

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### Publication of Revised Appendix 1 and Appendix 2 to Part B of the Investment Services Rules for Investment Services Providers

15<sup>th</sup> October, 2010

Further to consultation with the industry the MFSA is today publishing a revised version of Appendix 1 to Part B of the Investment Services Rules for Investment Services Providers (hereinafter referred to as 'the Rules'). The main changes relate to:

- a. Amendments to Section 1.2 due to the application of the revised financial resources requirement to Fund Managers of UCITS schemes and Non-UCITS schemes;
- b. Minor clarifications to Sections 1.3.2 to 1.3.7, Section 2.0, Section 3.6 and Section 4.2 indicating that these Sections shall not be applicable to Fund Managers given the application of the new financial resources requirement, as indicated in point (a) above;
- c. An amendment to Section 3.0 indicating that the Automated Financial Return (included in Appendix 2 to Part B of the Rules) has been revised to include [i] an Automated Financial Return which shall be completed by Investment Services Licence Holders ('Licence Holders') that **are not** Fund Managers in terms of the revised Section 1.2 of Appendix 1 to Part B of the Rules (included in a new Appendix 2A to Part B of the Rules); and [ii] an Automated Financial Return which shall be completed solely by Fund Managers, including Fund Managers which provide investment services other than management services to collective investment schemes (included in a new Appendix 2B to Part B of the Rules);
- d. Minor clarifications to Sections 3.1 (b), 3.1 (c), 3.1 (d), 3.1 (k), 3.1 (n), 3.1 (o), 3.2 (a), 3.2 (d), 3.2 (e), 3.3 (h), 3.3 (m), 3.3 (n), 3.3 (o), 3.3 (p), 3.3 (q), 3.6 (a), 4.2.5(C) (ii) and 4.3 (B), including the addition of paragraph (f) to Section 3.2 due to the application of the new and revised version of the Automated Financial Return; and
- e. An additional paragraph to Section 4.2.1.1 (C) which indicates that apart from the ratings of the credit rating agencies outlined in point (i) of the said section, Licence Holders may utilise, for the purposes of the computation of the credit/counterparty risk component, credit ratings issued by other credit rating agencies which are regulated in terms of Regulation 1060/2009 of the European Parliament and of the Council and which are not included in point (i) of the said section.

As outlined in point (c) above, today the MFSA is also publishing a revised version of Appendix 2 to Part B of the Rules which contains the revised version of the Automated Financial Return for Licence Holders and the new Automated Financial Return for Fund Managers. The revised Automated Financial Return for Licence Holders which are not Fund Managers shall be included in Appendix 2A of Part B of the Rules whilst the new

Automated Financial Return for Fund Managers shall be included in Appendix 2B of the Rules.

## **1.0 Amendments to Appendix 1 to Part B of the Rules**

### **1.01 Financial resources requirement of Fund Managers**

On 6<sup>th</sup> April, 2010 the MFSA issued its first circular to the investment services industry relating to the proposed changes to the financial resources requirement applicable to Non-UCITS Fund Managers in terms of the Rules, which also served as a consultation document on the proposed new financial resources requirement.

Further to the feedback received from the investment services industry with respect to the consultation made on the proposed revised financial resources requirement applicable to Non-UCITS Fund Managers and the guidance obtained from the European Commission, the MFSA has made further amendments and has revised the financial resources requirement applicable to both UCITS and Non-UCITS Fund Managers.

The revised financial resources requirement applicable to UCITS Fund Managers and Non-UCITS Fund Managers has been included in Section 1.2 C of Appendix 1 to Part B of the Rules, which has been revised to be more aligned to the financial resources requirement of the UCITS IV Directive (Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities).

The main change to the financial resources requirement of Fund Managers relates to the waiver of the requirement to calculate the non-trading book business risk component, the trading book business risk components, the commodities instrument risk component, the large exposures risk component, and the foreign exchange risk component.

The updated version of the new financial resources requirement applicable to Fund Managers, which is being published today in Appendix 1 to Part B of the Rules, is being brought into force immediately.

### **1.02 Implementation of Article 4 of Regulation 1060/2009 of the European Parliament and of the Council**

As from 7 December 2010, Licence Holders may only utilise, for the purposes of the computation of the credit/counterparty risk component, credit ratings issued by credit rating agencies which are regulated in terms of Regulation 1060/2009 of the European Parliament and of the Council and which are not included in point (i) of Section 4.2.1.1 (C) of Appendix 1 to the Rules. This amendment is being made in order to implement Article 4 of the EU regulation on credit rating agencies (Regulation 1060/2009).

## **2.0 Amendments to Appendix 2 to Part B of the Rules**

The changes made to the Automated Financial Return were made principally to allow the integration of the financial return in a new automated database to be used by the Authority in carrying out its regulatory functions.

Licence Holders (including Fund Managers) are obliged to make use of the new Automated Financial Return (Appendix 2A – Automated Financial Return for Licence Holders that are not Fund Managers and Appendix 2B – Automated Financial Return for Fund Managers, including Fund Managers that provide investment services other than management services to collective investment schemes) in providing the Authority with future submissions of the returns, as required in terms of standard licence conditions 7.16, 7.21 and 7.22 of Part B of the Rules.

The new Automated Financial Return requires Licence Holders, including Fund Managers, to insert a Licence Holder Code in Item 3.0 of the Cover Page. This is a unique code assigned to all Licence Holders by the Authority to enable the new database to recognise individually each Licence Holder. This code is available on the MFSA website – [www.mfsa.com.mt](http://www.mfsa.com.mt), under the section: *Securities/Investment Firms/Licence Holders*.

As a result of the implementation of the new Automated Financial Return for Fund Managers (included in a new Appendix 2B), item 6 (i) of Sheet 1 of the said Automated Financial Return shall indicate the total value of the portfolios under management, as reported by the Fund Manager. The portfolios of the Fund Manager are deemed to be the portfolios referred to in Section 1.2 C of Appendix 1 to Part B of the Rules. The value of any other Assets which are managed by the Fund Manager should be included under Item 6 (j) of Sheet 1 of the said Automated Financial Return.

Users of the new financial return are advised to save the completed return as ‘*Excel 97-2003 Workbook*’ format to allow compatibility with the new database.

Moreover, users of the new financial return are requested not to use the copy/cut/paste function when completing the financial return to avoid any possible changes to the format of the return. Licence Holders are advised that any tampering of the format of the new financial return is not acceptable and will be considered as a regulatory offence.

## **3.0 Applicability**

The revisions to Appendix 1 and Appendix 2 to Part B of the Rules are applicable as from today and may be downloaded from the Authority’s website located at [www.mfsa.com.mt](http://www.mfsa.com.mt), under the section: *Securities/Investment Services/ Rules for Investment Services Providers & related Guidance Notes/Part B-Standard Licence Conditions*.

The Authority expects the financial returns for the period ending 30<sup>th</sup> September 2010 which are due to be submitted to the Authority by the end of October 2010, to be prepared using the revised Appendix 2 to Part B of the Rules (the electronic version of the financial return should be sent by email on the following address: [smsufinret@mfsa.com.mt](mailto:smsufinret@mfsa.com.mt)). Should you have any difficulties in this regard, please contact the Authority’s Officials as further detailed below.

#### **4.0 Contacts**

Should you have any queries regarding the new version of the Automated Financial Return please do not hesitate to contact Mr. Christopher P. Buttigieg (Deputy Director - Securities and Markets Supervision Unit) on 2548 5229 or e-mail: [cbuttigieg@mfsa.com.mt](mailto:cbuttigieg@mfsa.com.mt) or Mr. Edward Grech (Manager - Securities and Markets Supervision Unit) on 2548 5447 or e-mail: [egrech@mfsa.com.mt](mailto:egrech@mfsa.com.mt).

Should you have any queries regarding the revised financial resources requirement of Fund Managers please do not hesitate to contact Mr. Christopher P. Buttigieg (Deputy Director - Securities and Markets Supervision Unit) on 2548 5229 or e-mail: [cbuttigieg@mfsa.com.mt](mailto:cbuttigieg@mfsa.com.mt) or Ms. Mellyora Grech (Manager - Securities and Markets Supervision Unit) on 2548 5193 or e-mail: [mgrech@mfsa.com.mt](mailto:mgrech@mfsa.com.mt).

**Communications Unit**  
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