MFSA

MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

PART B - STANDARD LICENCE CONDITIONS

Part BI: Malta based Retail Non-UCITS Collective Investment Schemes

1. Introduction

1.1 In addition to the requirements included in this Part, the Scheme shall comply with the provisions of the relevant Regulations issued under the Investment Services Act, 1994, as may be amended or supplemented at any time.

1.2 Where the Scheme is:

i. in the form of a limited partnership whose capital is divided into shares it shall also be subject to the *"Supplementary Conditions for Schemes established as Limited Partnerships"* set out in Section 11 of this Part.

ii. in the form of an investment company it shall also be subject to the *"Supplementary Conditions for Schemes established as Investment Companies"* set out in Section 12 of this Part.

iii. set up as a Self-Managed Fund and has accordingly not appointed a third party Investment Manager, the Scheme shall also be subject to the *"Supplementary Conditions for Self-Managed Schemes"* set out in Section 13 of this Part in lieu of SLCs 2.2, 2.3 and 2.4.

Provided that a Scheme which is self-managed and which qualifies for the *de minimis* exemption prescribed therein shall also be subject to SLC 13.1 of Section 13 of this Part.

iv. set up as an Umbrella Fund, reference to "the Scheme" throughout this Part shall be construed, where applicable, as reference to the Sub-Funds of the Scheme. Moreover, the Scheme shall also be subject to the *"Supplementary Conditions for Schemes established as Umbrella Funds"* set out in Section 14 of this Part.

v. set up as an Incorporated Cell Company with Incorporated Cells, the Scheme shall also be subject to the "*Supplementary Conditions for Schemes established as Umbrella Funds and set up as Incorporated Cell Companies with Incorporated Cells*" set out in Section 15 of this Part.

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vi. set up as a Feeder Fund or Fund of Funds it shall also be subject to the *"Supplementary Conditions for Schemes established as Feeder Funds or Fund of Funds"* set out in Section 16 of this Part.

vii. set up as a Money Market Fund, it shall also be subject to the "*Supplementary Licence Conditions applicable to Schemes set up as Money Market Funds*" prescribed in Appendix VII of these Rules.

1.3 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme.

1.4 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.

1.5 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any Licence Condition or to impose any new conditions.

2. Service Providers

Manager

2.1 The Scheme which is not a self-managed Scheme, may appoint a Maltese or European third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme.

2.2 A Maltese manager shall be licenced in terms of the Investment Services Act. It shall have an established place of business in Malta. It shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Manager shall also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Manager. The Scheme shall be required to satisfy the MFSA that the proposed Manager meets the above requirements.

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2.3 The MFSA shall be entitled to be satisfied, on a continuing basis that the Manager of the Scheme has the appropriate expertise and experience to carry out its functions.

2.4 The appointment and/or the replacement of any party who is to be the Manager of the Scheme, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Manager of the Scheme.

Administrator

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2.5 The Scheme or the Manager may appoint an Administrator. Where an Administrator is not appointed, the Manager shall be responsible for the Administration function.

2.6 Where the Scheme or Manager appoints a Maltese Administrator, such Administrator shall have an established place of business in Malta and shall be a Recognised Administrator in terms of Article 9A of the Investment Services Act, 1994.

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2.7 The Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Administrator of the Scheme. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above requirements.

2.8 The MFSA shall be entitled to be satisfied, on a continuing basis that the Administrator of the Scheme has the appropriate expertise and experience to carry out its functions.

2.9 The appointment and/or the replacement of any party who is to be the Administrator of the Scheme, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Administrator of the Scheme.

Investment Adviser

2.10 The Scheme or the Manager may appoint an Investment Adviser.

2.11 Where the Scheme or Manager appoints an Investment Adviser, the Investment Adviser shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Investment Adviser shall also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Adviser. The Scheme shall be required to satisfy the MFSA that the proposed Investment Adviser meets the above requirements.

2.12 The MFSA shall be entitled to be satisfied, on a continuing basis that the Investment Adviser has the appropriate expertise and experience to carry out its functions.

2.13 The appointment and/or the replacement of any party who is to be the Investment Adviser, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Investment Adviser.

Custodian

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2.14 The assets of the Scheme shall be entrusted to a Custodian for safekeeping. The Custodian shall also be responsible for monitoring the extent to which the Manager is abiding by the investment and borrowing powers laid out in the Prospectus and otherwise in accordance with the provisions of the Constitutional Document of the Scheme and these Licence Conditions.

2.15 The Custodian shall be the holder of a Category 4 Investment Services Licence issued by the Authority or a Credit Institution having its registered office in the EU and authorised in accordance with Directive 2006/48/EC.

2.16 Where the Custodian is in possession of a Category 4 Investment Services Licence, it shall have an established place of business in Malta. It shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Custodian shall also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Custodian. The Scheme shall be required to satisfy the MFSA that the proposed Custodian meets the above requirements

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2.17 The MFSA shall be entitled to be satisfied, on a continuing basis that the Custodian has the appropriate expertise and experience to carry out its functions.

2.18 The appointment and/or the replacement of any party who is to be the Custodian of the Scheme, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Custodian of the Scheme.

2.19 The Custodian shall be separate and independent from the Manager and shall act independently and solely in the interests of the unit holders. Any facts, relationships, arrangements, or circumstances which may at any stage bring that independence into question shall be declared to the MFSA as soon as the Scheme becomes aware of any such matter.

2.20 The Custodian in general shall ensure that the Scheme's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of a Scheme have been received and that all cash of the Scheme has been booked in cash accounts opened in the name of the Scheme or in the name of the fund manager acting on behalf of the Scheme.

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2.21 The assets of the Scheme or the Fund Manager acting on behalf of the Scheme shall be entrusted to the Custodian for safe-keeping as prescribed in Part BIV of the Investment Services Rules for Investment Services Providers.

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Auditor

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2.22 The Scheme shall appoint an auditor approved by the MFSA. The Scheme shall replace its auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an auditor.

2.23 The Scheme shall make available to its auditor, the information and explanations he/ she needs to discharge his/ her responsibilities as an auditor, and in order to meet the MFSA's requirements.

2.24 The Scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual is directly responsible for the audit, or his/ her firm is:

i. a director, partner, qualifying shareholder, officer, representative or employee of the Scheme;

ii. a partner of, or in the employment of, any person in (i) above;

iii. a spouse, parent, step-parent, child, step-child or other close relative of any person in (i) above;

iv. a person who is not otherwise independent of the Scheme; or

v. a person disqualified by the MFSA from acting as an auditor of a Scheme.

For this purpose an auditor shall not be regarded as an officer or an employee of the Scheme solely by reason of being the auditor of that Scheme.

2.25 The Scheme shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his/ her appointment. The Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

2.26 The letter of engagement shall include terms requiring the auditor:

i. to provide such information or verification to the MFSA as the MFSA may request;

ii. to afford another auditor all assistance as he/ she may require;

iii. to vacate his/ her office if he/ she becomes disqualified to act as auditor for any reason;

iv. to advise the MFSA of the fact and of the reasons for his/ her ceasing to hold office, if he/ she resigns, or is removed or not reappointed. The auditor shall also be required to advise the MFSA if there are matters he/ she considers

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should be brought to the attention of the MFSA;

v. in accordance with section 18 of the Act, to report immediately to the MFSA any fact or decision of which he/ she becomes aware in his/ her capacity as auditor of the Scheme which:

- is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
- constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme in or under the Act; or
- gravely impairs the Scheme's ability to continue as a going concern; or
- relates to any other matter which has been prescribed.

2.27 If at any time the Scheme fails to have an auditor in office for a period exceeding four weeks, the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Scheme.

2.28 In respect of each annual accounting period, the Scheme shall require its auditor to include in the annual report of the Scheme an audit report. The Scheme shall notify the MFSA immediately if it is informed that its auditor intends to qualify the audit report.

3. Compliance Officer/ Money Laundering Reporting Officer ("MLRO")

Compliance Officer

3.1 Responsibility for the Scheme's compliance with these Licence Conditions rests with the Board of Directors in the case of a Scheme set up as an investment company; with the General Partner(s) in the case of a Scheme set up as a limited partnership; or with the Manager in the case of a Scheme set up as a unit trust or common contractual fund.

3.2 The Scheme shall at all times have a Compliance Officer.

3.3 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer. The request for consent of the appointment of replacement of a Compliance Officer shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement and shall be accompanied by a Personal Questionnaire, in the form set out in Schedule E to Part A of these Rules and by a Competency Form, in the form set out in Schedule F to Part A of these Rules - duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such

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additional information it considers appropriate.

3.4 The Scheme shall notify the MFSA of the resignation or removal of its Compliance Officer upon becoming aware of the proposed resignation or removal. The Scheme shall also request the Compliance Officer to confirm to the MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.

3.5 The Scheme shall request its Compliance Officer to prepare a "Compliance Report" at least on a six monthly basis, which in the case of a Scheme taking the form of:

- an investment company, should be presented to the Board of Directors; or
- a limited partnership, should be presented to the General Partner; or
- a unit trust or common contractual fund, should be presented to the Manager and the Trustee.

The "Compliance Report" should indicate any:

i. breaches to the Investment and Borrowing Restrictions;

ii. complaints from unit holders in the Scheme and the manner in which these have been handled;

iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and

iv. material compliance issues during the period covered by the Compliance Report.

The "Compliance Report" shall also include a confirmation that all the local Prevention of Money Laundering requirements have been satisfied. This confirmation should be obtained from the Scheme's Money Laundering Reporting Officer.

3.6 A copy of the "Compliance Report" should be held in Malta at the registered office of the Scheme and made available to the MFSA during Compliance Visits.

Money Laundering Reporting Officer ("MLRO")

3.7 Responsibility for the Scheme's compliance with its Prevention of Money Laundering obligations rests with the Board of Directors in the case of a Scheme set up as an investment company; with the General Partner(s) in the case of a Scheme

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set up as a limited partnership; or with the Manager in the case of a Scheme set up as a unit trust or common contractual fund.

3.8 The Scheme shall at all times have an MLRO.

3.9 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of an MLRO. The request for consent of the appointment of replacement of an MLRO shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement and shall be accompanied by a Personal Questionnaire, in the form set out in Schedule E to Part A of these Rules and by a Competency Form, in the form set out in Schedule F to Part A of these Rules - duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

3.10 The Scheme shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal. The Scheme shall also request the MLRO to confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.

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4. Investment Objectives, Policies and Restrictions

4.1 The Scheme shall observe its Investment Objectives, Policies and Restrictions.

4.2 The Scheme's investment policy shall be clearly defined in the Scheme's Prospectus, and sufficient information shall be given to ensure that holders of Units are fully aware of the risks to which they will be exposed.

Breaches of Investment Restrictions

4.3 The Scheme shall comply with the investment restrictions within six months from the launch of the Scheme or upon reaching a value equivalent to EUR2,500,000 whichever is sooner. However, the Scheme will, provided it considers this to be in the best interest of its shareholders and that it observes the principle of risk spreading, not be required to comply with its investment restrictions upon reaching a value equivalent to EUR2,500,000 subject to it complying with such restrictions within a maximum of six months from launch. The Scheme shall take all reasonable steps to comply with the investment restrictions. The Custodian shall supervise the operation of the Scheme or the Manager to ensure that the Scheme complies with the investment restrictions.

4.4 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

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i. If one or more of the Scheme's investment restrictions are at any time contravened for reasons beyond the control of the Manager or the Scheme, the Manager or the Scheme shall take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s).

The above is aimed at addressing circumstances which may arise following acquisition of the Scheme's assets and include market price movements of the Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the Manager and the Scheme to comply with the Scheme's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

ii. Forthwith upon the Custodian becoming aware that circumstances of a kind described above have arisen, the Custodian shall take such steps as are necessary to ensure that the Scheme or the Manager comply with the requirement imposed by (i) above.

iii. A contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a Licence Condition and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied by the Manager or Scheme within the maximum six month period stipulated in (i) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply.

Ancillary Liquid Cash

4.5 The Scheme may hold ancillary liquid assets irrespective of its investment objective and policy.

Investments in Securities

4.6 The Scheme shall not invest more than 10 per cent of its assets in Securities which are not traded in or dealt on a market which:

i. the Custodian and Manager have agreed between themselves as being appropriate for the Scheme;

ii. is listed in the Prospectus;

iii. is regulated, operates regularly, is recognised and is open to the public;

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iv. has adequate liquidity and adequate arrangements in respect of the transmission of income and capital; and

v. is not the subject of an MFSA restriction.

4.7 The Scheme shall not invest more than 10 per cent of its assets in Securities issued by the same body.

4.8 The Scheme shall not hold more than 10 per cent of any class of Security issued by any single issuer.

4.9 The Scheme may, subject to approval from the MFSA, invest up to 100 per cent of its assets in Securities issued or guaranteed by any State, its constituent States, its local authorities, or public international bodies of which one or more States are members.

4.10 The Scheme may invest in nil paid or partly paid shares and subscribe for placing or underwriting as long as the amount due to be paid does not exceed 5 per cent of the value of the Scheme, except that, if the amount exceeds that figure, cash not required for other purposes or for the efficient management of the portfolio shall be available to cover the full amount outstanding.

4.11 The Scheme and its Manager, taking into account all of the Schemes which the latter manages, shall not acquire sufficient instruments to give it the right to exercise control over 20 per cent or more of the share capital or votes of a company, or sufficient instruments to enable it to exercise significant influence over the management of the issuer.

Deposits with Credit Institutions

4.12 No more than 10 per cent of the assets of the Scheme shall be kept on deposit with any one body. This limit may be increased to 30 per cent in respect of money deposited with a credit institution licensed in Malta or in any other EEA State, or with any other credit institution which has been approved by the MFSA.

Investments in Other UCITS and/ or Other Collective Investment Schemes

4.13 The Scheme may acquire the Units of other Collective Investment Schemes subject to the following:

i. not more than 20 per cent of the Scheme's assets shall be invested in any one scheme;

ii. where the Scheme invests in the Units of another scheme managed by the same Manager, the Manager of the scheme into which the investment is made shall

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waive all charges which it is entitled to charge for its own account in relation to the acquisition or disposal of Units;

iii. where a commission is received by the Manager of the Scheme by virtue of an investment in the Units of another scheme, that commission shall be paid into the property of the Scheme.

Transactions in Financial Derivative Instruments – for efficient portfolio management purposes

4.14 The Scheme may employ techniques and instruments for the purpose of efficient portfolio management. These operations may concern the use of Financial Derivative Instruments.

The reference in this SLC to techniques and instruments for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:

i. they are economically appropriate in that they are realised in a cost-effective way;

ii. they are entered into for one or more of the following specific aims:

a. reduction of risk; or

b. reduction of cost.

4.15 The Scheme shall only hold Financial Derivative Instruments for the purposes of efficient portfolio management in terms of SLC 4.14 and shall not hold Financial Derivative Instruments for investment purposes nor shall it be leveraged or geared in any manner through the use of Financial Derivative Instruments.

4.16 In order to assure it is not leveraged or geared through the use of Financial Derivative Instruments, the Scheme shall calculate its exposure relating to Financial Derivative Instruments on the basis of the Commitment Approach. The Scheme shall convert its derivatives positions into the equivalent positions of the underlying assets embedded in those Financial Derivative Instruments. The commitment calculation for certain Financial Derivative Instruments may be adjusted by a probability factor that aims to reflect the probability of the Financial Derivative Instrument's commitment occurring. For options and warrants, the delta approach may be used. Where it is not possible to calculate a probability factor on a scientific and objective basis, the factor is assumed to be 1. Appendix VI sets out the commitment rules for a non-exhaustive list of commonly traded Financial Derivative Instruments.

4.17 The Scheme's maximum exposure to one counterparty in an OTC-derivative

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transaction shall not be more than 5 per cent of value of the assets of the Scheme. This limit may be increased to 10 per cent in respect of OTC-derivative transactions made with a counterparty which is a credit institution. The exposure per counterparty of an OTC-derivative should not be measured on the basis of the notional value of the OTC-derivative, but on the maximum potential loss incurred by the Scheme if the counterparty defaults.

4.18 The exposure to one counterparty in an OTC-derivative transaction may be reduced where the counterparty provides the Scheme with collateral which satisfies the following criteria:

i. the collateral falls within one of the following categories:

   a. cash;

   b. government or other public securities;

   c. certificates of deposit issued by Relevant Institutions; and

   d. bonds/commercial paper issued by Relevant Institutions;

ii. collateral is:

   a. marked to market daily;

   b. transferred to the custodian, or its agent; and

   c. immediately available to the Scheme, without recourse to the counterparty, in the event of a default by that entity;

iii. in the case of non-cash collateral, the collateral:

   a. cannot be sold or pledged;

   b. has a minimum credit rating of A or equivalent;

   c. is held at the credit risk of the counterparty; and

   d. is issued by an entity independent of the counterparty;

iv. in the case of cash collateral, the collateral may not be invested other than in the following:

   a. deposits with relevant institutions, which are capable of being withdrawn within 5 working days;

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b. government or other public securities which have a minimum credit rating of A or equivalent;

c. certificates of deposit issued by relevant institutions, which have a minimum credit rating of A or equivalent; and

d. daily dealing Qualifying Money Market Funds which have a minimum credit rating of AAA or equivalent.

Invested cash collateral which is held at the credit risk of the Scheme, other than cash collateral invested in government or other public securities or Qualifying Money Market Funds, shall be diversified so that no more than 20 per cent of the collateral is invested in the securities of, or placed on deposit with, one institution. Invested cash collateral may not be placed on deposit with, or invested in securities issued by the counterparty or a related entity.

4.19 The Scheme may net the mark-to-market value of its OTC-derivative positions with the same counterparty, thus reducing the Scheme's exposure to its counterparty, provided that the Scheme has a contractual netting agreement with its counterparty which creates a single legal obligation such that, in the event of the counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the Scheme would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions.

4.20 Derivative transactions which are performed on an exchange where the clearing house meets the following conditions, shall be deemed to be free of counterparty risk:

i. is backed by an appropriate performance guarantee;

ii. is characterised by a daily mark-to-market valuation of the derivative positions; and

iii. is subject to at least daily margining.

4.21 The Scheme shall only enter into OTC-derivatives for the purposes of efficient portfolio management with counterparties who:

i. are not the Manager or Custodian of the Scheme; and

ii. form part of a group whose head office or parent company is licensed, registered or based in Malta, any member of the OECD, the EU or the EEA and is subject to prudential supervision; and

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iii. have a credit rating of at least A (Standards & Poor's) or A2 (Moody's) or an equivalent rating by another internationally renowned credit rating agency.

Such counterparty shall satisfy the Manager or the Scheme that it has:

– agreed to value the transaction at least weekly; and

– will close out the transaction at the request of the Manager or the Scheme at fair value.

4.22 When the Scheme holds a Financial Derivative Instrument which automatically or at the Scheme's or counterparty's discretion, requires cash or physical settlement on maturity or exercise, the Scheme shall hold the underlying instrument as cover. The level of cover should be calculated on the basis of the Commitment Approach as indicated in SLC 4.16.

4.23 When in view of the nature of the Financial Derivative Instrument, the Scheme cannot hold the underlying as cover (e.g. in the case of index based financial derivative instruments), SLC 4.22 shall not apply and the Scheme shall hold any of the following assets as cover:

i. cash;

ii. liquid debt instruments (e.g. government bonds of first credit rating) prudently adjusted by appropriate haircuts (minimum of 5 per cent);

iii. other highly liquid assets which are correlated with the underlying of the Financial Derivative Instruments, prudently adjusted by appropriate haircuts (minimum 5 per cent).

The level of cover should be calculated on the basis of the Commitment Approach as indicated in SLC 4.16.

For the purposes of the above, the instruments held as cover should be considered as 'liquid' when they can be converted into cash at no more than 7 business days at a price closely corresponding to the current valuation of the financial instrument. It has to be ensured that the respective cash amount is at the Scheme's disposal at the maturity/ expiry or exercise date of the Financial Derivative Instrument.

Uncovered Sales

4.24 The Scheme may not carry out uncovered sales of Securities or other financial instruments. Uncovered sales are all transactions in which the Scheme is exposed to the risk of having to buy securities at a higher price than the price at which the

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securities are delivered, thus making a loss, and the risk of not being able to deliver the underlying for settlement at the time of the maturity of the transaction.

General Restrictions – Single Issuer Exposures

4.25 Notwithstanding the individual limits laid down in SLC 4.7, 4.12 and 4.17, the Scheme may not combine:

i. investments in Securities issued by;

ii. deposits made with; and/or

iii. counterparty exposures arising from OTC-derivative transactions undertaken with;

a single body in excess of 35 per cent of its assets.

Borrowing Limits

4.26 A Scheme may borrow up to a maximum of 10 per cent of:

i. its assets, when the Scheme is set up as an investment company or limited partnership; or

ii. the value of the Scheme, when the Scheme is set up as a unit trust or common contractual fund.

Provided that the borrowing is on a temporary basis and such that the Scheme's overall risk exposure does not exceed 110 per cent of its assets under any circumstances.

Provided further that the Scheme may acquire foreign currency by means of a 'back to back' loan. Foreign currency obtained in this manner is not classed as borrowings for the purposes of this SLC provided that the offsetting deposit:

a. is denominated in the base currency of the Scheme; and

b. equals or exceeds the value of the foreign currency loan outstanding.

Miscellaneous

4.27 Material changes to the Investment Policies and Restrictions of the Scheme shall be notified to investors in advance of the change.

4.28 Changes to the Investment Objectives of the Scheme shall be subject to the prior

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approval of the Unit holders of the Scheme. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

5. Prospectus

5.1 The Scheme shall publish a Prospectus, and in the case of an open-ended Scheme, if it so desires, a Key Investor Information Document (KII), which shall be dated and the essential elements of which shall be kept up-to-date. Where only a Prospectus has been published, this shall always be offered to investors free of charge before they commit to investing. Where a KII has been published in addition to a Prospectus, the KII shall always be offered to investors free of charge before they commit to investing, whilst the Prospectus shall be offered to investors free of charge on request. The Scheme shall comply with the requirements on the KII prescribed in Commission Regulation No. 583/2010 and the applicable provisions on the KII prescribed in Part BII of these Rules. In addition:

i. where the Scheme is in the form of an investment company or partnership, it shall lodge a signed copy of the Prospectus and the KII (if any) with the Registrar of Companies. Such Prospectus shall be made available for inspection by the public. In the case of a closed-ended Scheme, the Prospectus shall be made available to the public as soon as practicable, and in any case, within a reasonable time in advance of, and at the latest, at the beginning of, the offer to the public. In the case of an initial public offer of units in a closed-ended Scheme not already admitted to trading on a Regulated Market that is admitted to trading for the first time, the Prospectus shall be available at least six working days before the offer opens; and

ii. where (i) above is not applicable, a Scheme whose structure is other than in a corporate form (such as a unit trust or common contractual fund) shall lodge a copy of the Prospectus and the KII (if any), authenticated by an authorised person on behalf of the Scheme, with MFSA and the Registrar of Companies who will make the necessary arrangements to retain the documentation in an appropriate file for public access.

5.2 Where the Prospectus is made available by publication in electronic form, a paper copy shall nevertheless be delivered to the investor upon his request and free of charge, by the Scheme or the financial intermediaries placing or selling the Scheme's units.

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5.3 The Prospectus of the Scheme shall be made available in a printed form at the registered office of the Scheme or its Manager or other financial intermediaries placing or selling the units in the Scheme.

5.4 The Prospectus and the KII (if any) as well as any amendments thereto shall be sent to and agreed with the MFSA before publication.

5.5 The Prospectus and the KII shall contain sufficient information for investors to make an informed judgement about the investment proposed, including, where applicable, the assets and liabilities, financial position, the profit and loss and the rights attached to the units of the Scheme. This information shall be presented in an easily analysable and comprehensible form and shall contain at least the information listed in the following Annexes of Appendix I: Annex I, in the case of the Prospectus of an open ended Scheme; and Annex III, in the case of the Prospectus of a closed ended Scheme.

5.6 The text and the format of the Prospectus, and the KII (if any), published or made available to the public, shall at all times be identical to the latest version approved by the MFSA.

5.7 Every significant new factor, material mistake or inaccuracy relating to the information included in a Prospectus of a closed ended Scheme which is capable of affecting the investors' assessment of the units on offer and which arises or is noted between the time when the Prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a Regulated Market begins, shall be mentioned in a supplement to the Prospectus. Such a supplement shall be approved in the same way within a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original Prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.

5.8 If there are significant new factors, material mistakes or inaccuracies, arising since the approval of the Prospectus, the Scheme shall publish a supplement which shall be approved by the MFSA.

5.9 The Scheme shall comply with the relevant requirements laid out in the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005 as may be amended from time to time.

6. Constitutional Document

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6.1 The Constitutional Document of the Scheme shall contain at least the information prescribed in Appendix III.

6.2 Any changes to the Constitutional Document of the Scheme shall be approved by the MFSA in advance of implementation.

7. Promotion

7.1 The promotion of the Scheme is subject to Article 11 of the Act and to the requirements of Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.

7.2 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.

7.3 All Investment Advertisements issued directly by the Scheme shall be approved by the Compliance Officer. All promotional material issued directly by the Scheme shall indicate that a Prospectus exists and the places where it, and any documents updating it, may be obtained.

7.4 The Scheme shall make public in an appropriate manner, the issue, sale, re-purchase or redemption price of its units each time it issues, sells, re-purchases or redeems them, and at least twice a month. The MFSA may, however permit the Scheme to reduce the frequency to once a month on condition that such a derogation does not prejudice the interests of unit-holders.

8. Side Letters

8.1 The Scheme shall not enter into Side letters.

9. Distributions of Income

9.1 The Scheme shall allocate and distribute its income in accordance with Appendix IV.

10. General

10.1 The Scheme shall obtain the approval of the MFSA before any of the following documents are amended:

i. Constitutional Documents;

ii. Scheme rules (if not contained in (i));

iii. any other document affecting the rights of participants in the Scheme;

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iv. the latest annual report and any subsequent interim report for the Scheme;

v. the Prospectus and Key Investor Information Document (if applicable), or similar document giving details of the Scheme;

vi. a business plan submitted to the MFSA;

vii. a marketing plan submitted to the MFSA;

viii. the Management agreement and any other documents detailing the relationship between the Scheme and the persons responsible for managing the Scheme;

ix. the agreement between the Scheme or the Manager and the Administrator;

x. the agreement between the Scheme or the Manager and the Registrar;

xi. the agreement between the Scheme or the Manager and the Custodian; and

xii. the agreement between the Scheme or the Manager and the Investment Adviser.

The Constitutional Documents shall establish the procedures for amending these documents.

10.2 The Scheme shall comply with any applicable requirements of the External Transactions Act, 1972.

10.3 The Scheme shall be liable to the holders of Units for any loss or prejudice suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.

10.4 The Scheme or its Manager shall comply with directions given by the Custodian, being directions designed to ensure that the Scheme is properly managed and administered in accordance with the Constitutional Documents, the Licence Conditions and the most recently published Prospectus.

10.5 The MFSA has the right to require the suspension of the repurchase/ redemption, or sale/ issue of Units of the Scheme. When the Manager or the Scheme temporarily suspends the repurchase or redemption of Units it shall inform the MFSA immediately and, in any event, within the working day.

10.6 Any variation of the duties or charges by which the issue or sale price of Units is increased or by which the redemption or repurchase price of Units is decreased shall be notified to the MFSA and the Custodian. Such variation shall be published in

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revised Prospectus at least 90 days before becoming effective. An increase in the duties or charges applied to the redemption or repurchase price shall be applied only to Units issued or sold after the date on which the increase takes effect.

10.7 The Scheme shall submit half-yearly and annual reports to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The accounting information provided in the annual report shall be audited by a qualified auditor approved by the MFSA. The auditor's report, including any qualifications thereto shall be reproduced in full in the annual report. The contents of the half-yearly and annual reports are set out in Appendix II. The half-yearly and annual reports shall be published and submitted to the MFSA within two and four months respectively of the end of the period concerned.

The Scheme shall also submit to the MFSA, on the following email address: fundreporting@mfsa.com.mt, any statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations.

10.8 The Scheme, its Manger or Administrator on its behalf shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.

10.9 The Scheme shall comply with all Maltese and overseas regulations to which it is subject and shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements and other documents. Wording similar to the following shall be used: *"Licensed as a Collective Investment Scheme by the Malta Financial Services Authority"*.

10.10 The Scheme shall comply with the Prevention of Money Laundering Act, 1994 and the Regulations issued thereunder.

10.11 The Scheme shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of, the MFSA and inform it promptly of any relevant information. The Scheme shall supply the MFSA with such information as the MFSA may require.

10.12 When requested to do so by the MFSA, the Scheme shall submit to arbitration in respect of any dispute between itself and a holder of Units. Under such circumstances the MFSA shall be entitled to appoint an Arbitrator.

10.13 The MFSA will not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad

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10.14 The MFSA shall be informed of any material information concerning the Scheme, its management or its operation, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing of:

i. any evidence of fraud or dishonesty by an official of the Scheme immediately upon becoming aware of the matter;

ii. any actual or intended legal proceedings of a material nature by or against the Scheme; and

iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad;

immediately upon becoming aware of the matter.

10.15 The financial year end of the Scheme shall be agreed with the MFSA.

10.16 The MFSA shall be advised if the value of the Scheme falls below EUR2,500,000.

10.17 A request for a variation of a Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons for such request.

10.18 The Scheme shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Scheme on the day the Licence is first issued, and thereafter annually within one week from the anniversary of that date.

10.19 The Scheme shall not grant loans or act as a guarantor on behalf of a third party. This is without prejudice to the right of the Scheme to acquire debt securities.

10.20 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Constitutional Documents as soon as the Scheme or its Manager or Administrator become aware of the breach.

10.21 In the event of the winding-up of the Scheme, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Scheme and its Manager shall do all in their power to delay the winding-up of the Scheme or to proceed with the winding-up in accordance with conditions imposed by the MFSA.

10.22 The issue of bearer Units, and the terms of that issue, shall be agreed in advance with the MFSA.

10.23 Where units in a Scheme are not freely transferable, no Units in the Scheme may be

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transferred from a Unit holder to any other party without the advance permission of the MFSA.

10.24 Where the Scheme is closed-ended, neither the authorised nor the issued share capital of the Scheme shall be increased or reduced without the advance permission of the MFSA.

10.25 Where the Scheme is not listed, the Scheme shall obtain the advance permission of the MFSA before taking any preparatory steps to seeking a listing.

11. Supplementary Conditions for Schemes established as Limited Partnerships

11.1 The Scheme shall obtain the written consent of the MFSA before admitting a General Partner. The request for consent shall reach the MFSA at least twenty one business days prior to the proposed date of admittance and shall be accompanied by a Personal Questionnaire in the form set out in Schedule E to Part A of these Rules duly completed by the person proposed (in the case of an individual) or by the Directors and Qualifying Shareholders of the proposed Corporate General Partner. The MFSA reserves the right to object to the proposed General Partner and to require such additional information it considers appropriate.

Provided that where the proposed corporate General Partner is regulated in a Recognized Jurisdiction, the request for consent need not be accompanied by a Personal Questionnaire of the Directors and Qualifying Shareholders of the proposed corporate General Partner, but shall include details of the regulatory status of the General Partner. Nevertheless, the MFSA reserves the right to require submission of the Personal Questionnaires of the Directors and Qualifying Shareholders of the proposed corporate General Partner where considered appropriate.

11.2 General Partners shall be persons falling within any one of the following categories:

i. a company licensed under the Investment Services Act, 1994, for the provision of fund management services; or

ii. a company falling within the exemptions applicable to overseas fund managers; or

iii. any other entity of sufficient standing and repute as approved by the MFSA; or

iv. any other person who satisfies the fit and proper test.

Where the General Partner falls under (iii) and (iv) above, and in the absence of a Manager [as per (i) or (ii)] acting as an additional General Partner, the Scheme shall appoint a Manager acceptable to the MFSA.

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11.3 The Scheme shall notify the MFSA in writing of the departure of a General Partner within 14 days of the departure. The Scheme shall also request the General Partner to confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.

11.4 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the General Partner(s) and of any party appointed by the Scheme.

11.5 Where applicable, the Scheme, or the Manager or Administrator on behalf of the Scheme, is required to disclose to potential investors, the identity of the beneficial owners of the General Partner(s) upon request.

12. Supplementary Conditions for Schemes established as Investment Companies

12.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Scheme.

12.2 The Scheme shall at all times have one or more Directors independent from the Manager and the Custodian.

12.3 The Scheme shall obtain the written consent of the MFSA before the appointment of a Director. The request for consent of the appointment or replacement of a Director shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement. The Scheme shall not appoint a Corporate Director unless such Corporate Director is regulated in a Recognized Jurisdiction.

12.4 The request for consent of the appointment or replacement of an individual as Director shall be accompanied by a Personal Questionnaire in the form set out in Schedule E to Part A of these Rules duly completed by the person proposed. In the case of a Corporate Director, the request for consent shall include details of its regulatory status. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

12.5 The Scheme shall notify the MFSA in writing of the departure of a Director within 14 days of the departure. The Scheme shall also request the Director to confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.

12.6 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

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12.7 The Scheme shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:

i. avoiding conflicts of interest where this is possible and, where it is not, ensuring – by way of disclosure, internal procedures or otherwise – that investors are treated fairly. The following procedures should be followed during Board Meetings, where a member considers that he/ she has or may have a conflict of interest:

a. that person should declare that interest to the other members either at the Meeting at which the issue in relation to which he/ she has an interest first arises, or if the member was not at the date of the Meeting interested in the issue, at the next Meeting held after he/ she became so interested;

b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which he/ she is interested and should withdraw from the meeting while the matter in which he/ she has an interest is being discussed;

c. the interested member should not vote at a Meeting in respect of any contract or arrangement in which he/ she is interested, and if he/ she shall do so, his/her vote shall not be counted in the quorum present at the Meeting; and

d. the minutes of the meeting should accurately record the sequence of such events;

ii. abiding by all relevant laws and regulations, including in respect of Prevention of Money Laundering;

iii. avoiding any claim of independence or impartiality which is untrue or misleading; and

iv. avoiding making misleading or deceptive representations to investors.

13. Supplementary Conditions for Self-Managed Schemes

NOTE: This Section is applicable to all Self-Managed Schemes.

In the case where a self-managed Scheme wishes to avail itself of the *de minimis* exemption prescribed in Article 3 AIFMD, it shall comply with SLCs 13.1 to 13.14 prescribed in this Section.

Other self-managed Schemes shall comply with SLCs 13.2 to 13.14.

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13.1 A self-managed Scheme (hereinafter referred to as *de minimis* self-managed Scheme) which satisfies one of the following conditions shall further comply with the requirements contained herein:

(a) Either directly or indirectly, through a company with which the Scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or

(b) Either directly or indirectly, through a company with which the Scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

Where the conditions prescribed above are no longer met the *de minimis* self-managed Scheme shall inform the MFSA thereof and shall apply for an extension to its *de minimis* Collective Investment Scheme Licence to a full AIF Licence within 30 days from the date of notification thereof to the MFSA.

Provided that in complying with the requirements prescribed in SLC 13.1 (a) and (b) above the *de minimis* self-managed scheme shall further comply with articles 3 and 4 of the Commission delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

The *de minimis* self-managed Scheme shall comply with the following requirements:

i. The Scheme shall provide information to the MFSA on its investment strategy;

ii. The Scheme shall regularly, provide the MFSA with information on the main instruments in which it is trading and on its principal exposures and most important concentrations in order to enable the MFSA to monitor systemic risk effectively; and

Provided that in complying with the requirements prescribed in paragraph [ii] above, the Scheme shall submit to the MFSA the information prescribed in Appendix IX to these Rules and shall further comply with the applicable provisions of the Commission Delegated Regulation (EU) No

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231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

iii. The Scheme shall provide the MFSA with any additional information required from time to time. In particular, in respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing, which shall be submitted to the MFSA. The auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion the methodology used by the Scheme to calculate its assets under management complies with the requirements of the Alternative Investment Fund Management Directive.

13.1A. The *de minimis* self-managed Scheme shall not benefit from any rights to passport in terms of the Alternative Investment Fund Managers Directive, unless it chooses to apply for, and is granted a full AIFMD compliant Licence in accordance with all the conditions in the Alternative Investment Funds Rulebook.

13.2 The Scheme and the Custodian shall be separate persons independent of each other. They shall act independently and solely in the interests of the Unit holders. A majority of the directors of the Scheme shall be independent of the Custodian. Since independence may be compromised in a variety of ways, any facts, relationships, arrangements, or circumstances which may at any stage bring that independence into question shall be declared to the MFSA as soon as the Scheme becomes aware of any such matter.

Capital Requirements

13.3 The Scheme shall be operated in or from Malta, as agreed with the MFSA. It shall have sufficient financial resources at its disposal to enable it to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed. The initial, paid up share capital for the Scheme should not be less than EUR 125,000, or the equivalent in any other currency and the NAV of the Scheme is expected to exceed this amount on an on-going basis. The Scheme should notify the MFSA as soon as its NAV falls below EUR125,000.

Operational Arrangements

13.4 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements and shall provide the MFSA with all the information it may require from time to time. The Scheme shall be

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required to observe the relevant requirements set out in Part BI of the Investment Services Rules for Investment Services Providers which are set out to ensure that it:

i. acts honestly and fairly in conducting its business activities in the best interests of Unit holders and the integrity of the market;

ii. acts with due skill, care and diligence, in the best interests of Unit holders and the integrity of the market;

iii. has and employs effectively the resources and procedures that are necessary for the proper performance of its activities;

iv. tries to avoid conflicts of interests and, when they cannot be avoided, ensures that Unit holders are fairly treated, and

v. complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its Unit holders and the integrity of the market.

Any reference in these rules to "Licence Holders" shall be construed as reference to "the Scheme".

13.5 The management of the assets of the Scheme is to be the responsibility of the Board of Directors, at least one of whom shall be resident in Malta. Unless otherwise agreed with the MFSA, the Board of Directors of the Scheme shall establish an in-house Investment Committee made up of at least three members, whose composition may include Board members. The Terms of Reference of this Investment Committee – which regulate the proceedings of the Investment Committee – and any changes thereto, is subject to the prior approval of the MFSA. The majority of Investment Committee meetings – the required frequency of which should depend on the nature of the Scheme's investment policy, but which should be at least quarterly – are to be physically held in Malta. Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.

13.6 Minutes of the Investment Committee meetings should be available in Malta for review during MFSA's compliance visits. The role of the Investment Committee will be to:

i. monitor and review the investment policy of the Scheme;

ii. establish and review guidelines for investments by the Scheme;

iii. issue rules for stock selection;

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iv. set up the portfolio structure and asset allocation; and

v. make recommendations to the Board of Directors of the Scheme.

13.7 Where the Scheme has not appointed an Investment Committee, the functions mentioned under SLC 13.5 above shall be undertaken by the Directors of the Scheme and any reference to Investment Committee throughout this Section shall be construed as reference to the Board of Directors of the Scheme.

13.8 The Investment Committee may delegate the day-to-day investment management of the assets of the Scheme to at least two officials of the Scheme (referred to as "the Portfolio Managers") – who will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objectives, policy and restrictions described in the Scheme's Prospectus. The Scheme may also delegate the day to day investment management of its assets to a third party Manager acceptable to the MFSA. In this case reference to "Portfolio Manager" throughout this Section shall be construed as a reference to the third party Manager appointed by the Scheme.

13.9 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a member of the Investment Committee or a Portfolio Manager. The request for consent of the appointment of replacement of a member of the Investment Committee or a Portfolio Manager, where applicable, shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness, including competence, of the members of the Investment Committee and of the Portfolio Managers.

The request for consent of the appointment of a member of the Investment Committee or a Portfolio Manager shall be accompanied by a PQ and the Competency Form in the forms set out in Schedules E and F to Part A of these Rules together with a detailed CV of the person proposed.

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13.10 The Scheme shall notify the MFSA in writing of the departure of a Member of the Investment Committee and/ or a Portfolio Manager within 14 days of the departure. The Scheme shall also request the Investment Committee and/ or the Portfolio Manager, as applicable, to confirm that his/ her departure has no regulatory implications or otherwise provide any relevant details, as appropriate. A copy of such request shall be provided to MFSA.

13.11 The Scheme shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure adequate monitoring of the activities of the Portfolio Managers and the Investment Committee.

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13.12 The Scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

Documents and Records

13.13 The Scheme or the Administrator shall keep such accounting and other records, in particular regarding the whole process of the investment management function and its monitoring thereof, as are necessary to enable it to comply with the Licence Conditions and to demonstrate that compliance has been achieved. Records are to be retained in Malta and made available to MFSA's review as the need arises. Records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.

Auditor

13.14 In respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.

14. Supplementary Conditions for Schemes set up as Umbrella Funds.

Note: Where the Scheme has issued a Prospectus and the Key Investor Information Document (where applicable), the disclosure requirements set out in SLCs 14.3 till 14.6 shall relate only to the Prospectus.

14.1 Where the Scheme is set up as an Umbrella Fund, in addition to the approval being obtained for the Scheme, each Sub-Fund shall be approved by the MFSA, following the submission of an application form and supporting documentation.

14.2 Each Sub-Fund shall comply with the laws and regulations governing Collective Investment Schemes.

14.3 The Prospectus shall state the charges, if any, applicable to the exchange of units in one Sub-Fund for Units in another. Charges shall be detailed in the most recent Prospectus. Any increase in the charges shall be notified to the MFSA and the Custodian and published in revised Prospectus at least 90 days before becoming effective.

14.4 The Prospectus shall state the procedures and basis of valuation (including in respect of any foreign exchange conversion) to be applied to the exchange of Units in one Sub-Fund for Units in another.

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14.5 The Prospectus shall state the basis of apportioning charges, expenses, liabilities and amounts received (which are not clearly attributable to only one Sub-Fund) between Sub-Funds. This basis should be fair to the holders of Units in each Sub-Fund.

14.6 If applicable, the Prospectus shall state that, although each Sub-Fund will bear its own liabilities, the Scheme as a whole will remain liable to third parties for all its liabilities.

14.7 Where a supplement to the Scheme's Prospectus is issued relating to a Sub-Fund, it shall state that the Scheme as a whole is constituted as an Umbrella Fund and name the other Sub-Funds.

14.8 A Sub-Fund shall not invest in another Sub-Fund of the same Scheme.

14.9 A meeting of the holders of Units in any one Sub-Fund may approve a modification of the constitutional documents or any policy statement only if the provisions to be modified relate only to that Sub-Fund.

15. Supplementary Conditions for Schemes established as Incorporated Cell Companies with Incorporated Cells

15.1 Both the Incorporated Cell Company and the individual Incorporated Cells shall be licensed by the MFSA.

15.2 The Incorporated Cell Company and the individual Incorporated Cells shall have at least one common director between them.

15.3 The Incorporated Cell Company and the individual Incorporated Cells shall have a common registered office.

16. Supplementary Conditions for Schemes set up as Feeder Funds or Fund of Funds.

16.1 The underlying scheme or schemes shall be licensed by the MFSA or authorised in another jurisdiction by a supervisory authority responsible for the regulation of Collective Investment Schemes and which, in the opinion of the MFSA, provides an adequate level of regulation. Alternatively, the MFSA may licence a Scheme if it is satisfied that the management and custodial arrangements, constitution and investment objectives of the underlying scheme or schemes provide adequate safeguards.

16.2 The underlying scheme or schemes shall fall within the objectives and investment policy as set out in the Prospectus and shall already have been marketed to the

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public in one or more territories overseas.

16.3 Where the Scheme invests in the Units of an underlying scheme which is managed or advised by the Scheme's Manager or Advisor or by an associate of the Manager or Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/or advisory charges.

16.4 Notwithstanding the limit in SLC 4.13(i), where the Scheme is set up as a Fund of the Funds, it may invest up to 30 per cent of its assets in one underlying scheme.

16.5 If an underlying scheme is denominated in a currency other than that in which the Scheme itself is denominated, the Scheme's Prospectus shall explain the risks involved and, if appropriate, the techniques which may be used to reduce this risk.

16.6 The Prospectus shall accurately reflect the characteristics of the underlying scheme or schemes. Where appropriate, holders of Units in the Scheme shall be given the opportunity to receive copies of the Prospectus for each underlying scheme.

16.7 The Prospectus shall give details of all fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Scheme and, where appropriate, by each underlying scheme.

16.8 Price quotation and sale and repurchase arrangements for Units in the Scheme shall ensure that:

i. a purchaser is able to purchase Units at a price based on the most recent underlying scheme price or prices;

ii. the issuing of the Units and the remitting of the purchase proceeds to the underlying scheme or schemes is achieved as soon as is practicable;

iii. a seller is able to sell Units at a price based on the most recent underlying scheme price or prices;

iv. the cancellation (if appropriate) of the Units and the remitting of the proceeds to the seller are achieved as soon as is practicable.

16.9 The Scheme shall, as far as practicable, be valued with the same frequency as the underlying schemes.

16.10 The Scheme shall not invest in a Feeder Fund or, without MFSA approval, in a Fund of Funds.

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16.11 Such information as is required by the MFSA concerning each underlying scheme shall be made available to the MFSA on request.

17. Supplementary Conditions for Schemes established as Incorporated Cells ('IC') under a Recognised Incorporated Cell Company ('RICC')

17.1 Incorporated Cells ('IC') set up under a Recognised Incorporated Cell Company ('RICC') in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations, 2012 may be set up as:

- an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta);

- an investment company with fixed share capital in terms of the Companies Act (Chapter 386 of the Laws of Malta).

17.2 Each IC can be either third party managed or self-managed. In the case where an IC is third-party managed, it will be required to appoint an investment manager, which should be approved by the RICC.

17.3 An IC which is third-party managed shall appoint its own investment manager which may be the same or different from the investment manager appointed by any other incorporated cells set up under the same RICC. However, in any case, the investment manager appointed has to be approved by both the RICC and the MFSA

17.4 An IC shall, unless otherwise authorised in writing by the MFSA, appoint the service providers selected for it by its RICC, under the same terms and conditions as shall have been approved by the Authority for this purpose.

17.5 An IC shall have the same registered office as its RICC at all times.

17.6 Each IC is regulated by its own Memorandum and Articles of Association. Each of the constitutional documents or any changes thereto must be endorsed by the RICC. No changes to the constitutional documents of the IC shall be effected except as approved by Resolution of the Board of Directors of the IC and the RICC and in accordance with the Standard Licence Conditions applicable to such schemes.

17.7 Each IC must issue its own offering document which may either be based on the standard form used by incorporated cells that belong to the same RICC or specific to the particular incorporated cell. Provided that no offering document or changes thereto shall be issued by the IC unless it has first been approved by the RICC and

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the MFSA.

17.8 An IC that has been granted or has applied for a Collective Investment Scheme Licence may apply for admissibility to listing with the Listing Authority (the MFSA is the Listing Authority in terms of the Financial Market Act, 1990).

17.9 The directors of an IC are not required to be the same as those of the RICC. However the RICC and the IC must have at least once common director. The MFSA may require that directors with different competencies sit on the different boards of directors of the incorporated cells. The common director shall report to the Board of the RICC on a regular basis and must provide the RICC with any information that may be relevant to the fulfilment of the RICC's compliance obligations in relation to its incorporated cells.

17.10 In addition to the obligations arising under the Companies Act, the IC shall notify the RICC and the MFSA within 14 days of a director of the IC being appointed or ceasing to be a director of the cell.

17.11 An IC may create sub-funds. In this regard, an IC is required to comply with Section 14 above.

17.12 Unless expressly prohibited by any rules, laws or regulations or by its articles of association, an IC shall be permitted to own shares in any other IC of its RICC subject to any conditions that may apply in terms of its licence.

17.13 In addition to the requirements of article 6 of the Companies Act, an IC of an RICC shall also indicate in a suitable manner in all of its business letters and forms that it is an IC of a RICC and the name of the RICC.

17.14 No IC of a RICC shall transfer, relocate or convert itself in any other manner except as authorised by the competent authority and subject to any conditions which the latter deems fit to impose.

17.15 An IC shall apply for a collective investment scheme licence as if it were an independent scheme, provided that it shall also be required to provide the relevant endorsements, resolutions and other approvals from its RICC as required by the applicable Rules and Regulations and will be required to comply with the applicable Investment Services Rules for Retail Collective Investment Schemes.

17.16 On application, the IC must provide information on any departure from the standard model agreements endorsed by the RICC.

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17.17 An IC must provide a draft copy of its agreement with the RICC referred to in section 3 of Part BIII of the Investment Services Rules for Recognised Persons.

17.18 The IC must inform its RICC of any departure from any standard model agreement and must submit the relevant changes to the Competent Authority for approval.

17.19 The MFSA may only grant a Collective Investment Scheme licence to an IC if it is satisfied that the Scheme will comply in all respects with the provisions of the Investment Services Act, the relevant Regulations and MFSA Rules and Standard Conditions.

17.20 An IC of a RICC shall pay the licencing and supervision fees applicable to a Collective Investment Scheme as stipulated in paragraph (b) of the Schedule to the Investment Services Act (Licence and Other Fees) Regulations. Sub-funds of the IC shall pay the licensing and supervision fees applicable to sub-funds of a Collective Investment Scheme in terms of the same paragraph.

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