

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

28th May, 2007

Securities Unit

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Dear Sirs,

Re: Proposed New Guidelines for Professional Investor Funds

We refer to our circular dated 6th March, 2007, titled 'The Introduction of a new Professional Investor Funds Sourcebook and a new class of Professional Investor Funds targeting Extraordinary Investors'.

We would like to inform you that further to a review of the feedback received in relation to our circular dated 6th March, 2007, the Authority has now published a Feedback Statement outlining the main issues raised during the consultation process and the MFSA's views on these issues, and has up-dated its proposed new requirements for PIFs.

As explained in the Feedback Statement, in view of the requirements of Article 6(2)(b) of the Investment Services Act, 1994 which specifically refers to MFSA's powers to issue Guidelines, the proposed Professional Investor Funds Sourcebook is to be re-named "Guidelines for Professional Investor Funds".

An electronic copy of the Feedback Statement as well as the proposed revised Guidelines for Professional Investor Funds are being sent to your office by e-mail. For ease of reference, the changes to the first version of the requirements circulated with our 6th March 2007 circular, are tracked.

Any comments on the revised draft of the Guidelines for Professional Investor Funds including any representations setting out reasons why the changes should not be effected, should be submitted in writing by not later than **Friday 15th June, 2007 to:**

The Director
Securities Unit
Malta Financial Services Authority
Notabile Road
Attard BKR 3000

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

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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

Yours faithfully



Cristina Parlato Trigona
Director

Encls. by e-mail only

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Professional Investor Funds – Proposed New Guidelines¹

Feedback Statement

28th May 2007

1.0 Background

- 1.1 On 6th March, 2007, the Malta Financial Services Authority (“MFSA” or “Authority”) issued a circular describing the proposed review of the regulatory regime applicable to Professional Investor Funds. The said circular outlined the proposed introduction of new Guidelines for Professional Investor Funds and a new class of Professional Investor Funds targeting Extraordinary Investors.
- 1.2 Locally based collective investment schemes and their locally based managers, administrators, lawyers and auditors were requested to submit any comments in relation to the draft Guidelines for Professional Investor Funds by the 2nd April, 2007. The Authority also accepted individual requests for the extension of this time limit for consultation. In fact, the latest feedback was received on the 11th April, 2007.
- 1.3 The MFSA received feedback from a number of locally based managers, administrators, lawyers and auditors.
- 1.4 Most respondents welcomed the introduction of the new Guidelines for Professional Investor Funds and the new class of Professional Investor Funds targeting Extraordinary Investors.
- 1.5 This Feedback Statement outlines (in no particular order) the main issues raised during the consultation process and the MFSA’s views on these issues. It also presents – in Annex 1 hereto – the proposed Guidelines for Professional Investor Funds (with tracked changes for ease of reference), which the MFSA has updated following consideration of all feedback received.
- 1.6 The MFSA is open to consider any further comments which may be received in relation to the changes indicated in the attached proposed Guidelines for Professional Investor Funds, within the timeframe indicated in the covering note to this Feedback Statement.

¹ Reference to ‘Sourcebook’ is being replaced by ‘Guidelines’ as further explained in para. 2.1 of this Feedback Statement

- 1.7 Subject to any further changes which the MFSA considers appropriate following consideration of any final feedback received in response to this Feedback Statement (para 1.6 above refers), the final version of the Guidelines will be issued thereafter. Existing licensed Professional Investor Funds would need to satisfy the requirements stipulated in the final Guidelines for Professional Investor Funds within one year of publication of the said final Guidelines.

2.0 Structure of the proposed Guidelines for Professional Investor Funds

- 2.1 In view of the requirements of Article 6(2)(b) of the Investment Services Act, 1994 which specifically refers to MFSA's powers to issue Guidelines, the proposed Professional Investor Funds Sourcebook is to be re-named "Guidelines for Professional Investor Funds".

The new Guidelines for Professional Investor Funds will include an overview of the Application process in Section I and the Standard Licence Conditions in Section II.

As explained in MFSA's circular dated 6th March, 2007, the MFSA also plans to issue Guidance Notes. These will not form part of the Guidelines for Professional Investor Funds, which Guidelines are binding on licensed PIFs, but will primarily aim to provide interpretative guidance in respect of a number of provisions of Sections I and II of the Guidelines for Professional Investor Funds.

3.0 Comments Received: Section II of the Guidelines for Professional Investor Funds

Monitoring Function

- 3.1 SLC 1.13 of Part A of the initial draft of the Guidelines provides that the Custodian of a PIF targeting Experienced Investors is also responsible for monitoring the extent to which the Manager is abiding by the investment and borrowing restrictions laid out in the Offering Document of the PIF. The Custodian is also required to ensure that the PIF is being managed in accordance with the provisions of its Constitutional Document and Licence Conditions.

Comments Received

- 3.2 One of the respondents explained that a number of Prime Brokers might not be willing to carry out the monitoring function outlined above. The said respondent in turn enquired whether the MFSA would be willing to consider the Administrator as a substitute of the Prime Broker to carry out such monitoring function.

MFSA's position

- 3.3 Having considered the above, the MFSA may on a case by case basis, and subject to the Administrator being independent of the Manager and capable of undertaking such function, accept the Administrator as a substitute of the Prime Broker to carry out a monitoring function over the activities of the Manager.

Compliance Officer

- 3.4 SLC 1.24 of Part A, SLC 1.23 of Part B and SLC 1.22 of Part C of the initial draft of the Guidelines provide that the PIF shall notify the MFSA of the resignation or removal of its Compliance Officer upon becoming aware of the proposed resignation or removal and that the notification shall include relevant information on the proposed new Compliance Officer.

Comments Received

- 3.5 One of the respondents enquired whether the notification referred to above should be accompanied by a Personal Questionnaire of the new Compliance Officer.

MFSA's position

- 3.6 Parts A, B and C have been updated to provide that PIFs shall notify the MFSA of the proposed appointment or replacement of a Compliance Officer at least twenty one business days in advance. The said notification would need to be accompanied by a Personal Questionnaire of the proposed new Compliance Officer.

The Compliance Report

- 3.7 SLC 1.23 of Part A, SLC 1.24 of Part B and SLC 1.23 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.25, SLC 1.25 and SLC 1.24 respectively) provide that the Compliance Officer of a PIF is required to draw up a Compliance Report which should indicate:
- breaches of the Investment and Borrowing Restrictions (which may be laid out in the PIF's Offering Document/ Prospectus);
 - complaints from unit holders in the PIF and the manner in which these have been handled;
 - valuation errors and the manner in which these have been handled; and
 - material compliance issues during the period covered by the Compliance Report.

Comments Received

- 3.8 Some respondents requested further guidance with respect to the threshold that should be applied in determining when a valuation error is to be

reported. They argued that a requirement to report all valuation errors may be too cumbersome and may not add any real value.

- 3.9 Some respondents also requested further clarifications as to the manner in which the Compliance Officer of the PIF is required to handle and report complaints from unit holders in those instances when complaints are not submitted to the PIF or its Manager or Administrator but rather to third party Intermediaries.
- 3.10 One respondent also suggested that only material breaches of the investment and borrowing restrictions should be included in the Compliance Report and that materiality could be established by providing that if the fund exceeds its investment and borrowing restrictions by 1% of NAV at any time, then it would be in breach of an investment or borrowing restriction. .
- 3.11 Another respondent suggested that the Compliance Report should also be provided to the PIF's auditors.

MFSA's position

- 3.12 The MFSA is proposing the introduction of a threshold of 0.5% of the NAV with respect to reportable valuation errors. Accordingly the Compliance Officer would only need to report those valuation errors which have an effect on NAV of 0.5% or more.
- 3.13 The Compliance Officer of a PIF is only required to include in the Compliance Report, those complaints which have been submitted directly to the PIF or to its Manager or Administrator. Complaints that have been submitted directly to Intermediaries, fall outside the scope of these SLCs and should be handled directly by the said Intermediaries unless the complaints in question have been forwarded to the PIF or its Manager or Administrator, in which case the complaint would be reportable by the Compliance Officer.
- 3.14 The MFSA is of the view that the Compliance Report should report all breaches of the investment and borrowing restrictions.
- 3.15 The MFSA will not be requiring PIFs to submit the Compliance Report to its auditors, although this should be available to the PIF's auditors upon their request.
- 3.16 The SLCs referred to in 3.7 have been updated to reflect MFSA's position outlined above.

Money Laundering Reporting Officer

- 3.17 SLC 1.30 of Part A, SLC 1.29 of Part B and SLC 1.28 of Part C of the initial draft of the Guidelines (SLC 1.29 of Part B has been renumbered SLC 1.30) provide that the PIF shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal and

that the notification shall include relevant information on the proposed new MLRO.

Comments Received

- 3.18 One of the respondents enquired whether the notification referred to above should be accompanied by a Personal Questionnaire of the new MLRO.

MFSA's position

- 3.19 Parts A, B and C of Section II have been updated to provide that PIFs shall notify the MFSA of the proposed appointment or replacement of a MLRO at least twenty one business days in advance. The said notification would need to be accompanied by a Personal Questionnaire of the proposed new MLRO.

Experienced Investor Funds set up as Funds of Funds

- 3.20 SLC 1.35 of Part A provides that when an Experienced Investor Fund has been set up as a fund of hedge funds, the PIF shall invest in at least five different hedge funds to ensure an adequate level of diversification.

Comments Received

- 3.21 One of respondents explained that the MFSA should consider removing the “*five fund diversification requirement*” on a case by case basis in view of the fact that Experienced Investor Funds which are not SICAVs (and therefore not subject to article 84(2)(b)(i) of the Companies Act, 1995) may not necessarily be required to adhere to the principles of risk spreading given the proviso to the definition of ‘collective investment scheme’ in article 2 of the Investment Services Act, 1994.

MFSA's position

- 3.22 In view of the fact that the underlying hedge funds may be allowed, in terms of their respective Offering Documents, to leverage their positions extensively, the requirement for the Experienced Investor Fund to invest in at least five underlying hedge funds is aimed at limiting the risk arising by ensuring an adequate level of diversification – given that Experienced Investor Funds may only leverage their positions up to 100% of NAV.
- 3.23 On the basis of the above, SLC 1.35 of Part A of Section II has been retained.

Changes to the Investment Objectives

- 3.24 SLC 1.37 of Part A, SLC 1.32 of Part B and SLC 1.31 of Part C of the initial draft of the Guidelines (SLC 1.32 of Part B has been renumbered SLC 1.33 and SLC 1.31 of Part C has been renumbered SLC 1.32) provide that notwithstanding anything contained in a PIF's Constitutional Documents or

Offering Document, a PIF shall obtain the investors' consent before changing its investment objectives.

Comments Received

- 3.25 One of the respondents explained that a change in the investment objectives of a PIF should be notified to shareholders in advance of the change – rather than be subject to investors' consent – in order for such investors to be in a position to redeem their units accordingly. The said respondent explained that requesting unit holders' approval for a change in the investment objectives could be cumbersome and could potentially delay changes which the PIF would want to implement as soon as possible.

MFSA's position

- 3.26 Having considered the above submissions, the MFSA will be revising the requirement for unit holders' approval and will be following the advance notification route provided that the notice period is sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected; and subject to appropriate disclosure in the PIF's Offering Document. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objective have been satisfied. Any applicable redemption fees would also need to be waived accordingly.
- 3.27 The relevant SLCs as well as Appendix II have been updated to reflect MFSA's position outlined above.

Lodgement of the Prospectus with the Registrar of Companies

- 3.28 SLC 1.42 of Part A of the initial draft of the Guidelines (now re-numbered SLC 1.43) provides that where the PIF (targeting Experienced Investors) 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.

Comments Received

- 3.29 One of the respondents explained that the requirement to lodge a copy of the Offering Document with the Registrar of Companies should only be required if the PIF makes "*an offer of securities to the public*" in terms of the Companies Act, 1995.

MFSA's position

- 3.30 Having considered the above submissions, the MFSA has revised the above SLC accordingly in order to ensure the necessary consistency with the provisions of the Companies Act, 1995.

Promotion of Experienced Investor Funds

- 3.31 SLC 1.44 of Part A, SLC 1.38 of Part B and SLC 1.40 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.45, SLC 1.40 and SLC 1.42 respectively) provide that the Manager and/or any appointed intermediary may only promote the PIF to Experienced, Qualifying or Extraordinary Investors as applicable and that the PIF may only in turn accept subscriptions from the said investors.

Comments Received

- 3.32 A number of respondents requested further clarifications with the respect to the above SLCs in view of the fact that PIFs may be actively promoted through the use of mass media advertising.

MFSA's position

- 3.33 In the event of active promotion of a PIF through the use of mass media advertising, investment advertisements should clearly indicate that the PIF is not available for investment by the general public but is only available for certain investors satisfying the applicable [Experienced /Qualifying / Extraordinary – as applicable] investor eligibility criteria as laid out in the PIF's Offering Document or Prospectus. The Guidelines for Professional Investor Funds have been extended in line with the above.

Minimum Investment Amount

- 3.34 SLC 1.48 of Part A, SLC 1.42 of Part B and SLC 1.44 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.49, SLC 1.44 and SLC 1.46 respectively) outline the minimum investment amount applicable to PIFs promoted to Experienced, Qualifying or Extraordinary Investors respectively. These SLCs further provide that in the case of an umbrella structure comprising a number of sub-funds, the applicable minimum investment amount may apply on a per scheme basis rather than on a per sub-fund basis.

Comments Received

- 3.35 One of the respondents enquired whether the above requirement is also applicable in those instances when the scheme includes both PIFs and retail funds and whether it can be extended to include other schemes managed by the same Investment Manager.

MFSA's position

- 3.36 The above SLCs are not applicable to umbrella schemes which include a mixture of retail funds and PIFs as they only apply in those instances when all sub-funds of an umbrella scheme are set up as Professional Investor Funds. The said SLCs have been updated to clearly indicate this position.

Moreover, it is not MFSA's intention to extend the minimum investment amount rule to include all schemes managed by the same Investment Manager.

Side Letters

- 3.37 SLC 1.51 of Part A, SLC 1.45 of Part B and SLC 1.47 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.52, SLC 1.47 and SLC 1.49 respectively) provide that Side Letters to be entered into by a PIF must be circulated and approved by the Directors/ General Partner(s)/ Manager of the PIF prior to issue.

Comments Received

- 3.38 A number of respondents suggested that the MFSA should include a definition of Side Letter.

MFSA's position

- 3.39 The Guidelines for Professional Investor Funds will include a Glossary which will define key words in the Guidelines for Professional Investor Funds, including the term "Side Letters".

The term side letter is generally used to refer to a letter or agreement entered into by a scheme or its Manager on its behalf, with one or more investors, with the purpose of agreeing particular terms relating to redemption conditions, fees or other matters relevant to an investor's investment in the scheme.

Submission of Audited and Interim Financial Statements of a PIF

- 3.40 SLC 1.54 of Part A, SLC 1.48 of Part B and SLC 1.50 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.55, SLC 1.50 and SLC 1.52 respectively) provide that a PIF is required to draw up audited financial statements which must be submitted to the MFSA within four months from the year end. A PIF which draws up half yearly financial statements is also required to submit such financial statements to the MFSA within two months from the period end. The half-yearly (if any) and annual reports shall be published and provided to investors in the PIF, and submitted to the MFSA within two and four months respectively of the end of the period concerned.

Comments Received

- 3.41 A respondent requested an extension of the deadline for the submission of the Interim and Annual Financial Statement from the present two and four month period to three and six months respectively. No specific reason was cited for the request for such extension.
- 3.42 The same respondent also enquired whether the said financial statements could be provided to shareholders upon request.

MFSA's position

- 3.43 The MFSA wishes to retain the present deadline for the submission of the Interim and Annual Financial Statements given that an extension of this reporting deadline would dilute the relevance of such financial statements for investors.
- 3.44 With regards to the comment referred to in para. 3.42 above, it is to be noted that Article 180 of the Companies Act provides that the annual financial statements of a company should be provided to shareholders in advance of the annual general meeting approving the said annual financial statements. Accordingly, the above mentioned SLCs have been retained as originally drafted.

Reporting of Breaches to the MFSA

- 3.45 SLC 1.64 of Part A, SLC 1.57 of Part B and SLC 1.59 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.65, SLC 1.59 and SLC 1.61 respectively) provide that 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 PIF as soon as the PIF or its Manager or Administrator becomes aware of the breach.

Comments Received

- 3.46 One of the respondents explained that only material breaches should be reported.

MFSA's position

- 3.47 Given the subjectivity involved in determining what is or is not material, the MFSA considers it preferable to retain the requirement for all breaches to be reported.
- 3.48 The above mentioned SLCs have accordingly been retained as currently drafted.

Public issue of Issue and Redemption prices

- 3.49 SLC 1.65 of Part A, SLC 1.59 of Part B and SLC 1.60 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.66, SLC 1.60 and SLC 1.62 respectively) provide that the PIF is not required to make public the issue and redemption prices of its units.

Comments Received

- 3.50 One of the respondents explained that Schedule V of the Companies Act, 1995 requires the disclosure of the net asset value per unit at the end of the accounting period in the audited financial statements.

MFSA's position

- 3.51 The MFSA would like to clarify that the above mentioned SLCs are without prejudice to the obligation of a PIF set up in corporate form to disclose in its audited financial statements the net asset value per unit.

Accounting Records

- 3.52 SLC 1.67 of Part A, SLC 1.60 of Part B and SLC 1.62 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.68, SLC 1.62 and SLC 1.64 respectively) provide that the PIF, its Manger or Administrator on its behalf, is required to keep such accounting and other records for a minimum period of five years. During the first two years, the records should be kept in a place from which they can be produced within 24 hours of their being requested.

Comments Received

- 3.53 One of the respondents explained that:
- the Income Tax Act, provides that the accounting records are to be maintained for a minimum period of ten years;
 - in the case of PIFs that are administered outside Malta, the requirement to produce the accounting records within 24 hours of their being requested may be unrealistic; and
 - guidance ought to be provided as to the time frame for submission of the accounting records after the first two years (not specified).
- 3.54 The said respondent also queried whether the accounting records may be maintained in a language other than English.

MFSA's position

- 3.55 In view of the above, the MFSA is proposing:
- an extension of the five year period to ten years to ensure the necessary consistency with the requirements of the Income Tax Act;
 - an extension of the 24 hour submission period to two working days;
 - the introduction of a new requirement whereby after the two year period has elapsed, the accounting records shall be kept in a place from which they can be produced within 5 working days of their being requested.
- 3.56 Accounting records may be kept in any language. However any documents submitted to the MFSA should be in English or Maltese.
- 3.57 The said SLCs have been updated to reflect MFSA's position outlined above.

MFSA's power to delay the winding up of a PIF

- 3.58 SLC 1.68 of Part A, SLC 1.61 of Part B and SLC 1.63 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.69, SLC 1.63 and SLC 1.65 respectively) provide that in the event of a winding-up, the PIF is required to give MFSA at least two weeks notice of this intention and to seek the prior approval of the MFSA with respect to the approach to be adopted. The said SLCs also provide that if requested to do so by the MFSA, the PIF 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.

Comments Received

- 3.59 One of the respondents requested the MFSA to indicate those instances where a PIF may be requested to delay its winding-up.

MFSA's position

- 3.60 Examples of instances which may lead to the MFSA requesting a PIF to delay its winding-up, include unresolved issues affecting the PIF's valuation, which may or may not arise from investor complaints or disputes.

Declaration by the Auditor

- 3.61 Appendix VI includes the specimen wording of the declaration to be provided by the Auditor of a self managed PIF. The said declaration includes a confirmation from the auditor that the PIF has in issue at least EUR125,000 worth of units.

Comments Received

- 3.62 One of respondents explained that in practical terms it may be difficult for the auditor to confirm – at the application stage – that the PIF satisfies the capital requirements of EUR 125,000 unless the PIF has been registered with an issued share capital that is equivalent to or exceeds such amount. The respondent explained that it may be more practical for the applicant to submit the 'companies in formation' deposit slip and to confirm that the funds exist at the time of the application and will remain intact until the licence is issued.

MFSA's position

- 3.63 Having considered this matter further, the request for the submission of a declaration by the auditor has been removed. The MFSA will take other measures to satisfy itself that the requirement outlined above has been satisfied.

Contents of Audited and Interim Financial Statements of a PIF

- 3.64 Section II does not impose any specific requirements as to the contents of the annual financial statements.

Comments Received

- 3.65 One of the respondents requested clarifications with respect to the contents of the financial statements of PIFs which have constituted sub-funds – more specifically as to whether these financial statements should clearly disclose relevant financial information (i.e. Profit and Loss Account, Balance Sheet, Statement of Changes in Equity and relevant notes) relating to the different sub-funds of the PIF.

MFSA's position

- 3.66 The MFSA expects financial statements of PIFs which have constituted sub-funds to include relevant financial information on a per sub-fund basis.

Marketing Document

- 3.67 SLCs 1.32 and 1.36 of the initial draft of the Guidelines (now re-numbered SLCs 1.34 and 1.38 respectively) of Part C provide that the PIF may publish an Offering Document or else a brief Marketing Document and that the Marketing Document should include as an Annex, the most recent version of the Constitutional Document of the PIF.

Comments Received

- 3.68 One of the respondents explained that rather than the full version of the Constitutional Document of the PIF, the Marketing Document should include a summary of the most important provisions of the PIF's Constitutional Document and that the Constitutional Document could be provided to prospective investors upon request.
- 3.69 The said respondent also suggested the inclusion of the Extraordinary Investor Declaration Form and the Application Form as part of the Marketing Document.

MFSA's position

- 3.70 Having considered the above submissions, the MFSA has revised Section I and Part C to incorporate the changes proposed above.

Corporate Directors

- 3.71 Appendix I provides that a Corporate Director of a PIF should be regulated in a recognised jurisdiction, which implies that non regulated Corporate Directors would not be acceptable as Directors of a PIF.

Comments Received

- 3.72 One of the respondents explained that the MFSA could accept as Directors of a PIF, non regulated corporate entities subject to such entities satisfying MFSA's fitness and properness requirement.

MFSA's position

- 3.73 MFSA would not like to encourage the use of Corporate Directors and remains of the view that Corporate Directors should only be accepted if they are regulated in a recognised jurisdiction. This provides comfort that the Corporate Director is subject to ongoing monitoring by its Regulator.

Investment Committee Meetings

- 3.74 Para. 1.19 of Appendix I of the initial draft of the Guidelines (now re-numbered para. 4.3) provides that the Investment Committee of a self managed PIF should meet at least on a quarterly basis with the majority of the meetings being physically held in Malta.

Comments Received

- 3.75 One of the respondents enquired on the rationale of the requirement for quarterly meetings given that MFSA's previous requirement was for a minimum of three investment committee meetings each year. The said respondent also requested clarifications as to whether an investment committee meeting is deemed to be held physically in Malta if the majority of the investment committee members are physically present in Malta.

MFSA's position

- 3.76 The minimum number of investment committee meetings has been increased to a minimum of four meetings per annum in order to create a direct link between the management function relating to the PIF and Malta. In view of the nature of self managed PIFs where the management function is carried out internally and which function falls under MFSA's regulatory responsibility, the MFSA must ensure that there is a clear link between the persons involved in the provision of management services and Malta, even more so when one considers that the Portfolio Manager who is responsible for the day to day management of the assets of the PIF, need not be based in Malta.

In view of the above, the proposed requirement for quarterly investment committee meetings will be retained.

- 3.77 In order for an Investment Committee meeting to be deemed as physically held in Malta, the minimum number of members that form a quorum necessary for a meeting must be physically present in Malta.

Votes of Directors and Investment Committee Members

3.78 Paragraph 1.35 of Appendix I of the initial draft of the Guidelines (now re-numbered para. 4.20) provides that where a member of the Board of Directors of the PIF or a member of the Investment Committee (in the case of a self managed PIF) considers that he has or may have a conflict of interest, the interested member should not vote at a meeting in respect of any contract or arrangement in which he is interested, and if he shall do so, his/her vote shall not be counted in the quorum present at the meeting.

Comments Received

3.79 One of the respondents explained that if the other members of the Board/ Investment Committee unanimously resolve to permit a Director/ member of the Investment Committee to vote in respect of any contract or arrangement in which he has an interest, then such Director/ member of the Investment Committee should be counted in the quorum and vote on the matter in which he has an interest.

MFSA's position

3.80 In order to ensure proper governance, the MFSA is still of the view that a conflicting Director should be precluded from voting on matters in relation to which he has a conflict.

Appointment of an Independent Director by an SPV

3.81 Para. 1.15 of Appendix I of the initial draft of the Guidelines (now re-numbered para. 3.2) provides that a PIF shall – through its Directors or General Partner(s) – at all times maintain the majority directorship of any SPV and that the SPV should also appoint one or more independent directors.

Comments Received

3.82 One of the respondents questioned the rationale behind the appointment of an independent Director at the SPV level. The said respondent explained that such a requirement is adding an extra cost when one considers that the PIF itself is also required to appoint an independent Director.

MFSA's position

3.83 Having considered the above submissions, the MFSA has revised the above mentioned paragraph to remove the requirement for an independent director at the SPV level.

Prospectus Directive

3.84 Appendix II provides that an Experienced Investor Fund set up as a closed ended fund must unless otherwise agreed with the MFSA (which agreement

will only be granted if the offer of units by the PIF is not deemed to be “*an offer of securities to the public*” in terms of the Companies Act, 1995), draw up its Offering Document in line with the requirements of the Prospectus Directive.

Comments Received

- 3.85 One of the respondents enquired whether the requirement to draw up a Prospectus in line with the requirements of the Prospectus Directive is only applicable in those instances when the Experienced Investor Fund is making an “offer of securities to the public” in terms of the Companies Act, 1995.

MFSA’s position

- 3.86 A closed ended Experienced Investor Fund is only required to draw a Prospectus in line with the requirements of the Prospectus Directive if the offer in question qualifies as an “offer of securities to the public” in terms of the Companies Act. Where the terms of the offer and the Offering Document clearly provide that the offer in question does not qualify as an “*offer of securities to the public*” the requirement to draw up a Prospectus in line with the requirements of the Prospectus Directive shall not apply.
- 3.87 Appendix II has been amended to reflect the above.

Beneficial owners of the Founder Shares

- 3.88 Appendix II provides that where the PIF has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors, the Offering Document should identify the holders of the “Voting Shares” of the PIF. This Offering Document shall also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.

Comments Received

- 3.89 One of the respondents explained that rather than disclosing the details of the beneficial owners of the Voting Shares in the Offering Document, the Offering Document could simply state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request

MFSA’s Comments

- 3.90 MFSA would like to clarify that the disclosure requirement included in Appendix II provides that PIFs should disclose in their Offering Document the holders of the “Voting Shares”. Where such shares are held by natural persons, the Offering Document should state the names of the said individuals. However, where the “Voting Shares” are held by a Corporate

Entity or a Trustee, the Offering Document may include the name of the said Corporate Entity/ Trustee without disclosing the names of the individual beneficial owners/ beneficiaries. In the latter case, the Offering Document would also need to state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.

- 3.91 Given that both Part C and Section I provide that details of the beneficial owners should be included in the Marketing Document/ Offering Document, these sections will be updated in line with the above.

The Experienced Investor Declaration Form (“EIDF”)

- 3.92 Experienced Investors are required to satisfy one of the eligibility criteria listed in the Experienced Investor Declaration Form. In this regard, one of the eligibility criteria applicable to Experienced Investors provides that “*a person who has carried out investment transactions in significant size at a certain frequency*” qualifies as an Experienced Investor. It was proposed to remove the following example included in the current Declaration Form in relation to the above: “*a person who within the past 5 years, invested at least a sum of USD50,000*”.

- 3.93 Section I of the initial draft of the Guidelines provides that the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund is bound to take reasonable steps to ensure that:

- 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
- the declarations made by the investor in the Experienced Investor Declaration Form are well supported by evidence as far as this is possible.

Comments Received

- 3.94 A number of respondents requested the retention of the example referred to above such that “*a person who within the past 5 years, invested at least a sum of USD50,000*” is deemed to be an Experienced Investor as it was being used as a benchmark with respect to the requirements that must be satisfied by investors who do not satisfy the other eligibility criteria applicable to experienced investors.

- 3.95 One respondent objected to the proposed introduction of the requirement for the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund to take the reasonable steps outlined in 3.93 above. It was claimed that responsibility for the declarations made by the investor in the Experienced Investor Declaration Form should be assumed by the investor, and that the proposed requirements would effectively shift the burden of responsibility on the Manager/ Sales Agent to ascertain the investor’s eligibility. Another respondent argued that the current ‘self-certification’

process should be retained as ultimately intermediaries selling Experienced Investor Funds to their clients would have ordinarily undertaken a fact find to ensure that the Fund is suitable in light of the client's particular circumstances. Yet another respondent requested clarification in respect of those instances where the investor does not wish to disclose information in respect of his holdings and whether this would lead to an exemption from the requirement that declaration forms are to be well supported by evidence.

MFSA's position

3.96 The MFSA is of the view that by today's standards, an investment of USD 50,000 over five years is not that significant and does not necessarily render an investor 'experienced'. On the other hand, MFSA acknowledges that the criterion referring to "*a person who has carried out investment transactions in significant size at a certain frequency*" is rather subjective without the inclusion of any benchmarks. In this respect, it is proposed that the definition of Experienced Investors be amended to refer to a person having the expertise, experience and knowledge to be in a position to make his/ her own investment decisions and understand the risks involved on the basis that:

- a. he/ she is:
 - 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
 - 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
 - iii. a person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least EUR50,000 at an average frequency of 3 per quarter);

OR

- b. by providing any other appropriate justification.

3.97 In response to the comments referred to above, the MFSA would like to point out that the proposal to place some onus on the intermediary selling the Experienced Investor PIF to take reasonable steps as outlined in 3.93 above, was mainly triggered by the:

- i. lack of investment restrictions applicable to PIFs targeting Experienced Investor;

- ii. relatively low Minimum Investment Amount applicable to PIFs targeting Experienced Investors;
- iii. relatively wide definition of Experienced Investors

which makes Experienced Investor Funds “quasi” retail Funds. Moreover, it is to be noted that Experienced Investor PIFs are not necessarily sold in an advisory scenario which requires the drawing up of a comprehensive client fact find and the performance of a suitability test.

3.98 The MFSA is considering removing the proposed requirement (referred to in 3.93 above) for the intermediary selling the Experienced Investor PIF to verify that the declarations made by the investor in the Experienced Investor Declaration Form are well supported by evidence in so far as possible. Nonetheless, the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund will be required to take reasonable steps to ensure that the Experienced Investor has the necessary experience and knowledge in order to understand the risks involved in investing in a PIF. Accordingly, the intermediary will be expected to seek relevant information from the potential investor regarding his/her knowledge and experience to enable it to undertake such assessment. If the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund is not satisfied that the investor has the necessary experience and knowledge in order to understand the risks involved in investing in a PIF (eg in cases where the client or potential client elects not to provide relevant information regarding his knowledge and experience), the said Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund will be required to warn the investor accordingly.

3.99 In view of the above, the Manager/Sales Agent or any third party selling units in an Experienced Investor Fund will be required to countersign the Experienced Investor Declaration Form signifying that he has satisfied himself that the investor meets the above requirements. If the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund is not satisfied that the investor has the necessary experience and knowledge in order to understand the risks involved in investing in a PIF, then the said Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund should state so in the Experienced Investor Declaration Form and confirm that he has warned the investor accordingly. The investor is also to confirm in writing that he has been warned in this regard.

3.100 Section II has been updated to reflect MFSA’s position outlined above.

Re-designation of the Minimum Investment Amount

3.101 Section I and SLC 1.48 of Part A, SLC 1.42 of Part B and SLC 1.44 of Part C of the initial draft of the Guidelines (now re-numbered SLC 1.49, SLC 1.44 and SLC 1.46 respectively) provide that the minimum investment amount applicable to PIFs targeting Experienced, Qualifying and

Extraordinary Investors is USD20,000, USD100,000 and USD1,000,000 respectively.

Comments Received

3.102 A number of respondents requested – in view of the upcoming Euro changeover – the minimum investment amount to be designated in Euro.

MFSA's position

3.103 The Euro equivalent of the said amounts using current CBM rates is (EUR/LM 1: 0.4293; LM/ USD 1: 3.1688):

- i. PIFs targeting Experienced Investors: EUR14,701
- ii. PIFs targeting Qualifying Investors: EUR73,509
- iii. PIFs targeting Extraordinary Investors: EUR735,096

3.104 Having considered the above, the MFSA has revised the minimum investment amounts applicable to the three classes of PIFs as follows:

- i. PIFs targeting Experienced Investors: EUR15,000
- ii. PIFs targeting Qualifying Investors: EUR75,000
- iii. PIFs targeting Extraordinary Investors: EUR750,000

3.105 Investors in existing PIFs (having an investment amount equal or equivalent to USD20,000, USD100,000 and USD1,000,000) will not be required to top up their investment to meet the Euro threshold outlined above.

Other minor amendments

3.106 The definition of Qualifying and Extraordinary Investors has been slightly amended mainly to ensure the necessary clarity in the eligibility criteria applicable to such investors and to reflect the re-designation of the reference currency to Euro.

Certificate of Compliance

3.107 The requirement for a certificate of compliance has been removed.

4.0 New Requirement – Investment and Borrowing restrictions

4.1 In line with the approach adopted for retail funds, the MFSA is also proposing the introduction of a new SLC which clearly provides that if one or more of the PIF's investment and borrowing restrictions are at any time contravened for reasons beyond the control of the Manager or PIF, the Manager or the PIF will be required to take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s). This requirement is

aimed at addressing circumstances which may arise following acquisition of the PIF's assets and is without prejudice to the duty of the Manager and the PIF to comply with the PIF's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

A contravention of an investment restriction which may arise due to the circumstances outlined above will not be considered as a breach of a licence condition. However, where the contravention is not remedied by the Manager or PIF within the maximum six month period stipulated above, a breach of the Licence Conditions is deemed to have arisen and the relevant notification requirements will apply.

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

GUIDELINES FOR
PROFESSIONAL INVESTOR
FUNDS

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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:

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- 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.

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

Article 4 of the Act states:

- “4 (1) Subject to the provisions of subarticle (3), 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 subarticle (3), 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 subarticle (1) 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.”

Subarticle 4(1) makes it illegal for any Scheme, including a Scheme set up as a PIF, to operate in or from Malta without having a licence.

Subarticle 4(2) makes it illegal for a Scheme including a PIF, to use Malta as a base without having a licence.

Subarticle 4(3) permits the initial steps in establishing a Scheme including a PIF, to be taken before a Licence has been obtained but the Scheme may not deal with investors before it is licensed.

Under Article 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.

3. 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 provisions of the Act, the relevant Regulations and these Guidelines 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 PIF.

In accordance with Article 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 nature 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 persons 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 provides for the licensing of many different kinds of Schemes, the MFSA applies the same standards relating to the "fit and proper" status of the Applicant and its service providers. The "fit and proper" test is one which an Applicant and a Licence Holder must satisfy on a continuing basis. 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 licensed PIF as the case may be. It is not the task of the MFSA to prove that an applicant is fit and proper either on licensing or thereafter. The MFSA's approach is cumulative. It may decide that a PIF has failed the test on the basis of considering various circumstances, each of which on its own may or 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 disclosed. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test:

- a. integrity;

b. competence; and

c. solvency.

Integrity involves the PIF and its officers and its service providers acting honestly and in a trustworthy fashion.

Competence means that the persons responsible for running the PIF must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved.

Solvency means ensuring that proper financial controls and management of liquidity and capital is applied.

4. 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, all references to PIFs throughout these Guidelines capture PIFs promoted to Experienced Investors, PIFs promoted to Qualifying Investors and PIFs promoted to Extraordinary Investors.

4.1 PIFs promoted to Experienced Investors

An "Experienced Investor", is a person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved. An investor must state the basis on which he satisfies this definition, either

Deleted: is required to meet one or more of the following criteria:¶

a. by confirming that he is:

- 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
- 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
- iii. a person who has carried out investment transactions in significant size at a certain frequency, (for example a person who within the past 2 years carried out transactions amounting to at least EUR50,000 at an average frequency of 3 per quarter);

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OR

b. by providing any other appropriate justification.

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

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The minimum investment threshold is EUR15,000 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 EUR15,000 or equivalent in another currency.

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In the case of an umbrella fund comprising of sub-funds each of which is set up as a Professional Investor Fund, the EUR15,000 threshold may be applicable on a per scheme

basis rather than on a per sub-fund basis. Thus, effectively an “Experienced Investor” may hold less than ~~EUR15,000~~ in a sub fund provided that his total holding in ~~such~~ scheme is at least ~~EUR15,000~~.

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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 Section II of these Guidelines.

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The Manager/Sales Agent or any third party selling units of the Experienced Investor Fund is bound to take reasonable steps to ensure that ~~the investor~~ has sufficient knowledge and understanding of the risks involved in investing in a PIF.

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The Manager/Sales Agent or any third party selling units in an Experienced Investor Fund will be required to countersign the Experienced Investor Declaration Form signifying that he has satisfied himself/ herself that the investor has sufficient knowledge and understanding of the risks involved.

If the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund is not satisfied that the investor has the necessary experience and knowledge in order to understand the risks involved, then the said Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund should state so in the Experienced Investor Declaration Form and confirm that he/ she has warned the investor accordingly. The investor shall also confirm in writing that he/ she has been warned in this regard.

Whilst the PIF or its Administrator may rely on the confirmation provided by the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund, it shall be precluded from processing applications for the issue of units in the PIF unless the Experienced Investor Declaration Form is duly completed as indicated above.

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.

4.2 PIFs promoted to Qualifying Investors

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

1. a body corporate, which has net assets in excess of ~~EUR750,000~~ or which is part of a group which has net assets in excess of ~~EUR750,000~~;

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2. an unincorporated body of persons or association which has net assets in excess of ~~EUR750,000;~~
3. a trust where the net value of the trust's assets is in excess of ~~EUR750,000;~~
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 ~~EUR750,000;~~
6. ~~a senior~~ 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) ~~EUR3.75 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.

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

Minimum initial investment is ~~EUR75,000~~, 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 ~~EUR75,000 or equivalent in another currency.~~

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In the case of an umbrella fund comprising of sub-funds ~~each of which is set up as a Professional Investor Fund~~, the ~~EUR75,000~~ threshold ~~may be~~ applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively a "Qualifying Investor" may hold less than ~~EUR75,000~~ in a sub-fund provided that his total holding in the scheme is at least ~~EUR75,000~~.

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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 Section II of these Guidelines.

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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.

4.3 PIFs promoted to Extraordinary Investors

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

1. a body corporate, which has net assets in excess of EUR7.5 million or which is part of a group which has net assets in excess of EUR7.5 million; Deleted: or partnership
2. an unincorporated body of persons or association which has net assets in excess of EUR7.5 million; Deleted: USD10.0
3. a trust where the net value of the trust’s assets is in excess of EUR7.5 million; Deleted: USD10.0
4. an individual whose net worth or joint net worth with that person’s spouse, exceeds EUR7.5 million; Deleted: bona fide
5. a senior employee or director of service providers to the PIF; Deleted: USD10.0
6. the investor qualifies as a PIF promoted to Extraordinary Investors; Deleted: USD10.0
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. Deleted: n

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

Minimum initial investment is EUR750,000, 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 EUR750,000 or equivalent in another currency. Deleted: USD1,000,000

In the case of an umbrella fund comprising of sub-funds each of which is set up as a Professional Investor Fund, the EUR750,000 threshold may be applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively an “Extraordinary Investor” may hold less than EUR750,000 in a sub-fund provided that his total holding in the scheme is at least EUR750,000. Deleted: a number
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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 Section II of these Guidelines. Deleted: 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.

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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 Licence Conditions for PIFs promoted to Experienced Investors are set out in Part A of Section II of these Guidelines, in Part B as regards PIFs promoted to Qualifying Investors and in Part C as regards PIFs promoted to Extraordinary Investors.

Deleted: - 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.¶

¶ <#>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.¶

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<#> . **Criteria which MFSA will apply in considering an application for a Licence**¶

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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 Section II of these Guidelines. The Offering Document should be provided to prospective investors free of charge.

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A PIF targeting Extraordinary Investors may either draw up an Offering Document – which includes at least the information listed in Appendix II to Section II of these Guidelines – or else draw up a Marketing Document which should at least include:

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- 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 PIF;
- iv. the investment objectives, policies and restrictions of the PIF, 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);

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viii. a Statement – where the PIF has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the PIF. This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request;

ix. the Extraordinary Investor Declaration Form and the Subscription 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.”.

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The Marketing Document should also include as an Annex, either the most recent version of the Constitutional Document of the PIF, or a summary thereof. In the latter case, the Marketing Document should provide that a copy of the PIF’s Constitutional Document will be provided to prospective investors upon request. The Marketing Document, or where

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applicable the Offering Document, should be provided to prospective investors free of charge.

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8. Service Providers

A PIF may appoint any service provider 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 Part A of Section II of these Guidelines.

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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.

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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 assume responsibility for the acts of the Sub-Manager

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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 Section II of these Guidelines.

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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.

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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 [Section II of these](#) Guidelines. The appointed Custodian should be independent from the Manager and need not be established and regulated in Malta.

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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 [PIF](#).

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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 [Article 6](#) of the Investment Services Act, 1994 and should be duly

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licensed and authorised by the MFSA to provide investment advice to collective investment schemes.

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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 service providers which does not fall within the parameters outlined in Section 8 above.

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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 to this Section 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 Licence (Please refer to Section 10 below).

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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 collective investment scheme licence under the Act, the promoter should ensure that the appropriate Application Form (Schedule A to this Section refers) is completed.

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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 [Section II of these Guidelines](#), in Part B as regards PIFs promoted to Qualifying Investors and in Part C as regards PIFs promoted to Extraordinary Investors.

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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 ([Schedule A to this Section](#));
- ii. Draft version of the Offering Document/[Marketing Document](#);
- iii. Draft version of the Memorandum & Articles of Association [of the PIF](#);
- iv. draft Board of Directors’ resolution:
 - confirming the Directors’ intention to apply for a licence in favour of the [PIF](#);
 - 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 [PIF](#);
 - identifying the person(s) responsible on behalf of the Board for the AML obligations of the [PIF](#);

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- approving and assuming responsibility for the contents of the Offering Document/Marketing Document;

v. Application Fee;

vi. Directors of the PIF;

where Individuals

- Personal Questionnaires of the proposed Director(s);

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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 PIF;

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vii. Founder Shareholder(s) € that hold more than 10% of the voting shares:

where Individuals

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

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where Corporate, regulated in a recognised jurisdiction

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

where Corporate, not regulated in a recognised jurisdiction

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

Limited Partnership

i. Application Form (Schedule A to this Section);

ii. Draft version of the Offering Document/Marketing 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 licence in favour of the PIF;
- 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 General Partners(s) for the Compliance obligations of the PIF;
- identifying the person(s) responsible on behalf of the General Partners(s) for the AML obligations of the PIF; and
- approving and assuming responsibility for the contents of the Offering Document/Marketing Document.

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v. Application Fee;

vi. General Partner(s) of the **PIF**:

where Individuals

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

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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(s)**;

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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(s)**; and
- Last three years audited financial statements of the proposed Corporate General Partner(s).

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<#>PQs of the holders of the voting shares (where applicable);¶

Unit Trust

- Application Form (**Schedule A to this Section**);
- Draft version of the Offering Document/**Marketing Document**;
- Draft version of the Trust Deed;
- A resolution of the proposed Manager:

- confirming the Manager's intention to apply for a licence in favour of the **PIF**;
- 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 Manager for the Compliance obligations of the **PIF**;
- identifying the person(s) responsible **on behalf of** the **Manager** for the AML obligations of the **PIF**; and
- approving and assuming responsibility for the contents of the Offering Document;

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v. Application Fee;

vi. Details of the regulatory status of the proposed Trustee.

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Supplementary Application Documents – Self Managed PIF

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- Personal Questionnaire and detailed **Curriculum Vitae** of the members of the Investment Committee/ Portfolio Manager;
- Terms of reference regulating the procedures of the Investment Committee;
- 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 **PIF's** Offering Document in general and the investment guidelines issued by the investment committee in particular;

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- report to the Investment Committee on a regular basis any transactions effected on behalf of the PIF; 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.

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Supplementary Application Documents – PIFs targeting Extraordinary Investors

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- i. Directors/ General Partner(s)/ Founder Shareholders of the PIF:
- 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/ General Partner(s)/ Founder Shareholders;
- a recent certificate of good-standing in respect of such Corporate Director/ General Partner(s)/ Founder Shareholders;

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- 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.

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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.

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The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

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/ Offering Supplement (as applicable);
- iv. the appropriate application fee (refer to Section 14 below); and
- v. a draft copy of the approval by the PIF's proposed Directors, General Partner(s) or the Manager (as applicable) of the revised Offering Document/ Marketing Document/ Offering Supplement (as applicable).

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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 multi class (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:

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- i. formal notification to the MFSA of its intention to issue additional classes 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(s) or the Manager – as applicable – of the Offering Document/ Marketing Document; and
- iv. a confirmation from the Directors, General Partner(s) or the Manager (as applicable) signifying their intention to issue additional classes of shares/ units.

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

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13. 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 [Regulations](#).

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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. ¶

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The standard licence conditions for PIFs promoted to Experienced Investors are set out in Part A of the Professional Investor Fund ... [2]

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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.¶

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## SECTION II: STANDARD LICENCE CONDITIONS

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### Part A

#### Professional Investor Funds targeting Experienced Investors

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- 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

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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.

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- 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.

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## 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 or replacement of a Compliance Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a Compliance Officer, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule C to Section I of these Guidelines – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 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 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.

**Deleted:** 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 "Compliance Report" should indicate any:

- i. breaches to the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. material compliance issues during the period covered by the Compliance Report.

The "Compliance Report" should also include a confirmation that all the local

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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 at all times have a Money Laundering Reporting Officer.

- 1.29 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a MLRO, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule C to Section I of these Guidelines – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

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

**Deleted:** Money Laundering Reporting Officer

**Deleted:** 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

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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 Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objective have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

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

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

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

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

ii. a contravention of an investment restriction which may arise due to the

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

### Offering Document

- 1.39 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.
- 1.40 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.
- 1.41 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.42 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.
- 1.43 Where the Scheme is in the form of an investment company or limited partnership and makes an offer of securities to the public, 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

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

### Promotion

- 1.45 The Manager and/or any appointed intermediary may only promote the Scheme to Experienced Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available for investment by the general public but is only available for investors satisfying the applicable Experienced Investor criteria set out in the Scheme's Offering Document. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Experienced Investors.

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1.46 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.

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

1.48 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

1.49 The minimum investment which the Scheme may accept is ~~EUR15,000~~ (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 ~~EUR15,000~~ unless this is the result of a fall in the net asset value. In the case of an umbrella ~~Scheme, where each of the sub-funds is set up as a Professional Investor Fund~~, the ~~EUR15,000~~ threshold ~~may apply~~ on a per scheme basis rather than on a per sub-fund basis.

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### Experienced Investor Declaration Forms

1.50 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. ~~In the case of joint holders, all holders should individually qualify as “Experienced Investors”. The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary.~~

1.51 ~~The Scheme or the Manager or Administrator on its behalf shall only create units if amongst others it is in receipt of an appropriately completed Experienced Investor Declaration Form.~~

1.52 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

1.53 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.

1.54 Side letters issued by the Scheme should be retained in Malta at the registered office

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of the Scheme and should be available for inspection by the MFSA during compliance visits.

### **Distributions of Income**

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

### **General**

**1.56** 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.

**1.57** 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

**1.58** 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.

**1.59** 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.

**1.60** The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.

**1.61** 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”*.

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1.62 The Scheme shall comply with the applicable laws and regulations relating to the prevention of money laundering.

1.63 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.

1.64 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.

1.65 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.

1.66 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.

1.67 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.

1.68 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.

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

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1.70 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

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power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA.

| 1.71 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.

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## SECTION II: STANDARD LICENCE CONDITIONS

**Deleted:** PROFESSIONAL INVESTOR FUNDS GUIDELINES

### Part B

#### Professional Investor Funds targeting Qualifying Investors

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**Deleted:** 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

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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

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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.

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## 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 or replacement of a Compliance Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a Compliance Officer, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule C to Section I of these Guidelines – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

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 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 of the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. material compliance issues during the period covered by the Compliance Report.

The "Compliance Report" should also include a confirmation that all the local

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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 at all times have a Money Laundering Reporting Officer.

1.29 ~~The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a MLRO, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule C to Section I of these Guidelines – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.~~

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

**Deleted:** 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 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.

1.33 ~~Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objective have been satisfied. Any applicable redemption fees would also need to be~~

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waived accordingly.

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

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

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

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

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

## **Offering Document**

1.35 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.

1.36 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.

1.37 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.

1.38 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.

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## 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 Qualifying Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available for investment by the general public but is only available for investors satisfying the applicable Qualifying Investor criteria set out in the Scheme's Offering Document. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Qualifying Investors.

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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 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 EUR75,000 (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 EUR75,000 unless this is the result of a fall in the net assets value. In the case of an umbrella Scheme, where each of the sub-funds is set up as a Professional Investor Fund, the EUR75,000 threshold may apply on a per scheme basis rather than on a per sub-fund basis.

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## Qualifying 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 "Qualifying Investors" and that they have read and understood the risk warnings in the Offering Document. In the case of joint holders, all holders should individually qualify as "Qualifying Investors". The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary.

1.46 Copies of the Qualifying Investor Declaration forms and records evidencing compliance with the local prevention of money laundering requirements should be

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held in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

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- | 1.48 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

- | 1.49 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering 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 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.
- | 1.51 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*

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*Investor Fund available to Qualifying 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 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.

**1.59** 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.

**1.60** 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.

**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 ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.

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**1.63** In the event of a winding-up, the Scheme must give MFSA at least two weeks notice

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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.



## SECTION II: STANDARD LICENCE CONDITIONS

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INVESTOR FUNDS  
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### Part C

#### Professional Investor Funds targeting Extraordinary Investors

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- 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.

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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.

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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

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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 obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a Compliance Officer,

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shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Section I of these Guidelines – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

**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 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 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. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. material compliance issues during the period covered by the Compliance Report.

The “Compliance Report” 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

**Deleted:** 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.

**Deleted:** 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.

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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 or replacement of a Money Laundering Reporting Officer at least twenty one business days in advance. The request for consent of the appointment or replacement of a MLRO, shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Section I of these Guidelines – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

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

**Deleted:** 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/ Marketing Document.

1.31 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.

1.32 Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objective have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

**Deleted:** 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.

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

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

The above is aimed at addressing circumstances which may arise following acquisition of the Scheme’s assets and include market price movements of the

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Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the Manager and Scheme to comply with the Scheme's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

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

### **Offering Document/ Marketing Document**

1.34 The Scheme shall publish an Offering Document or else a brief Marketing Document.

1.35 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.

1.36 The Marketing Document or the Offering Document shall be dated and shall be kept up to date.

1.37 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.

1.38 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);

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vii. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed)

viii. 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;

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ix. the Extraordinary Investor Declaration Form and the Subscription Form;

x. Extraordinary Investor Declaration Form;

xi. 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, either the most recent version of the Constitutional Document of the Scheme or a summary thereof. In the latter case the Marketing Document should provide that a copy of the Scheme’s Constitutional Document will be provided to prospective investors upon request.

1.39 The Scheme shall approve the Offering Document/ Marketing Document including any amendments thereto, and confirm its approval to MFSA.

1.40 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.

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## Constitutional Document

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

## Promotion

1.42 The Manager and/or any appointed intermediary may only promote the Scheme to Extraordinary Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available for investment by the general public but is only available for investors satisfying the applicable Extraordinary Investor criteria set out in the Scheme's Offering Document. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Extraordinary Investors.

1.43 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.

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

1.45 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

1.46 The minimum investment which the Scheme may accept is EUR750,000 (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 EUR750,000 unless this is the result of a fall in the net assets value. In the case of an umbrella Scheme, where each of the sub-funds is set up as a Professional Investor Fund, the EUR750,000 threshold may apply on a per scheme basis rather than on a per sub-fund basis.

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## Extraordinary Investor Declaration Forms

1.47 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as "Extraordinary Investors" and that they have read and understood the risk warnings in the Offering Document, In the case of joint holders, all holders should individually qualify as "Extraordinary Investors". The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary.

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1.48 Copies of the Extraordinary Investor Declaration Forms and records evidencing

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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

- | 1.49 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.
- | 1.50 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

- | 1.51 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering Document/ Marketing Document.

### General

- | 1.52 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.
- | 1.53 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.
- | 1.54 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.
- | 1.55 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- | 1.56 The Scheme shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements, and other documents. Wording

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similar to the following shall be used: “*Licensed by the MFSA as a Professional Investor Fund available to Extraordinary Investors*”.

**1.57** The Scheme shall comply with the applicable laws and regulations relating to the prevention of money laundering.

**1.58** 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.

**1.59** 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.

**1.60** 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.

**1.61** 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.

**1.62** 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.

**1.63** 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.

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

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being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.

1.65 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.

1.66 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document/ Marketing Document.

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## SECTION II: STANDARD LICENCE CONDITIONS

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### Appendix I Supplementary Licence Conditions

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#### 1. *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.

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- 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.

**2. *Supplementary Conditions for Professional Investor Funds established as Investment Companies***

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

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

2.3 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Director provided that the Scheme shall not appoint a Corporate Director unless such Corporate Director is regulated in a recognized jurisdiction.

2.4 The request for consent of the appointment or replacement 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.

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

2.6 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".

2.7 Minutes of the meetings of the Board of Directors must be held in Malta at the

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registered office of the Scheme or at any other place as may be agreed with the MFSA.

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

#### **3.1 The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country**

**3.2** The Scheme shall – through its Directors or General Partner(s) – at all times maintain the majority directorship of any SPV.

**Deleted:** <#>The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country.¶

**3.3** The Scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the Scheme.

**Deleted:** The SPV should also appoint one or more independent directors.

### **4. Supplementary Conditions for self managed Professional Investor Funds**

#### *Capital Requirements*

**4.1** 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*

**4.2** 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.

**4.3** 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. Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.

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4.4 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:

- i. monitor and review the investment policy of the Scheme;
- ii. establish and review guidelines for investments by the Scheme;
- iii. issue of rules for stock selections;
- iv. set up the portfolio structure and asset allocation; and
- v. make recommendations to the Board of Directors of the Scheme.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

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4.9 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.

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**4.10** 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*

**4.11** 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*

**4.12** The Scheme shall notify the MFSA immediately if it is notified that its auditor intends to qualify the audit report.

#### *Auditor*

**4.13** 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.

- 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.

**4.14** 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;

**Deleted:** <#>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]

**Deleted:** The incoming auditor will be required to submit the declaration included in Appendix VI.

**Deleted:** Section II - March 2007

- 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.

**4.15** 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.

**4.16** 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.

**4.17** 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.

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**4.18** 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*

**4.19** 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*

**4.20** 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;

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- 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: STANDARD LICENCE CONDITIONS

**Deleted:** PROFESSIONAL INVESTOR FUNDS GUIDELINES

### Appendix II Contents of the Offering Document

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#### 1. General Requirements

2.1 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.

2.2 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:

**Deleted:** 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). ¶

#### *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.

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- 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 Scheme, an indication of the sub-funds.

Deleted: fund

viii. The investment objectives, policies and restrictions of the Scheme, together with the extent of use of leverage. In the case of umbrella Schemes, this information must be provided for each sub-fund.

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ix. A statement indicating that:

- changes to the investment policies and restrictions of the Scheme, or in the case of an umbrella Scheme, its sub-funds, shall be notified to investors in advance of the change.
- changes to the investment objectives of the Scheme, or in the case of an umbrella Scheme its sub-funds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.

x. Accounting and distribution dates.

xi. Name of auditor.

xii. 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;

xiii. 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. In the event that the “Voting Shares” are held by a Corporate Entity or a Trustee, the Offering Document may include the name of the said Corporate Entity/ Trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The Offering Document would also need to state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.

This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.

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xiv. Procedures and conditions for the creation, issue and sale of Units.

xv. Procedures and conditions for the repurchase, redemption and cancellation of Units, and details of the circumstances in which repurchase or redemption may be suspended.

xvi. Rules for the valuation of assets.

xvii. 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.

xviii. In the case of umbrella Schemes, the charges applicable to the switching of investments from one sub-fund to another.

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xix. 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.

xx. In the case of an investment company, the amounts of authorised and paid-up capital.

xxi. 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.

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

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- 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.

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- 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.

#### ***Information concerning the Local Representative***

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

#### ***Risk Warnings***

Deleted: 4.

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

#### ***General Information***

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- 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.

### **2. Closed ended schemes set up as Professional Investor Funds which make an offer of securities to the public**

#### **2.1 Closed ended schemes set up as Professional Investor Funds targeting Experienced Investors which make an offer of securities to the public shall:**

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- not be subject to the requirements outlined in Section 1 of this Appendix; and
  - draw up their Offering Document in line with the requirements of Schedule C of Appendix 9 to the current Investment Services Guidelines.
- 2.2 The Offering Document shall be made available to Experienced Investors as soon as practicable and in any case, within a reasonable time in advance of, and at the latest, at the beginning of the offer of units. In the case of an initial offer of units in closed ended Scheme not already admitted to trading on a RIE that is to be admitted to trading for the first time, the Offering Document shall be available at least six working days before offer opens.
- 2.3 Where the Offering Document is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the Scheme or the financial intermediaries placing or selling the Scheme's units. The Prospectus of the Scheme must be made available in a printed form at the registered office of the Scheme or its manager or other financial intermediaries placing or selling the units in the Scheme.
- 2.4 The Directors of the Scheme, or its administrative management or supervisory body – whose names and functions or in the case of legal persons their names and registered officers appear on the Offering Document – must include a declaration in the Offering Document to the effect that to the best of their knowledge the information contained therein is in accordance with facts and that the Offering Document makes no omission likely to effect its import.
- 2.5 The text and the format of the Offering Document, and/or the supplements to the Offering Document, published or made available to the public, shall at all times be identical to the latest version approved by the MFSA.
- 2.6 Every significant new factor, material mistake or inaccuracy relating to the information included in a Offering Document of the Scheme which is capable of affecting the investors' assessment of the units on offer and which arises or is noted between the time when the Offering Document is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the Offering Document. Such a supplement shall be approved in the same way within a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.

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- 2.7 If there are significant new factors, material mistakes or inaccuracies, arising since the approval of the Offering Document, the Scheme shall publish a supplement which must be approved by the MFSA.
- 2.8 The Scheme shall comply with the requirements laid out in Regulations 3 to 8 of the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005

## SECTION II: STANDARD LICENCE CONDITIONS

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INVESTOR FUNDS  
GUIDELINES

### Appendix III Declaration Forms

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

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**Annex I**

**Pro Forma Experienced Investor Declaration Form**

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Scheme: [insert name of the Scheme]

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Deleted: 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. ¶

**Section I: This section should be completed by the Experienced Investor or his/ her duly authorised agent**

*[tick as appropriate]*

**Name of Investor/ duly authorised agent: [insert name of the Scheme Investor/ duly authorised agent]**

**The investment is being made directly by the investor (not through a duly authorised agent)**

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) below or the reasons supplied. I certify that I have read and understood the Offering Document including the mandatory risk warnings.

*Where applicable:*

I hereby confirm that I have been warned by the Manager/ Sales Agent/ third party selling units of the Scheme that I do not possess the necessary experience and knowledge in order to understand the risks involved in investing in the Scheme.

**The investment is not being made directly by the investor but through a duly authorised agent**

I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the Scheme 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) below 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.

*Where applicable:*

I hereby confirm that I have been warned by the Manager/ Sales Agent/ third party selling units of the Scheme that my principal does not possess the necessary experience and knowledge in order to understand the risks involved in investing in the Scheme and that I have informed my principal accordingly.

**I qualify / My Principal qualifies [delete as applicable] as an “Experienced Investor”, as I/ he/ she possess(es) the necessary expertise, experience and knowledge to be in a position to make my/ his/ her own investment decisions and understand the risks involved as:**

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|                                                                                                                                                                                                                                                                               | <u>Yes</u>               | <u>No</u>                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| a. <u>I am/ (s)he is</u>                                                                                                                                                                                                                                                      |                          |                          |
| i. <u>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</u>                                                                   | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. <u>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 Scheme/ Sub-Fund in question relates; or</u> | <input type="checkbox"/> | <input type="checkbox"/> |
| iii. <u>a person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least EUR50,000 at an average frequency of 3 per quarter);</u>             | <input type="checkbox"/> | <input type="checkbox"/> |

OR

|                                                |                          |                          |
|------------------------------------------------|--------------------------|--------------------------|
| b. <u>[Please provide justification below]</u> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                                          |                          |                          |
| _____                                          |                          |                          |
| _____                                          |                          |                          |
| _____                                          |                          |                          |

|                                                        |  |
|--------------------------------------------------------|--|
| <u>Name of investor/<br/>duly authorised<br/>agent</u> |  |
| <u>Signature</u>                                       |  |
| <u>Title/ Capacity in<br/>which signed</u>             |  |
| <u>Date</u>                                            |  |

**Deleted:** 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:¶  
 ¶

... [2]

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**Section II: This section should be completed by the Manager/ Sales Agent/ third party selling units of the Scheme**

*[tick as appropriate]*

**I hereby confirm that:**

I have satisfied myself that the investor has the necessary experience and knowledge in order to understand the risks involved;

**OR**

I have **not** satisfied myself that the investor has the necessary experience and knowledge in order to understand the risks involved and that I have warned the investor/ duly authorised agent accordingly.

|                    |  |
|--------------------|--|
| <b><u>Name</u></b> |  |
|--------------------|--|

|                         |  |
|-------------------------|--|
| <b><u>Signature</u></b> |  |
|-------------------------|--|

|                                                                 |  |
|-----------------------------------------------------------------|--|
| <b><u>Name of Manager/<br/>Sales Agent/ Third<br/>Party</u></b> |  |
|-----------------------------------------------------------------|--|

|                    |  |
|--------------------|--|
| <b><u>Date</u></b> |  |
|--------------------|--|

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**Annex II**  
**Pro Forma Qualifying Investor Declaration Form**

*Scheme: [insert name of the Scheme]*

***This section should be completed by the Qualifying Investor or his/ her duly authorised agent***

*[tick as appropriate]*

***Name of Investor/ duly authorised agent: [insert name of the Scheme Investor/ duly authorised agent]***

***The investment is being made directly by the investor (not through a duly authorised agent)***

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

***The investment is not being made directly by the investor but through a duly authorised agent***

I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the Scheme described above. I certify that my principal is eligible to be treated as a “Qualifying Investor” since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) below in respect of my principal. I certify that my principal has read and understood the Offering Document including the mandatory risk warnings.

I qualify / My Principal qualifies *[delete as applicable]* as a “Qualifying Investor”, as I am/ he/ she/ it is:

|                                                                                                                                                                                                            | <u>Yes</u>               | <u>No</u>                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| i. a body corporate, which has net assets in excess of <u>EUR750,000</u> or which is part of a group which has net assets in excess of <u>EUR750,000</u> ;                                                 | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. an unincorporated body of persons or association which has net assets in excess of <u>EUR750,000</u> ;                                                                                                 | <input type="checkbox"/> | <input type="checkbox"/> |
| iii. a trust where the net value of the trust’s assets is in excess of <u>EUR750,000</u> ;                                                                                                                 | <input type="checkbox"/> | <input type="checkbox"/> |
| 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 |                          |                          |

**Deleted: 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 ... [3]

**Deleted:** , including a partnership,

**Deleted:** USD1.0 million

**Deleted:** Yes

**Deleted:** No

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... [4]

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... [5]

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... [6]

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|                                                                                                                                                                                                  | <u>Yes</u>               | <u>No</u>                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 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 <u>Scheme</u> in question relates;      | <input type="checkbox"/> | <input type="checkbox"/> |
| v. an individual whose net worth or joint net worth with that person's spouse, exceeds <u>EUR750,000</u> ;                                                                                       | <input type="checkbox"/> | <input type="checkbox"/> |
| vi. a <u>senior</u> employee or director of service providers to the <u>Scheme</u> ;                                                                                                             | <input type="checkbox"/> | <input type="checkbox"/> |
| vii. a relation <u>or a</u> close friend of the promoters;                                                                                                                                       | <input type="checkbox"/> | <input type="checkbox"/> |
| viii. an entity with (or which are part of a group with) <u>EUR3.75</u> million or more under discretionary management investing on its own account;                                             | <input type="checkbox"/> | <input type="checkbox"/> |
| ix. a PIF promoted to Qualifying or Extraordinary Investors; or                                                                                                                                  | <input type="checkbox"/> | <input type="checkbox"/> |
| 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. | <input type="checkbox"/> | <input type="checkbox"/> |

|                                                        |  |
|--------------------------------------------------------|--|
| <u>Name of investor/<br/>duly authorised<br/>agent</u> |  |
| <u>Signature</u>                                       |  |
| <u>Title/ Capacity in<br/>which signed</u>             |  |
| <u>Date</u>                                            |  |

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... [8]

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... [9]

**Deleted: and**

**Deleted: limited to a total of 10 persons per PIF**

**Deleted: Yes**

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... [10]

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... [11]

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... [12]

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**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 m...** [13]

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**Annex III**  
**Pro Forma Extraordinary Investor Declaration Form**

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*Scheme: [insert name of the Scheme]*

*This section should be completed by the Extraordinary Investor or his/ her duly authorised agent*

*[tick as appropriate]*

*Name of Investor/ duly authorised agent: [insert name of the Scheme Investor/ duly authorised agent]*

*The investment is being made directly by the investor (not through a duly authorised agent)*

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

*The investment is not being made directly by the investor but through a duly authorised agent*

I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the Scheme described above. I certify that my principal is eligible to be treated as an “Extraordinary Investor” since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) below in respect of my principal. I certify that my principal has read and understood the Offering Document/ Marketing Document including the mandatory risk warnings.

*I qualify / My Principal qualifies [delete as applicable] as an “Extraordinary Investor”, as I am/ he/ she/ it is:*

|                                                                                                                                                                   | <u>Yes</u>               | <u>No</u>                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| <i><u>i. a body corporate, which has net assets in excess of EUR7.5 million or which is part of a group which has net assets in excess of EUR7.5 million;</u></i> | <input type="checkbox"/> | <input type="checkbox"/> |
| <i><u>ii. an unincorporated body of persons or association which has net assets in excess of EUR7.5 million;</u></i>                                              | <input type="checkbox"/> | <input type="checkbox"/> |
| <i><u>iii. a trust where the net value of the trust’s assets is in excess of EUR7.5 million;</u></i>                                                              | <input type="checkbox"/> | <input type="checkbox"/> |
| <i><u>iv. an individual whose net worth or joint net worth with that person’s spouse, exceeds EUR7.5 million;</u></i>                                             | <input type="checkbox"/> | <input type="checkbox"/> |

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|                                                                                                                                                                                                           | <u>Yes</u>               | <u>No</u>                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| v. <u>a senior employee or director of service providers to the Scheme;</u>                                                                                                                               | <input type="checkbox"/> | <input type="checkbox"/> |
| vi. <u>a PIF promoted to Extraordinary Investors;</u>                                                                                                                                                     | <input type="checkbox"/> | <input type="checkbox"/> |
| vii. <u>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.</u> | <input type="checkbox"/> | <input type="checkbox"/> |

|                                                        |  |
|--------------------------------------------------------|--|
| <u>Name of investor/<br/>duly authorised<br/>agent</u> |  |
|--------------------------------------------------------|--|

|                  |  |
|------------------|--|
| <u>Signature</u> |  |
|------------------|--|

|                                            |  |
|--------------------------------------------|--|
| <u>Title/ Capacity in<br/>which signed</u> |  |
|--------------------------------------------|--|

|             |  |
|-------------|--|
| <u>Date</u> |  |
|-------------|--|

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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:*¶  
 ¶  
 ¶ <#>a body corporate, including a partnership, which has net assets in excess of USD 10.0 million or which is part of a group which has net assets in excess of USD 1.0 million;

... [14]

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**SECTION II: STANDARD LICENCE CONDITIONS**

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**Appendix IV  
Quarterly Statistical Return**

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- 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 \_\_\_\_\_

**Deleted:** ¶

**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.

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|                                               |  |
|-----------------------------------------------|--|
| <b><u>Name</u></b>                            |  |
| <b><u>Signature</u></b>                       |  |
| <b><u>Title/ Capacity in which signed</u></b> |  |
| <b><u>Date</u></b>                            |  |

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¶  
Signature . . . ¶  
¶  
Capacity in which signed . . . ¶  
¶  
Date . . . ¶

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