9th December 2008

Consultation on proposed new Investment Services Rules applicable to Qualifying or Extraordinary Investors effecting draw-downs on investors' committed funds.

1.0 Background

Reference is made to the consultation issued on the 5th May 2008 relating to the proposed amendments to the Companies Act (Investment Companies with Variable Share Capital), 2005 (hereinafter referred to as "the Regulations").

These proposals provided for, *inter alia*, the possibility for Professional Investor Funds targeting Qualifying or Extraordinary investors to effect "drawdowns" on investors` committed funds in return for the issue of units at a price which may be below the net asset value per unit prevailing at the time.

The purpose of this circular is to provide industry with the proposed amendments to the Investment Services Rules for Professional Investor Funds which MFSA envisages to implement in order to supplement the requirements of the Regulations.

2.0 Proposed New Rules in the Investment Services Rules to the Professional Investor Funds ("the Rules").

The proposed amendments relate to:

a. a new section to be included in Appendix 1 to Part B of the Rules providing supplementary conditions for PIFs opting to effect drawdowns and;

b. the addition of two new paragraphs (ii) and (ii) under the section entitled "Risk Warnings" in Appendix II to part B of the Rules.

The proposed Rules are attached as Appendix 1 herewith.

3.0 Consultation Period and Contacts

Interested parties are requested to send their submissions in writing to the Director – Securities Unit MFSA (or by email at su@mfsa.com.mt) by **not later than the 9th January 2009.**

In case of difficulties, please contact Dr. Sarah Pulis on 25485232 or spulis@mfsa.com.mt.

Appendix 1

***<u>New Section 5 in Appendix 1 'Supplementary Licence Conditions' in the Rules</u>*:**

5. Supplementary Conditions for Professional Investor Funds targeting Qualifying or Extraordinary Investors effecting draw-downs on investors' committed funds

Qualifying or Extraordinary Professional Investor Funds established as SICAVs and which wish to effect draw-downs on investors' committed funds are required to comply with the relevant provisions of Legal Notice xx of 2008 relating to the 'Issue of shares at a discount', in addition to the following SLCs:

5.1 The Scheme shall retain at its Registered Office, a copy of its written agreements with investors who have committed to invest in the Scheme. Such agreements shall be available for inspection by MFSA officials during compliance visits.

5.2 Any request on committed funds shall be effected pro-rata amongst all relevant investors in the Scheme

5.3 The Scheme shall only make a fresh call for further commitments once all outstanding commitments from existing investors have been requested.

5.4 Reference to 'minimum investment' in SLC 1.51 of Part B II and SLC 1.53 of Part B III shall be construed as a reference to 'minimum commitment'.

5.5 In addition to the disclosure requirements applicable to the Offering Document of the Scheme set out in Regulation 15(3) of LN XX of 2008, the Offering Document shall comply with the applicable disclosure requirements set out in Appendix II of these Rules under the heading 'Risk Warnings'. In the case of a Scheme targeting Extraordinary Investors which has opted to issue a Marketing Document instead of an Offering Document, such disclosure requirements will likewise apply for the Marketing Document.

<u>Appendix II – New paragraph (ii) under section entitled "'Risk Warnings'</u>

ii Where it is possible for the Scheme to enter into agreements with investors for the purpose of committing funds for the subscription at a future date to units at a specific price, a risk warning should be made to the effect that should the Scheme issue units at a discount with respect to its current NAV, in terms of the such agreements, there will be a risk of dilution to the Net Asset Value of the Scheme.

iii. There should also be a clear risk warning that while investors entering into an agreement with the Scheme for the purpose of committing funds for the subscription at a future date to units at a specific price, would in effect be subscribing for such units at a discount if the NAV per unit prevailing at the time the draw-down request is made exceeds the price at which the investor had agreed to subscribe for units in terms of such agreement, on the other hand, if the NAV per unit at the time a draw-down request is made is lower than the price at which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.