**INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES**

**PART B: STANDARD LICENCE CONDITIONS**

**Appendix II: Contents of the Financial Statements of UCITS**

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| 1. **Introduction** |
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| * 1. The Rules included in this Appendix shall be applicable solely and exclusively to UCITS.   2. The contents of the annual and half-yearly reports are primarily the responsibility of the scheme concerned. Moreover, any service providers such as managers and/ or custodians who include their reports within the scheme’s reports, will also be responsible for ensuring that their disclosures are accurate and fair.   3. Where the annual report includes the scheme’s audited financial statements, the scheme’s auditor is responsible insofar as the audited financial statements and the opinion expressed thereon is concerned. |
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| * 1. A copy of the annual and half-yearly reports shall be supplied to unit-holders free of charge upon request. |
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| * 1. A copy of the annual and half-yearly reports shall also be submitted to the MFSA, together with: |
| 1. a directors’ confirmation pursuant to Rule 1.07 of this Appendix and an auditor’s report pursuant to Rule 1.08 of this Appendix in the case of the annual report; |
| 1. a directors’ confirmation pursuant to Rule 1.07 of this Appendix in the case of half-yearly reports. |
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| * 1. The scheme or the manager on behalf of the scheme shall ensure that all the necessary checks have been carried out to ensure the accuracy and completeness of the reports prior to publication. An indicative list of the nature of checks which the MFSA expects to be performed is included in Annex III to this Appendix. |
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| * 1. Copies of annual and half-yearly reports submitted to the MFSA shall be accompanied by a directors’ confirmation to the effect that to the best of their knowledge, the report is complete and accurate in all material respects and conforms with the MFSA’s requirements in terms of the scheme’s licence. A specimen of the wording to be used in such a confirmation is included on Annex I to this Appendix. |
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| * 1. The scheme will be required to request its auditors to review its annual report in its entirety to ensure that it includes all disclosures required by this Appendix and that all references to figures included in the audited financial statements are accurate. The scheme shall require the auditor to provide it with an opinion to this effect and this opinion shall be retained in the scheme’s records. A specimen of the wording of such an opinion is included in Annex II to this Appendix. |
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| * 1. The financial statements shall not be submitted to the MFSA unless these are a full and complete set of the required documentation and signed by all the signatories as required.   2. In the case where the submission of the financial statements to the MFSA will be justifiably and exceptionally delayed, the scheme shall at least one week prior to the deadline for the submission of the financial statements, submit a request with the MFSA to consider the possibility of such a delay. This request shall be accompanied by the following documents:   3. a resolution from the governing body of the scheme setting out clearly the reasons which justify the delay and requesting the MFSA to grant the proposed extension period which should be clearly stated in the resolution;   4. a written confirmation from the fund administrator of the scheme that the underlying investors of the scheme have been informed of the delay and the reasons for such delay;   5. a written confirmation from the external auditor of the scheme supporting the request for extension and confirming that the audit will be completed within the proposed extended deadline.   Provided that where the delay consists of two or three days, the documents requested in paragraphs (a) to (c) need not be submitted.   * 1. The MFSA reserves the right to take whatever action it deems appropriate should it come across material misstatements and/or inaccurate or incomplete information therein. Such action may range from requests for clarifications, to the possible imposition of fines and where necessary, the publication of amendments to the reports. The MFSA reserves the right to issue a public notice highlighting why amendments have been necessary. The expenses relating to the issue of the public notice will be borne by the party concerned. |
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| * 1. The dates for the initial reports issued by the scheme shall be agreed with the MFSA at the time of the granting of the licence. |
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| * 1. The annual report shall contain the following information:   2. a balance sheet or a statement of assets and liabilities;   3. a detailed income and expenditure account for the financial year;   4. a report on the activities of the financial year;   5. other information outlined in Section 2 below;   6. any other significant information which will enable investors to make an informed judgement on the development of the activities of the Scheme and its results;   7. the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the manager and by the scheme to its staff, and the number of beneficiaries, and, where relevant, any amount paid directly by the scheme itself, including any performance fee;   8. the aggregate amount of remuneration, broken down by categories of employees or other members of staff as referred to in Rule 3.57 of Part BII of the Investment Services Rules for Investment Services Providers;   9. a description of how the remuneration and the benefits have been calculated;   10. the outcome of the reviews referred to in paragraphs (c) and (d) of Rule 3.56 of Part BII of the Investment Services Rules for Investment Services Providers including any irregularities that have occurred;   11. material changes to the adopted remuneration policy. |
| The half-yearly report shall contain at least the information prescribed in Rules 2.02 to 2.06 of this Appendix. |
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| * 1. The annual and half-yearly reports of a scheme which is established as an index-tracking scheme shall state the size of the tracking error at the end of the period under review. |
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| * 1. The annual and half-yearly reports shall be available to the public at locations, or through other means as approved by the MFSA, specified in the prospectus.   2. The annual and half-yearly reports shall be provided to unit-holders upon request free of charge. |
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| 1. **Information to be included in the annual report** |
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| * 1. The annual report shall include the following as well as any additional significant information which will enable investors to make an informed judgement on the progress of the scheme and its results. |
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| * 1. The annual report shall also include a balance sheet or statement of assets and liabilities, including details of accounting and valuation policies, and a definition and explanation of equalisation. The statement of assets and liabilities shall include: |
| 1. transferable securities; 2. debt instruments; 3. bank balances; 4. other assets; 5. total assets; 6. liabilities; and 7. net asset value. |
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| * 1. The annual report shall include the number of units in circulation, the net asset value per unit at the beginning and the end of the period. |
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| * 1. The annual report shall include portfolio details, distinguishing between the different types of investments and categorising each investment in accordance with the most appropriate criteria in the light of the scheme’s investment policy[[1]](#footnote-1) as a percentage of net assets.   This section shall also include references to the proportion of the total net assets of the scheme which each of the investments represents. The details of the composition of the portfolio shall at least distinguish between: |
| 1. securities admitted to official stock exchange listing; 2. securities dealt in on another regulated market; 3. recently issued securities; 4. securities not included in the above; 5. debt instruments not included in the above; and 6. financial derivative instruments; 7. other investments as applicable.   In the case of changes in the composition of the portfolio during the period under review, a statement of such change shall be included to that effect. |
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| For the purposes of this Rule, reference in paragraph (iii) to recently issued securities shall include securities the terms of issue of which include an undertaking that application will be made for admission to official stock exchange listing or to another regulated market.  Where applicable the scheme shall also include the credit rating of the issuers/ issues referred to above. |
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| * 1. Reference shall also be made to the notional exposure relating to each position in financial derivative instruments calculated on the basis of the Commitment Approach as prescribed in Appendix VI to these Rules. |
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| * 1. A statement of the developments concerning the scheme’s assets during the period shall be included providing the following information: |
| 1. income from investments; 2. other income; 3. management charges; 4. depositary’s charges; 5. other charges and taxes; 6. net income; 7. distributions of income reinvested; 8. changes on capital account; 9. appreciation or depreciation of investments; 10. cash movements in relation to the creation and cancellation of units; 11. transaction costs, which are costs incurred by the scheme in connection with transactions on its portfolio; and 12. any other changes effecting the assets and liabilities of the scheme. |
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| * 1. Provision shall be made for a comparative table covering the last three financial years and including, the total net asset value and the net asset value per unit for each financial year, at the end of the financial year |
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| * 1. During its first, second and third financial years, the scheme shall show the information required pursuant to Rule 2.07 above for all financial years since its inception. |
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| * 1. The annual report shall include details, by category of transaction, of the resulting amount of commitments.   For the purposes of this Rule, the term “*commitments*” shall be understood as referring to those commitments resulting from the use of techniques and instruments for the purposes of efficient portfolio management, including protection against exchange, interest rate and market risks. |
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| * 1. The annual report shall also include the following:   2. a report by the manager on the scheme’s activities during the period;   3. a report by the depositary on whether the scheme has been managed:  1. in accordance with the limitations imposed on the investment and borrowing powers of the scheme by the instruments of incorporation and by the MFSA; and 2. in accordance with the scheme’s instruments of incorporation and its licence conditions:   Provided that where the manager or the scheme has not complied with paragraphs (i) or (ii) above, the depositary’s report shall state why this is the case and shall outline the steps which the depositary took to rectify the situation. |
| * 1. The annual report shall include names and addresses of all the scheme’s functionaries. |
| * 1. Provision shall be made for the details of significant changes to the full prospectus during the period. |
| * 1. The annual report shall include a statement regarding breaches of licence conditions and/or regulatory sanctions. Where there have been no breaches or regulatory sanctions, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of each breach committed and/or regulatory sanction imposed. |
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| * 1. The accounting information provided in the annual report must be audited by a qualified auditor approved by the MFSA. The auditor’s report, including any qualifications thereto, shall be reproduced in full in the annual report. |
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| * 1. The annual report of the scheme shall also contain details of the following: |
| 1. the exposure obtained through efficient portfolio management techniques; |
| 1. the identity of the counterparties to these efficient portfolio management techniques; |
| 1. the type and amount of collateral received by the scheme to reduce counterparty exposure; |
| 1. the revenue arising from efficient portfolio management techniques for the entire reporting period together with the direct and indirect operational costs and fees incurred; |
| 1. the underlying exposure obtained through financial derivative instruments; |
| 1. the identity of the counterparties to these financial derivative transactions; and |
| 1. the type and amount of collateral received by the scheme to reduce counterparty exposure. |
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| * 1. The annual report of a scheme using total return swaps or other financial derivative instruments with the same characteristics should include the following: |
| 1. the underlying exposure obtained through financial derivative instruments; |
| 1. the identity of the counterpart(ies) to these financial derivative instruments; |
| 1. the type and amount of collateral received by the scheme to reduce counterparty exposure. |
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| * 1. The annual report of a scheme which is an index-tracking UCITS shall provide an explanation of any divergence between the anticipated and realised tracking error for the relevant period. The annual report shall also disclose and explain the annual tracking difference between the performance of the UCITS and the performance of the index tracked.   2. The annual report of a scheme entering into OTC financial derivative transactions and using efficient portfolio management techniques, should include details of the following:  1. where collateral received from an issuer has exceeded 20% of the NAV of the scheme, the identity of that issuer; and 2. whether the scheme has been fully collateralised in securities issued or guaranteed by a Member State. |
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| 1. **Information to be included in the half-yearly report** |
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| * 1. The half-yearly report shall include a balance sheet or statement of assets and liabilities, including details of accounting and valuation policies, and a definition and explanation of equalisation. The statement of assets and liabilities should include: |
| 1. securities |
| 1. debt instruments |
| 1. bank balances |
| 1. other assets |
| 1. total assets |
| 1. liabilities |
| 1. net asset value |
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| * 1. The half-year report shall include reference to the number of units in circulation*,* to the net asset *v*alue per unit and mid-market price per unit, at the beginning and the end of the period. |
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| * 1. Reference shall be made to the portfolio details, distinguishing between the different types of investments and categorising each investment in accordance with the most appropriate criteria in the light of the investment policy of the scheme[[2]](#footnote-2) as a percentage of net assets.   For each of the investments the proportion it represents of the total net assets of the Scheme should be stated.  Details of the composition of the portfolio should distinguish at least between: |
| 1. securities admitted to official stock exchange listing; |
| 1. securities dealt in on another regulated market; |
| 1. recently issued securities; |
| 1. securities not included in the above; |
| 1. debt instruments not included in the above; |
| 1. financial derivative instruments; |
| 1. other investments as applicable. |
|  |
| References in paragraph (iii) above to recently issued securities includes securities the terms of issue of which include an undertaking that application will be made for admission to official stock exchange listing or to another regulated market. |
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| Where applicable the scheme shall also include the credit rating of the issuers/ issues referred to above. |
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| * 1. Reference shall be made to the notional exposure relating to each position in financial derivative instruments calculated on the basis of the Commitment Approach as indicated in Appendix VI to Part B of these Rules. |
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| * 1. The half-yearly report shall include a statement of changes in the composition of the portfolio during the period. |
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| * 1. Where the scheme holds more than 10 per cent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions should be provided. Schemes holding less than 10 per cent of their assets in deposits or other accounts with credit institutions should submit the relevant details to the MFSA with the Report. |
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| * 1. The half-yearly report shall include a comparative table covering the last three financial years and including, for each financial year, at the end of the financial year: |
| 1. the total net asset value; |
| 1. the net asset value per unit. |
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| During its first, second and third financial years, the scheme should show the above information for all financial years since its inception. |
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| * 1. The half-yearly report shall include a report by the manager on the activities during the period. |
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| * 1. Reference shall be made to the names and address of all the scheme’s functionaries. |
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| * 1. Where the scheme has paid or proposes to pay an interim dividend, the half-yearly report should give the results after tax for the half-year concerned and the amount of the dividend paid or proposed. |

**Annex I**

**Specimen directors’ confirmation**

(Addressed by the directors responsible for the preparation of the annual/half-yearly report of the scheme to the MFSA)

We the undersigned, are responsible for the preparation of the annual/interim report of (name of scheme) for the period/year ended \_\_\_\_\_\_\_\_\_ and confirm that to the best of our knowledge:

* it is complete and accurate in all material respects and conforms with the MFSA’s requirements in terms of the scheme’s licence conditions; and
* any disclosures of the scheme’s past performance are accurate and in conformity with the MFSA’s applicable requirements.

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Director Director

**Annex II**

**Specimen auditors’ opinion**

(Addressed by the auditor to the MFSA)

We the undersigned have audited the financial statements of (name of scheme) for the period/year ended \_\_\_\_\_\_\_\_\_\_ in accordance with International Standards on Auditing. In our opinion the annual report is complete in all material respects in accordance with the MFSA’s requirements, and the scheme’s licence conditions.

Moreover, based on our review procedures, nothing has come to our attention that causes us to believe that the information contained in the annual report is inconsistent with the financial statements, the books of account and the records of (name of scheme).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Auditor

Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature and Date)

**Annex III**

**Checks to be undertaken to ensure the accuracy and completeness of the reports prior to publication**

1. **Incomplete/ inaccurate information regarding the scheme’s functionaries and directors**

Check: Up-to-date complete details regarding the scheme’s functionaries and directors/ general partner(s)/ trustee should be included in all reports.

1. **Issues relating to the manager’s report on the activities during the period**
   1. Reference to performance rates without a clear indication of the basis of calculation and/ or rates which are not in line with the MFSA’s requirements ordinarily applicable for rates quoted in advertisements.

Check: Any reference to past performance rates should be supported by a clear description of the basis of calculation. Moreover, the requirements ordinarily applicable for rates quoted in advertisements (e.g. offer to bid/ annualised rates etc.), should be complied with.

* 1. Statements and/ or expressions of opinion which do not take into account/ reflect developments occurring between the end of the reporting period and the publication date of the report.

Check: Care should be exercised to ensure that any statements or expressions of opinion are/ will remain relevant upon publication. The manager should seek to provide as much relevant information as possible to aid investors understand both the performance of the scheme during the relevant period, as well as the possible effect on performance of subsequent events occurring between the end of the reporting period and publication date.

* 1. Over optimistic statements and/ or expressions of opinion regarding the scheme’s future performance

Check: Care should be exercised to ensure that any statements or expressions of opinion regarding future predicted performance are as balanced and objective as possible.

1. **Incomplete/ inaccurate custodian reports included in annual reports**

Check: The custodian’s report should include the matters stipulated in Rule 2.10 of this Appendix.

1. **Inconsistent reference to performance rates in different sections of the report**

Check: All past performance references throughout the reports, e.g. quoted in the directors’ and manager’s report, should be cross-checked for accuracy and consistency.

1. **Inconsistencies between statistics disclosed in the reports and those previously reported to MFSA in the monthly returns**

Check: Salient statistics such as:

* total net assets value;
* net assets value per unit;
* number of shares in circulation;

should ordinarily conform with those reported to the MFSA in the scheme’s monthly statistical returns. Inconsistencies may either reflect errors in the monthly statistical returns or in the reports. Alternatively, there may be valid reasons for such discrepancies. The scheme, the manager or the depositary should provide the MFSA with a clear explanation of the reasons for any discrepancies – preferably prior to publication of the reports. In such instances, a minimum of two weeks clear notice should be provided.

1. **Risk warnings**

Check: Although these Rules do not include a specific requirement for inclusion of risk warnings, the MFSA considers that minimum disclosure of the following ‘standard’ risk warnings should be included:

* past performance is no guarantee of future performance; and
* the value of the scheme, including the currencies in which they are denominated, may fall as well as rise.



1. (for example, in accordance with economic, geographical or currency criteria) [↑](#footnote-ref-1)
2. (for example, in accordance with economic, geographical or currency criteria) [↑](#footnote-ref-2)