

**INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTOR FUNDS**

**PART B**

**APPENDIX III: CONTENTS OF THE OFFERING DOCUMENT**

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**1 GENERAL REQUIREMENTS**

- 1.01 The requirements prescribed in this Appendix are applicable to Maltese AIFs ('schemes') whether these are third-party managed or self-managed schemes in terms of Part B of these Rules.
- 1.02 Unless otherwise agreed with the MFSA, the scheme shall issue or cause to be issued an offering document for which it shall be responsible. The purpose of the offering document is to provide sufficient information to enable potential investors to make an informed investment decision.
- 1.03 The offering document shall contain all material information which at the date thereof is within the knowledge of the governing body of the scheme 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 document shall include the information listed hereunder.

**2 INFORMATION CONCERNING THE SCHEME**

- 2.01 Where the scheme is to be made available only to professional investors, the following statements 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 an Alternative Investment Fund which is available to Professional Investors.
  - This Alternative Investor Fund is a Non-Retail Scheme. 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.
  - 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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2.02 Where the scheme is to be made available to qualifying investors, the following statements must be in a prominent position printer in font whose pitch is at least 12:

- “[name of the FUND] is licensed by the Malta Financial Services Authority (“MFSA”) as an Alternative Investment Fund whose investors may comprise Qualifying Investors, and fulfils any additional conditions prescribed by the Authority in relation to Schemes sold to Qualifying Investors.”
- This 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 for this fund.
- This fund may only be marketed outside Malta to Professional Investors as defined in the AIFM Directive. The marketing of the fund to an investor who is not a Professional Investor as defined in the AIFM Directive may only be undertaken if allowed by the respective jurisdiction and subject to the national provisions applicable in the respective jurisdiction as prescribed in Article 43 AIFMD.
- 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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2.03 The offering document shall include a statement by the governing body of the scheme confirming their approval of the contents of the offering document.

2.04 In addition to the above, the offering document shall include the following additional information about the scheme:

- i. name of the scheme;
- ii. date of establishment of the scheme and a statement as to its duration, if limited;
- iii. name or style, form in law and registered office;
- iv. in the case of an umbrella scheme, an indication of the sub-funds together with a declaration that new sub-funds require the prior approval of the MFSA;
- v. where applicable a description of the different share classes which the scheme may establish together with the differentiating factors between share classes;
- vi. where applicable in the case of use of side pockets:

Deleted: <#>Where the AIF is to be made available to retail investors, the following statements 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 an Alternative Investment Fund and fulfils the additional conditions prescribed by the Authority to be marketed to Retail Investors.¶

<#>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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- (a) the circumstances/criteria where a side pocket may be employed, the policy for transferring assets to side pockets, including the nature of the assets that may be allocated to side pockets and the circumstances in which such allocations may be made as well as the procedure for the allocation of investments to side pockets; a disclosure of any side pocket arrangements together with the clause in the instruments of incorporation which permits the creation of side pockets;
- (b) the policy and procedure to be followed by the scheme for transferring assets out of side pockets or for redeeming such assets as well as the procedure to be followed for the redemption or re-conversion of the units representing the side pocket. In this regard, upon the occurrence of a 'liquidity event whereby an asset allocated to a side pocket becomes liquid or capable of valuation, the scheme may decide to redeem such asset or to transfer such asset to the liquid pool of assets – details pertaining to the policy and procedure to be adopted are to be clearly disclosed;
- (c) limits (where applicable) on the size of side pockets, including the maximum percentage of the scheme/sub-fund which can be allocated to the side pocket in aggregate, and in the case where no limits are set, disclosure to this effect;
- (d) policies for the valuation of assets allocated to a side pocket. This disclosure should be comprehensive on the methodology for the valuation of these types of assets and should also refer to a consistent approach to be adopted when valuing such assets;
- (e) fee structure relating to the class of units representing the side pocket; and
- (f) relevant risk warnings in particular arising from the fact that side pocket assets may be hard to value, the illiquidity of side pocket assets, the difficulty which investors may find to exit from an investment in a side pocket rather than from a 'normal' share class in the scheme, and associated restrictions in realising interests in such assets.
- (g) accounting and distribution dates. In particular, the offering document shall also include:
  - (a) an outline of the distribution policy and indicate whether the income will be reinvested or paid to the shareholders.;
  - (b) any time limits (where applicable) after which the entitlement to dividend lapses and the procedure to be followed in that case; and
  - (c) the method of payment of dividends.
- (h) details of the types and main characteristics of the units and in particular:
  - a. the nature of the right represented by the unit;
  - b. indication of the voting rights, if any of the unitholders.

**Commented [IA1]:** Disclosure requirements included in Circular dated 31 May 2010 on the use of side pockets by Collective Investment Schemes

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- (i) where the scheme has issued “Voting Shares” to the promoters and “non-Voting Shares” to prospective investors, a statement 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.
- (j) the base currency of the scheme;
- (k) procedures and conditions for the creation, issue and sale of units;
- (l) procedures and conditions for the repurchase, redemption and cancellation of units, and details of the circumstances in which repurchase or redemption may be suspended;
- (m) rules for the valuation of assets. In particular, the offering document shall provide a description of the valuation procedure to ensure a proper and independent valuation of the assets of the scheme. In particular the offering document shall include the following:
  - (a) a description of the methodology and frequency applied to the valuation of assets and the manner in which the net asset value per unit or share of the scheme is carried out;
  - (b) the pricing methodology for valuing the assets including the methods used in relation to hard-to-value assets as indicated in the instruments of incorporation;
  - (c) a confirmation that the assets are valued and the net asset value per unit or share is calculated as least on a yearly basis;
  - (d) information on the external valuer where this is appointed;
- (n) 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:
  - a. the method and frequency of the calculation of the net asset value;
  - b. information concerning the charges relating to the sale or issue and the repurchase or redemption of units; and
  - c. arrangements whereby unit holders and prospective unit holders may deal.
- (o) in the case of an umbrella scheme, the charges applicable to the switching of investments from one sub-fund to another.
- (p) information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the scheme to the AIFM (or in the case

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of a self-managed scheme, the investment committee), administrator, depositary, adviser, and in respect of the reimbursement of costs by the scheme to the AIFM, and to the depositary.

- (q) where the scheme is established as an investment company, the offering document shall include the following information:
- (e) amounts of authorised and paid-up share capital; and
  - (f) 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.

- (r) where the scheme is established as an investment company with variable share capital and which has opted to issue shares subject to full payment by a settlement date, in accordance with regulation 16 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the offering document shall indicate, the settlement date by which payment of the full subscription price is to be received, which date cannot be later than five working days from the date of issue of those shares;
- (s) where the scheme is established as an investment company with variable share capital and opting to issue shares for a consideration other than cash, in accordance with regulation 10 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the scheme shall indicate in its prospectus/offering document, the procedure to be followed by a prospective investor contemplating an application in specie;
- (t) where the scheme is established as a limited partnership, the offering document shall include brief details of the general partner(s). Where the scheme has appointed one or more corporate general partner(s), this section should include brief details on the corporate general partner(s) and its directors, including a brief description of the nature/ objects of the company. In the case of corporate general partner(s) with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the corporate general partner(s) or include a statement that such information will be available upon request.

**3 INFORMATION CONCERNING THE INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS OF THE SCHEME**

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- 3.01 The offering document shall include a section providing a description of the investment strategy and objectives of the scheme. In the case of an umbrella scheme, this information must be provided for each sub-fund in the respective offering supplements.
- 3.02 In particular, the offering document shall provide a description of the types and sources of leverage permitted and the associated risks. The offering document shall also include a description concerning any restriction on the use of leverage and any collateral and asset reuse arrangements together with the maximum level of leverage which the scheme may employ.
- 3.03 In particular, the section concerning the investment objectives and policies shall include the following information:
- i. information on where any master scheme is established and where the underlying funds are established if the scheme is a fund of funds;
  - ii. a description of the types of assets in which the scheme may invest;
  - iii. an indication whether the scheme will be operating within the principle of risk spreading.
  - iv. the techniques it may employ and all the associated risks;
  - v. in the case of securities, the offering document shall provide an indication of whether the securities are listed or unlisted and the geographical spread;
  - vi. in the case of investment in equities, the offering document shall provide an indication whether the fund shall target equities having particular market size, capitalisation;
  - vii. in the case of investments in fixed income, the offering document shall identify whether these are sovereign or corporate bonds. Furthermore, an indication shall be provided of the ratings of such fixed income assets i.e. whether high yield and investment grade.
- 3.04 Where the scheme expects to deal/trade directly in commodities or expects the delivery of commodities underlying an FDI instrument, the offering document shall specify accordingly the manner in which such investments will be made by the fund, the types of commodities, including relevant safekeeping arrangements, insurance arrangements (as applicable), valuation methodology of such asset and relevant risk warnings in relation to these instruments.
- 3.05 Where the scheme proposes to invest in other collective investment schemes, the offering document shall provide the following information:
- (a) the strategy of such collective investment schemes, domicile of the schemes;
  - (b) a confirmation that the scheme is not restricted from investing in other collective investment schemes;

- (c) an identification whether the scheme will invest in collective investment schemes which are managed by the same AIFM of the scheme. In the case where the scheme is allowed to invest in such collective investment schemes which are managed by the AIFM managing the scheme, a confirmation that there will be certain waiving of fees and that only one set of subscription and/or redemption fees applies between the scheme and the underlying scheme level in order to avoid duplication of fees;
  - (d) an indication whether the target collective investment schemes are regulated or otherwise;
  - (e) an indication whether the scheme may invest in other sub-funds of the same scheme and the applicability or otherwise of the rules on cross sub-fund investments;
- 3.06 Where the scheme proposes to invest in financial derivative instruments, the offering document shall provide the following information:
  - (a) an indication of the types of financial derivative instruments;
  - (b) an indication whether these financial derivative instruments will be used as part of the investment strategy and/or for hedging purposes and whether they are exchange traded or dealt in over-the-counter;
  - (c) information on the underlying assets of the financial derivative instruments.
- 3.07 With regards to the investment restrictions, the offering document shall include information on the applicable investment restrictions and any limits on investments. The offering document shall also disclose any remedial measures which the scheme proposes to take in the case where any investment limits are exceeded.
- 3.08 The offering document shall include a description of the procedures by which the scheme may change its investment strategy or investment policy or both.
- 3.09 The offering document shall include a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on the jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the scheme is established.
- 3.10 The offering document shall include a statement indicating that:
  - a. 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;
  - b. 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.

3.11 The offering document shall include a description of the risks attached to the investment policy of the scheme.

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**4 ADDITIONAL INFORMATION REQUIRED WHERE THE SCHEME IS ESTABLISHED AS A LOAN FUND**

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4.01 Where the scheme is established as a loan fund the offering document shall include the following:

- i. information on the risk diversification strategy which the scheme will adopt to achieve a portfolio of loans whether through direct origination of loans by the scheme or through the acquisition by the scheme of a portfolio of loans or a direct interest in loans;
- ii. information on the manner in which the scheme proposes to limit the exposure to any one single undertaking to 10%;
- iii. information on the time-frames which the scheme will be adopting to achieve its strategy;
- iv. disclosure of the dates at which the scheme or the fund manager may invite redemptions from unit-holders;
- v. information on the risk and reward profile of the scheme to enable investors to assess the risks linked to an investment in such a scheme;
- vi. information on the entities, the locations and sectors;
- vii. details of the credit risk policy as outlined in Section 4 of the Rules applicable to collective investment schemes authorised to invest through loans;
- viii. information on the leverage limits of the scheme and a warning that these may be varied by the MFSA.

**5 ADDITIONAL INFORMATION REQUIRED WHERE THE SCHEME IS ESTABLISHED AS A MONEY MARKET FUND**

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5.01 Where the scheme is established as a money market fund the offering document shall provide the following:

- (a) state whether the scheme is a money market fund or a short-term money market fund;
- (b) information on the primary objective of the scheme of maintaining the principal investment of the scheme and provide for a return in line with money market rates;
- (c) information on the investments carried out by the money market fund in accordance with Appendix 2 of these Rules.

**6 ADDITIONAL INFORMATION REQUIRED WHERE THE SCHEME IS ESTABLISHED AS EUVECA FUND IN TERMS OF REGULATION (EU) NO 345/2013**

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6.01 Where the scheme is established as an EuVECA fund, the offering document shall include:

- (a) a confirmation that the AIFM is in possession of a licence/authorisation granted in terms of Directive 2011/61/EU;
- (b) a description of the investment strategy and objectives of each EuVECA fund including:
  - i. the types of qualifying portfolio undertakings in which the AIFM intends investing;
  - ii. any other qualifying venture capital funds in which the AIFM intends to invest;
  - iii. the types of qualifying portfolio undertakings in which any other qualifying venture capital fund as referred to in paragraph (ii) intends to invest;
  - iv. the non-qualifying investment which the AIFM intends to make;
  - v. the techniques that it intends to employ;
  - vi. any applicable investment restrictions;
- (c) a description of the risk profile of the qualifying venture capital fund and any risks associated with the assets in which the scheme may invest or investment techniques that may be employed;
- (d) a description of the procedures by which the qualifying venture capital fund may change its investment strategy or investment policy or both.

## 7 ADDITIONAL INFORMATION REQUIRED WHERE THE SCHEME IS ESTABLISHED AS EUSEF FUND IN TERMS OF REGULATION (EU) No 346/2013

7.01 Where the scheme is established as an EuSEF fund, the offering document shall include:

- (a) a confirmation that the AIFM is in possession of a licence/authorisation granted in terms of Directive 2011/61/EU;
- (b) a description of the investment strategy and objectives of each EuSEF fund including:
  - i. the types of qualifying portfolio undertakings in which the AIFM intends investing;
  - ii. any other qualifying social entrepreneurship funds in which the AIFM intends to invest;
  - iii. the types of qualifying portfolio undertakings in which any other qualifying social entrepreneurship fund as referred to in paragraph (ii) intends to invest;
  - iv. the non-qualifying investment which the AIFM intends to make;
  - v. the techniques that it intends to employ;
  - vi. any applicable investment restrictions;
- (c) a description of the positive social impact being targeted by the investment policy of the qualifying social entrepreneurship fund, including, where relevant, projections of such outcomes as may be reasonable and information on past performance in this area;

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- (d) the methodologies to be used to measure social impacts;
- (e) a description of the assets other than qualifying portfolio undertakings and the process and the criteria which are used for selecting these assets unless they are cash or cash equivalents;
- (f) a description of the risk profile of the qualifying social entrepreneurship fund and any risks associated with the assets in which the scheme may invest or investment techniques that may be employed;
- (g) a description of the procedures by which the qualifying venture capital fund may change its investment strategy or investment policy or both.

## **8 ADDITIONAL INFORMATION REQUIRED WHERE THE SCHEME IS ESTABLISHED AS A EUROPEAN LONG-TERM INVESTMENT FUNDS IN TERMS OF REGULATION (EU) No 2015/760**

8.01 Where the scheme is established as a European Long-Term Investment Fund ('ELTIF'), the offering document shall include all information necessary to enable investors to make an informed assessment regarding the investment proposed to them and in particular the risks attached thereto. Furthermore, the following additional information is required:

- (a) a statement setting out how the scheme's investment objectives and strategy for achieving these objectives qualify the scheme as long-term in nature;
- (b) information to be disclosed by schemes of the closed-ended type in accordance with Directive 2003/71/EC and Regulation (EU) No 809/2004;
- (c) a prominent indication of the categories of assets in which the scheme is authorised to invest;
- (d) a prominent indication of the jurisdictions in which the scheme is allowed to invest;
- (e) any other information considered necessary by the competent authorities to be relevant to enable investors to make such informed assessment;
- (f) information to investors about the long-term nature of the scheme's investments;
- (g) information to investors about the end of the life of the scheme as well as the option to extend the life of the scheme where this is provided for and the conditions thereof;
- (h) information whether the scheme is intended to be marketed to retail investors;
- (i) an explanation on the rights of investors to redeem their investment in accordance with article 18 of Regulation (EU) 2015/760 and in particular a confirmation that redemptions to investors shall be possible from the day following the date of the end of life of the scheme;
- (j) information on the frequency and the timing of distribution of proceeds, if any to investors during the life of the scheme;
- (k) a declaration to investors that only a small proportion of their overall investment portfolio should be invested in the scheme;

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- (l) a description of the hedging policy of the scheme, including a prominent indication that financial derivative instruments may be used only for the purpose of hedging risks inherent to other investments of the scheme, and an indication of the possible impact of the use of financial derivative instruments on the risk profile of the scheme;
- (m) information to investors about the risks related to investing in real assets, including infrastructure;
- (n) regular updated information (at least annually) on the jurisdictions in which the scheme has invested.

8.02 The offering document shall include information from the AIFM whether or not it intends to borrow cash as part of its investment strategy.

8.03 The offering document shall include information concerning the redemption policy

8.04 In relation to cost disclosure, the offering document shall prominently inform investors of the level of the different costs borne directly or indirectly by the investors. The different costs shall be grouped according to the following headings:

- (a) costs of setting up the scheme;
- (b) costs related to the acquisition of assets;
- (c) management and performance related fees;
- (d) distribution costs;
- (e) other costs, including administrative, regulatory, depositary, depositary, professional service and audit costs;
- (f) an overall ratio of the costs to the capital of the scheme.

## 9 ADDITIONAL INFORMATION REQUIRED WHERE THE SCHEME IS ESTABLISHED AS A SELF-MANAGED SCHEME

9.01 Where the scheme is a self-managed scheme, the offering document shall include a reference to the self-managed nature of the scheme.

9.02 The offering document shall also include a description of the share capital applicable to the scheme and the manner in which it will be financed i.e. via investor shares and founder share capital. Where the scheme will be financed via investor shares, a confirmation shall be provided by the fund administrator confirming that such capital has been invested into the scheme on the first day of the scheme's operation.

## **10 INFORMATION CONCERNING THE AIFM, INVESTMENT ADVISER, ADMINISTRATOR, DEPOSITARY/ PRIME BROKER (WHERE APPLICABLE) ("THE SERVICE PROVIDER")**

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10.01 This section in the offering document shall include information on the identity of the AIFM, the depositary, auditor and any other service providers together with a description of their duties and the investors' rights.

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10.02 In particular, the offering document shall include the following information about the service providers:

- i. name or style, registered office and head office;
- ii. information as to whether the service provider is part of a group including the name of that group;
- iii. regulatory status of the service provider.
- iv. in the case of the investment adviser or the administrator, the offering document shall include a statement whether the investment adviser/ the administrator is appointed by the scheme or the AIFM;
- v. where one or more service providers have not been appointed, the offering document shall include a description concerning how the functions normally undertaken by each functionary will be carried out;

10.03 In relation to the AIFM, the offering document shall include a description of the manner in which the AIFM is covering potential professional liability risks:

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- (a) either through additional own funds which are appropriate to cover potential liability risk arising from professional negligence; or
- (b) by holding a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

10.04 In the case where the scheme is established as a loan fund, the offering document shall include information on the experience of the AIFM to manage a loan fund and in particular in relation to the credit assessment, credit provisioning monitoring and control of exposures.

10.05 The offering document shall include information on the name of any entity which has been contracted by the AIFM or the scheme to carry out its work. In particular, the offering document shall include a description of any delegated management function by the scheme and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations.

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10.06 Where a prime broker is appointed the offering document shall include the following:

- (a) information on the identity of the prime broker;
- (b) a description of any material arrangements of the scheme with its prime brokers and the way the conflicts of interest in relation thereto are managed;
- (c) information on the provision in the contract with the depositary on the possibility of transfer and reuse of the scheme's assets;
- (d) information on any transfer of liability to the prime broker that may exist.

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10.07 The offering document shall include information of any arrangement made by the depositary to contractually discharge itself of liability as well as any changes to the liability of the depositary.

10.08 Where the scheme is established as a self-managed AIF, the offering document shall include 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.

## 11 REDEMPTIONS AND SUBSCRIPTIONS

11.01 The section on redemptions and subscriptions shall a description of the scheme's liquidity risk management including information concerning the arrangements for making payments to unit-holders, subscribing to or redeeming units and making available information concerning the scheme.

11.02 In particular in relation to subscriptions, the offering document shall provide the following:

- (a) an indication of dealing days (where applicable);
- (b) in relation to subscriptions, the offering document shall provide information relating any maximum subscription charges and the initial offer price;
- (c) information concerning the duration of the initial offer period together with an indication whether it will be possible for the scheme to commence investing the subscribers' subscriptions during the initial offer period;
- (d) the manner in which the ownership of the units will be confirmed;
- (e) types and main characteristics of the units.

11.03 In relation to redemptions, the offering document shall provide the following:

- (a) a description of the redemption rights both in normal and in exceptional circumstances including the existing redemption arrangements with investors;
- (b) an indication of any maximum redemption charges;
- (c) an indication of the redemption facilities which will be provided to investors (where applicable).

11.04 The offering document shall disclose the settlement period which is applicable to the investors in the scheme.

11.05 In relation to redemptions and subscriptions in specie, the offering document shall include a reference whether it will be possible for the scheme to accept subscriptions and/or redemptions in specie and the relevant applicable provisions.

## **12 RISK WARNINGS**

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12.01 The section on risk warnings should provide a detailed and clear indication of the principal risks associated with investing in the scheme.

12.02 In the case where the scheme will not be operating within the principle of risk spreading, the offering document shall include a relevant risk warning to that effect.

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12.03 In the case where the scheme will be investing in collective investments which are unregulated, the offering document shall include a risk warning to that effect. Furthermore, the offering document shall also include risk warnings regarding any underlying fees when the scheme invests in other collective investment schemes.

12.04 In the case where the scheme is established as a loan fund, the offering document shall include a risk warning which draws the attention of investors on the high risk inherent to this type of collective investment schemes and how investment in loan funds is not guaranteed and subject to the possibility of losses.

12.05 In the case where the scheme will be applying any performance fees, the offering document shall include a risk warning stating that the amount of the performance fee payable to the AIFM/investment committee will not be subject to any cap or maximum amount and that the performance fee payable to the AIFM/investment committee may incentivise the AIFM /investment committee to take higher risks. The offering document shall also include a risk warning (where applicable) that the scheme does not operate an equalisation account nor any other method to ensure the equal treatment for the payment of performance fees irrespective of the timing of the application for or redemption of shares of the scheme and that when purchasing and/or redeeming shares in the scheme, shareholders may accordingly indirectly underpay or overpay an under-performance accrual or an over-performance accrual as the case may be.

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

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

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which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.

## 13 USE OF TRADING COMPANIES AND SPECIAL PURPOSE VEHICLES

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13.01 Where applicable, the offering document shall contain an indication that the scheme will use trading companies or special purpose vehicles as part of its investment strategy. In particular, in relation to the use of special purpose vehicles, the offering document shall include a description outlining the relevant criteria and requirements applicable in relation to the financing of such special purpose vehicles. The offering document shall specify the manner in which such financing will be made i.e. either by capital contributions only, or a combination of capital contributions and loan facilities (as applicable). The offering document could also include details relating to the main terms of a loan facility arrangements to be entered into by the scheme and the special purpose vehicle in question which could inter alia include the following:

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- (a) that the scheme should not be obliged to honour any request for lending made by the special purpose vehicle in the case where the scheme does not have sufficient liquid assets or if the scheme deems necessary the retention of such assets to finance other investments of the sub-fund or the retention of such assets as reserves for any current or future contingent liability;
- (b) that any amount borrowed by the special purpose vehicle will be repayable on or within a short period of time following any request in this regard by the scheme in order to ensure the liquidity of the scheme and allow the scheme to satisfy redemption requests by investors in the case where these cannot be satisfied from liquid assets available to the scheme;
- (c) that any proceeds of any loan made to the special purpose vehicle shall be used by it solely to finance the acquisition of the assets or property referred to in the loan agreement, which shall always reflect and be in line with the objectives and policies of the sub-fund;
- (d) any other safeguards deemed appropriate by the directors of the scheme.

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## 14 FEES, CHARGES AND EXPENSES

14.01 The offering document shall provide a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors.

14.02 In particular the offering document shall provide details of the following:

- (a) details of the fees payable directly by the scheme to the directors or at least an aggregate or a maximum amount of such fees;
- (b) details of the maximum fee payable directly by the scheme to the AIFM, the fund administrator, the depositary as well as to the sub-manager (where applicable). In the case where the scheme is self-managed, the offering

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- document shall include details of the maximum fees paid to the investment committee members and the portfolio manager;
- (c) details of the fees payable by the scheme relating to authorised distributor fees, introducers, etc.
  - (d) a description of the manner in which such fees will be paid and accrued;
  - (e) details of the basis of the fee calculation;
  - (f) details of any applicable performance fees including the amount and manner in which the performance fee is calculated;
  - (g) in the case of differing initial/ exit/ authorised distributor/ management/ performance fees for different share classes, a description of such fees per each share class. Furthermore, the offering document shall include a description of the entry eligibility criteria applicable for each investor class.

## **15 REPORTING TO INVESTORS**

15.01 The offering document shall disclose the annual accounting date. Furthermore, it shall provide the following:

- (a) information to investors from where they can obtain a copy of the instruments of incorporation of the scheme;
- (b) information to investors from where they can obtain the latest annual report and where applicable the half-yearly report;
- (c) the latest net asset value of the scheme or the latest market price of the unit or share of the scheme.

15.02 Where applicable, the offering document shall provide the following information in relation to the EU AIFs managed by the AIFM and for each AIF marketed in the Union by the AIFM:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the scheme;
- (c) the current risk profile of the scheme and the risk management systems employed by the AIFM to manage those risks.

15.03 Where applicable, the offering document shall provide the following information in relation to each EU AIF managed or marketed in the EU by the AIFM which employs leverage:

- (a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the scheme as well as any right of the reuse of collateral or any guarantee under the leveraging arrangement;
- (b) the total amount of leverage employed by that scheme.

## **16 GENERAL INFORMATION**

16.01 A description of the potential conflicts of interest which could arise between the AIFM, or the investment adviser, or the depositary/ prime broker, and the scheme

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and the manner in which these will be resolved. Furthermore, the offering document shall provide a description of the involvements of the proposed officials of the scheme with the scheme's service providers.

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16.02 The offering document shall also provide a description of the manner in which the scheme or the AIFM proposes to ensure a fair treatment of investors and, whenever an investor obtains preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the scheme or the AIFM.

16.03 The offering document shall include an indication whether the scheme shall have a minimum commitment amount in order to be able to launch and whether the scheme would actually be launched if the minimum commitment amount is not reached.

16.04 Where the scheme proposes to invest through joint ventures, the offering document shall provide:

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- (a) a description of proposed investments via co-investments or joint ventures;
- (b) a description of the manner in which the scheme intends to safeguard the interest of shareholders in the instances where it may not have majority control;
- (c) a description of the manner in which the scheme will ensure the suitability of investments undertaken by such joint ventures and how it will ensure on an ongoing basis that these reflect the investment objectives and policies of the scheme

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16.05 A description of the tax system which will be applicable to scheme;

16.06 Information on the safekeeping arrangements for all underlying assets.

Deleted: The name of any entity which has been contracted by the AIFM or the AIF to carry out its work.

16.07 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 offering document of the scheme must be made available in a printed form at the registered office of the scheme or its AIFM or other financial intermediaries placing or selling the units in the scheme.

Deleted: Information concerning the arrangements for making payments to Unit-Holders, purchasing or redeeming Units and making available information concerning the AIF.¶  
<#>Where applicable, an indication that the AIF will use Trading Companies or Special Purpose Vehicles as part of its investment strategy. ¶

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16.08 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 offices 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 affect its import.

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- 16.09 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.
- 16.10 Every significant new factor, material mistake or inaccuracy relating to the information included in an 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 offering document 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 units 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.
- 16.11 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.
- 16.12 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.