MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular regarding the EU Markets in Financial Instruments Directive ('MiFID')

13th November 2006

The MFSA invites comments by not later than the 15th December, 2006 on the draft revised sections 1 to 6 of Part C.I of the Investment Services Guidelines attached to this document, which transpose various articles of the MiFID framework directive and the Commission Implementing Directive as detailed further in this Circular. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA. The MFSA plans to adopt the revised Investment Services Guidelines by the 31st January, 2007, and Investment Services Licence Holders will be required to comply with the new requirements by the 1st November, 2007. In the meantime, the current Investment Services Guidelines will continue to apply.

1.0 Background

MiFID has been on the MFSA's agenda since 2004. During this period, whilst preparing the required amendments to the legislative and regulatory framework to transpose MiFID, MFSA has endeavoured to provide the industry with relevant information regarding this Directive. In this regard, in **April 2005,** presentations on MiFID were delivered to the industry as part of a training programme on Investment Services Regulation organised by the MFSA in conjunction with the IFS (Malta). These presentations were complemented by a one day industry conference on the implementation of MiFID which was organised by the MFSA in **June 2005.** Furthermore**,** during this year, two Circulars on this Directive were issued to the industry.

The **1st Circular,** issued on the **29th May 2006**, had the purpose of providing an overview of the MiFID and relevant developments relative to this Directive. The **2nd Circular**, issued on the **23rd October 2006**, had the purpose of updating the industry on developments relating to MiFID. The purpose of this **3rd Circular** on MiFID is that of serving as the **1st Consultation** document outlining the proposed amendments to a number of Sections of Part C I of the Investment Services Guidelines. As part of the changes envisaged, it is to be noted that the term 'Guidelines' is to be replaced by 'Rules' to better reflect the nature of the requirements contained therein.

Apart from amendments to the Investment Services Guidelines which will be required to transpose MiFID**,** changes will also be made to the Investment Services Act, 1994 ('ISA') – in particular to its Schedules, as well as to the ISA Regulations issued in terms of Article 12 of the same Act. Similarly, amendments will also be required to the Financial Markets Act, Cap. 345 and the Regulations issued thereunder. **The changes to Part C I of the Investment Services Guidelines which have been drafted and which are the subject of this Consultation document, were prepared in the light of the draft changes to the ISA and the Regulations**

issued thereunder, which changes, will be the subject of a separate document to be issued by the MFSA to the industry in due course.

2.0 Overview of Proposed Changes to Part C.I of the Investment Services Guidelines

[2.1] Structure

The following is an overview of the main proposed changes to the structure of Part C I of the Investment Services Guidelines (Rules). In this regard, please note that:

(a) the current **section 1 – [General Requirements]** has been enhanced to transpose parts of articles 8, 9, 13, and 53 of the MiFID framework directive and articles 5, 6, 7,8 , and 9 of the Commission Implementing Directive;

(b) the current section 2 – [Sole Traders] will be deleted. Given that in practice the instances when investment services providers have opted to operate as sole traders have been extremely rare, as well as in light of SLC 1.05 of the proposed revised section 1, it was felt that this section is no longer required;

(c) the current section 3 – [Conduct of Business Rules], section 4 – [Complaints Procedure], section 6 - [Clients' Money], section 7 - [Customers' Assets], section 8 - [Records and Documents], and section 9 - [Staff Dealing] have been moved to the new **section 2 - [Conduct of Business Rules]** which transposes MiFID framework directive articles 13, 18, 19, 20, 21, 22, 24, and 25 and Commission Implementing Directive articles 3, 10, 12, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 51;

(d) the new **sections 3 to 6** will deal respectively with **'Disclosure Requirements for Information to Clients, including Marketing Communications', 'Outsourcing', 'Supplementary Conditions for Operators of Multilateral Trading Facilities'** and **'Supplementary Conditions for Investment Services Licence Holders which qualify as Systematic Internalisers'**. These sections transpose MiFID framework directive articles 13, 14, 19, 26, 27, 29, 30, 35, and Commission Implement Directive articles 14, 15, 27, 29, 31, 32, 33 and 34;

(e) the SLCs in the current section 10 - [Financial Notification, Record Keeping and Reporting] will be dealt with in a new **section 7 – [Financial Notification, Record Keeping]** and a new **section 8 – [Transaction Reporting]**. These will be the subject of a separate consultation document which will include requirements relating to professional indemnity insurance which have been removed from section 1 and which will be referred to in the new section 7;

(f) at this stage, it is not envisaged that the remaining sections of Part C.I of the Guidelines (ie. Section 11 onwards), will require amendment, other than the deletion of the current section 13 relating to the promotion of Linked Long-Term Contracts of Insurance in line with the review of the regulatory regime relating to such instruments. Nevertheless, any amendments which may be considered appropriate will be the subject of a separate note to the industry.

The Glossary of Terms to the Investment Services Guidelines (Rules), will also be up-dated to include new terms which are being referred to in the revised SLCs.

[2.2] Scope

It is to be noted that MiFID is a 'maximum harmonization' Directive and Member States are only permitted to adopt requirements additional to those prescribed by the Directive in exceptional circumstances. Whilst the MiFID sets the standards which must be implemented by investment services providers, the Implementing Measures issued in terms of the framework Directive elaborate on the manner in which these must be implemented. Nonetheless, and in line with the approach being taken by competent authorities in other Member States, in order to assist Investment Services Licence Holders in abiding by the Licence Conditions in the new Investment Services Rules, the MFSA intends issuing appropriate Guidance in due course. The purpose of such Guidance will be to provide the local industry with:

(a) direction as to MFSA's interpretation of certain provisions set in the local Legislation/Rules transposing the MiFID; and

(b) the manner in which it expects Licence Holders to implement certain aspects of these Rules.

In drawing up such Guidance, the MFSA will be taking account of relevant Guidance which may be issued by the Committee of European Securities Regulators and/ or the European Commission from time to time.

3.0 Principal Changes to the Standard Licence Conditions

Section 1 – General Requirements

The rules in this section have *inter alia* been enhanced with requirements covering the following:

Risk Management

Risk Management is an area which is not currently dealt with in the Investment Services Guidelines. In this regard, new rules are being introduced in order to transpose MiFID which require Investment Services Licence Holders to manage their risks by, *inter alia:*

(a) establishing, implementing and maintaining adequate risk management policies and procedures; and

(b) by adopting effective arrangements, process and mechanisms to manage the risks relating to the Investment Services Licence Holders' activities, process and systems.

The same rules also require Investment Services Licence Holders to establish and maintain a risk management function that operates independently and implements the policy and procedures referred to above.

Responsibility of Senior Management

MiFID vests senior management of investment services providers with a number of responsibilities. In particular, the new Rules transposing the MiFID shall require senior management to assess and periodically to review the effectiveness of the policies, arrangements and procedures put in place by Investment Services Licence Holders in order to comply with the obligations of its Licence and to take appropriate measures to address any deficiencies.

Internal Audit

Where appropriate, in view of the nature, scale and complexity of their business, Investment Services Licence Holders will be required to set-up an internal audit function which is independent from its business functions and activities.

Section 2 - Conduct of Business Rules

A number of material changes have been made to the current conduct of business rules in order to transpose MiFID. The proposed draft new conduct of business rules, cover broader areas of regulation. Indeed rules applicable to control of assets and clients money, which were previously covered as separate sections of Part C I of the Investment Services Guidelines, are now included under the new Section 2. The following are noteworthy:

Client Classification

MiFID establishes a common EU framework for classifying clients. The current SLCs which deal with client categorization will therefore need to change. In terms of the proposed new Rules, before providing any investment service, Investment Services Licence Holders must first classify their clients or potential clients as either retail or professional or eligible counterparties. These terms, as defined in the MiFID, have been replicated in the proposed revised Glossary of terms.

Suitability and Appropriateness

The MiFID provides for '*suitability and appropriateness' tests.*

Suitability Test – Before providing investment advice or portfolio management, Licence Holders are required to assess the suitability of the financial instrument for a particular client. This is done by assessing the client or potential client's knowledge and experience in the investment field relevant to the specific product or service, his financial situation and his investment objectives. This requirement already exists in terms of the current standard licence conditions.

Appropriateness Test – The concept of the appropriateness test is new. In terms of the proposed new Rules, when providing investment services other than the provision of investment advice or portfolio management services, Licence Holders will now be required to assess whether the transaction is appropriate for the client by evaluating his knowledge and experience. Where the product or service offered is not considered by the Licence Holder to be appropriate for the client or potential client, the Licence Holder is required in terms of the new Rules to warn the client or potential client. In the case of execution only transactions, Licence Holders can be exempted from affecting an appropriateness test for their clients if specific conditions are met.
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Best Execution

On the coming into force of the new rules, Licence Holders will be obliged to have an execution policy which must be shown and agreed to by the client before the Licence Holder effects a transaction on his/her behalf. The execution policy must, *inter alia*, disclose the execution venue of the transaction. The Licence Holder must at least annually review this policy. Such review should however also be carried out whenever a material change occurs that affects the Licence Holder's ability to continue to obtain the best possible result of the execution of its clients orders on a consistent basis using the venues included in its execution policy.

Licence Holders which offer portfolio management services and/or receive and transmit orders on behalf of clients are still bound to act in accordance with the best interests of their clients when placing orders with other entities for execution. Indeed, such Licence Holders are still obliged to establish, implement and keep under review an execution policy. In the case of a Licence Holder which ordinarily transmits orders for execution to a member of its group, it is MFSA's understanding that it may continue to do so provided it is able to demonstrate that it obtains the best possible result for its clients by transmitting orders to such group entity.

Certain details with respect to the practical implementation of this requirement are currently being discussed at EU Level and it is expected that the European Commission and CESR will, in due course, issue Guidance in this regard. The MFSA is also raising certain queries regarding the best execution requirement at appropriate EU fora and will in due course be issuing a separate Circular to provide more details concerning the best execution requirement.

Record Keeping

In terms of the new record keeping requirements to be introduced as part of the transposition of MiFID, Licence Holders will be required to keep records of all services and transactions they undertake and which shall be sufficient to enable the MFSA to monitor compliance with the Rules. In particular MFSA would need to ascertain that the Licence Holder has complied with all the obligations with respect to clients or potential clients.

A list of the minimum records which Licence Holders must retain in terms of the new MiFID requirements is being discussed at CESR Level. In this regard, your attention is once again drawn to the Consultation Document issued by CESR which was attached to our circular of the 23rd October 2006. MFSA takes this opportunity to encourage Investment Services Licence Holders to participate in the CESR consultation process by considering the questions set out in this consultation document and sending their comments to CESR. Respondents are also welcome to make any relevant points which they do not think are covered directly by the questions included in the set document.

MFSA will advise Licence Holders of the final list of documents as agreed by CESR through a Guidance Note issued for this purpose.

Section 3 – Disclosure Requirements for Information to Clients, including Marketing Communications

This new section replaces part of the conduct of business rules and Section 5 – Advertisements of the current Investment Services Guidelines. The provisions in this Section cover an area which the MFSA intends to further amplify by way of Guidance Notes.

Section 4 - Outsourcing

This new Section of Part C I of the Investment Services Guidelines/Rules provides for the outsourcing requirements which will be applicable to Investment Services Licence Holders. Further to the coming into force of these new Rules, the current section on outsourcing of Part D of the Guidelines will not remain applicable to Investment Services Licence Holders

Section 5 – Supplementary conditions for Operators of Multilateral Trading Facilities ('MTFs')

A new section has been included in Part C I of the Investment Services Guidelines to provide for conditions which apply specifically to operators of MTFs. An MTF is defined in Glossary of Terms [as transposed from MiFID] as being a multilateral system which brings together multiple third party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.

MTFs may be operated either by a duly licensed Category 3 Investment Services Licence Holder or by an operator of a regulated market (the term 'regulated market' is also defined in the Glossary of Terms). In the latter case, the regulated market would be exempt from the requirement of an investment services licence.

Section 5 sets rules which regulate the activity of MTFs. It requires an MTF to have: **(a)** rules and procedures for fair and orderly trading on its system; **(b)** transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems; and **(c)** membership and access rules. This Section also provides for pre and post trade transparency requirements applicable to MTFs. These transparency requirements are further amplified in the Commission Regulation which MTFs are also obliged to abide by.

Section 6 – Supplementary conditions for Investment Services Licence Holders which qualify as Systematic Internalisers

The MiFID creates a specific regulatory regime applicable to what MiFID refers to as Systematic Internalisers. Systematic Internalisers are defined in the Glossary [as transposed from MiFID] as: *'Investment Services Licence Holders which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market or an MTF.'* What constitutes a systematic internaliser is further amplified in article 21 of the Commission Regulation.

Entities which want to operate as Systematic Internalisers will require a Category 3 Investment Services Licence. Such persons will *inter alia* need to comply with the transparency and order execution provisions of Section 6 of Part C I of the Investment Services Guidelines (Rules) and the relevant provisions of the Commission Regulation.

Contacts

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Part C I – Standard Licence Conditions

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1. General Requirements

General Sundry Requirements

1.01 The Licence Holder shall commence its Investment Services business within twelve months of the date of issue of the Investment Services Licence.

If, for any reason the Licence Holder is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reasons/s for such a delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Licence in accordance with the relevant provisions of the Act.

1.02 The Licence Holder shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Licence Holder shall supply the MFSA with such information and returns as the MFSA requires.

1.03 Where a Standard Licence Condition demands that a Licence Holder notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

1.04 The Licence Holder's Investment Services Business shall be effectively directed or managed by at least two individuals in satisfaction of the "dual control" principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the investment firm.

Moreover, the Licence Holder shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end, the investment firm shall employ appropriate and proportionate systems, resources and procedures.

1.05 By way of derogation from the requirements of SLC 1.04, where a Licence Holder is a natural person or a legal person managed by a single natural person, it shall provide, to the satisfaction of MFSA, alternative arrangements which ensure that it is soundly and prudently managed.

1.06 The Licence Holder shall notify the MFSA in writing of:

a. a change in the Licence Holder's name or business name (if different) at least one month in advance of the change being made;

b. a change of address: at least one month in advance;

c. the departure of a director or manager: within 14 days of the departure. The Licence Holder shall also request the director or manager to confirm to MFSA that their 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 Licence Holder's notification of departure;

d. the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Licence Holder's share capital on becoming aware of the situation;

e. any acquisitions or disposals of shares which fall within the disclosure provisions of Article 10 of the Act - immediately upon becoming aware of the proposed acquisition or disposal; (it should be noted that MFSA has the right to object to such an acquisition);

f. the provision of a related company loan, within 15 days of making the loan;

A Licence Holder which falls under any one of the following categories need not comply with the requirements of this Licence condition:

i. credit institutions licensed in terms of the Banking Act, 1994;
ii. financial institutions licensed in terms of the Financial Institutions Act, 1994

g. any proposed material change to its business (whether that business constitutes licensable activity under the Act or not) - at least one month before the change is to take effect (where a new or amended Investment Services Licence is required, the new business shall not begin until the new Investment Services Licence has been granted or the amendment has been approved);

h. any evidence of fraud or dishonesty by a member of the Licence Holder's staff immediately upon becoming aware of the matter;

i. a decision to make a material claim on any insurance policy held in relation to the Licence Holder's Investment Services business. Notification should be provided as soon as the decision is taken;

j. any actual or intended legal proceedings of a material nature by or against

the Licence Holder immediately the decision has been taken or on becoming aware of the matter;

k. any material changes in the information supplied to the MFSA - immediately upon becoming aware of the matter; This shall include the obligation to notify the MFSA on a continuous basis of any changes or circumstances which give rise to the existence of close links between the Licence Holder and any other person as set out in Part D Section 4 of these Rules;

l. the fact, where applicable, that it has not provided any investment service or carried out any investment activity for the preceding six months, setting out the reasons for such inactivity and providing a business plan for the future;

m. any relevant details required in terms of Part D Section 3 of these Rules pertaining to any introducers which may be appointed by the Licence Holder;

n. any other material information concerning the Licence Holder, its business or its staff in Malta or abroad - immediately upon becoming aware of the matter.

1.07 The Licence Holder shall obtain the written consent of the MFSA before:

a. making any change to its share capital or the rights of its shareholders;

b. establishing a branch in Malta or abroad;

c. acquiring 10 per cent or more of the voting share capital of another company;

d. taking any steps to cease its Investment Services business;

e. agreeing to sell or merge the whole or any part of its undertaking;

f. making application to a Regulator abroad to undertake any form of licensable activity outside Malta;

g. the appointment of a director or senior manager responsible for the investment services business of the Licence Holder or of the Licence Holder's compliance officer in terms of SLC 1.22 (b) and/ or Money Laundering Reporting Officer, at least twenty one business days in advance. The request for consent of the appointment shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule J of these Guidelines – duly completed by the person proposed,

which shall in the case of a proposed compliance officer and/ or MLRO, include sufficient details of the individual's background, training and/ or experience relevant to the post, to enable an adequate assessment by the MFSA. Where the person proposed had within the previous three years submitted a PQ to the MFSA in connection with some other role with the same Licence Holder, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto. For the purposes of the above and (h) below, 'manager' should be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.

h. the change in the responsibilities of a director or manager at least twenty one business days in advance. The request for consent of the change in responsibilities of a director or manager shall be accompanied by a PQ unless the individual concerned had within the previous three years submitted a PQ to the MFSA in connection with another role occupied by such individual with the same Licence Holder, in which case it shall be accompanied by a confirmation by the director or manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto.

A change in the responsibilities of a director or manager should only be notified to the MFSA when such a change is material, which shall include a change in the status or seniority of the person concerned (upwards or downwards).

i. any persons, whether directors, managers or other employees are engaged in any of the following activities:

- Portfolio or fund management
- Investment advice

The request for authorisation shall include all relevant details in order to enable the MFSA to assess whether the persons concerned are sufficiently competent to undertake such activities. For this purpose, details of relevant experience, training and/or qualifications will be required. Applicants should also complete Tables 3.3, 3.4 and 3.5 in the Application for an Investment Services Licence.

1.08 The Licence Holder shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Investment Services Licence and as

required by SLCs 2.83 to 2.85.

1.09 The Licence Holder shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.

1.10 Where, in the event of a dispute between a Licence Holder and a customer, it can be shown that unsuccessful efforts have been made to resolve the dispute, the MFSA may encourage the parties to submit the matter to arbitration. In such circumstances, the parties must in advance and in writing agree to:

(a) make all the necessary arrangements at their own cost;

(b) appoint as Arbitrator(s), person(s) mutually acceptable; and

(c) be bound by the decision of the Arbitrator(s) as if such decision was a judgement of the Court.

Alternatively, the matter may have to be referred to the Courts.

1.11 The Licence Holder shall pay promptly all amounts due to the MFSA.

1.12 The Licence Fee shall be payable by the Licence Holder on the day the Licence is first issued, and thereafter annually within one week from the anniversary of that date.

1.13 The Licence Holder shall notify the MFSA of any breach of the conditions of the Licence as soon as the Licence Holder becomes aware of the breach.

1.14 If so required by the MFSA, the Licence Holder shall do all in its power to delay the cessation of its Investment Services business, or the winding-up of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests of customers

1.15 A request for a variation of a Licence by the Licence Holder shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

1.16 A Licence Holder which is a sole trader or a small business shall make arrangements to ensure that customers' interests are safeguarded in the event of death, incapacity, sickness, holidays or other absence of the licensee.

General Organizational Requirements

1.17 The Licence Holder shall:

(a) establish, implement and maintain decision-making procedures and an organizational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(b) ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder;

(d) employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;

(e) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Licence Holder;

(f) maintain adequate and orderly records of their business and internal organization;

(g) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

For these purposes, the Licence Holder shall take into account the nature, scale and complexity of its business, and the nature and range of investment services and activities undertaken in the course of that business.

1.18 The Licence Holder shall establish, implement and maintain:

(a) systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

(b) an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its investment services and activities.

(c) accounting policies and procedures that enable it to deliver in a timely manner to the MFSA upon request, financial reports which reflect a true and

fair view of its financial position and which comply with all applicable accounting standards and rules.

1.19 The Licence Holder shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SLCs 1.17 and 1.18 above and take appropriate measures to address any deficiencies.

Compliance

1.20 The Licence Holder shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the Act, the Regulations issued thereunder and these Rules, as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, 1994, the Prevention of Financial Markets Abuse Act, 2005, and Regulations issued thereunder, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

The Licence Holder shall, for this purpose, take into account the nature, scale and complexity of its business and the nature and range of investment services and activities undertaken in the course of that business.

1.21 The Licence Holder shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the requirements of SLC 1.20, and the actions taken to address any deficiencies in the Licence Holder's compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's legal and regulatory obligations.

1.22 In order to enable the compliance function to discharge its responsibilities properly, the Licence Holders shall ensure that the following conditions are satisfied:

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by these Rules.

(c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities which they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

However, MFSA may exempt a Licence Holder from the requirements of point (c) or point (d) if the Licence Holder is able to demonstrate to the satisfaction of the MFSA, that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirement under that point is not proportionate and that its compliance function continues to be effective.

Moreover, with respect to (b) above, the appointment of an individual as compliance officer, is subject to MFSA's prior approval. Such person may also act as the Licence Holder's Money Laundering Reporting Officer. Reference should be made to SLC 1.07 (g) in this regard.

Risk Management

1.23 The Licence Holder shall take the following actions with a view to manage its risks:

(a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the Licence Holder's activities, processes and systems, and where appropriate, set the level of risk tolerated by the Licence Holder;

(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the Licence Holder's activities, processes and systems, in light of that level of risk tolerance;

(c) monitor the following:

(i) the adequacy and effectiveness of the Licence Holder's risk management policies and procedures;

(ii) the level of compliance by the Licence Holder and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b) above;

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those arrangements and procedures, including failures by the relevant persons to comply with such arrangements or follow such procedures.

1.24 The Licence Holder is required to establish and maintain a risk management function that operates independently and carries out the following tasks:

(a) implementation of the policy and procedures referred to in SLC1.23;

(b) provision of reports and advice to senior management in accordance with SLC 1.26.

However, MFSA may grant a derogation from the requirements of this SLC if the Licence Holder requesting such a derogation, satisfies the MFSA that the establishment and maintenance of an independent risk management function is not appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business.

Where a Licence Holder is granted such a derogation, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SLC 1.23, satisfy the requirements thereof and are consistently effective.

Responsibility of Senior Management

1.25 When allocating functions internally, the Licence Holder shall ensure that senior management, and where appropriate, the supervisory function, are responsible for ensuring that the Licence Holder complies with its obligations under these Rules.

In particular, senior management and where appropriate, the supervisory function shall be required to assess and periodically to review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under these Rules and to take appropriate measures to address any deficiencies.

1.26 The Licence Holder shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on the matters covered by SLCs1.20 to 1.24 and SLC 1.28 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

1.27 The Licence Holder shall ensure that the supervisory function, if any, receives on a regular basis written reports on the same matters.

For the purposes of this section, "supervisory function" means the function within a Licence Holder responsible for the supervision of its senior management.

Internal Audit

1.28 Where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of investments services and activities undertaken in the course of its business, the Licence Holder shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Licence Holder and which has the following responsibilities:

(a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Licence Holder's systems, internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with point (a);

(c) to verify compliance with those recommendations;

(d) to report in relation to internal audit matters in accordance with SLC1.26

2. Conduct of Business Obligations

General

2.01 When providing investment services to clients, a Licence Holder shall act honestly, fairly and professionally in accordance with the best interests of its clients and shall comply with the relevant provisions of the Act, the Regulations issued thereunder, these Rules as well as with other relevant legal and regulatory requirements, in particular those set out in the Prevention of Money Laundering Act, 1994, and the Prevention of Financial Markets Abuse Act, 2005 and Regulations issued thereunder. The Licence Holder is also expected to take due account of any relevant Guidance Notes which may be issued by the MFSA or other relevant body to assist the Licence Holder in complying with its legal and regulatory obligations.

2.02 Licence Holders shall not be regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

(a) a fee, commission or non-monetary benefit paid or provided to by the client or a person on behalf of the client;

(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:

(i) the existence, nature and amount of the fee, commission or benefit, or where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. The essential terms of the arrangements relating to the fee, commission or non-monetary benefit may be disclosed in summary form, provided that the Licence Holder undertakes to disclose further details at the request of the client and provided that it honours that undertaking;

(ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interests of the client;

(c) proper fees which enable or are necessary for the provision of investment services such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

Client Classification

2.03 Before providing an investment service, the Licence Holder shall classify the client or potential client to whom the service is to be offered as a professional client, retail client or an eligible counterparty in terms of the Glossary to these Rules and the following Rules.

Moreover, Licence Holders shall notify new clients and existing clients which it has newly categorised, of their categorisation as a retail client, a professional client or eligible counterparty.

2.04 The Licence Holder shall implement appropriate written internal policies and procedures to categorize clients. Professional clients are responsible for keeping the Licence Holder informed about any change, which could affect their current categorization. Should the Licence Holder become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the Licence Holder must take appropriate action

2.05 Licence Holders shall inform clients in a durable medium about any right that a client has to request a different categorisation and about any limitations to the level of client protection it would entail.

2.06 Licence Holders may, either on their own initiative or at the request of the client concerned:

(a) treat as a professional or retail client, a client that might otherwise be classified as an eligible counterparty;

(b) treat as a retail client, a client that is considered as a professional client as defined in the Glossary to these Rules.

2.07 Where a client would ordinarily fall within the definition of a professional client, it may still elect to be treated as a retail client and the Licence Holder may agree to provide a higher level of protection. In this case, the Licence Holder must:

(a) warn the client, prior to any provision of services, that, on the basis of the information available to it, the client is deemed to be a professional client, and will be treated as such unless Licence Holder and the client agree

otherwise;

(b) inform the client that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

Although it is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved, such higher level of protection will only be provided on the basis of a written agreement with the Licence Holder to the effect that the client shall not be treated as a professional client for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

2.08 The Licence Holder shall treat clients which do not fall under the definition of a "professional client" in terms of the Glossary to these Rules, including public sector bodies and private individual investors, as retail clients, unless they have clearly elected not to be so treated. Such an option would mean that the client has chosen to waive some of the protections afforded by the conduct of business rules and the Licence Holder shall only uphold such a request provided the relevant criteria and procedure mentioned below in SLC 2.09 to 2.12, are fulfilled.

2.09 Such clients referred to in SLC 2.08 which have opted not to be treated as retail clients, should not be presumed to possess market knowledge and experience comparable to that of the categories mentioned in the definition of "professional clients". Any waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the Licence Holder, gives reasonable assurance, in the light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding of the risks involved.

The fit and proper test applied to managers and directors of licensed entities under the Investment Services Act 1994, the Banking Act 1994 and the Insurance Intermediaries Act 2006 could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorized to carry out transactions on behalf of the entity.

2.10 In the course of the above assessment required in terms of SLC 2.09, as a minimum, two of the following criteria should be satisfied:

(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter of the previous four quarters;

(b) The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000;

(c) The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

2.11 Clients referred to in SLC 2.08, may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

(a) they must state in writing to the Licence Holder that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction or type of transaction or product;

(b) the Licence Holder must give them a clear written warning of the protections and investor compensation rights they may lose;

(c) they must state in writing in a separate document from the contract, that they are aware of the consequences of losing such protections.

2.12 Before deciding to accept any request for waiver, the Licence Holder is required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in SLC 2.10 above. However, if clients have already been categorized as professionals under parameters and procedures similar to those above, it is not intended that their relationships with the Licence Holder should be affected by any new procedures adopted under these Rules.

Client Profile Requirements

Assessment of Suitability and Appropriateness

2.13 When providing investment advice or portfolio management services, the Licence Holder shall obtain the necessary information, in accordance with SLCs 2.16 to 2.20 and SlC2.22 to 2.24 regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to or, in the case of portfolio management, to

effect for the client or potential client, the investment services and financial instruments that are suitable for him.

2.14 When providing investment services other than investment advice or portfolio management services, the Licence Holder shall ask the client or potential client to provide information in accordance with SLCs 2.21 and SLC 2.22 to 2.24 regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the Licence Holder to assess whether the investment service or product envisaged is appropriate for the client.

In case the Licence Holder considers, on the basis of the information received under the above paragraph, that the product or service is not appropriate to the client or potential client, the Licence Holder shall warn the client or potential client. This warning may be provided in a standardised format.

In cases where the client or potential client elects not to provide the information referred in this SLC or where he provides insufficient information regarding his knowledge and experience, the Licence Holder shall warn the client or potential client that such a decision will not allow the Licence Holder to determine whether the service or product envisaged is appropriate for him. This warning may be provided in standardised format.

2.15 In cases where an investment service is offered as part of a financial product which is already subject to other provisions of Community legislation or common European standards related to credit institutions and consumer credits with respect to risk assessment of clients and/or information requirements, this service shall not be additionally subject to the obligations set out in this Section.

Assessment of Suitability

2.16 Licence Holders shall obtain from clients or potential clients, such information as is necessary for the Licence Holder to understand the essential facts about the client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

(a) it meets the investment objectives of the client in question;

(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

2.17 Where a Licence Holder provides an investment service to a professional client, it shall be entitled to assume that, in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of SLC 2.16.

Where that investment service consists in the provision of investment advice to a professional client, the Licence Holder shall be entitled to assume for the purposes of SLC 2.16 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

2.18 The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

2.19 The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile and the purposes of the investment.

2.20 Where, when providing the investment service of investment advice or portfolio management, a Licence Holder does not obtain the information required under SLC 2.13, the firm shall not recommend investment services or financial instruments to the client or potential client.

Assessment of appropriateness

2.21 When assessing whether an investment service, other than investment advice or portfolio management, is appropriate for a client, Licence Holders shall be required to determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded.

For these purposes, a Licence Holder shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

Provisions common to the assessment of suitability and appropriateness.

2.22 Information regarding the client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their

complexity and the risks involved:

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, profession or relevant former profession of the client or potential client.

2.23 A Licence Holder shall not encourage a client or potential client not to provide information required for the purposes of SLCs 2.13 and 2.14.

2.24 A Licence holder shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

2.25 When providing investment services that only consist of the execution and/or reception and transmission of client orders with or without ancillary services, Licence Holders need not obtain the information referred to in SLC 2.14 above where all of the following conditions are met:

(a) the above services relate to shares admitted to trading on a regulated market or in an equivalent third country market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex financial instruments. A market established in a country which is not an EU or EEA Member State shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established in terms of the MIFID;

(b) the service is provided at the imitative of the client or potential client;

(c) the client or potential client has been clearly informed that in the provision of this service the Licence Holder is not required to assess the suitability of the instrument or service provided or offered and that therefore, he does not benefit from the corresponding protection of the relevant conduct of business rules. This warning may be provided in standardised format.

(d) the Licence Holder complies with its obligations relating to the management of conflicts of interests as set out in SLC 2.94 to 2.100. below.

2.26 A financial instrument which is not specified in SLC 2.25(a) above shall be

considered as non-complex if it satisfies the following criteria:

(a) it does not fall within the definition of transferable securities or paragraphs (3) to (10) of Schedule 2 to the Investment Services Act, 1994;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgement as to whether to enter into a transaction in that instrument.

Client Disclosure Requirements

2.27 The Licence Holder shall provide appropriate information, in a comprehensible form to its clients or potential clients such that they are reasonably able to understand the nature and risks of the investment service to be provided by the Licence Holder and of the specific type of financial instrument that is being offered, and consequently to take investment decisions on an informed basis. This information may be provided in standardized format and should include details about:

(a) the Licence Holder and its services;

(b) financial instruments and proposed investment strategies. This should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies;

(c) execution venues;

(d) costs and associated charges.

2.28 Licence Holders shall provide retail clients or potential retail clients with the following general information, where relevant:

(a) the name and address of the Licence Holder, and the contact details necessary to enable clients to communicate effectively with the firm;

(b) the languages in which the client may communicate with the Licence Holder, and receive documents and other information from the firm;

(c) the methods of communication to be used between the Licence Holder and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the Licence Holder is licensed by the MFSA, together with the address of the MFSA;

(e) the nature, frequency and timing of the reports on the performance of the service to be provided by the Licence Holder to the client in accordance with SLC 2.40.

(f) if the Licence Holder holds client financial instruments or client money, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the Licence Holder by virtue of its activities in a Member State;

(g) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in according with SLC 2.98 to 2.100.

(h) at any time that the client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in SLC 2.115 are satisfied.

2.29 When providing the services of portfolio management, the Licence Holder shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the Licence Holder's performance.

2.30 The following information shall also be provided, where applicable, in addition to that required under SLC 2.27 to retail clients or potential retail clients by Licence Holders proposing to provide portfolio management services:

(a) information on the method and frequency of valuation of the financial instruments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the financial instruments or money in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;

(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

2.31 Licence Holders shall, in good time before a retail client or potential retail client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services whichever is the earlier, to provide that client or potential client with the following information:

(a) the terms of any such agreement;

(b) the information required in SLC 2.28 to 2.30 relating to that agreement or to those investment or ancillary services.

2.32 Licence Holders, shall, in good time before the provision of investment services or ancillary services to retail clients or potential retail clients, provide the information required under SLCs 2.28 to 2.30 and SLCs 3.10 to 3.22.

2.33 Licence Holders shall provide professional clients with the information referred to in SLCs 3.19 to 3.20 in good time before the provision of the service concerned.

2.34 The information referred to in SLCs 2.31 to 2.33 shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions in SLC 2.116 are satisfied.

2.35 By way of exception from SLCs 2.31 and 2.32, Licence Holders may, in the following circumstances provide the information required under SLC 2.31 to a retail client immediately after that client is bound by any agreement for the provision of investment services or ancillary services, and the information required under SLC 2.32 immediately after starting to provide the service:

(a) the Licence Holder was unable to comply with the time-limits specified in SLCs 2.31 and 2.32 because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the Licence Holder from providing the information required in aforementioned SLCs.

(b) in any case where Article 3(3) of Directive 2002/65/EC on the distance

marketing of consumer financial services does not otherwise apply, the Licence Holder complies with the requirement in relation to the retail investor or potential retail investor, as if that client or potential client were a "consumer" and the Licence Holder were a "supplier" within the meaning of that Directive.

2.36 Licence Holders shall notify a client in good time about any material change to the information provided under SLCs 2.28 to 2.30 and 3.10 to 3.22 which is relevant to the service being provided to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

2.37 Licence Holders shall ensure that information contained in a marketing communication, is consistent with any information the Licence Holder provides to clients in the course of carrying on investment or ancillary services.

Retail Client Agreement

2.38 The Licence Holder shall establish a record that includes the document or documents agreed between it and the client and which set out the rights and obligations of the parties, and the other terms on which the Licence Holder will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

2.39 The Licence Holder which provides an investment service other than investment advice to a new retail client, shall enter into a written basic agreement with the client, in paper or another durable medium, setting out the essential rights and obligations of the firm and the client.

The rights and duties of the parties to the agreement may be incorporated by reference to other documents or legal texts.

Client Reporting

General

2.40 The client must receive from the Licence Holder, adequate reports on the service provided to him. These reports shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

Reporting Obligations in Respect of Execution of Orders Other Than For Portfolio Management

2.41 Where a Licence Holder has carried out an order, other than for portfolio management, on behalf of a client, it is required to take the following action in

respect of that order:

(a) it must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;

(b) in the case of a retail client, it must send the client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the Licence Holder form a third party, no later than the first business day following receipt of the confirmation from the third party;

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made together with the consolidated terms of the mortgage loan, but no later than one month after the execution of the order.

2.42 In addition to the requirements set out above, Licence Holders shall supply the client, on request, with information about the status of his order.

2.43 In the case of orders for a retail client relating to units or shares in a collective investment scheme which are executed periodically, Licence Holders shall either take the action specified in point (b) of SLC 2.41 or provide the retail client, at least once every six months, with the information listed in SLC 2.44 in respect of those transactions.

2.44 The notice referred to in point (b) of SLC 2.41 shall include such of the following information as is applicable, and where relevant, in accordance with Table 1 of Annex I to the Commission Regulation:

(a) the reporting firm identification;

(b) the name or designation of the client;

(c) the trading day;

(d) the trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;

(h) the buy/sell indicator;

(i) the nature of the order if other than buy/sell

(j) the quantity;

(k) the unit price;

(l) the total consideration;

(m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown;

(n) the client's responsibilities in relation to the settlement of the transaction including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;

(o) if the client's counterparty was the Licence Holder itself or any person in the Licence Holder 's group or another client of the Licence Holder, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of (k) above, where the order is executed in tranches, the Licence Holder may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the Licence Holder shall supply the retail client with information about the price of each tranche upon request.

2.45 The Licence Holder may provide the client with the information referred to in SLC 2.44 using standard codes if it also provides an explanation of the codes used.

Reporting Obligations In Respect of Portfolio Management Services.

2.46 Licence Holders which provide the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

2.47 In the case of retail clients, the periodic statement required above shall include wherever relevant, the following information:

(a) the name of the Licence Holder;

(b) the name or other designation of the retail client's account;

(c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and the end of the reporting period, and the performance of the portfolio during he reporting period.

(d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including where relevant, a statement that a more detailed breakdown will be provided on request;

(e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the Licence Holder and the client;

(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;

(g) Information about other corporate actions giving rights in relation to financial instruments held in the portfolio;

(h) For each transaction executed during the period, the information referred in SLC 2.44 where relevant, unless the client elects to receive information about executed transactions on a transaction – by- transaction basis, in which case SLC 2.49 shall apply.

2.48 In the case of retail clients, the periodic statement referred to in SLC 2.46 shall be provided once every six months, except in the following cases:

(a) where the client so requests, the periodic statement must be provided every 3 months;

(b) in cases where SLC 2.49 applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between a Licence Holder and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

Licence Holders shall inform retail clients that they have the right to make requests for the purposes of point (a).

However the exception provided for in point (b) shall not apply in case of

transactions in securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures or in instruments included in points (3) to (10) of Schedule 2 to the Investment Services Act, 1994.

2.49 The Licence Holder shall, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

Where the client concerned is a retail client, the Licence Holder must send him a notice confirming the transaction and containing the information referred to in SLC 2.44 no later than the first business day following that execution or, if the confirmation is received by the investment firm from third party, no later than the first business day following sub-paragraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

Additional Reporting Obligations For Portfolio Management or Contingent Liability Transactions.

2.50 Where a Licence Holder provides portfolio management transactions for retail clients or operates retail client accounts that include an uncovered open position in a contingent liability transaction, it is also required to report to the retail client any losses exceeding any predetermined threshold, agreed between the firm and the client, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

Statement of Client Financial Instruments or Client Money..

2.51 A Licence Holder that holds client financial instruments or client money is required to send at least once a year, to each client for whom it holds financial instruments or money, a statement in a durable medium of those financial instruments or money unless such a statement has been provided in any other periodic statement.

Provided that this SLC shall not apply to a credit institution authorised under Directive 2000/12/EC, relating to the taking up and pursuit of the business of credit institutions, in respect of deposits within the meaning of that Directive held by that institution.

2.52 The statement of client assets referred to above, shall include the following

information:

(a) details of all the financial instruments or money held by the Licence holder for the client at the end of the period covered by the statement;

(b) the extent to which any client financial instruments or client money have been the subject of securities financing transactions;

(c) the extent of any benefit that has accrued to the clients by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued.

In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

2.53 A Licence Holder which holds financial instruments or money and which carries out the service of portfolio management for a client, may include the statement of client assets referred to in SLC 2.52, in the periodic statement it provides to that client pursuant to SLC 2.46.

Best Execution Requirements

General

2.54 The Licence Holder shall take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client, the Licence Holder shall execute the order following the specific instruction.

2.55 Licence Holders shall establish and implement effective arrangements for complying with SLC 2.54. In particular, Licence Holders shall establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with SLC 2.54.

2.56 The order execution policy shall include in respect of each class of instruments, information on the different venues where the Licence Holder executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the Licence Holder to obtain on a consistent basis the best possible result for the execution of client orders.

The Licence Holder shall provide appropriate information to its clients on its

order execution policy and shall obtain the prior consent of its clients to the execution policy.

Where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or a MTF, the Licence Holder shall, in particular, inform its clients abut this possibility. Licence Holders shall obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market or an MTF. Licence Holders may obtain this consent either in the form of a general agreement or in respect of individual transactions.

2.57 The Licence Holder shall monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether it needs to make changes to its execution arrangements. The Licence Holder shall notify clients of any material changes to its order execution arrangements or execution policy.

2.58 The Licence Holder shall be able to demonstrate to its clients, at their request, that it has executed their orders in accordance with the Licence Holder's execution policy.

Best Execution Criteria

2.59 When executing client orders, the Licence Holder shall take into account the following criteria for determining the relative importance of the factors referred to in SLC 2.54:

(a) the characteristics of the client including the categorisation of the client as retail or professional;

(b) the characteristics of the client order;

(c) the characteristics of financial instruments that are the subject of that order;

(d) the characteristics of the execution venues to which that order can be directed.

For the purpose of this SLC and SLCs 2.70 and 2.71, "execution venue" means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

2.60 A Licence Holder would satisfy its obligation under SLC 2.54 to take all

reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of the order following specific instructions from a client relating to the order or the specific aspect of the order.

2.61 Where a Licence Holder executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering best execution where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the Licence Holder's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

2.62 Licence Holders shall not structure or charge their commission in such a way as to discriminate unfairly between execution venues.

Special Provisions Applicable to Licence Holders Carrying Out Portfolio Management Services and Reception and Transmission of Orders.

2.63 When providing the service of portfolio management, the Licence Holder shall act in accordance with the best interests of its clients when placing orders with other entities for execution that result from decisions by the Licence Holder to deal in financial instruments on behalf of its clients.

2.64 When providing the services of transmission and reception of orders (arranging deals), the Licence Holder shall comply with the obligation to act in accordance with the best interests of its clients when transmitting client orders, to other entities for execution.

2.65 In complying with SLCs 2.63 and 2.64 above, Licence Holders shall comply with the requirements of SLC 2.66 to SLC 2.69.

2.66 The Licence Holder shall take all reasonable steps to obtain the best possible result for its clients taking into account the factors referred to in SLC 2.54 . The relative importance of these factors shall be determined by reference to the criteria set out in SLC 2.59 and, for retail clients, to the requirement under SLC 2.61.

A Licence Holder satisfies its obligations under SLC 2.63 or SLC 2.64, and is

not required to take the steps mentioned in this Licence Condition, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

2.67 The Licence Holder shall establish and implement a policy to enable it to comply with the obligation in SLC2.66. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the Licence Holder transmits orders for execution. The entities identified must have execution arrangements that enable the Licence Holder to comply with its obligations under SLCs 2.63 to 2.69 when it places or transmits orders to that entity for execution.

The Licence Holder shall provide appropriate information to its clients on the policy established in accordance with this SLC.

2.68 The Licence Holder shall monitor on a regular basis the effectiveness of the policy established in accordance with SLC 2.67 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, investment firms shall review the policy annually. Such a review shall also be carried out whenever a material change occurs that affects the Licence Holder's ability to continue to obtain the best possible result for its clients.

2.69 SLCs 2.63 to 2.68 shall not apply when the Licence Holder that provides the service of portfolio management and/or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, SLCs 2.54 to 2.58 shall apply.

Execution Policy

2.70 The Licence Holder shall review annually the execution policy established pursuant to SLC 2.55 as well as its order execution arrangements.

Such a review shall also be carried out whenever a material change occurs that affects the Licence Holder's ability to continue to obtain the best possible result of the execution of its clients orders on a consistent basis using the venues included in its execution policy.

2.71 The Licence Holder shall provide retail clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the Licence Holder assigns, in accordance with the criteria specified in SLC 2.59, to the factors referred to in SLC 2.54, or the process by which the Licence Holder determines the relative importance of those factors;

(b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;

(c) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;

This information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in SLC 2.115 are satisfied.

Client Order Handling Rules

General

2.72 Licence Holders which are licensed to execute orders on behalf of clients (deal as agent) shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment firm. These procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the Licence Holder

2.73 In the case of a client limit order in respect of shares admitted to trading on a regulated market which are not immediately executed under prevailing market conditions, Licence Holders are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants.

2.74 When carrying out client orders, the Licence Holder shall satisfy the following conditions:

(a) it must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;

(b) it must carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make it impracticable, or the interests of the client require otherwise;

(c) it must inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

2.75 Where a Licence Holder is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client money received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

2.76 A Licence Holder shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Aggregation and allocation of orders.

2.77 A Licence Holder shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

(a) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of a client whose order is to be aggregated;

(b) it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

(c) an order allocation policy must be established and effectively implemented, provided in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

2.78 Where a Licence Holder aggregates an order with one or more other client orders and the aggregated order is partially executed, it is expected to allocate the related trades in accordance with its order allocation policy.

Aggregation and allocation of transactions for own account.

2.79 Licence Holders which aggregate transactions for own account and with one or

more client orders shall not allocate the related trades in a way that is detrimental to a client.

2.80 Where a Licence Holder aggregates a client order with a transaction for own account and the aggregated order is partially executed, the Licence Holder is expected to allocate the related trades to the client in priority to itself.

However, if the Licence Holder is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in SLC 2.77(c).

2.81 The Licence Holder shall, as part of the order allocation policy referred in SLC 2.77(c), put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

Transactions Executed with Eligible Counterparties

2.82 Licence Holders authorised to execute orders on behalf of clients and/or deal on their own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under these Rules which fall under the following sub-sections of the Conduct of Business Obligations: 'General', 'Client Profile Requirements', 'Client Disclosure Requirements', 'Client Reporting', 'Best Execution Requirements' and SLC 2.72 in respect of 'Client Order Handling'.

Record Keeping

2.83 The Licence Holder shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable MFSA to monitor compliance with the requirements under these Rules, and in particular to ascertain that the Licence Holder has complied with all obligations with respect to clients or potential clients.

In complying with this SLC, the Licence Holder shall refer to Articles 7 and 8 of the Commission Regulation.

Moreover, the Licence Holder shall also keep at the disposal of the MFSA, for at least five years, the relevant data relating to all transactions in financial instruments which it has carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under the Prevention of Money Laundering Act, 1994 and Regulations issued thereunder.

2.84 The Licence Holder shall retain all the records required under these Rules and the Commission Regulation for a period of at least 5 years.

Additionally records which set out the respective rights and obligations of the Licence Holder and the client under an agreement to provide services, or the terms on which the Licence Holder provides services to the client, shall be retained for at least the duration of the relationship with the client.

However, MFSA, may, in exceptional circumstances, require Licence Holders to retain any or all of those records for such longer period as is justified by the nature of the instrument or transaction, if that is necessary to enable MFSA to exercise its supervisory functions.

2.85 The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA and in such a form and manner that the following conditions are met:

(a) MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transactions;

(b) it must be possible for any corrections or other amendments, and he contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it must not be possible for the records otherwise to be manipulated or altered.

Safeguarding of Client Assets

Licence Holders holding or controlling Client Assets shall be required to comply with the SLCs in this Section in addition to the relevant provisions of the Investment Services Act (Control of Assets) Regulations, 1998 as amended.

For the purposes of these Rules, the term "Client Assets" shall mean financial instruments and money belonging to the client.

General

2.86 For the purposes of safeguarding client's rights in relation to financial instruments and money belonging to them which are held or controlled by Licence Holders, the latter shall comply with the following requirements:

(a) they must keep such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for another client, and from their own assets;

(b) they must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and money held for clients;

(c) they must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held;

(d) they must take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with SLCs 2.87 to 2.89 are identifiable from the financial instruments belonging to the Licence Holder and from the financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

(e) they must take the necessary steps to ensure that the client money deposited in accordance with SLC 2.90 to 2.91 with a central bank, an EEA credit institution or a bank authorized in a third country or a qualifying money market fund, are held in an account or accounts identified separately from any accounts used to hold money belonging to the Licence Holder;

(f) they must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

Depositing Client Financial Instruments

2.87 A Licence Holder is permitted to deposit financial instruments held by it on behalf of its clients into an account or accounts opened with a third party provided that the Licence Holder exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

In particular, Licence Holders, shall take into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

2.88 If the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision in a jurisdiction where a Licence Holder proposes to deposit client financial instruments with a third party, the Licence Holder shall not deposit those financial instruments in that jurisdiction

with a third party which is not subject to such regulation and supervision.

2.89 Licence Holders shall not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions are met:

(a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;

(b) where the financial instruments are held on behalf of a professional client, that client requests the Licence Holder to deposit them with a third party in that third country.

Depositing Client Money

2.90 Licence Holder, on receiving any client money, shall promptly place that money into one or more accounts opened with any of the following:

(a) a central bank;

(b) a credit institution authorised in accordance with Directive 2000/12/EC;

(c) a bank authorised in a third country;

(d) a qualifying money market fund.

Point (a) above shall not apply to a credit institution authorised under Directive 200/12/EC in relation to deposits within the meaning of that Directive held by that institution.

2.91 Where the Licence Holder does not deposit client money with a central bank, it shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the money is placed and the arrangements for the holding of that money.

In particular, the Licence Holder shall take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights as well as any legal or regulatory requirements or market practices related to the holding of client money that could adversely affect client's rights.

Clients shall have the right to oppose the placement of their money in a qualifying money market fund.

Use of Clients' Financial Instruments

2.92 A Licence Holder shall not enter into arrangements for securities financing transactions in respect of financial instruments which it holds on behalf of a client, or otherwise use such financial instruments for its own account or the account of another client of the Licence Holder, unless the following conditions are met:

(a) the client must have given his prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a retail client, by his signature or equivalent alternative mechanism;

(b) the use of that client's financial instrument must be restricted to the specific terms to which the client consents.

2.93 Licence Holders shall not enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of another client unless, in addition to the conditions set out in SLC 2.92, at least one of the following conditions are met:

(a) each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with point (a) of SLC2.92;

(b) the Licence Holder must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with point (a) of SLC 2.92 are so used.

The records of the Licence Holder shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

Conflicts of Interest

General

2.94 The Licence Holder shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in this Section from adversely affecting the interests of its clients.

2.95 Licence Holders shall take all steps to identify conflicts of interests between themselves, including their managers, employees or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof.

2.96 Where the organisational or administrative arrangements made by the Licence Holder in accordance with SLC 2.94 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the Licence Holder shall clearly disclose the nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

Such disclosure shall be made in a durable medium and shall include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises.

2.97 For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, Licence Holders shall take into account, by way of minimum criteria, the question of whether itself or a relevant person, or a person directly or indirectly linked by control to the Licence Holder, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

(a) the Licence Holder or that person is likely to make a financial gain, or avoid a financial loss at the expense of the client;

(b) the Licence Holder or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the Licence Holder or that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the client;

(d) the Licence Holder or that person carries on the same business as the client;

(e) the Licence Holder or that person receives or will receive from a person other than the client, an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Conflicts of Interest Policy.

2.98 Licence Holders shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

Where the Licence Holder is a member of a group, the policy must also take into account any circumstances, of which the Licence Holder is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2.99 The conflicts of interest policy established in accordance with SLC 2.98, shall include the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the Licence Holder, the circumstances which constituted or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

2.100 The procedures and measures provided for in SLC 2.99(b) are to be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in SLC 2.99(a), carry on those activities at a level of independence appropriate to the size and activities of the Licence Holder and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

For the purposes of SLC 2.99(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the Licence Holder to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the Licence Holder;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interests.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, the Licence holder shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Record Keeping

2.101 A Licence Holder shall keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Licence Holder in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Staff Dealing

General

2.102 A Licence Holder shall establish adequate policies and procedures sufficient to ensure compliance of the Licence Holder, including its managers and employees, with its obligations under these Rules as well as appropriate rules governing personal transactions by such persons.

Personal Transactions

2.103 A Licence Holder shall establish, implement and maintain adequate arrangements aimed at preventing the activities listed in (a) to (c) below in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 2(1) of the Prevention of Financial Markets Abuse Act, 2005 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the Licence

Holder:

(a) entering into a transaction which meets at least one of the following criteria:

(i) that person is prohibited it from entering into it under the Prevention of Financial Markets Abuse Act, 2005;

(ii) it involves the misuse of improper disclosure of that confidential information;

(iii) it conflicts or is likely to conflict with an obligation of the Licence Holder under these Rules.

(b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) above or by SLC 2.112 (a) or (b) or SLC 2.76.

(c) Without prejudice to Article 6(2) of the Prevention of Financial Markets Abuse Act, 2005, disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure, that other person will or would be likely to take either of the following steps:

(i) to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) above or SLC 2.112 (a) or (b) or SLC 2.76;

(ii) to advise or procure another person to enter into such a transaction.

2.104 The arrangements required under SLC 2.103 must be designed in particular to ensure that:

(a) each relevant person covered by SLC 2.103 is aware of the restrictions on personal transactions, and of the measures established by the Licence Holder in connection with personal transactions and disclosure, in accordance with SLC 2.103;

(b) the Licence Holder is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the Licence Holder to identify such transactions;

In the case of outsourcing arrangements, the Licence Holder must ensure that the firm to which the activity is outsourced, maintains a record of personal transactions entered into by any relevant person and provides that information to the Licence Holder promptly on request;

(c) a record is kept of the personal transaction notified to the Licence Holder or identified by it, including any authorisation or prohibition in connection with such a transaction.

2.105 SLC 2.103 and SLC 2.104 shall not apply to the following kinds of personal transactions:

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the UCITS Directive or are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected, are not involved in the management of that undertaking.

Provision of services though the medium of another Investment Firm

2.106 A Licence Holder receiving an instruction to perform investment or ancillary services on behalf of a client through the medium of another Investment Firm, shall be able to rely on client information transmitted by the latter. The Investment Firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

2.107 The Licence Holder which receives an instruction to undertake services on behalf of a client through the medium of another Investment Firm, shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another Investment Firm. The Investment Firm which mediates the instructions will remain responsible for the appropriateness for the client of the recommendations or advice provided.

2.108 The Licence Holder which receives client instructions or orders through the medium of another Investment Firm, shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of these Rules.

Conduct of Business Rules for Licence Holders Producing and Disseminating Investment Research

2.109 For the purposes of this section, "investment research" means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

(a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(b) if the recommendation in question were made by a Licence Holder to a client, it would not constitute the provision of investment advice for the purposes of the Act.

2.110 A recommendation of the type covered by Regulation 1(2) of the Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005 (Legal Notice 106 of 2005), but relating to financial instruments as defined in the Act, that does not meet the conditions set out in SLC2.109, shall be treated as a marketing communication for the purposes of these Rules, and any Licence Holder which produces or disseminates the recommendation shall ensure that it is clearly identified as such.

Additionally, the Licence Holder shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

2.111 A Licence Holder which produces, or arranges for the production of investment research that is intended or likely to be subsequently disseminated to clients of the Licence Holder or to the public, under its own responsibility or that of a member in its group (if the Licence Holder is a member of a group), shall ensure that the implementation of all the measures set out in SLC 2.100 in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

2.112 The Licence Holder which is covered under SLC 2.111 shall have in place arrangements designed to ensure that the following conditions are satisfied:

(a) financial analysts and other relevant persons must not undertake personal transactions or trade other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the Licence Holder, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;

(b) in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the Licence Holder's legal or compliance function;

(c) the Licence Holder itself, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;

(d) the Licence Holder itself, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;

(e) issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the Licence Holder's legal obligations, if the draft includes a recommendation or a target price.

For the purposes of this SLC, "related financial instrument" means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

2.113 The Licence Holders which disseminates investment research produced by another person to the public or to clients shall be exempted from complying with the requirements of SLC 2.112 if the following criteria are met:

(a) the person that produces the investment research is not a member of the group to which the Licence Holder belongs;

(b) the Licence Holder does not substantially alter the recommendations within the investment research;

(c) the Licence Holder does not present the investment research as having been produced by it;

(d) the Licence Holder verifies that the producer of the research is subject to requirements equivalent to the requirements under these Rules in relation to the production of that research, or has established a policy setting such requirements.

Conditions Applicable to the Provision of Information

2.114 Where, for the purposes of these Rules, information is required to be provided in a durable medium, the Licence Holder may provide that information in a durable medium other than on paper only if:

(d) the provision of that information in that medium is appropriate to the context in which the business between the Licence Holder and the client is, or is to be, carried on; and

(e) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

2.115 Where the Licence Holder provides the information he is bound to provide in terms of these Rules to a client, by means of a website and that information is not addressed personally to the client, the following conditions shall be satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the Licence Holder and the client is, or is to be, carried on;

(b) the client must specifically consent to the provision of that information in that form;

(c) the client must be notified electronically of the address of the website, and the place on the website where the information may be

accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time that the client may reasonably need to inspect it.

2.116 For the purposes of SLCs 2.114 and 2.115, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Licence Holder and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an email address for the purposes of the carrying on of that business shall be treated as such evidence.

Complaints Handling

2.117 The Licence Holder is required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for its resolution. The Licence Holder is also required to inform complainants that they may refer their complaint to the MFSA if they are not satisfied with the manner in which it has been handled by the Licence Holder.

3. Disclosure Requirements for Information to Clients, including Marketing Communications

General.

3.01 All information, including marketing communications addressed by the Licence Holder to clients or potential clients shall be fair, clear and not misleading by complying with the conditions set out below. Marketing communications shall be clearly identifiable as such.

For the avoidance of doubt, 'investment advertisements' as defined in Article 2(1) of the Act, shall be considered as 'marketing communications'.

Marketing Information and other Information for Retail Clients and Potential Retail Clients.

3.02 The Licence Holder shall ensure that all information it addresses to, or disseminates in such a way that it is likely to be received by retail clients or potential retail clients, including marketing communications, satisfies the following conditions. It shall:

(a) include the name of the Licence Holder;

(b) be accurate, and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks;

(c) be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;

(d) not disguise, diminish or obscure important items, statements or warnings.

3.03 Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, the following conditions shall be satisfied:

(a) the comparison must be meaningful and presented in a fair and balanced way;

(b) the sources of the information used for the comparison must be specified;

(c) the key facts and assumptions used to make the comparison must be

included.

3.04 Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, the following conditions shall be satisfied:

(a) that indication must not be the most prominent feature of the communication;

(b) the information must include appropriate performance information which covers the immediately preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided if less than 5 years, or such longer period as the Licence Holder may decide, and in every case that performance information must be based on complete 12 month periods;

(c) the reference period and the source of information must be clearly stated;

(d) the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(e) where the indication relies on figures denominated in a currency other than that of the country in which the retail client or potential retail client is resident, the currency must be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(f) where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

3.05 Where the information relates to future performance, the following conditions shall be satisfied:

(a) the information must not be based on or refer to simulated past performance ;

(b) it must be based on reasonable assumptions supported by objective dated;

(c) where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed;

(d) it must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

3.06 Where the information includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied:

(a) the simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned;

(b) in respect of the actual past performance referred in point (a), the conditions set out in points (a) to (c), (e) and (f) of SLC 3.04 must be complied with;

(c) the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

3.07 Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client may be subject to change in the future.

3.08 The information shall not use the name of the MFSA or other competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the Licence Holder.

3.09 Where a marketing communication contains an offer or invitation of the following nature and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred in SLCs 2.28 to 2.30 and SLC 3.10 to 3.22 as is relevant to the offer or invitation:

(a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;

(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, paragraph (a) shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which, alone or in combination, contain that information.

Information about financial instruments.

3.10 Licence Holders shall provide clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client or a professional client. That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

3.11 The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

(a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment;

(b) the volatility of the price of such instruments and any limitations on the available market for such instruments;

(c) the fact that an investor might assume as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring instruments;

(d) any margin requirements or similar obligations, applicable to instruments of that type.

3.12 If a Licence Holder provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC ("the Prospectus Directive"), that Licence Holder shall inform the client or potential client where that prospectus is made available to the public.

3.13 Where the risks associated with a financial instrument composed of two or more different financial instruments or services are likely to be greater than the risks associated with any of the components, the Licence Holder shall provide an adequate description of the components of that instrument and the way in which its interaction increases the risks.

3.14 In the case of financial instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the retail client or potential retail client to make a fair assessment of the guarantee.

Disclosure Requirements applicable to Licence Holders holding or controlling Client Assets.

3.15 Where the Licence Holder holds or controls financial instruments or money belonging to retail client, the Licence Holder shall provide those retail clients or potential retail clients with the information specified in SLCs 3.16 to 3.21 as is relevant.

3.16 The Licence Holder shall inform the retail client or potential retail client where the financial instrument or money of that client may be held by a third party on behalf of the Licence Holder and of the responsibility of the licence Holder for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

3.17 Where financial instruments of the retail client or potential retail client may, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

3.18 The Licence Holder shall inform the retail client or potential retail client where it is not possible for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the Licence Holder and shall provide a prominent warning of the resulting risks.

3.19 The Licence Holder shall inform the client or potential client where accounts that contain financial instruments or money belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or money may differ accordingly.

3.20 A Licence Holder shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial instruments or money, or any right of set-off it holds in relation to those instruments or money. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or money.

3.21 A Licence Holder, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or otherwise to use such financial instruments for its own account or on the account of another client, shall in good time before the use of those instruments provide the retail client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the Licence Holder with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

Information about Costs and Associated Charges.

3.22 Licence Holders shall require investment firms to provide their retail clients with information on costs and associated charges that includes such of the following elements as are relevant:

(a) the total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commission, charges and expenses, and all taxes applicable via the Licence Holder or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. Commissions charged by the Licence Holder shall be itemised separately in every case;

(b) where any part of the total price referred to in point (a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(c) notice of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the Licence Holder or imposed by it;

(d) the arrangements for payment or other performance.

Information Drawn up in accordance with Directive 85/611/EEC (the UCITS Directive).

3.23 In respect of units in a collective investment scheme which qualifies as a UCITS under Directive 85/11/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded as appropriate information for the purposes of:

(c) the provision of information about financial instruments and proposed investment strategies including appropriate guidance on and warnings of the risks associated with investments in those instrument or in respect of particular investment strategies;

(d) costs and associated charges related to the UCITS itself including the exit and entry commissions.

4. Outsourcing

General.

4.01 A Licence Holder shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the MFSA to monitor the Licence Holder's compliance with all obligations.

4.02 An operational function of a Licence Holder shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a Licence Holder with the conditions and obligations of its authorisation or its other obligations under these Rules, or its financial performance, or the soundness or the continuity of its investment services and activities.

4.03 Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of SLC 4.02:

(a) the provision to the Licence Holder of advisory services, and other services which do not form part of the investment business of the Licence Holder, including the provision of legal advice to the Licence Holder, the training of the Licence Holder's personnel, billing services and the security of the Licence Holder's premises and personnel;

(b) the purchase of standardised services, including market information services and the provision of price feeds.

Conditions for Outsourcing Critical Or Important Operational Functions or Investment Services or Activities.

4.04 When Licence Holders outsource critical or important operational functions or any investment services or activities, the Licence Holders remain fully responsible for discharging all of their obligations under these Rules and are required to comply, in particular with the following conditions:

(a) the outsourcing must not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the investment firm towards its clients

under these Rules must not be altered;

(c) the compliance with the Licence Holder's applicable licence conditions must not be undermined;

(d) none of the other conditions subject to which the Licence Holder was granted a licence must be removed or modified.

4.05 Licence Holders shall exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any investment services or activities.

Licence Holders shall in particular take the necessary steps to ensure that the following conditions are satisfied:

(a) the service provider must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

(b) the service provider must carry out the outsourced services effectively, and to this end the Licence Holder must establish methods for assessing the standard of performance of the service provider;

(c) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

(d) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

(e) the Licence Holder must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

(f) the service provider must disclose to the Licence Holder any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the Licence Holder must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

(h) the service provider must cooperate with the MFSA in connection with the

outsourced activities;

(i) the Licence Holders, its auditors and the MFSA must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the MFSA must be able to exercise those rights of access;

(j) the service provider must protect any confidential information relating to the Licence Holder and its clients;

(k) the Licence Holder and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

4.06 The respective rights and obligations of the Licence Holder and of the service provider must be clearly allocated and set out in a written agreement.

4.07 Where the Licence Holder and the service provider are members of the same group, the Licence Holder may, for the purposes of complying with this section, take into account the extent to which the Licence Holder controls the service provider or has the ability to influence its actions.

4.08 Licence Holders shall make available to the MFSA, on request, all information necessary to enable the MFSA to supervise the compliance of the performance of the outsourced activities with the requirements of the these Rules.

Service Providers Located in Third Countries.

4.09 In addition to the requirements of SLCs 4.04 to 4.08, where a Licence Holder outsources the investment service of portfolio management provided to retail clients to a service provider located in a third country, that Licence Holder shall ensure that the following conditions are satisfied:

(a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;

(b) there must be an appropriate cooperation agreement between the MFSA and the supervisory authority of the service provider.

4.10 When one or both of the conditions referred to in SLC 4.09 are not satisfied, a Licence Holder may outsource investment services to a service provider located in a third country only if the firm gives prior notification to MFSA about the outsourcing arrangement and the MFSA does not object to that arrangement within a reasonable time following receipt of that notification.

4.11 The Licence Holder shall still be required to comply with the requirements of SLC s 4.04 to 4.08.

5. Supplementary Conditions for Operators of Multilateral Trading Systems

General

5.01 The operator of an MTF, shall establish transparent and non-discretionary rules and procedures for fair and orderly trading and shall establish objective criteria for the efficient execution of orders.

5.02 The operator of an MTF shall:

(a) establish transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems; and

(b) where applicable, provide or ensure that there is access to sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

5.03 SLCs 2.01 to 2.81 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. Provided that members of or participants in the MTF shall comply with the obligations provided for in the above-mentioned SLCs with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.

5.04 The operator of an MTF shall establish and maintain transparent rules, based on objective criteria, governing access to its facility. These rules shall provide that the MTF may admit as members or participants Licence Holders, credit institutions authorised under Directive 2000/12/EC and other persons who:

(a) are fit and proper;

(b) have a sufficient level of trading ability and competence;

(c) have, where applicable, adequate organisational arrangements; and

(d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the MTF may have established in order to guarantee the adequate settlement of transactions.

5.05 The operator of an MTF shall:

(a) clearly inform its users of their respective responsibilities for the settlement of the transactions executed in that facility;

(b) have in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of the MTF.

5.06 Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer, the MTF shall not make such issuers subject to any obligation relating to initial, ongoing or ad hoc financial disclosure.

5.07 The operator of an MTF shall comply immediately with any instruction from the MFSA to suspend or remove a financial instrument from trading.

Compliance Arrangements.

5.08 The operator of an MTF shall:

(a) establish and maintain effective arrangements and procedures, relevant to the MTF, for the regular monitoring of the compliance by its users with its rules.

(b) monitor the transactions undertaken by its users under their systems in order to identify breaches of its rules, disorderly trading conditions or conduct that may involve market abuse.

5.09 The operator of an MTF shall:

(a) notify the MFSA of any significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse;

(b) supply the relevant information without delay to the MFSA for the investigation and prosecution of market abuse and shall provide the MFSA with full assistance in investigating and prosecuting market abuse occurring on or through its systems.

Pre-trade transparency requirements for MTFs .

5.10 The operator of an MTF shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through its systems in respect of shares admitted to trading on a regulated market. This information shall be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

5.11 Depending on the market model or the type and size of orders in the cases defined in the Commission Regulation, the MFSA may waive the obligation for

the operator of an MTF to make public the information referred to in SLC 5.10. In particular, the MFSA may waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Such waiver may be granted by the MFSA following a written request from the MTF operator to the MFSA which request should include relevant details as necessary.

5.12 In complying with the provisions of this section of these rules the operators of an MTF shall also comply with the applicable provisions of the Commission Regulation.

Post-trade transparency requirements for MTFs.

5.13 The operator of an MTF shall make public the price, volume and time of the transactions executed under its systems in respect of shares which are admitted to trading on a regulated market. The details of all such transactions shall be made public, on a reasonable commercial basis, as close to real-time as possible. Provided that this SLC shall not apply to details of trades executed on an MTF that are made public under the systems of a regulated market.

5.14 The MFSA may authorise the operator of an MTF to provide for deferred publication of the details of transactions based on their type or size. In particular, the MFSA may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares.

MTFs shall obtain the MFSA's prior approval to proposed arrangements for deferred trade-publication. These arrangements shall be clearly disclosed to market participants and the investing public.

5.15 In complying with the provisions of this section of the Rules the operator of an MTF shall also comply with the applicable provisions of the Commission Regulation.

Transaction Reporting

5.16 An MTF shall submit to the MFSA a daily report of all the transactions carried out in instruments which are traded on the MTF ('the Transaction Report'). Such a Transaction Report shall contain the information as specified from time to time by the MFSA and shall be submitted in the format specified by the MFSA. Transaction Reports are to be submitted by the MTF to reach the Authority by the end of the business day following that on which the said trades were executed. The MTF will immediately notify the Authority in writing of any circumstance which prevents it from complying with this requirement.

Provisions regarding central counterparty, clearing and settlement arrangements in respect of MTFs

5.17 The operator of an MTF may enter into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.

Provided that the MFSA may oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State where this is demonstrably necessary in order to maintain the orderly functioning of that MTF and taking into account the conditions for settlement systems established in Article 34(2) of the MIFID.

6. Supplementary Conditions For Investment Services Licence Holders Which Qualify As Systematic Internalisers

6.01 Systematic internalisers in shares shall publish a firm quote in those shares admitted to trading on a regulated market for which they are systematic internalisers and for which there is a liquid market. In the case of shares for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request.

Provided that the provisions of this section of the Rules shall be applicable to systematic internalisers when dealing for sizes up to standard market size. Systematic internalisers that only deal in sizes above standard market size shall not be subject to the provisions of this Section.

6.02 Systematic internalisers may decide the size or sizes at which they will quote. For a particular share, each quote shall include a firm bid and/or offer price or prices for a size or sizes which could be up to standard market size for the class of shares to which the share belongs. The price or prices shall be updated regularly by the systematic internaliser and shall also reflect the prevailing market conditions for that share.

6.03 Shares shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that share. The standard market size for each class of shares shall be a size representative of the arithmetic average value of the orders executed in the market for the shares included in each class of shares.

Provided that the market for each share shall be comprised of all orders executed in the European Union in respect of that share excluding those large in scale compared to normal market size for that share.

6.04 Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours.

Provided that they shall be entitled to update their quotes at any time. Provided further that, under exceptional market conditions, to withdraw their quotes.

6.05 Quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

6.06 Systematic internalisers shall, in complying with the SLCs 2.54 to 2.71 execute the orders they receive from their retail clients in relation to the shares for which they are systematic internalisers at the quoted prices at the time of

reception of the order

6.07 Systematic internalisers shall execute the orders they receive from their professional clients in relation to the shares for which they are systematic internalisers at the quoted price at the time of reception of the order. This notwithstanding, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.

6.08 Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with SLC 6.07 in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

6.09 Where a systematic internaliser who quotes only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions of SLCs 6.07 and 6.08.

6.10 Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with SLCs 2.72 to 2.81 except where otherwise permitted under the conditions of SLCs 6.07 and 6.08.

6.11 Systematic internalisers may decide, on the basis of their commercial policy and in an objective non-discriminatory way, the investors to whom they give access to their quotes. To that end, there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

6.12 In order to limit the risk of being exposed to multiple transactions from the same client, systematic internalisers may limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. Systematic Internalisers may also in a non-discriminatory way, and in accordance with SLCs 2.72 to 2.81, limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm**.**

6.13 In complying with the provisions of this section of the Rules, Investment Services Licence Holders shall also refer and comply with the applicable provisions of the Commission Regulation.

Glossary of Terms

"Act": The Investment Services Act, 1994.

"Ancillary services": Any service listed in Section B of Annex 1 of the MiFID.

"Banking Consolidation Directive" or "BCD": Banking Directives (77/780/EEC and 89/646/EEC).

"Commission Regulation": Commission Regulation (EC) No 1287/2006 of 10th August 206 implementing the MIFID (Directive 2004/39/EC) of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

"Connected Company": A company in which the Applicant or Licence Holder, or a company holding directly or indirectly fifty per cent or more of the share capital or voting rights of the Applicant or Licence Holder, holds a qualifying shareholding, and also the Applicant's or the Licence Holder's holding company itself.

"Constitutional Documents": The documents constituting the scheme: in the case of an investment company its Memorandum and Articles of Association, statutory documents, or other instruments of incorporation; in the case of a mutual fund the contract or partnership agreement; in the case of a unit trust the trust deed.

"Custodian": An investment company depository, a mutual fund custodian, or unit trust trustee.

"Customer": Includes a potential customer and a recipient of documents from a Licence Holder including a policyholder and a potential policyholder in relation to linked long term contracts of insurance.

"Distribution Channels": Distribution channels within the meaning of Regulation 2 of Legal Notice 106 of 2005 regarding the fair presentation of investment recommendations and the disclosure of conflicts of interest.

"Durable Medium": Any instrument which enables a client to store information addressed personally to that a client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

"EEA": European Economic Area

"Eligible Counterparty": Licence Holders, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorized or regulated under EU Law or the national law of an EU Member State, undertakings which are exempt from the requirements of the MIFID in terms of Article 2(1)(k) and (l) thereof, national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organizations.

Provided that the above entities shall have the right to request, either generally or on a trade-by-trade basis, not to be treated as an eligible counterparties

Provided further that the MFSA may recognise as eligible counterparties, third country entities equivalent to those categories of entities mentioned above.

"EU": European Union

"Financial Analyst": A relevant person who produces the substance of investment research.

"Group" (when used in relation to a Licence Holder): The group of which that Licence Holder forms a part, in consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings link to each other by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC on consolidated accounts.

"Home State": The country of incorporation of the European Investment Firm

"Home State Regulator": The Competent Authority responsible for the regulation of investment services in the country of incorporation (which could be a member of the European Union or the European Economic Area) of a European Investment Firm and which issued the respective authorisation to the European Investment Firm.

"Initial Capital"*:* Capital as defined in items 1 and 2 of Article 34(2) of EU Directive 2000/12/EC and computed in accordance with Appendix 1 of these Guidelines.

"Instrument": Has the same meaning as that provided in the Investment Services Act, Cap. 370.

"Investment": Any instrument, contract or right falling within the Second

Schedule to the Act and whether or not issued or entered into in Malta.

"Investment Firm": A firm licensed to provide investment services in terms of the Act or authorised to provide investment services by a competent authority of a Member State.

"Licence": A licence granted to a Licence Holder pursuant to section 6 of the Act.

"Licence Holder": The holder of a Licence granted by the MFSA pursuant to section 6 of the Act.

"Listing Authority": The authority defined in Article 2 of the Financial Markets Act, Cap. 345.

"Market Operator": A person or persons who manages and/or operates the business of a regulated market. The market operator may be the regulated market itself.

"Member State": A country which is a full member of the European Union (EU) or the European Economic Area (EEA)

"MFSA": The Malta Financial Services Authority.

"MIFID": Directive 2004/39/EC of the European Parliament and of the Council of the 21st April 2004 on markets in financial instruments amending Council Directives 85/611EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC .

"Money Market Instruments": instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time.

"Multilateral Trading Facility" or "MTF": A multilateral system, operated by a licence Holder or a market operator, which brings together multiple third-party buying and selling interests in financial instruments - in a system and in accordance with non-discretionary rules – In a way that results in a contract in accordance with the provisions of the MIFID.

"Outsourcing": An arrangement of any form between a Licence Holder and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the Licence Holder himself;

"Own funds": Funds defined in Title V, Chapter 2, Section 1 of Directive 2000/12/EC, subject to possible amendment in the circumstances described in Annex V of Directive 93/6/EEC (the Capital Adequacy Directive), and computed

in accordance with Appendix 1 of these Guidelines.

"Person with whom a relevant person has a family relationship": Any of the following:

(a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;

(b) a dependent child or stepchild of the relevant person;

(c) any other relative of the relevant person who has shared the same household as that person for at least one ear on the date of the personal transaction concerned.

"Personal Transaction": A trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met;

(a) the relevant person acting outside the scope of the activities he carries out in that capacity;

(b) the trade is carried out for the account of any of the following persons:

(i) the relevant person;

(ii) any person with whom he has a family relationship, or with whom he has close links;

(iii) a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

"Professional Client": A client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. The following should all be regarded as professionals in all investment services and activities and with respect to all the financial instruments mentioned in Schedule 2 to the Investment Services Act, 1994:

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

(a) Credit Institutions
(b) Investment Firms
(c) Other authorised or regulated financial institutions
(d) Insurance Companies
(e) Collective investment schemes and management companies of such schemes
(f) Pension funds and management companies of such funds
(g) Commodity and commodity derivatives dealers
(h) Locals
(i) Other institutional investors

(2) Large undertakings meeting two of the following size requirements on a company basis:
- balance sheet total : EUR 20 000 000
- net turnover: EUR40 000 000
- own funds: EUR 2 000 000

(3) National and regional governments, public bodies that manage public debt, Central banks, international and supranational institutions such as the World Bank, the IMF, he ECB, the EIB and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Clients not falling under any of the above categories, including public sector bodies and private individual investors may also be treated as professional clients upon request subject to the conditions and procedure set out in Section 2 of Part C1 of these Rules.

"Qualifying Money Market Fund": A collective investment undertaking authorised under the UCITS Directive or which is subject to supervision and, if applicable authorised by an authority under the national law of an EU Member State, and which satisfies the following conditions:

(a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings**;**

(b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residential maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

(c) it must provide liquidity through the same day or next day settlement.#

For the purposes of point (b) above, a money market instrument shall be considered of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency shall not be considered of high quality.

For the purposes of the paragraph above, a rating agency shall be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of Directive 2006/48/EC. Recasting Directive 2000/12/EEC of the 20th march 200 relating to the taking up and pursuit of the business of credit institutions.

"Qualifying Shareholder": A holder of a direct or indirect holding in a body corporate which represents ten per cent or more of the share capital issued by such body, or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the body corporate.

"Regulated Market": For the purpose of these rules means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way which results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly in accordance with the provisions of Title III of the MIFID.

"**Relevant person**" (when used in relation to a Licence Holder): Any of the following:

(a) a director, partner or equivalent, manager of the Licence Holder;

(b) an employee of the Licence holder , as well as any other natural person whose services are placed at the disposal and under the control of the Licence Holder and who is involved in the provision by the Licence Holder of investment services and activities;

(c) a natural person who is directly involved in the provision of services to the Licence Holder under an outsourcing arrangement for the purpose of the provision by the Licence Holder of investment services and activities.

"**Retail Client**": A client who is not a professional client.

"Securities Financing Transaction": An instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.

"Senior Management": The person or persons who effectively direct the business of the Licence Holder.

"SLC": Standard Licence Conditions.

"Systematic Internaliser": An Investment Firm which, on an organised, frequent and systematic basis, deals on own account by executing client orders outside a regulated market or an MTF.

"Third Country": A country which is not an EU or an EEA Member State.

"Transferable Securities": Shares in companies and other securities equivalent to shares in companies ("shares"); bonds and other forms of securitised debt ("debt securities"); any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange excluding the techniques and instruments referred to in Article 21 of the UCITS Directive.

"UCITS": A collective investment scheme, whether of the unit trust or open-ended investment company variety, falling within the scope of and authorised in terms of the UCITS Directive.

"UCITS Directive": EU Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Council Directive 85/611/EEC of the 20 December 1985), as amended from time to time.

"Units": Shares in an investment company, units in a unit trust, or any other form of representation of the rights and interests of participants in a Collective Investment Scheme.