

## Circular: Cross Sub-Fund Investments in Retail Collective Investment Schemes

***Attention: The Directors and Compliance Officers of Retail Collective Investment Schemes, Fund Managers and Depositories.***

Following feedback received from the industry, the Authority has decided to review its Rules in relation to cross sub-fund investments in Retail Schemes.

Cross Sub-Fund Investments take place when a Sub-Fund forming part of an umbrella scheme invests in another (target) Sub-Fund of the same scheme. At present, the MFSA allows Professional Investor Funds (“PIF”) and Alternative Investment Funds (“AIF”) to undertake cross sub-fund investments, subject to this being permitted in the Constitutional Documents, Offering Memorandum and in relevant conditions laid down in the Investment Services Rules (“the Rules”) and a number of conditions as briefly summarised below:

- there are appropriate clauses regarding separate patrimony principle;
- investment capped at 50% of NAV of any fund within same scheme;
- no duplication of management fees, subscription and redemption fees;
- cross sub-fund investments only counted once for capital requirements purposes; and
- voting rights are curtailed.

On the other hand, with regards to Investment Services Rules for Retail Collective Investment Schemes (“the RCIS Rules”), (i) SLC 17.3 of Part BII of the RCIS Rules<sup>1</sup> and (ii) SLC 14.8 of Part BI of the RCIS Rules<sup>2</sup> -; and (iii) SLC 4.39 and SLC 4.60 of Part B Investment Services Rules for Alternative Investment Funds<sup>3</sup> cross sub-fund investments are currently prohibited<sup>4</sup>.

---

<sup>1</sup> Part BII of Investment Services Rules applicable to Malta based UCITS Collective Investment Schemes

<sup>2</sup> Part BI of Investment Services Rules applicable to Malta based Retail Non-UCITS Collective Investment Scheme

<sup>3</sup> SLC 4.39 and SLC 4.60 of Part B of Investment Services Rules for Alternative Investment Funds (“AIF Rules”) are applicable to AIFs Sold Exclusively to Retail Investors

<sup>4</sup> SLC 17.3 of Part BII of RCIS Rules and SLC 14.8 of Part BI of RCIS Rules state: “A Sub-Fund shall not invest in another Sub-Fund of that same scheme”; SLC 4.39 and SLC 4.60 of Part B of AIF Rules state: “An AIF cannot enter into cross sub-fund investments”

The Authority has reviewed this position and will now be allowing cross sub-fund investments in Retail Schemes, subject to the following terms and conditions:

“A Sub-Fund may invest in units of one (1) or more sub-funds within the same Scheme, subject to this being permitted in the Constitutional Documents and the Offering Memorandum of the said Scheme, provided that:

- (a) adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the Scheme is made in the Offering Documentation;
- (b) the Scheme must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund comprised in that company treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same company in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;
- (c) the Sub-Fund is allowed to invest up to 10% of its assets into any Sub-Fund within the same Scheme;
- (d) the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);
- (e) in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

Provided that the restriction in point (e) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

- (f) for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net assets of each Sub-Fund, cross sub-fund investments will be counted once;
- (g) any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disapplied;
- (h) clear disclosure of cross sub-fund investments shall be made in the Scheme’s Half-Yearly and Annual Financial Statements;

For the purpose of point (h) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

- (i) a Conflict of Interest Policy shall be in place and accordingly conflicts of interest that arise are duly recorded, mitigated and disclosed as may be necessary.



This Rule does not apply to Schemes that fall within the scope of the Loan Fund Rules. Moreover it applies over and above other Rules relating to investments made by Retail Collective Investment Schemes, including, but not limited to, SCL 5.45 of Part BII of RCIS Rules and SCL 4.25 of Part B of AIF Rules.

The relevant Standard Licence Conditions in the Rule Book will be amended due course.

### Contact

Any queries regarding this Circular shall be directed to the Securities and Market Supervision, MFSa at: [funds@mfsa.com.mt](mailto:funds@mfsa.com.mt)

A handwritten signature in black ink, appearing to read 'J. Agius', enclosed within a large, loopy, hand-drawn oval shape.

Joseph J. Agius  
Deputy Head

### **Communications Unit**