

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

6th March, 2007

Securities Unit

Unit Tel: (+356) 21441155

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Dear Sirs,

Re: The introduction of a new Professional Investor Funds Sourcebook and a new class of Professional Investor Funds targeting Extraordinary Investors

The Malta Financial Services Authority (“MFSA”) is currently reviewing the regulatory regime applicable to Professional Investor Funds. In this respect, we are pleased to enclose the draft Sections I and II of the new Professional Investor Funds Sourcebook together with an Explanatory Note outlining the principal developments.

We look forward to receipt of any comments you would like to make in relation to the proposed new requirements. These should be submitted in writing by **Monday 2nd April, 2007** to:

The Director
Securities Unit
Malta Financial Services Authority
Notabile Road
Attard BKR 14

E-mail address: su@mfsa.com.mt.

Please feel free to contact Mr. James Farrugia should you have any queries or require any clarifications regarding the above.

Yours sincerely,

Cristina Parlato Trigona
Director

Encls. by e-mail only

**Circular regarding the introduction of a new
Professional Investor Funds Sourcebook and a new class of Professional
Investor Funds targeting Extraordinary Investors**

6th March, 2007

1.0 Background/ Introduction

The purpose of this circular is to serve as:

- i. an explanatory note on the proposed new class of Professional Investor Funds targeting Extraordinary Investors and the new Professional Investor Funds Sourcebook; and
- ii. a consultation document on the proposed standard licence conditions – included in Section II of the Professional Investor Funds Sourcebook to be applicable to PIFs promoted to Experienced Investors; PIFs promoted to Qualifying Investors; and PIFs promoted to Extraordinary Investors.

2.0 Developments with respect to PIFs targeting Experienced and Qualifying Investors

- 2.1 The new Professional Investor Funds Sourcebook will introduce a number of new requirements applicable to PIFs targeting Experienced or Qualifying Investors which have been summarised below.

Side Letters

- 2.2 Side letters to be entered into by a PIF, will require the approval of the Directors (in the case of an investment company)/ General Partner(s) (in the case of a limited partnership)/ Manager (in the case of a unit trust) of the Scheme prior to issue. Copies of these Side letters need to be retained in Malta at the registered office of the PIF.

Compliance Officer/ MLRO

- 2.3 PIFs will be required to formally appoint a Compliance Officer and a Money Laundering Reporting Officer. Where all service providers are based outside Malta and the PIF has not appointed:
- a local resident Director (in the case of a Scheme set up as an investment company);

- a local General Partner (in the case of a Scheme set up as a limited partnership); or
- a local Trustee (in the case of a Scheme set up as a unit trust)

the PIF will be required to appoint a Local Representative who shall also assume the role of MLRO.

- 2.4 Where the PIF has appointed a Malta based Administrator or a Maltese resident Director, the latter Director or an officer of the said Administrator would be expected to assume the role of Compliance Officer and MLRO.

Compliance Report

- 2.5 The Compliance Officer will be required to prepare a “Compliance Report” at least on a six monthly basis which in the case of a PIF taking the form of:

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

- 2.6 The “Compliance Report” should indicate amongst others 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. valuation errors 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.

Leverage Restrictions applicable to Experienced Investor Funds

- 2.7 In the case of Experienced Investor Funds, direct borrowing for investment purposes and leverage via the use of derivatives has been raised to 100% of NAV. It is proposed that the PIF’s exposure relating to derivative instruments is calculated taking into account:

- i. the current value of the underlying asset;
- ii. the counterparty risk;
- iii. future market movements; and
- iv. the time available to liquidate positions.

The PIF’s exposure relating to borrowing for investment purposes will accordingly be the amount so borrowed.

Changes to the Investment Objectives, Policies and Restrictions of a PIF

- 2.8 PIFs will be required to seek investors' consent before changing their investment objectives. They will also be required to notify all relevant investors of any material changes to their Investment Policies or Restrictions.

Experienced Investor Funds set up as Feeder Funds or Funds of Hedge Funds

- 2.9 Where an Experienced Investor Fund has been set up as a feeder fund, the underlying fund will be required to satisfy the leverage restrictions applicable to the Experienced Investor Fund. This requirement will avoid any circumvention of the proposed leverage restrictions referred to above.
- 2.10 On the other hand, where the Experienced Investor Fund has been set up as a fund of hedge funds, it shall be required to invest in at least five different hedge funds to ensure the necessary diversification. In this case there will be no restrictions on the extent of leverage that the underlying hedge funds may assume.

Independent Director

- 2.11 PIFs constituted as an investment company will be required to appoint at least one Director independent from the Manager and the Custodian of the PIF.

Application for Admissibility to Listing

- 2.12 In order to facilitate and speed up the listing process, it is proposed that where an application for admissibility to listing has been submitted concurrently with an application for a collective investment scheme licence, the documents submitted as part of the application for a collective investment scheme licence, need not be resubmitted as part of the application for admissibility to listing. Once these documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a collective investment scheme licence as well as in relation to the application for admissibility to listing.

Contents of the Offering Memorandum

- 2.13 The Professional Investor Funds Sourcebook will include as an Appendix to Section II, more detailed requirements with respect to the contents of the Offering Memorandum of a PIF.

3.0 PIFs promoted to Extraordinary Investors

This new offshoot of the current PIF regime will be subject to lighter regulatory requirements than those applicable to PIFs targeting Experienced or Qualifying Investors. However, PIFs targeting Extraordinary Investors will be subject to more onerous eligibility criteria and a higher minimum investment amount for investors vis-à-vis PIFs targeting Experienced or Qualifying Investors.

4.0 Main unique features pertaining to PIFs promoted to Extraordinary Investors

Fast Track Approach

4.1 In the case of third party managed PIFs promoted to Extraordinary Investors, the MFSA is committed to review the Application Form and the supporting documentation and to provide its comments to the Applicant within three business days from submission of a complete application form and supporting documentation. This time-frame only applies when the PIF appoints a third party Manager and where all service-providers are based and regulated in Recognised Jurisdictions.

Eligibility Requirements

4.2 It is being proposed that in order to qualifying as “Extraordinary”, an investor should meet one or more of the following criteria:

1. a body corporate or partnership, which has net assets in excess of USD10.0 million or which is part of a group which has net assets in excess of USD 10.0 million;
2. an unincorporated bona fide body of persons or association which has net assets in excess of USD 10.0 million;
3. a trust where the net value of the trust’s assets is in excess of USD 10.0 million;
4. an individual whose net worth or joint net worth with that person’s spouse, exceeds USD 10.0 million;
5. employees and directors of service providers to the PIF;
6. the investor qualifies as a PIF promoted to Extraordinary Investors;
7. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

In the case of joint holders, all holders should individually satisfy the definition of “Extraordinary Investor”.

Minimum Investment Amount

4.3 The minimum initial investment is being proposed to be set at USD1,000,000, or equivalent in another currency. The total amount invested may not fall below this threshold (or equivalent) unless this is the result of a fall in the net asset value of the PIF. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment threshold applies to each individual “Extraordinary Investor”. In the case of joint holders, the minimum investment limit remains USD1,000,000.

4.4 In the case of an umbrella fund comprising a number of sub-funds established as PIFs targeting Extraordinary Investors, the USD1,000,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively an “Extraordinary Investor” may hold less than USD1,000,000 in a sub-fund provided that the investor’s total holding in the scheme is at least USD1,000,000.

Offering/ Marketing Document

4.5 A PIF targeting Extraordinary Investors may either draw up an Offering Document (minimum disclosure requirements prescribed) or a Marketing Document which should at least include:

- i. a list of service providers including the Directors, General Partner(s) or Trustee – and their respective contact details;
- ii. a definition of Extraordinary Investor;
- iii. a risk warnings section describing at least the principal risks associated with investing in the PIF;
- iv. investment objectives, policies and restrictions of the PIF;
- v. fee structure;
- vi. details of the classes/ units on offer (whether these constitute a distinct sub-fund or not);
- vii. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed);
- viii. details of the beneficial owners of the Founder Shares (where these shares hold voting rights)/ General Partner(s)/ Trustee;
- ix. the following text:
 - *“[name of the Fund] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as ‘Extraordinary Investors’. This entails the minimum level of supervision for a Fund regulated in Malta.*
 - *Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.*
 - *Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.*
 - *The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”.*

4.6 The Marketing Document shall also include as an Annex, the most recent version of the Constitutional Document of the PIF.

4.7 PIFs targeting Extraordinary investors will be required to approve the Offering Document/ Marketing Document including any amendments thereto, and confirm their approval to MFSA. The Offering Document/ Marketing Document and any amendments thereto – for so long as the amendments do not relate to the creation of a new class of shares or to any other matter that requires approval in terms of the PIF’s Licence Conditions – including a copy of the PIF’s approval of the revised Offering Document/ Marketing Document would need to be submitted to the MFSA within five business days from publication.

4.8 Any amendments to the Offering Document/ Marketing Document which relate to the creation of a new class of shares or to any other matter that requires approval by the MFSA would need to be submitted to the MFSA for approval before publication.

5.0 New Professional Investor Funds Sourcebook

5.1 The new Professional Investor Funds Sourcebook is to be divided into three main sections as described below.

Section 1: The Application Process

5.2 This section provides:

- i. a detailed description of the Application Process and includes as Schedules the relevant Application Documents for a PIF Licence;
- ii. an outline of the licensing requirements applicable to Professional Investor Funds in terms of the Investment Services Act, 1994;
- iii. a detailed description of the different classes of Professional Investor Funds licensed by the MFSA;
- iv. a description of the eligibility requirements to be satisfied by prospective Service Providers of the PIF;
- v. a non exhaustive list of documents to be submitted by an applicant in support of an application for a collective investment scheme licence;
- vi. the requirements applicable for the licensing of additional sub-funds within an existing umbrella PIF; and
- vii. the requirements applicable for the approval of additional classes of shares of an existing PIF (which classes of shares do not constitute one or more sub-funds).

Section 2: PIF Guidelines – Standard Licence Conditions

5.3 This section is divided into three parts and includes a number of Appendices. The standard conditions for PIFs promoted to Experienced Investors are set out in Part A, in Part B as regards PIFs promoted to Qualifying Investors and in Part C as regards PIFs promoted to Extraordinary Investors.

5.4 Some of the licence conditions listed in Parts A, B and C may be disapplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions (if any) may be applied.

Section 3: Guidance Notes

5.5 This section will include a number of Guidance Notes to be issued by the MFSA in due course to cover areas such as:

- i. Procedure relating to the surrender of a collective investment scheme licence (one or more sub-funds);
- ii. Procedure relating to the closure of one or more class of shares in a multi class investment company;
- iii. Procedure relating to the closure of one or more class of shares in a multi fund investment company;
- iv. Obligations and Responsibilities of Compliance Officers and MLROs;

- v. Operational Arrangement applicable to Self Managed Funds;
- vi. Master Feeder Structures;
- vii. Property Funds;
- viii. PIFs set up as SICAVs;
- ix. PIFs set up as Limited Partnerships;
- x. Assessment of Leverage by Experienced Investor Funds;

5.6 The issue of Guidance Notes will mainly be triggered by developments in this sector.

5.7 The draft Sections I and II of the Professional Investor Funds Sourcebook are available on MFSA's web-site www.mfsa.com.mt under the section Securities/ Collective Investment Schemes/ Guidelines/ Draft Professional Investor Funds Sourcebook.

6.0 Consultation Period

6.1 We would be grateful for any comments you would like to make in relation to Sections I and II of the Professional Investor Funds Sourcebook and the proposed new class of Professional Investor Funds targeting Extraordinary Investors. Comments should be submitted in writing by not later than **Monday 2nd April, 2007** addressed to:

The Director
Securities Unit
Malta Financial Services Authority
Notabile Road
Attard BKR 14

E-mail address: su@mfsa.com.mt

6.2 You may contact Mr. James Farrugia should you have any queries or require any clarifications regarding the above.

7.0 Way Forward

It is being proposed that following the end of the consultation period, once the proposed Standard Licence Conditions in Section II of the PIF Sourcebook are finalised and published, these will immediately become applicable to new PIFs¹ which may be established. It is also being proposed that existing PIFs will be granted a transitional period of a maximum of twelve months from the date of publication of the new requirements, to come in line with the new Standard Licence Conditions. Such PIFs will be required to notify MFSA of arrangements being made or which have been made to come in line with the new requirements by not later than nine months following publication of the new Standard Licence Conditions.

¹ In the case of existing umbrella PIFs, "new PIFs" should not be interpreted as covering new Sub-Funds of existing PIFs.

SECTION I: THE APPLICATION PROCESS

1. Investment Services Act 1994 (“The Act”)

1.1 Regulation of Professional Investor Funds (“PIFs”)

The Investment Services Act, 1994 (“the Act”) provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. PIFs are a special class of collective investment schemes which fall within the provisions of the Act. The following sections make reference to various parts of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for reading the Act itself.

1.2 Definition of a Collective Investment Scheme

As indicated above, PIFs are a special class of collective investment scheme. The Act defines “Collective Investment Schemes” as any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

- a. the scheme or arrangement operates according to the principle of risk spreading; and either
- b. the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
- c. at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or
- d. units are, or have been, or will be issued continuously or in blocks at short intervals.

Provided that the Competent Authority may issue a licence with respect to a scheme or arrangement whose units are to be offered for subscription, sale or exchange to:

- a. Licence Holders; or
- b. persons whose ordinary business involves the acquisition and disposal of instruments of the same kind as the instrument or instruments in which the scheme or arrangement invests; or
- c. persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, in which the scheme or arrangement invests; or
- d. persons who by regulation under the Act are exempt from the requirement of an investment services licence provided that the scheme or arrangement invests in instruments or property in respect of which such persons are exempt;

Notwithstanding that such a scheme or arrangement does not have the characteristic listed in paragraph (a) above, and in any such case, such scheme or arrangement shall be deemed to be a collective investment scheme.

2. Categories of Professional Investor Funds

The MFSA's regulatory regime for PIFs caters for three principal categories:

1. PIFs promoted to Experienced Investors (or Experienced Investor Funds);
2. PIFs promoted to Qualifying Investors (or Qualifying Investor Funds); and
3. PIFs promoted to Extraordinary Investors (or Extraordinary Investor Funds).

Unless otherwise indicated, reference to PIFs throughout these Guidelines capture PIFs promoted to Experienced Investors, PIFs promoted to Qualifying Investors and PIFs promoted to Extraordinary Investors.

2.1 PIFs promoted to Experienced Investors

An "Experienced Investor", is required to meet one or more of the following criteria:

1. a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these type of investments; or
2. a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;
3. a person who has carried out investment transactions in significant size at a certain frequency.

In the case of joint holders, all holders should individually satisfy the definition of "Experienced Investor".

The minimum investment threshold is USD20,000 or equivalent in another currency. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value of the PIF. The minimum investment threshold applies to each individual "Experienced Investor". In the case of joint holders, the minimum investment limit remains USD20,000.

In the case of an umbrella fund comprising a number of sub-funds established as PIFs promoted to Experienced Investors, the USD20,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively an "Experienced Investor" may hold less than USD20,000 in a sub fund provided that his total holding in the scheme is at least USD20,000.

Before an Experienced Investor Fund may accept any investment, it should obtain a completed "Experienced Investor Declaration Form" in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is an "Experienced Investor". In the case where the Experienced Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Experienced Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as an Experienced Investor and to exclude retail investors. A proforma of an Experienced Investor Declaration Form is provided in Appendix III to the Professional Investor Funds Guidelines.

The Manager/Sales Agent or any third party selling units of the Experienced Investor Fund is bound to take reasonable steps to ensure that:

1. the client has sufficient knowledge and understanding of the risks involved in investing in a PIF and qualifies within the definition of “Experienced Investor”; and
2. the declarations made by the investor in the Experienced Investor Declaration Form are well supported by evidence as far as this is possible.

PIFs promoted to Experienced Investors are not subject to any investment restrictions. Whilst borrowing on a temporary basis for liquidity purposes is permitted and not restricted, borrowing for investment purposes or leverage via the use of derivatives is restricted to 100% of NAV.

2.2 PIFs promoted to Qualifying Investors

A “Qualifying Investor”, is required to meet one or more of the following criteria:

1. a body corporate or partnership, which has net assets in excess of USD1.0 million or which is part of a group which has net assets in excess of USD1.0 million;
2. an unincorporated bona fide body of persons or association which has net assets in excess of USD1.0 million;
3. a trust where the net value of the trust’s assets is in excess of USD1.0 million;
4. an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and/or disposal of :-
 - 4.1 funds of a similar nature or risk profile;
 - 4.2 property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;
5. an individual whose net worth or joint net worth with that person’s spouse, exceeds USD1.0 million;
6. an employee or director of service providers to the PIF;
7. a relation or close friend of the promoters limited to a total of 10 persons per PIF;
8. an entity with (or which are part of a group with) USD5.0 million or more under discretionary management, investing on its own account;
9. the investor qualifies as a PIF promoted to Qualifying or Extraordinary Investors;
10. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

In the case of joint holders, all holders should individually satisfy the definition of “Qualifying Investor”.

Minimum initial investment is USD100,000, or equivalent in another currency. The total amount invested may not fall below this threshold (or equivalent) unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment threshold applies to each individual “Qualifying Investor”. In the case of joint holders, the minimum investment limit remains USD100,000.

In the case of an umbrella fund comprising a number of sub-funds established as PIFs, the USD100,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively a “Qualifying Investor” may hold less than USD100,000 in a sub-fund provided that his total holding in the scheme is at least USD100,000.

Prior to accepting any investment the PIF should be in receipt of a completed “Qualifying Investor Declaration Form” in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is a “Qualifying Investor”. In the case where the Qualifying Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Qualifying Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as a Qualifying Investor. A proforma of a Qualifying Investor Declaration Form is provided in Appendix III to the Professional Investor Funds Guidelines.

PIFs promoted to Qualifying Investors are not subject to any investment or borrowing (including leverage) restrictions other than those which may be specified in their Offering Document.

2.3 PIFs promoted to Extraordinary Investors

An “Extraordinary Investor” is required to meet one or more of the following criteria:

1. a body corporate or partnership, which has net assets in excess of USD10.0 million or which is part of a group which has net assets in excess of USD10.0 million;
2. an unincorporated bona fide body of persons or association which has net assets in excess of USD10.0 million;
3. a trust where the net value of the trust’s assets is in excess of USD10.0 million;
4. an individual whose net worth or joint net worth with that person’s spouse, exceeds USD10.0 million;
5. an employee or director of service providers to the PIF;
6. the investor qualifies as a PIF promoted to Extraordinary Investors;
7. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

In the case of joint holders, all holders should individually satisfy the definition of “Extraordinary Investor”.

Minimum initial investment is USD1,000,000, or equivalent in another currency. The total amount invested may not fall below this threshold (or equivalent) unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment threshold applies to each individual “Extraordinary Investor”. In the case of joint holders, the minimum investment limit remains USD1,000,000.

In the case of an umbrella fund comprising a number of sub-funds established as PIFs, the USD1,000,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively an “Extraordinary Investor” may hold less than USD1,000,000 in a sub-fund provided that his total holding in the scheme is at least USD1,000,000.

Prior to accepting any investment the PIF should be in receipt of a completed “Extraordinary Investor Declaration Form” in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is an “Extraordinary Investor”. In the case where the Extraordinary Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Extraordinary Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as an Extraordinary Investor. A proforma of an Extraordinary Investor Declaration Form is provided in Appendix III to the Professional Investor Funds Guidelines.

PIFs promoted to Extraordinary Investors are not subject to any investment or borrowing (including leverage) restrictions other than those which may be specified in their Offering Document/ Marketing Document.

3. Requirement for a Collective Investment Scheme Licence for Professional Investor Funds

Section 4 of the Act states:

- “4 (1) Subject to the provisions of subsection (3) of this section, no Collective Investment Scheme shall issue or create any units or carry on any activity in or from within Malta unless there is in respect of it a valid Collective Investment Scheme licence.
- (2) Subject to the provisions of subsection (3) of this section, no Collective Investment Scheme formed in accordance with or existing under the laws of Malta shall issue or create any units or carry on any activity in or from within a country, territory or other place outside Malta unless there is in respect of it a valid Collective Investment Scheme licence.
- (3) No Collective Investment Scheme shall be precluded by the provisions of subsection (1) of this section from issuing or creating such units or from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the scheme or from taking such steps as may be necessary for securing the authorisation of the scheme by the competent authority.”

Subsection 4(2) makes it illegal for a PIF to use Malta as a base without having a licence.

Subsection 4(3) permits the initial steps in establishing a PIF to be taken before a Licence has been obtained but a Scheme may not deal with Experienced/ Qualifying/ Extraordinary Investors before it is licensed.

Under section 12(1)(i) of the Act, certain exemptions have been granted from the requirement to obtain a Collective Investment Scheme Licence. A list of the exemptions is available from the MFSA.

4. Criteria which MFSA will apply in considering an application for a Licence

The MFSA may only grant a Collective Investment Scheme Licence to a PIF if it is satisfied to the extent that it can be, that the PIF will comply in all respects with the relevant regulations and that its directors and officers, or in the case of a unit trust or limited partnership, its Trustee(s) or General Partner(s) respectively, are fit and proper persons to carry out the functions required of them in connection with the Scheme.

In accordance with Section 6(3) of the Act, when considering whether to grant or refuse a Licence, the MFSA will, in particular, have regard to:

- a. the protection of investors and the general public;
- b. the protection to the reputation of Malta taking into account Malta's international commitments;
- c. the promotion of competition and choice; and
- d. the reputation and suitability of the applicant and all other parties connected with the Scheme.

The MFSA will consider the nature of the PIF and the kind of investors to whom it will be marketed. It will also look into the experience and track record of all parties who will be involved with the PIF. Such people should be of good standing and should be competent. The MFSA has the right to refuse a Licence if it does not approve a party involved with the PIF.

Although the Act covers many different kinds of PIFs, the MFSA applies consistent standards in dealing with each.

Each case is assessed on its own merits and on the basis of the relevant circumstances. The onus of proving that it meets the required standards on an on-going basis is on the Applicant and/or Licence Holder as the case may be. It is not the task of the MFSA to prove the converse before it can refuse or revoke a Licence. The MFSA's approach is cumulative. It may decide that a Licence Holder has failed the test on the basis of considering several situations, each of which on its own would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether an Applicant has met the required standards, the MFSA will take account both of what is said and of what is not said (for example in respect of a person's criminal record) that ought to have been said. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

5. Standard Licence Conditions

The MFSA aims to provide a regulatory framework which is both robust and simultaneously adaptable to allow managers and promoters to innovate and to develop new products to meet the changing needs of the market. The standard conditions for PIFs promoted to Experienced Investors are set out in Part A of the Professional Investor Funds Guidelines, in Part B as regards PIFs promoted to Qualifying Investors and in Part C as regards PIFs promoted to Extraordinary Investors.

6. Listing on the Malta Stock Exchange

A PIF 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).

Where an application for admissibility to listing has been submitted concurrently with an application for a collective investment scheme licence, the documents submitted as part of the application for a collective investment scheme licence need not be resubmitted as part of the application for admissibility to listing. Furthermore – provided that during the application for a collective investment scheme licence, the MFSA is informed of the PIF's intention to apply for admissibility to listing – once these documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a collective investment scheme licence as well as in relation to the application for admissibility to listing.

7. Offering Document/ Marketing Document

A PIF targeting Experienced or Qualifying Investors is required to draw up an Offering Document which should at least include the information listed in Appendix II to the Professional Investor Funds Guidelines. The Offering Documents should be provided to prospective investors free of charge.

On the other hand, a PIF targeting Extraordinary Investors may either draw up an Offering Document – which includes at least the information listed in Appendix II to the Professional Investor Funds Guidelines – or else draw up a Marketing Document which should at least include:

- i. a list of service providers including the Directors, General Partner(s) or Trustee (as applicable), and their respective contact details;
- ii. a definition of Extraordinary Investor;
- iii. a risk warnings section describing in brief at least the principal risks associated with investing in the Scheme;
- iv. the investment objectives, policies and restrictions of the Scheme or where applicable its sub-funds;
- v. details of the fee structure;
- vi. details of the classes/ units on offer (whether these constitute a distinct sub-fund or not);
- vii. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed);
- viii. details of the beneficial owners of the Founder Shares (where these shares hold voting rights);
- ix. the following text:
 - “[name of the Fund] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as ‘Extraordinary Investors’. This entails the minimum level of supervision for a Fund regulated in Malta.
 - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.
 - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.
 - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”.

The Marketing Document should also include as an Annex, the most recent version of the Constitutional Document of the Scheme. The Marketing Document (including the most recent version of the Constitutional Document of the Scheme) or where applicable the Offering Document, should be provided to prospective investors free of charge.

8. Service Providers

A PIF may appoint any service provider referred to in 8.1 to 8.4 below as it may deem necessary – although PIFs promoted to Experienced Investors are required to appoint a Custodian responsible for the safe custody of the assets of the PIF and for monitoring the activities of the PIF's Manager as more fully detailed in the applicable Standard Licence Conditions in Part A of the Professional Investor Funds Guidelines.

Ordinarily, service providers of a PIF may include, amongst others, a Manager, an Administrator, an Investment Adviser and/or a Custodian/Prime Broker.

Service providers should be established and regulated in a Recognised Jurisdiction. Recognised Jurisdictions include EU and EEA Members, and signatories to a Multilateral MoU or Bilateral MoU with the MFSA covering the relevant sector of financial services.

The MFSA may, in the following scenarios, also accept Service Providers which may not be established and regulated in a Recognised Jurisdiction:

- i. Where the Service Provider is the subsidiary of a firm that is regulated in a Recognised Jurisdiction, that retains control of its subsidiary and undertakes to provide all the necessary information to the MFSA; or
- ii. Where the MFSA considers that the Service Provider is subject to regulation to an equal or comparable level in the jurisdiction concerned.

Where one or more of the proposed Service Providers is not based in a Recognised Jurisdiction or does not fall under (i) above, it is recommended that prior to the submission of an Application for a PIF Licence, the promoters submit an application for preliminary indication of acceptability of a PIF as outlined under Section 9 below.

8.1 *Manager*

Where a third party Manager is to be appointed and the proposed Manager is established in Malta, the Manager should be in possession of a Category 2 Investment Services Licence and should be duly licensed and authorised by the MFSA to provide management services to collective investment schemes.

Where the proposed Manager has appointed a Sub-Manager with limited or full discretion in respect of the management of the assets of the PIF, the Sub-Manager is not subject to MFSA's approval and no eligibility criteria apply. In such case, the MFSA expects the Manager to exercise care and diligence in the selection of a sub-Manager and to accordingly assume responsibility for the acts of the Sub-Manager

For PIFs which do not appoint a third party manager, reference should be made to supplementary conditions applicable to self managed funds included in Appendix I to the Professional Investor Funds Guidelines.

8.2 *Fund Administrator*

Administrative services in relation to the PIF may either be carried out by an appointed third party Administrator or undertaken by the appointed Manager.

Where the proposed Fund Administrator is established in Malta, the Administrator should be in possession of a Fund Administration recognition certificate issued in terms of Section 9A of the Investment Services Act, 1994. For further details please refer to Part A, Section 9 of the MFSA's Investment Services Guidelines.

8.3 Custodian

A PIF promoted to Experienced Investors should appoint a third party Custodian responsible for the safe keeping of the assets of the PIF and for undertaking monitoring duties over the PIF's Manager as more fully detailed in the relevant standard licence conditions in Part A of the Professional Investor Funds Guidelines. The appointed Custodian should be independent from the Manager and need not be established and regulated in Malta.

In the case of a PIF promoted to Qualifying or Extraordinary Investors, although the MFSA recommends and would ordinarily expect the appointment of a Custodian, which may be a Prime Broker, for safekeeping the PIF's assets, there is no obligation to have either. Where no Custodian is appointed, responsibility for the establishment of proper arrangements for the safe keeping of the PIF's assets remains with the Directors/ General Partner(s)/ Trustee and officers of the PIF. The applicant will be required to outline – as part of the application process – the arrangements that will be put in place to ensure adequate safekeeping of the assets of the Fund.

Where the PIF wishes to appoint a Custodian established in Malta, the Custodian should be in possession of a Category 4 Investment Services Licence issued in terms of Article 6 of the Investment Services Act, 1994.

8.4 Investment Adviser

The Investment Adviser is a person responsible for the provision of investment advice to the PIF or its Manager on the assets of the PIF. It is understood that the Investment Adviser will not have any discretion with respect to the investment and re-investment of the assets of the PIF.

PIFs are generally not required to appoint a third party Investment Adviser. Moreover, the proposed Investment Adviser need not be established and regulated in Malta.

Where the Investment Adviser is appointed directly by the Manager, rather than by the PIF such Investment Adviser is not subject to MFSA's approval and no eligibility criteria apply.

Where the proposal includes the appointment – directly by the PIF – of a third party Investment Adviser, and the proposed Investment Adviser is established in Malta, the Adviser should be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of Section 6 of the Investment Services Act, 1994 and should be duly licensed and authorised by the MFSA to provide investment advice to collective investment schemes.

9. Application for Preliminary Indication of Acceptability of a Professional Investor Fund

An application for preliminary indication of acceptability of a PIF is to be submitted in respect of a prospective PIF having one or more of its principal service providers (i.e. Manager or Custodian/ Prime Broker) which does not fall within the parameters outlined in Section 8 of this Part.

If any of the external service-providers to be appointed by the PIF operate from a country that is not a “Recognised Jurisdiction” or are not subsidiaries of a company involved in financial services and regulated in a Recognised Jurisdiction, it is recommended that at an early stage, applicants request a preliminary indication of acceptability of the PIF. Schedule B contains the application form for preliminary indication of acceptability of a PIF.

The MFSA will review the proposed structure of the PIF and its prospective service providers – to the extent that these do not satisfy the conditions mentioned in Section 8 above – and will inform the applicant whether the proposed structure of the PIF and its service providers are acceptable to the MFSA.

Provided all relevant details are received pertaining to the regulatory status of the relevant service provider(s) and the applicable regulatory framework in the jurisdiction concerned, the MFSA will ordinarily communicate the acceptability or otherwise of the proposed structure of the PIF within seven business days of receipt of the application for preliminary indication of acceptability of a PIF.

The application for preliminary indication of acceptability of a PIF does not substitute the application for a PIF Licence. Therefore, where the MFSA has issued a positive indication of acceptability of the PIF, the applicant would then need to apply for a PIF Licence (Please refer to Section 10 below).

A positive indication of acceptability of a PIF should not be construed as a commitment or guarantee that the MFSA will grant a licence to the PIF (following the submission of an application for a PIF Licence).

10. Applications for a PIF Licence

10.1 The Application Process

When submitting an application for a CIS licence under the Act, the promoter should ensure that the appropriate Application Form enclosed as Schedule A is completed.

The application requirements and the ongoing requirements to which licences are subject, are summarised below.

There are three phases - as follows:-

Phase One - Preparatory

- a. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place in advance of submitting an Application for a licence. Although guidance will be given on the relevant regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of the Application documents will remain with the Applicant. It is essential that the Applicant provides a comprehensive description of the proposed activity at the beginning of Phase One.
- b. After preliminary discussions, the promoters should submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
- c. The draft Application and the supporting documentation will be reviewed and comments provided to the Applicant. In the case of third party managed PIFs promoted to Experienced or Qualifying Investors the MFSA is committed to review the Application Form and supporting documents and provide its comments to the Applicant within seven business days from receipt of the application documents. In the case of PIFs promoted to Extraordinary Investors, the MFSA is committed to review the Application Form and the supporting documentation and to provide its comments to the Applicant within three business days. This time-frame only applies when the PIF appoints a third party Manager and where all service-providers are based and regulated in Recognised Jurisdictions.
- d. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks – which entail following up the information which has been provided in the Application documents begin at this stage.
- e. The MFSA will consider the nature of the proposed PIF and a decision will be made regarding which "Standard Licence Conditions" (SLCs) should apply. Some of these conditions may be disapplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions (if any) may be applied. The licence conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed.

The standard licence conditions for PIFs promoted to Experienced Investors are set out in Part A of the Professional Investor Funds Guidelines, in Part B as regards PIFs promoted to Qualifying Investors and in Part C as regards PIFs promoted to Extraordinary Investors.

Phase Two – Pre-Licensing

- f. Once the review of the draft Application and supporting documents has been completed and the draft licence conditions have been agreed, the Authority will issue (all other things equal) its ‘in principle’ approval for the issue of a licence.
- g. At this stage, the Applicant will be required to finalise any outstanding matters. Submission of signed copies of the revised Application form together with supporting documents in their final format, and any other issues raised during the Application process, should be resolved as part of Phase Two.
- h. A licence will be issued as soon as all pre-licensing issues are resolved.

Phase Three – Post-Licensing/Pre-Commencement of Business

- i. The Applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

10.2 Application Documents

An applicant for a PIF Licence is ordinarily required to submit the following documents:

Investment Companies

- i. Application Form;
- ii. Draft version of the Offering Document;
- iii. Draft version of the Memorandum & Articles of Association;
- iv. draft Board of Directors resolution:
 - confirming the Directors' intention to apply for a PIF licence in favour of the Scheme;
 - identifying the person(s) responsible for signing the application documents;
 - identifying the person(s) responsible for acting as a point of liaison with the MFSA;
 - identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible on behalf of the Board for the AML obligations of the Scheme;
 - approving and assuming responsibility for the contents of the Offering Document;

- v. Application Fee;
- vi. Directors of the Scheme:

where Individuals

- Personal Questionnaires of the proposed Director(s);

where Corporate, regulated in a recognised jurisdiction

- details of the regulatory status of the proposed Corporate Director(s);
- name of the individual that will represent the Corporate Director on the Board of Directors of the Scheme;

vii. Founder Shareholder(s) - that hold all voting shares:

where Individuals

- Personal Questionnaire of the proposed Founder Shareholder(s);

where Corporate, regulated in a recognised jurisdiction

- details of the regulatory status of the proposed Corporate Director(s);

where Corporate, not regulated in a recognised jurisdiction

- Personal Questionnaire of the Directors of the proposed Corporate Director(s);
- Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate Director(s); and
- last three years audited financial statements of the proposed Corporate Director(s).

Limited Partnership

i. Application Form;

ii. Draft version of the Offering Document;

iii. Draft version of the Deed of Partnership;

iv. Resolution of the General Partner(s):

- confirming the its/ their intention to apply for a PIF licence in favour of the Scheme;
- identifying the person(s) responsible for signing the application documents;
- identifying the person(s) responsible for acting as a point of liaison with the MFSA;
- identifying the person(s) responsible obo the GP for the Compliance obligations of the Scheme;
- identifying the person(s) responsible obo the GP for the AML obligations of the Scheme; and
- approving and assuming responsibility for the contents of the Offering Document.

v. Application Fee;

vi. General Partner(s) of the Scheme:

where Individuals

- Personal Questionnaire of the proposed General Partner(s);

where Corporate, regulated in a recognised jurisdiction

- Details of the regulatory status of the proposed Corporate General Partner(s);
- the name of the individual who will represent the corporate General Partner;

where Corporate, not regulated in a recognised jurisdiction

- Personal Questionnaire of the Directors of the proposed Corporate General Partner(s);
 - Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate General Partner(s);
 - the name of the individual who will represent the corporate General Partner; and
 - Last three years audited financial statements of the proposed Corporate General Partner(s);
- vii. PQs of the holders of the voting shares (where applicable);

Unit Trust

- i. Application Form;
- ii. Draft version of the Offering Document;
- iii. Draft version of the Trust Deed;
- iv. A resolution of the proposed Manager:
 - confirming the Manager's intention to apply for a PIF licence in favour of the Scheme;
 - identifying the person(s) responsible for signing the application documents;
 - identifying the person(s) responsible for acting as a point of liaison with the MFSA;
 - identifying the person(s) responsible obo the Manager for the Compliance obligations of the Scheme;
 - identifying the person(s) responsible obo the Trustee for the AML obligations of the Scheme; and
 - approving and assuming responsibility for the contents of the Offering Document;
- v. Application Fee;
- vi. Details of the regulatory status of the proposed Trustee;

Supplementary Application Documents - Self Managed PIF

- i. Personal Questionnaire and detailed CV of the members of the Investment Committee/ Portfolio Manager;
- ii. Terms of reference regulating the procedures of the Investment Committee;
- iii. Confirmation from the Portfolio Manager/s (as applicable) that he/she/they will:
 - operate in accordance with the investment objective and policy described in the Scheme's Offering Document in general and the investment guidelines issued by the investment committee in particular;
 - report to the Investment Committee on a regular basis any transactions effected on behalf of the Scheme; and
 - provide to the Investment Committee, any information as the Investment Committee may require from time to time;
- iv. Confirmation from the Portfolio Manager(s)/ Investment Committee that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions;

- v. Declaration by the Auditor (Appendix VI of the Professional Investor Funds Guidelines refers);

Supplementary Application Documents - PIFs targeting Extraordinary Investors

- i. Directors/ General Partner(s)/ Founder Shareholders of the Scheme:

where Individuals

- a banker's reference from the individual's main banker with whom the individual has been banking for the last five years or over, confirming whether the individual concerned is a customer of the bank, for how long, and whether he/ she has maintained his/her bank account satisfactorily over such period;
- a reference from a lawyer, accountant, other professional or regulated person;

where Corporate, regulated in a recognised jurisdiction

- the references referred to above in respect of the person who will be representing the corporate Director;
- a recent certificate of good-standing in respect of such company;

- ii. A confirmation from the Directors/ General Partner(s)/ Manager as the case may be that the proposed Service Providers to the PIF are authorised to provide these services by their home state regulator together with evidence of their respective authorisation;

Supplementary Application Documents – Proposed appointment of Service Providers which do not operate from a Recognised Jurisdiction

- i. PQs of the Directors and Qualifying Shareholders (>10% control) of the relevant Service Provider;
- ii. Latest three years audited financial statements; and
- iii. Evidence of their respective authorisation.

11. Applications for the licensing of additional sub-funds of an existing PIF

A licensed PIF constituted in the form of an umbrella fund (i.e. with sub-funds) wishing to establish additional sub-funds, is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund;
- ii. a confirmation from the Directors, General Partner or the Manager as applicable signifying their intention to apply for a licence in favour of the sub-fund;
- iii. a final draft of the revised Offering Document/ Marketing Document;
- iv. the appropriate application fee (refer to Section 14 below); and
- v. a draft copy of the approval of the PIF's proposed Directors, General Partner or the Manager – as applicable – of the Offering Document/ Marketing Document.

12. Applications for the approval of additional classes of shares of an existing PIF

A licensed PIF constituted in the form of an umbrella (i.e. with sub-funds) or single fund (i.e. without sub-funds) wishing to issue an additional class of shares/ units (which shall not constitute a distinct sub-fund of the PIF) is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to issue an additional class of shares/ units;
- ii. a final draft of the revised Offering Document/ Marketing Document;
- iii. a draft copy of the approval of the PIF's proposed Directors, General Partner or the Manager – as applicable – of the Offering Document/ Marketing Document; and
- iv. a confirmation from the Directors, General Partner or the Manager as applicable signifying their intention to issue an additional class of shares/ units.

The issue of additional classes of shares/ units within an existing PIF – so long as the additional classes of shares/ units does not constitute a distinct sub-fund of the PIF- is not subject to any application/ supervisory fees.

13. Review of Application Documents

In the case of third party managed PIFs promoted to Experienced or Qualifying Investors, the MFSA is committed to review the Application Form and supporting documents and provide its comments to the Applicant within seven business days from receipt of the application documents. In the case of PIFs promoted to Extraordinary Investors, the MFSA is committed to review the Application Form and the supporting documentation and to provide its comments to the Applicant within three business days.

This time-frame only applies when the PIF appoints a third party Manager and where all service-providers are based and regulated in Recognised Jurisdictions. The MFSA may ask for more information and may make such further enquiries or ‘fit and proper’ checks as it considers necessary.

The MFSA will consider the nature of the proposed PIF and a decision will be made regarding which “Standard Licence Conditions” (SLCs) should apply. Some of these conditions may be disapplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions (if any) may be applied. The licence conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed.

The standard licence conditions for PIFs promoted to Experienced Investors are set out in Part A of the Professional Investor Funds Guidelines, in Part B as regards PIFs promoted to Qualifying Investors and in Part C as regards PIFs promoted to Extraordinary Investors.

Following the issue of an “in principle” approval for the issue of a licence, the applicant will be required to finalize any pre-licensing outstanding matters (e.g. incorporation of the company, finalisation and execution of the Offering Document and service agreements etc.). A licence will be issued as soon as all pre-licensing issues are resolved.

14. Fees

The Application Fee is payable on submission of the Application for Preliminary Indication of Acceptability of a Professional Investor Fund or the Application for a PIF Licence and is not refundable. Annual Fees are payable on the date the Licence is granted and then annually thereafter within seven business days.

The applicable fees are currently as follows:

Application for Preliminary Indication of Acceptability of a Professional Investor Fund
(Section 9 above refers)

LM200 (irrespective of the number of sub-funds)

Application for a PIF Licence (Section 10 above refers)

Scheme: LM300

Sub-funds LM300 per sub-fund

Annual Supervisory Fee

Scheme: LM300

Sub-funds LM125 per sub-fund

The Fees are subject to alteration by Legal Notice.

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Part A

Professional Investor Funds targeting Experienced Investors

Standard Licence Conditions

- 1.1 Apart from the conditions listed in this section, where the Scheme is established in the form of a limited partnership or an investment company, it shall also be subject to the supplementary conditions for Schemes established as limited partnerships or as investment companies – as applicable – set out in Appendix I.
- 1.2 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme.
- 1.3 Apart from being constituted as a professional investor fund, the Scheme shall not carry out any activity for which a Licence is required, unless prior approval is obtained from the MFSA. The MFSA may in such circumstances, request such additional information and impose such additional conditions it deems appropriate.
- 1.4 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any of the following conditions or to impose any new conditions.

Manager

- 1.5 The Scheme shall appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to self managed schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.
- 1.6 The Manager shall 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.
- 1.7 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Manager to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Administrator

- 1.8 The Scheme may appoint an Administrator. Where an Administrator is not appointed, the Manager shall be responsible for the Administration function.
- 1.9 The Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Administrator. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above

requirements.

- 1.10 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Adviser

- 1.11 The Scheme may appoint an Investment Adviser. The Investment Adviser shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Adviser. The Scheme shall satisfy the MFSA that the proposed Adviser meets the above requirements.
- 1.12 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Investment Adviser to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Custodian

- 1.13 The assets of the Licence Holder 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 Offering Document and otherwise in accordance with the provisions of the Constitutional Document of the Scheme and these Licence Conditions.
- 1.14 The Custodian shall be:
- i. an entity providing the services of Custodian in terms of a Category 4 investment services licence issued under the Investment Services Act, 1994;
 - ii. an entity constituted in a Member State or EEA State and operating from a Member State or EEA State other than Malta, providing the services of Custodian to collective investment schemes; or
 - iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian to collective investment schemes where the MFSA is satisfied that such entity is of sufficient standing and repute and having the business organization, systems, experience and expertise deemed necessary for it to act as Custodian.
- 1.15 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement any party to act in the capacity of Custodian to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.
- 1.16 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.

Local Representative

1.17 Where the Scheme's service providers are all based outside Malta and where the Scheme has not appointed:

- a local resident Director (in the case of a Scheme set up as an investment company);
- a local General Partner (in the case of a Scheme set up as a limited partnership); or
- a local Trustee (in the case of a Scheme set up as a unit trust)

such Scheme is required to appoint a Local Representative.

1.18 The Local Representative shall be based in Malta and shall carry out the following functions:

- i. act as point of liaison between MFSA and the Scheme;
- ii. receive any instructions from the MFSA;
- iii. provide any information to MFSA as may be requested by the MFSA from time to time; and
- iv. act as the Scheme's Money Laundering Reporting Officer.

The Local Representative may also act as the Scheme's Compliance Officer.

1.19 The Local Representative should have access to all records regarding the Scheme in order to be in a position to provide any documents or respond to any queries that the MFSA may have, as the need arises.

1.20 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Local Representative to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Compliance Officer

1.21 Responsibility for the Scheme's compliance with its licence conditions rests with the Board of Directors in the case of an investment company; with the General Partner(s) in the case of a limited partnership; or with the Manager in the case of a unit trust.

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

1.23 The Scheme shall obtain the written consent of the MFSA before the appointment of a Compliance Officer at least twenty one business days in advance.

1.24 The Scheme shall notify the MFSA of the resignation or removal of a Compliance Officer upon becoming aware of the proposed resignation or removal. The notification shall include relevant information on the proposed new Compliance Officer. The MFSA reserves the right to object to the proposed appointment and to require such additional information it considers appropriate.

The Scheme shall also request the Compliance Officer 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.

1.25 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 Directors;
- a limited partnership, should be presented to the General Partner; or
- a unit trust, 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. valuation errors 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" should 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.

1.26 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.

Prevention of Money Laundering

1.27 Responsibility for the Scheme's compliance with its prevention of money laundering obligations rests with the Board of Directors in the case of an investment company; with the General Partner(s) in the case of a limited partnership; or with

the Manager in the case of a unit trust.

- 1.28 The Scheme shall all times have a Money Laundering Reporting Officer.
- 1.29 The Scheme shall obtain the written consent of the MFSA before the appointment of a Money Laundering Reporting Officer at least twenty one business days in advance.
- 1.30 The Scheme shall notify the MFSA of the resignation or removal of the Money Laundering Reporting Officer upon becoming aware of the proposed resignation or removal. The notification shall include relevant information on the proposed new Money Laundering Reporting Officer. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Objectives, Policies and Restrictions

- 1.31 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. In addition, where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I.
- 1.32 Direct borrowing for investment purposes and leverage via the use of derivatives is restricted to 100% of NAV. The Scheme's exposure relating to derivative instruments is calculated taking into account:
 - i. the current value of the underlying asset;
 - ii. the counterparty risk;
 - iii. future market movements; and
 - iv. the time available to liquidate positions.

The Scheme's exposure relating to borrowing for investment purposes is the amount so borrowed.

- 1.33 The Manager shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The Custodian shall supervise the operation of the Scheme to ensure that the Manager complies with the investment policies and restrictions of the Scheme.
- 1.34 Where the Scheme has been set up as a feeder fund, the underlying fund shall satisfy the leverage restrictions applicable to the Scheme.
- 1.35 Where the Scheme has been set up as a fund of hedge funds, the Scheme shall invest in at least five different hedge funds to ensure the necessary diversification.
- 1.36 Changes to the investment policies and restrictions of the Scheme shall be notified

to investors in advance of the change.

- 1.37 Notwithstanding anything contained in the Scheme's Constitutional Documents or Offering Document, the Scheme shall obtain the investors' consent before changing its investment objectives.

Offering Document

- 1.38 The Scheme shall publish an Offering Document, which shall be dated and the essential elements of which shall be kept up to date. The Offering Document shall be offered to investors free of charge before they become committed to investing.
- 1.39 The Offering Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in Appendix II.
- 1.40 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.41 The Offering Document and any amendments thereto shall be sent to and agreed with the MFSA before publication. The Scheme must submit a copy of its approval of the Offering Document, when this is submitted for the MFSA's approval.
- 1.42 Where the Scheme is in the form of an investment company or limited partnership, it shall lodge a signed copy of the Offering Document with the Registrar of Companies. A Scheme in the form of a unit trust shall lodge a copy of the Offering Document with MFSA's Securities Unit. The Securities Unit will pass on the documentation to the Registrar of Companies who will make the necessary arrangements to retain the documentation in an appropriate file for public access.

Constitutional Document

- 1.43 Any changes to the Constitutional Document of the Scheme must be approved by the MFSA in advance of implementation.

Promotion

- 1.44 The Manager and/or any appointed intermediary may only promote the Scheme to Experienced Investors. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Experienced Investors.
- 1.45 The promotion of the Scheme is subject to Section 11 of the Act, to the requirements of Section 5 of Part C I of the current Investment Services Guidelines.
- 1.46 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.
- 1.47 All publicity comprising an invitation to purchase units in the Scheme shall be approved by the Compliance Officer. All promotional material issued by the Scheme shall indicate that an Offering Document exists and the places where it, and any

documents updating it, may be obtained.

Minimum Entry Levels

- 1.48 The minimum investment which the Scheme may accept is USD20,000 (or its equivalent expressed in other currencies). Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than USD20,000 unless this is the result of a fall in the net asset value. In the case of an umbrella fund comprising a number of sub-funds, the USD20,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis.

Experienced Investor Declaration Forms

- 1.49 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as “Experienced Investors” and that they have read and understood the risk warnings in the Offering Document.
- 1.50 Copies of the Experienced Investor Declaration forms and records evidencing compliance with the local prevention of money laundering requirements should be held in Malta at the registered offices of the Scheme and should be available for inspection by the MFSA during compliance visits.

Side Letters

- 1.51 Side letters to be entered into by the Scheme must be circulated and approved by the Directors (in the case of an investment company) / General Partner(s) (in the case of a limited partnership)/ Manager (in the case of a unit trust) of the Scheme prior to issue.
- 1.52 Side letters issued by the Scheme should be retained in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

Distributions of Income

- 1.53 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering Document.

General

- 1.54 The Scheme – or the Manager or Administrator on its behalf – shall submit quarterly statistical information and copies of the Scheme’s annual audited financial statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request. The contents of the quarterly statistical information are set out in Appendix IV. The statistical information shall be prepared in respect of the relevant quarter, and submitted within two weeks of the end of the quarter concerned. The half-yearly (if any) and annual reports shall be published and provided to investors in the Scheme, and submitted to the MFSA within two and four months respectively of the end of the period concerned.

- 1.55 The Annual Report of the Scheme shall include a report by the Custodian which shall state whether in the Custodian's opinion, the Scheme has been managed in that period:
- i. in accordance with the limitations imposed on the investment and borrowing powers of the Scheme by the Constitutional Document and Offering Document; and
 - ii. otherwise in accordance with the provisions of the Constitutional Document and the Licence Conditions
- 1.56 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.
- 1.57 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.
- 1.58 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.59 The Scheme 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 by the MFSA as a Professional Investor Fund available to Experienced Investors"*.
- 1.60 The Scheme shall comply with the applicable laws and regulations relating to the prevention of money laundering.
- 1.61 The MFSA shall 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 faith.
- 1.62 A request for a variation of the Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 1.63 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 immediately the decision has been taken or on becoming aware of the matter;

- iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.
- 1.64 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document or Constitutional Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.
- 1.65 The Scheme shall not be required to make public the issue and redemption prices of its units. However, these must be made available to unit-holders upon request.
- 1.66 If dealings in the units are suspended, the Scheme – or the Manager or Administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension.
- 1.67 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 five years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.
- 1.68 In the event of a winding-up, the Scheme must give MFSA at least two weeks notice of this intention. 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, shall do all in its power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA.
- 1.69 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Part B

Professional Investor Funds targeting Qualifying Investors Standard Licence Conditions

- 1.1 Apart from the conditions listed in this section, where the Scheme is established in the form of a limited partnership or an investment company, it shall also be subject to the supplementary conditions for Schemes established as limited partnerships or as Investment Companies – as applicable – set out in Appendix I.
- 1.2 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme.
- 1.3 Apart from being constituted as a professional investor fund, the Scheme shall not carry out any activity for which a Licence is required, unless prior approval is obtained from the MFSA. The MFSA may in such circumstances, request such additional information and impose such additional conditions it deems appropriate.
- 1.4 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any of the following conditions or to impose any new conditions.

Manager

- 1.5 The Scheme shall appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to self managed schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.
- 1.6 The Manager shall 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.
- 1.7 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Manager to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Administrator

- 1.8 The Scheme may appoint an Administrator. Where an Administrator is not appointed, the Manager shall be responsible for the Administration function.
- 1.9 The Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Administrator. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above

requirements.

- 1.10 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Adviser

- 1.11 The Scheme may appoint an Investment Adviser. The Investment Adviser shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Adviser. The Scheme shall satisfy the MFSA that the proposed Adviser meets the above requirements.
- 1.12 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Investment Adviser to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Custodian

- 1.13 The assets of the Scheme shall be subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the Offering Document and shall be subject to MFSA approval.
- 1.14 The Custodian, where appointed, shall be:
- i. an entity providing the services of a Custodian in terms of a Category 4 Investment Services Licence issued under the Investment Services Act, 1994; or
 - ii. an entity constituted in a Member State or EEA State and operating from a Member State or EEA State other than Malta, providing the services of Custodian or Prime Broker to collective investment schemes; or
 - iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian or Prime Broker to collective investment schemes where the MFSA is satisfied that such entity is of sufficient standing and repute and having the business organization, systems, experience and expertise deemed necessary for it to act as Custodian.
- 1.15 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement any party to act in the capacity of Custodian or Prime Broker to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.
- 1.16 Where appointed, the Custodian or Prime Broker 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.

Local Representative

1.17 Where the Scheme's service providers are all based outside Malta and where the Scheme has not appointed:

- a local resident Director (in the case of a Scheme set up as an investment company);
- a local General Partner (in the case of a Scheme set up as a limited partnership); or
- a local Trustee (in the case of a Scheme set up as a unit trust)

such Scheme is required to appoint a Local Representative.

1.18 The Local Representative shall be based in Malta and shall carry out the following functions:

- i. act as point of liaison between MFSA and the Scheme;
- ii. receive any instructions from the MFSA;
- iii. provide any information to MFSA as may be requested by the MFSA from time to time;
- iv. act as the Scheme's Money Laundering Reporting Officer.

The Local Representative may also act as the Scheme's Compliance Officer.

1.19 The Local Representative should have access to all records regarding the Scheme in order to be in a position to provide any documents or respond to any queries that the MFSA may have, as the need arises.

1.20 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Local Representative to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Compliance Officer

1.21 Responsibility for the Scheme's compliance with its licence conditions rests with the Board of Directors in the case of an investment company; with the General Partner(s) in the case of a limited partnership; or with the Manager in the case of a unit trust.

- 1.22 The Scheme shall at all times have a Compliance Officer.
- 1.23 The Scheme shall notify the MFSA of the resignation or removal of a Compliance Officer upon becoming aware of the proposed resignation or removal. The notification shall include relevant information on the proposed new Compliance Officer. The MFSA reserves the right to object to the proposed appointment and to require such additional information it considers appropriate.

The Scheme shall also request the Compliance Officer 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.

- 1.24 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 Directors;
 - a limited partnership should be presented to the General Partner; or
 - a unit trust should be presented to the Manager and the Trustee.

The "Compliance Report" should indicate any:

- i. breaches of the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. valuation errors 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" should 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.

- 1.25 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.

Prevention of Money Laundering

- 1.26 Responsibility for the Scheme's compliance with its prevention of money laundering obligations rests with the Board of Directors in the case of an investment company; with the General Partner(s) in the case of a limited partnership; or with the Manager in the case of a unit trust.

- 1.27 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.28 The Scheme shall obtain the written consent of the MFSA before the appointment of a Money Laundering Reporting Officer at least twenty one business days in advance.
- 1.29 The Scheme shall notify the MFSA of the resignation or removal of the Money Laundering Reporting Officer upon becoming aware of the proposed resignation or removal. The notification shall include relevant information on the proposed new Money Laundering Reporting Officer. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Objectives, Policies and Restrictions

- 1.30 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. In addition, where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I.
- 1.31 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.32 Notwithstanding anything contained in the Scheme's Constitutional Documents or Offering Document, the Scheme shall obtain the investors' consent before changing its investment objectives.

Offering Document

- 1.33 The Scheme shall publish an Offering Document, which shall be dated and the essential elements of which shall be kept up to date. The Offering Document shall be offered to investors free of charge before they become committed to investing.
- 1.34 The Offering Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in Appendix II.
- 1.35 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.36 The Offering Document and any amendments thereto shall be sent to and agreed with the MFSA before publication. The Scheme must submit a copy of its approval of the Offering Document, when this is submitted for the MFSA's approval.

Constitutional Document

- 1.37 Any changes to the Constitutional Document of the Scheme must be approved by the MFSA in advance of implementation.

Promotion

- 1.38 The Manager and/or any appointed intermediary may only promote the Scheme to Qualifying Investors. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Qualifying Investors.
- 1.39 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 5 of Part C I of the current Investment Services Guidelines.
- 1.40 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.
- 1.41 All publicity comprising an invitation to purchase units in the Scheme shall be approved by the Compliance Officer. All promotional material issued by the Scheme shall indicate that an Offering Document exists and the places where it, and any documents updating it, may be obtained.

Minimum Entry Levels

- 1.42 The minimum investment which the Scheme may accept is USD100,000 (or its equivalent expressed in other currencies). Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than USD100,000 unless this is the result of a fall in the net assets value. In the case of an umbrella fund comprising a number of sub-funds, the USD100,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis.

Qualifying Investor Declaration Forms

- 1.43 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as “Qualifying Investors”.
- 1.44 Copies of the Qualifying Investor Declaration forms and records evidencing compliance with the local prevention of money laundering requirements should be held in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

Side Letters

- 1.45 Side letters to be entered into by the Scheme must be circulated and approved by the Directors (in the case of an investment company) / General Partner(s) (in the case of a limited partnership)/ Manager (in the case of a unit trust) of the Scheme prior to issue.
- 1.46 Side letters issued by the Scheme should be retained in Malta at the registered offices of the Scheme and should be available for inspection by the MFSA during compliance visits.

Distributions of Income

- 1.47 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering Document.

General

- 1.48 The Scheme – or the Manager or Administrator on its behalf – shall submit quarterly statistical information and copies of the Scheme’s annual audited financial statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request. The contents of the quarterly statistical information are set out in Appendix IV. The statistical information shall be prepared in respect of the relevant quarter, and submitted within two weeks of the end of the quarter concerned. The half-yearly (if any) and annual reports shall be published and provided to investors in the Scheme, and submitted to the MFSA within two and four months respectively of the end of the period concerned.
- 1.49 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.
- 1.50 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.
- 1.51 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.52 The Scheme 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 by the MFSA as a Professional Investor Fund available to Qualifying Investors”*.
- 1.53 The Scheme shall comply with the applicable laws and regulations relating to the prevention of money laundering.
- 1.54 The MFSA shall 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 faith.
- 1.55 A request for a variation of the Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 1.56 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 immediately the decision has been taken or on becoming aware of the matter;
 - iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.
- 1.57 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document or Constitutional Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.
- 1.58 The Scheme shall not be required to make public the issue and redemption prices of its units. However, these must be made available to unit-holders upon request.
- 1.59 If dealings in the units are suspended, the Scheme – or the Manager or Administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension.
- 1.60 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 five years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.
- 1.61 In the event of a winding-up, the Scheme must give MFSA at least two weeks notice of this intention. 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, shall do all in its power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA.
- 1.62 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Part C

Professional Investor Funds targeting Extraordinary Investors Standard Licence Conditions

- 1.1 Apart from the conditions listed in this section, where the Scheme is established in the form of a limited partnership or an investment company, it shall also be subject to the supplementary conditions for Schemes established as limited partnerships or as investment companies – as applicable – set out in Appendix I.
- 1.2 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme.
- 1.3 Apart from being constituted as a professional investor fund, the Scheme shall not carry out any activity for which a Licence is required, unless prior approval is obtained from the MFSA. The MFSA may in such circumstances, request such additional information and impose such additional conditions it deems appropriate.
- 1.4 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any of the following conditions or to impose any new conditions.

Manager

- 1.5 The Scheme shall appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to self managed schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.
- 1.6 The Manager shall 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.
- 1.7 The Scheme shall notify the MFSA before the appointment or replacement of any party to act in the capacity of Manager to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:
 - i. a confirmation from the Directors (in the case of an investment company)/ General Partner(s) (in the case of a limited partnership)/ Trustee (in the case of a unit trust) as the case may be that the proposed Manager is authorised to provide these services by their home state regulator; and
 - ii. evidence of the authorisation of the Manager.

The MFSA reserves the right to object to the proposed replacement or appointment

and to require such additional information it considers appropriate.

Administrator

- 1.8 The Scheme may appoint an Administrator. Where an Administrator is not appointed, the Manager shall be responsible for the Administration function.
- 1.9 The Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Administrator. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above requirements.
- 1.10 The Scheme shall notify the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:
- i. a confirmation from the Directors (in the case of an investment company)/ General Partner(s) (in the case of a limited partnership)/ Trustee (in the case of a unit trust) as the case may be that the proposed Administrator is authorised to provide these services by their home state regulator; and
 - ii. evidence of the authorisation of the Administrator.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Adviser

- 1.11 The Scheme may appoint an Investment Adviser. The Investment Adviser shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Adviser. The Scheme shall satisfy the MFSA that the proposed Adviser meets the above requirements.
- 1.12 The Scheme shall notify the MFSA before the appointment or replacement of any party to act in the capacity of Adviser to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:
- i. a confirmation from the Directors (in the case of an investment company)/ General Partner(s) (in the case of a limited partnership)/ Trustee (in the case of a unit trust) as the case may be that the proposed Investment Adviser is authorised to provide these services by their home state regulator; and
 - ii. evidence of the authorisation of the Adviser.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Custodian

1.13 The assets of the Scheme shall be subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the Offering Document/ Marketing Document and shall be subject to MFSA approval.

1.14 The Custodian, where appointed, shall be:

- i. an entity providing the services of a Custodian in terms of a Category 4 Investment Services Licence issued under the Investment Services Act, 1994; or
- ii. an entity constituted in a Member State or EEA State and operating from a Member State or EEA State other than Malta, providing the services of Custodian or Prime Broker to collective investment schemes; or
- iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian or Prime Broker to collective investment schemes where the MFSA is satisfied that such entity is of sufficient standing and repute and having the business organization, systems, experience and expertise deemed necessary for it to act as Custodian.

1.15 The Scheme shall notify the MFSA before the appointment or replacement of any party to act in the capacity of Custodian or Prime Broker to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:

- i. a confirmation from the Directors (in the case of an investment company)/ General Partner(s) (in the case of a limited partnership)/ Manager (in the case of a unit trust) as the case may be that the proposed Administrator as the case may be that the proposed Custodian or Prime Broker is authorised to provide these services by their home state regulator; and
- ii. evidence of the authorisation of the Custodian or Prime Broker.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Local Representative

1.16 Where the Scheme's service providers are all based outside Malta and where the Scheme has not appointed:

- a local resident Director (in the case of a Scheme set up as an investment company);

- a local General Partner (in the case of a Scheme set up as a limited partnership); or
- a local Manager (in the case of a Scheme set up as a unit trust)

such Scheme is required to appoint a Local Representative.

1.17 The Local Representative shall be based in Malta and shall carry out the following functions:

- i. act as point of liaison between MFSA and the Scheme;
- ii. receive any instructions from the MFSA;
- iii. provide any information to MFSA as may be requested by the MFSA from time to time;
- iv. to act as the Scheme's Money Laundering Reporting Officer.

The Local Representative may also act as the Scheme's Compliance Officer.

1.18 The Local Representative should have access to all records regarding the Scheme in order to be in a position to provide any documents or respond to any queries that the MFSA may have, as the need arises.

1.19 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Local Representative to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Compliance Officer

1.20 Responsibility for the Scheme's compliance with its licence conditions rests with the Board of Directors in the case of an investment company; with the General Partner/s in the case of a limited partnership; or with the Manager in the case of a unit trust.

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

1.22 The Scheme shall notify the MFSA of the resignation or removal of a Compliance Officer upon becoming aware of the proposed resignation or removal. The notification shall include relevant information on the proposed new Compliance Officer. The MFSA reserves the right to object to the proposed appointment and to require such additional information it considers appropriate.

The Scheme shall also request the Compliance Officer 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.

- 1.23 The Scheme shall require 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 Directors;
 - a limited partnership should be presented to the General Partner; or
 - a unit trust should be presented to the Manager and the Trustee.

The “Compliance Report” should indicate any:

- i. breaches of the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. valuation errors 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” should 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.

- 1.24 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.

Prevention of Money Laundering

- 1.25 Responsibility for the Scheme’s compliance with its prevention of money laundering obligations rests with the Board of Directors in the case of an investment company; with the General Partner(s) in the case of a limited partnership; or with the Manager in the case of a unit trust.
- 1.26 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.27 The Scheme shall obtain the written consent of the MFSA before the appointment of a Money Laundering Reporting Officer at least twenty one business days in advance.
- 1.28 The Scheme shall notify the MFSA of the resignation or removal of the Money Laundering Reporting Officer upon becoming aware of the proposed resignation or removal. The notification shall include relevant information on the proposed new Money Laundering Reporting Officer. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Objectives, Policies and Restrictions

- 1.29 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document/ Marketing Document.
- 1.30 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.31 Notwithstanding anything contained in the Scheme's Constitutional Documents or Offering Document/Marketing Document, the Scheme shall obtain the investors' consent before changing its investment objectives.

Offering Document/ Marketing Document

- 1.32 The Scheme shall publish an Offering Document or else a brief Marketing Document.
- 1.33 The Offering Document or where an Offering Document has not been published the Marketing Document shall be offered to investors free of charge before they become committed to investing.
- 1.34 The Marketing Document or the Offering Document shall be dated and shall be kept up to date.
- 1.35 The Offering Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in Appendix II.
- 1.36 The Marketing Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the following information:
 - i. a list of service providers including the Directors, General Partner(s) or Trustee (as applicable), and their respective contact details;
 - ii. a definition of Extraordinary Investor;
 - iii. a risk warnings section describing in brief at least the principal risks associated with investing in the Scheme;
 - iv. investment objectives, policies and restrictions of the Scheme;
 - v. fee structure;
 - vi. details of the classes/ units on offer (whether these constitute a distinct sub-fund or not);
 - vii. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed)

- viii. details of the beneficial owners of the Founder Shares (where these shares hold voting rights);
- ix. Extraordinary Investor Declaration Form;
- x. the following text:
 - “[name of the Fund] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as ‘Extraordinary Investors’. This entails the minimum level of supervision for a Fund regulated in Malta.
 - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.
 - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.
 - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”;

The Marketing Document shall also include as an Annex the most recent version of the Constitutional Document of the Scheme.

- 1.37 The Scheme shall approve the Offering Document/ Marketing Document including any amendments thereto, and confirm its approval to MFSA.
- 1.38 The Offering Document/ Marketing Document and any amendments thereto – for so long as the amendments do not relate to the creation of a new class of units or to any other matter that requires approval in terms of these Licence Conditions – including a copy of the Scheme’s approval of the revised Offering Document/ Marketing Document shall be submitted to the MFSA within five business days from publication. Any amendments to the Offering Document/ Marketing Document which relate to the creation of a new class of shares or to any other matter that requires approval in terms of these Licence Conditions must be submitted to the MFSA for approval before publication.

Constitutional Document

- 1.39 Any changes to the Constitutional Document of the Scheme must be approved by the MFSA in advance of implementation.

Promotion

- 1.40 The Manager and/or any appointed intermediary may only promote the Scheme to Extraordinary Investors. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Extraordinary Investors.
- 1.41 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 5 of Part C I of the current Investment Services Guidelines.

- 1.42 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.
- 1.43 All publicity comprising an invitation to purchase units in the Scheme shall be approved by the Compliance Officer. All promotional material issued by the Scheme shall indicate that an Offering Document/ Marketing Document exists and the places where it, and any documents updating it, may be obtained.

Minimum Entry Levels

- 1.44 The minimum investment which the Scheme may accept is USD1,000,000 (or its equivalent expressed in other currencies). Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than USD1,000,000 unless this is the result of a fall in the net assets value. In the case of an umbrella fund comprising a number of sub-funds, the USD1,000,000 threshold is applicable on a per scheme basis rather than on a per sub-fund basis.

Extraordinary Investor Declaration Forms

- 1.45 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as “Extraordinary Investors”.
- 1.46 Copies of the Extraordinary Investor Declaration Forms and records evidencing compliance with the local prevention of money laundering requirements shall be held in Malta at the registered office of the Scheme and shall be available for inspection by the MFSA during compliance visits.

Side Letters

- 1.47 Side letters to be entered into by the Scheme must be circulated and approved by the Directors (in the case of an investment company) / General Partner(s) (in the case of a limited partnership)/ Manager (in the case of a unit trust) of the Scheme prior to issue.
- 1.48 Side letters issued by the Scheme should be retained in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

Distributions of Income

- 1.49 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering Document/ Marketing Document.

General

- 1.50 The Scheme – or the Manager or Administrator on its behalf – shall submit quarterly statistical information and copies of the Scheme’s annual audited financial

statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request. The contents of the quarterly statistical information are set out in Appendix IV. The statistical information shall be prepared in respect of the relevant quarter, and submitted within three weeks of the end of the quarter concerned. The half-yearly (if any) and annual reports shall be published and provided to investors in the Scheme, and submitted to the MFSA within two and four months respectively of the end of the period concerned.

- 1.51 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.
- 1.52 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.
- 1.53 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.54 The Scheme 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 by the MFSA as a Professional Investor Fund available to Extraordinary Investors”*.
- 1.55 The Scheme shall comply with the applicable laws and regulations relating to the prevention of money laundering.
- 1.56 The MFSA shall 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 faith.
- 1.57 A request for a variation of the Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 1.58 The MFSA shall be informed of any material information concerning the Scheme, its management, its operation or its service providers, 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 immediately the decision has been taken or on becoming aware of the matter;
 - iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad which a reasonable person would expect the MFSA to wish to be informed about - immediately upon becoming aware of

the matter.

- 1.59 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document/ Marketing Document or Constitutional Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.
- 1.60 The Scheme shall not be required to make public the issue and redemption prices of its units. However, these must be made available to unit-holders upon request.
- 1.61 If dealings in the units are suspended, the Scheme – or the Manager or Administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension. The period of suspension shall be as brief as is practicable.
- 1.62 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 five years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.
- 1.63 In the event of a winding-up, the Scheme must give MFSA at least two weeks notice of this intention. 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, shall do all in its power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA.
- 1.64 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document/ Marketing Document.

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Appendix I Supplementary Licence Conditions

Supplementary Conditions for Professional Investor Funds established as Limited Partnerships

- 1.1 The Scheme shall obtain the written consent of the MFSA before admitting a General Partner. The request for consent shall be accompanied by a Personal Questionnaire (“PQ”) in the form set out in Schedule J of the Investment Services Guidelines duly completed by the person proposed (in the case of an individual) or by the Directors and Qualifying Shareholders of the proposed General Partner (in the case of a body corporate).

Provided that where the proposed corporate General Partner is regulated in a recognized jurisdiction, the request for consent need not be accompanied by the PQ of the Directors and Qualifying Shareholders of the proposed corporate General Partner, but shall include details of the regulatory status of the General Partner.

- 1.2 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;
 - iv. any other individual who satisfies the fit and proper test.

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

- 1.3 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.
- 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 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.

- 1.6 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.

Supplementary Conditions for Professional Investor Funds established as Investment Companies

- 1.7 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Scheme.
- 1.8 The Scheme shall at all times have one or more Directors independent from the Manager and the Custodian.
- 1.9 The Scheme shall obtain the written consent of the MFSA before the appointment of a Director provided that the Scheme shall not appoint a Corporate Director unless such Corporate Director is regulated in a recognized jurisdiction.
- 1.10 The request for consent of the appointment of an individual as Director shall be accompanied by a PQ duly completed by the person proposed. In the case of a Corporate Director, the request for consent shall include details of its regulatory status.
- 1.11 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.
- 1.12 Where the Scheme has issued "Voting Shares" to the promoters and "non Voting Shares" to Experienced, Qualifying or Extraordinary Investors, any changes in the beneficial ownership of the "Voting Shares" of the Scheme shall be subject to the prior approval of the MFSA. 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 "Voting Shares" upon request.

The Scheme shall obtain the written consent of the MFSA before:

- i. making any changes to the rights of its "Voting Shares";
 - ii. redeeming its "Voting Shares"; or
 - iii. issuing additional "Voting Shares".
- 1.13 Minutes of the meetings of the Board of Directors must be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

Supplementary Conditions regarding the use of Trading Companies/ Special Purpose Vehicles (“SPVs”) for investment purposes

- 1.14 The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country.
- 1.15 The Scheme shall – through its Directors or General Partner(s) – at all times maintain the majority directorship of any SPV. The SPV should also appoint one or more independent directors.
- 1.16 The Scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the Scheme.

Supplementary Conditions for self managed Professional Investor Funds

Capital Requirements

- 1.17 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

- 1.18 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.
- 1.19 The management of assets is to be the responsibility of the Board of Directors, at least one of whom must be resident in Malta. The 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. Minutes of Investment Committee meetings should be available in Malta for review during MFSA’s compliance visits. The role of the Investment Committee will be to:
- monitor and review the investment policy of the Scheme;
 - establish and review guidelines for investments by the Scheme;
 - issue of rules for stock selections;

- set up the portfolio structure and asset allocation; and
- make recommendations to the Board of Directors of the Scheme.

- 1.20 Where the Scheme has not appointed an Investment Committee, the functions mentioned under para 1.18 above shall be undertaken by the Directors of the Scheme and any reference to Investment Committee throughout this Appendix shall be construed as reference to the Directors of the Scheme.
- 1.21 The Investment Committee may delegate the day-to-day investment management of the assets of the Scheme to one or more officials of the Scheme (referred to as “the Portfolio Manager(s)”) – who will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objective and policy described in the Scheme’s Offering Document/ Marketing Document.
- 1.22 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement a member of the Investment Committee or a Portfolio Manager. 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 Manager/s.

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 a detailed CV of the person proposed.

In the case of a resignation of a Member of the Investment Committee and/ or a Portfolio Manager, the Scheme shall notify the MFSA accordingly and request the departing member of the Investment Committee and/or the Portfolio Manager 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.

- 1.23 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 Manager/s and the Investment Committee.
- 1.24 The Scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

Dealing by Officials of the Scheme

- 1.25 Where the Scheme allows its officials to deal for their own account, it is responsible for ensuring that such a practice does not lead to abuse. The standards and procedures to be adopted should include the following:

- i. The Scheme must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market abuse.
- ii. The Scheme must take reasonable steps to ensure that its officials do not initiate personal transactions which might impair their ability to manage the Scheme's assets objectively and effectively or which might create a conflict between their own interest and that of the Scheme.
- iii. Internal mechanisms should be established to prompt the Compliance Officer's intervention if and when in respect of any staff member, abnormal behaviour or patterns concerning investment transactions are observed.

All transactions undertaken by officials on their own account should be at "arm's length" – but this does not preclude discounts being allowed to officials.

Reporting Requirements

- 1.26 The Scheme shall submit a Certificate of Compliance, in the form set out in Appendix V, to the MFSA for each six month period following the Licence date. The Certificate of Compliance shall be submitted within one week from the end of the period to which it relates. The Certificate of Compliance shall be signed by a Director on the authority of the Board. Where there have been breaches of the Act or of these Licence Conditions, Schemes are required to include a statement regarding such breaches in their Certificate of Compliance.
- 1.27 The Scheme shall notify the MFSA immediately if it is notified that its auditor intends to qualify the audit report.

Auditor

- 1.28 i. 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. The incoming auditor will be required to submit the declaration included in Appendix VI.
- ii. The Scheme shall make available to its auditor the information and explanations he needs to discharge his responsibilities as an auditor and in order to meet the MFSA's requirements.
- 1.29 The Scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his 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 (a) above;
 - iii. a spouse, parent, step-parent, child, step-child or other close relative of any

person in (a) 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 auditor of that Scheme.

1.30 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 appointment. The Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

1.31 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 such assistance as he may require;
- iii. to vacate his office if he becomes disqualified to act as auditor for any reason;
- iv. if he resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he considers 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 becomes aware in his capacity as auditor of the Scheme which:
 - a. is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
 - b. constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme in or under the Act;
 - c. relates to any other matter which has been prescribed.

1.32 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.

1.33 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.

Documents and Records

- 1.34 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 five years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.

Conflicts of Interest

- 1.35 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 and for Investment Committee meetings, where a member considers that s(he) 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 s(he) 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 s(he) 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 s(he) is interested and should withdraw from the meeting while the matter in which s(he) 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 s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the Meeting;
 - 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.

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Appendix II Contents of the Offering Document

Unless otherwise agreed with the MFSA, a Scheme shall issue or cause to be issued an Offering Document for which the Scheme shall be responsible. The purpose of the Document is to provide sufficient information to enable potential Experienced, Qualifying and/or Extraordinary Investors to make an informed investment decision.

Closed ended schemes set up as Professional Investor Funds targeting Experienced Investors must unless otherwise agreed with the MFSA, draw up their Offering Document in line with the requirements of the Prospectus Directive (Directive 2001/34/EC).

The Document must contain all material information which at the date of the Offering Document is within the knowledge of the Scheme's Board of Directors (in the case of an investment company), General Partner(s) (in the case of a limited partnership) or Manager (in the case of a unit trust) to be relevant for the purpose of making an informed judgement about the merits of participating in the Scheme and the extent of the risks accepted by so participating. The Offering Memorandum shall include the following information:

1. Information Concerning the Scheme

- i. The following statements – which must be in a prominent position printed in font whose pitch is at least 12:
 - “[name of the Fund] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as Experienced Investors/ Qualifying Investors/ Extraordinary Investors [delete as appropriate].
 - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA's investment and borrowing restrictions and other requirements for retail schemes do not apply.
 - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund's failure.
 - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”.
- ii. In the case of PIFs targeting Extraordinary Investors, the Offering Memorandum should also provide that: “PIFs targeting Extraordinary Investors are subject to the minimum level of supervision for a Fund regulated in Malta.”.
- iii. A statement that the Scheme's Board of Directors (in the case of an investment company), General Partner(s) (in the case of a limited partnership) or Manager (in the case of a unit trust) confirm their approval of the content of the Offering Document.

- iv. Name of the Scheme.
- v. Date of establishment of the Scheme and a statement as to its duration, if limited.
- vi. Name or style, form in law and registered office.
- vii. In the case of an umbrella fund, an indication of the sub-funds.
- viii. The investment objectives, policies and restrictions of the Scheme, together with the extent of use of leverage. In the case of umbrella funds, this information must be provided for each sub-fund.
- ix. Accounting and distribution dates.
- x. Name of auditor.
- xi. Details of the types and main characteristics of the Units and in particular:
 - the nature of the right represented by the Unit;
 - indication of the voting rights, if any of the holders of Units;
- xii. A Statement – where the Scheme has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the Scheme. This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.
- xiii. Procedures and conditions for the creation, issue and sale of Units.
- xiv. Procedures and conditions for the repurchase, redemption and cancellation of Units, and details of the circumstances in which repurchase or redemption may be suspended.
- xv. Rules for the valuation of assets.
- xvi. Method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of Units, in particular:
 - the method and frequency of the calculation of the net assets value;
 - information concerning the charges relating to the sale or issue and the repurchase or redemption of Units;
 - arrangements whereby holders of Units and prospective holders of Units may deal.
- xvii. In the case of umbrella funds, the charges applicable to the switching of

investments from one sub-fund to another.

- xviii. Information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the Scheme to the Manager (or in the case of a self managed Scheme the Investment Committee), Administrator, Custodian, Advisor, and to third parties, and in respect of the reimbursement of costs by the Scheme to the management company, to the Custodian and to third parties.
- xix. In the case of an investment company, the amounts of authorised and paid-up capital.
- xx. In the case of an investment company, brief details of the members of the Board of Directors of the Scheme. Where the Scheme has appointed one or more Corporate Directors, this section should include brief details on the Corporate Director and its directors, including a brief description of the nature/ objects of the company. In the case of a Corporate Director with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate Director or include a statement that such information will be available upon request.

2. Information concerning the Management Company, Investment Adviser, Administrator, Custodian/ Prime Broker (where applicable) (“the Service Provider”)

- i. Name or style, registered office and head office.
- ii. If the Service Provider is part of a group, the name of that group.
- iii. Regulatory Status of the Service Provider.
- iv. In the case of the Investment Adviser or the Administrator a statement whether the Investment Adviser/ the Administrator is appointed by the Scheme or the Manager.
- v. where one or more Service Provider has not to be appointed, a description should be provided concerning how the functions normally undertaken by each functionary will be carried out e.g. if a Custodian/Prime Broker is not appointed, the Document should include a description of the custodial arrangements that will be put in place.
- vi. In the case of a self managed Scheme, details of the members of the investment committee, including an overview of their experience and expertise together with an outline of the person(s) responsible for the day to day management of the assets of the Scheme.

3. Information concerning the Local Representative

- i. Name, registered office and head office, if different from registered office.

- ii. Main activities.

4. Risk Warnings

- i. This section should provide a detailed and clear indication of the principal risks associated with investing in the Scheme.

5. General Information

- i. A description of the potential conflicts of interest which could arise between the Management Company, or the Investment Adviser, or the Custodian/ Prime Broker, and the Scheme.
- ii. The name of any entity which has been contracted by the management company or the investment company to carry out its work.
- iii. Information concerning the arrangements for making payments to holders of Units, purchasing or redeeming Units and making available information concerning the Scheme.
- iv. Where applicable, an indication that the Company will use Trading Companies or Special Purpose Vehicles as part of its investment strategy.

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Appendix III Declaration Forms

This Appendix includes relevant information regarding the Declaration Forms to be completed by prospective Experienced, Qualifying and Extraordinary Investors.

Schedule I
Experienced Investor Declaration Form

A Scheme promoted to Experienced Investors must obtain a written declaration (the Experienced Investor Declaration Form) from each investor (or from a duly authorised agent on behalf of such investor) stating that the investor or agent on his behalf has read and understood the Offering Document and meets (by reference to the particular limb in issue) the eligibility criteria set out below.

The Scheme will be entitled to rely upon the declaration provided in the absence of information to the contrary.

The minimum investment which a Scheme promoted to Experienced Investors may accept is USD20,000 (or its equivalent expressed in other currencies). Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than USD20,000 (save where this relates to a decline in the net asset value). Nominee investors will be treated on a transparent basis.

In order to be eligible to be treated as “Experienced Investors”, investors or their duly authorised agents must certify (by deleting those answers which do not apply and signing the confirmation) that they or their client are persons having the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved on the basis that they or their client are either:

Table for insertion and completion:

i. a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these type of investments; or	<i>Yes</i>	<i>No</i>
ii. a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; or	<i>Yes</i>	<i>No</i>
iii. A person who has carried out investment transactions in significant size at a certain frequency; or	<i>Yes</i>	<i>No</i>
iv. by providing any other appropriate reason.	<i>Yes</i>	<i>No</i>

N.B.

In the case of joint holders, all joint holders individually must fall within the definition of “Experienced Investors”.

- To be signed by investor – where the investment is being made direct (not through a duly authorised agent) with the PIF.***

I hereby confirm that I am eligible to be treated as an “Experienced Investor”, since I satisfy the definition thereof in light of the positive response(s) that I have given to the question(s) above or the reasons supplied. I certify that I have read and understood the Offering Document including the mandatory risk warnings.

- To be signed by the duly authorised agent – where the investment is not being made direct by the investor with the PIF.***

I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the PIF described above.

I certify that my principal is eligible to be treated as an “Experienced Investor” since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) above in respect of my principal or appropriate reasons provided. I certify that my principal has read and understood the Offering Document including the mandatory risk warnings.

Name (please print)	
----------------------------	--

Signature	
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Title/ Capacity in which signed	
--	--

Date	
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Schedule II
Qualifying Investor Declaration Form

A Scheme promoted to Qualifying Investors must obtain a written declaration (the Qualifying Investor Declaration Form) from each investor (or from a duly authorised agent on behalf of such investor) stating that the investor or agent on his behalf has read and understood the Offering Document and meets the eligibility criteria set out below.

The Scheme will be entitled to rely upon the declaration provided in the absence of information to the contrary.

The minimum investment which a Scheme promoted to Qualifying Investors may accept is USD100,000 (or its equivalent expressed in other currencies). Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than USD100,000 (save where this relates to a decline in the net asset value). Nominee investors will be treated on a transparent basis.

In order to be eligible to be treated as “Qualifying Investors”, investors or their duly authorised agents must certify (by deleting those answers which do not apply and signing the confirmation) that they/their client are eligible to be treated as Qualifying Investors as they or their client are either:

Table for insertion and completion:

i. a body corporate, including a partnership, which has net assets in excess of USD1.0 million or which is part of a group which has net assets in excess of USD1.0 million;	Yes	No
ii. an unincorporated bona fide body of persons or association which has net assets in excess of USD1.0 million;	Yes	No
iii. a trust where the net value of the trust’s assets is in excess of USD1.0 million;	Yes	No
iv. an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile; or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;	Yes	No
v. an individual whose net worth or joint net worth with that person’s spouse, exceeds USD1.0 million;	Yes	No

vi. an employee or director of service providers to the PIF;	<i>Yes</i>	<i>No</i>
vii. a relation and close friend of the promoters limited to a total of 10 persons per PIF;	<i>Yes</i>	<i>No</i>
viii. an entity with (or which are part of a group with) USD5.0 million or more under discretionary management investing on its own account;	<i>Yes</i>	<i>No</i>
ix. the investor qualifies as a PIF promoted to Qualifying or Extraordinary Investors; or	<i>Yes</i>	<i>No</i>
x. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.	<i>Yes</i>	<i>No</i>

N.B.

In the case of joint holders, all joint holders individually must fall within the definition of “Qualifying Investors”.

- To be signed by investor – where the investment is being made direct (not through a duly Qualifying agent) with the PIF.***

I hereby confirm that I am eligible to be treated as a “Qualifying Investor” in light of the positive response(s) that I have given to the question(s) above.

- To be signed by the duly Qualifying agent – where the investment is not being made direct by the investor with the PIF.***

I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the PIF described above.

I certify that my principal is eligible to be treated as a “Qualifying Investor” in light of the positive response(s) that I have given to the question(s) above in respect of my principal.

Name (please print)	
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Signature	
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Title/ Capacity in which signed	
--	--

Date	
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Schedule III
Extraordinary Investor Declaration Form

Professional Investor Funds (“PIF”) may only be promoted and sold to “Extraordinary Investors”.

A Scheme promoted to Extraordinary Investors must obtain a written declaration (the Extraordinary Investor Declaration Form) from each investor (or from a duly authorised agent on behalf of such investor) stating that the investor or agent on his behalf has read and understood the Offering Document and meets the eligibility criteria set out below.

The Scheme will be entitled to rely upon the declaration provided in the absence of information to the contrary.

The minimum investment which a Scheme promoted to Extraordinary Investors may accept is USD1,000,000 (or its equivalent expressed in other currencies). Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than USD1,000,000 (save where this relates to a decline in the net asset value). Nominee investors will be treated on a transparent basis.

In order to be eligible to be treated as “Extraordinary Investors”, investors or their duly authorised agents must certify (by deleting those answers which do not apply and signing the confirmation) that they/their client are eligible to be treated as Extraordinary Investors as they or their client are either:

Table for insertion and completion:

i. a body corporate, including a partnership, which has net assets in excess of USD10.0 million or which is part of a group which has net assets in excess of USD1.0 million;	Yes	No
ii. an unincorporated bona fide body of persons or association which has net assets in excess of USD10.0 million;	Yes	No
iii. a trust where the net value of the trust’s assets is in excess of USD10.0 million;	Yes	No
iv. an individual whose net worth or joint net worth with that person’s spouse, exceeds USD10.0 million;	Yes	No
v. an employee or director of service providers to the PIF;	Yes	No
vi. the investor qualifies as a PIF promoted to Extraordinary Investors; or	Yes	No

vii. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.	<i>Yes</i>	<i>No</i>
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N.B.

In the case of joint holders, all joint holders individually must fall within the definition of “Extraordinary Investors”.

- To be signed by investor – where the investment is being made direct (not through a duly Qualifying agent) with the PIF.***

I hereby confirm that I am eligible to be treated as an “Extraordinary Investor” in light of the positive response(s) that I have given to the question(s) above.

- To be signed by the duly Qualifying agent – where the investment is not being made direct by the investor with the PIF.***

I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the PIF described above.

I certify that my principal is eligible to be treated as an “Extraordinary Investor” in light of the positive response(s) that I have given to the question(s) above in respect of my principal.

Name (please print)	
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Signature	
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Title/ Capacity in which signed	
--	--

Date	
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SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

**Appendix IV
Quarterly Statistical Return**

- 1. Name of PIF _____
- 2. Quarter Ended (Please delete as appropriate) Mar/ June/ Sept/ Dec
- 3. Year _____
- 4. Return Submitted by (Please delete as appropriate) PIF/Manager
- 5. Base Currency _____
- 6. Total Net Asset Value (“NAV”) expressed in base currency _____
- 7. Total NAV expressed in Euro (unless base currency is Euro) EUR _____
- 8. Date when NAV last calculated _____

Declaration

I confirm that I am authorised to sign this Quarterly Return on behalf of the entity described in No. 4 above. I further confirm that to the best of my knowledge and belief, the information contained in this return is both accurate and complete.

Name (please print) _____

Signature _____

Capacity in which signed _____

Date _____

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Appendix V Specimen Certificate of Compliance

To: Director – Securities Unit
Malta Financial Services Authority

Dear Sir/ Madam

Certificate of Compliance

With reference to the Professional Investor Fund licence number _____ granted to _____

I am a director/partner/principal of the licence holder and I confirm that during the period _____ to _____ :

the business of the licence holder has been conducted in accordance with:-

- a. the Investment Services Act;
- b. the licence conditions; and
- c. any recommendations or directives issued to the licence holder by the Malta Financial Services Authority

except for: *(kindly provide details:)* _____

and that the Malta Financial Services Authority has been notified of all matters which may influence its decision to allow the licence to continue.

I further confirm that during the above mentioned period, the licence holder has:

- not received any complaints from investors in the Fund;
- has received *(please specify number:)* _____ complaints from investors. At the end of the period, the licence holder has *(please specify number:)* _____ complaints which have not been resolved.

Signed, on the authority of the Board/the partners

by _____
(name and position)

Date _____

SECTION II: PROFESSIONAL INVESTOR FUNDS GUIDELINES

Appendix VI Specimen Declaration by the Auditor

The Auditor of the Applicant for a self-managed Collective Investment Scheme licence is required to make the following declaration to the MFSA. The Declaration should be attached to the licence Application.

To: The Director – Securities Unit
Malta Financial Services Authority

Date: _____

Dear Sir,

Licence Application made by _____

Licence Application dated _____

Auditing Firm _____

This Letter is to confirm that the Auditing Firm described above has agreed to accept appointment as auditor of the Applicant named above.

We are pleased to confirm that:

- 1.0 we hold adequate and appropriate Professional Indemnity insurance in the context of the application.
- 2.0 we are members of the following professional bodies/associations _____
- 3.0 we have satisfied ourselves that the Collective Investment Scheme is in a position to meet the initial capital requirement of EUR 125,000 set by the Malta Financial Services Authority (only required in the case of the first auditor of the Scheme);
- 4.0 in accordance with section 18 of the Investment Services Act, we undertake to report immediately to the MFSA any fact or decision about which we become aware in our capacity as auditor which:
 - 4.1 is likely to lead to a serious qualification or refusal of our audit report; or
 - 4.2 constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the Applicant in or under this Act; or
 - 4.3 gravely impairs the ability of the Applicant to continue as a “going concern”, or which;

4.4 relates to any other matter which has been prescribed.

Moreover, in terms of the said Act we also hereby undertake to likewise report to the MFSA any fact or decisions as specified above pertaining to any person having close links with the Applicant, of which we become aware in our capacity as auditor of the Applicant and of a person having close links with the former.

5.0 our responsibilities as auditor of the Applicant have been defined in a signed letter of engagement which has been confirmed in writing by the Applicant and the said letter of engagement includes the matters specified of the Licence Conditions applicable to the Scheme.

Yours faithfully,
