

03 July 2020

Circular on the updates made to the Investment Services Rules for Investment Services Providers and Collective Investment Schemes

This circular is addressed to firms classifying as MIFID, Fund Managers and Collective Investment Schemes falling within the scope of the Securities & Markets Supervision Function. This circular should be read together with the “Circular on the Fitness and Propriety Assessment of Committee Members involved with Investment Services Licence Holders and Collective Investment Schemes” for a full view of the changes implemented to the respective rulebooks.

1. Introduction

As part of its ongoing work, the Authority has updated certain sections of its rulebooks in line with regulatory updates at European level as well as other regulatory enhancements. Please note the below guidance in relation to the amendments made.

a. Amendment to Section 3 of the Investment Services Rules For Investment Services Providers Part A: The Application Process (“the Application Rules”)

Hyperlinks were updated in Rule R3-3.1.1 and minor amendments were done to the wording to crystallise the current procedure employed by the MFSA.

b. Amendment to Section 9 of the Application Rules

R9-9.2.1 of section 9 of the Application Rules, which relates to cessation of a Licence, has been revised and updated to ensure streamlining and additional consumer protection.

A new email address (securities_surrender@mfsa.mt) has been introduced to make it easier for Licence Holders to communicate with the Functions within the Authority.

Requests for surrender can be considered only if done in writing, including emails on the above-mentioned email address. Moreover, the Licence is now to be returned in original prior to the surrender of licence.

When requesting the surrender of its Investment Services Licence, the Licence Holder is required to inform the Investment Compensation Scheme immediately on info@compensationschemes.org.mt.

Rules R9-9.3 and R9-9.4 which deal with the surrender process and the subsequent public notice have also been slightly amended to reflect the current procedure which is being implemented by the MFSA.

2. Overview of general changes made to Part BI: Rules applicable to Investment Services
Licence Holders which qualify as MiFID Firms (“the MiFID Rules”)

a. Chapter 1 Title 2 – General Obligations

Rule R1-2.2.2 of the MiFID Rules has been amended to oblige Licence Holders to inform the MFSA in writing of such situation within 6 months of such expiration, the reasons behind it, and a proposed way forward.

b. Chapter 3 Title 2 – Risk Management

Rule R3-2.3.2.6.5 of the MiFID Rules was revised through the deletion of the words *“applicable to Category 3 investment services licence holders”*, thereby requiring all Licence Holders which are subject to the Risk Management and the Internal Capital Adequacy Assessment Process (RMICAAP) to take into consideration Operational Risk in their risk management assessment.

c. Chapter 3 Title 6 - Supplementary Organisational Requirements

A new Section 6, titled *“ICT and Security Risk Management”* is introduced to implement the [“EBA Guidelines on ICT and security risk management”](#) applicable to all Investment Firms, which came into force on 30 June 2020.

d. Chapter 4 Title 1 – Notifications and Approvals Requirements

Rule R4-1.2.1 was redrafted to provide further clarity and better instructions to officials authorised or approved by the MFSA when terminating their employment with the Licence Holder. In their communication to the MFSA, the officials shall use their personal email and/or letterhead, and state the reason(s) for their departure. Such communication is to be provided to the MFSA on the dedicated e-mail iffnotifications@mfsa.mt. To note that these documents may be possibly submitted through FinHub.

Rule R4-1.3.1 (iii), which regulates contractual agreements governing capital instruments was amended to capture all relevant instruments, thereby ensuring better supervision, and protection of the interests of all stakeholders within the industry.

e. Chapter 4 Title 4 – Reporting Requirements Applicable to Category 1 Licence Holders

In rule R4-4.6. the words *“carried out”* were substituted with the word *“met”* for further clarity as to the expectations from the Licence Holders and alleviate any and all concerns raised to the Authority in previous occasions.

- f. Chapter 4 Title 5 – Reporting Requirements Applicable to Category 2 and Category 3 Licence Holders

Rule R4-5.3.1 was amended in order for Licence Holders to submit a report of the circularisation exercise conducted as part of the Audit Pack.

In rule R4-5.8.1 the words “*carried out*” were substituted with the word “*met*” for further clarity.

- i. New Section 11 – Systematic Internalisers

Section 11, *Systematic Internalisers* was introduced to reflect the [EBA’s Regulatory Technical Standard on Systematic Internalisers \[2017/565\]](#).

- 3. Overview of changes made to clarify MFSA powers in relation to the imposition of the suspension of dealings

- a. Amendment to SLC 12.6 (iii) of Part BI of the Investment Services rules for Retail Collective Investment Schemes

SLC 12.6(iii) has been revised to enable the MFSA to require the suspension of both subscriptions and redemptions of units of a Scheme, where this is considered to be appropriate in the interests of unit-holders or of the public.

- b. Amendment to Section 1 of Part B of the Investment Services Rules for Alternative Investment Funds

Similarly, SLC 1.23 will be combined with SLC 1.22 with no changes to the respective wording. In addition, SLC 1.23 will be replaced to provide the MFSA the right to require the suspension of the subscription, repurchase or redemption of units of a Scheme, where this is considered appropriate in the interests of unit-holders or of the public.

- c. Addition of new rule in Section 1 of Part BI, BII and BIII of the Investment Services Rules for Professional Investor Funds

To align the PIF Rulebook with the other CIS Rulebooks, an additional provision on the MFSA’s powers to request the suspension of the subscription, repurchase or redemption of units of a Scheme has been included in SLC 1.100, 1.73 and 1.75 of Part BI, BII and BIII of the Rules respectively.

4. Overview of changes made **to apply ESMA's Liquidity Stress Testing Guidelines issued on 2 September 2019**

- a. Amendment of rules in Section 2 of Part BII of the Investment Services Rules for UCITS Management Companies ("**UCITS Manco**")

SLC 2.32(d)(vi), 2.32(e) and SLC 2.36(c) of the respective rulebook have been introduced to implement ESMA's [Guidelines on Liquidity Stress Testing](#). The Guidelines will apply the principle of proportionality in accordance with the nature, scale and complexity of the funds managed by the UCITS Manco.

- b. Amendment of rules in section 4 of Appendix VII (applicable to self-managed UCITS schemes) to the Investment Services Rules for Retail Collective Investment Schemes

Similar to the above, SLC 2.03(d)(iv), SLC 2.03(g) and SLC 3.03(c) of the respective rulebook have also been introduced to implement ESMA's [Guidelines on Liquidity Stress Testing](#).

- c. Amendment of rules in Section 2 of Part BIII of the Investment Services Rules for Alternative Investment Fund Managers ("**AIFMs**") and Section 8 of Part B of the Investment Services Rules for Alternative Investment Funds ("**AIFs**")

Furthermore, an additional paragraph was included in SLC 2.12 and SLC 8.44 of the respective rulebooks, implementing ESMA's [Guidelines on Liquidity Stress Testing](#). The principle of proportionality is also applicable in the case of AIFMs and self-managed AIFs.

5. Overview of the change implemented in relation to the **MFSA's approval of the Key Investor Information Document ("KIID")**

- a. Amendment of Section 6 of Part BII of the Investment Services Rules for Retail Collective Investment Schemes

SLC 6.2.19 has been revised to replace the MFSA's approval process of the KIID with a notification by the UCITS to the MFSA. The UCITS shall provide the MFSA with any revised KIIDs solely for records purposes as the MFSA will no longer be reviewing the content of the KIID.

6. Update of hyperlinks to reference **ESMA's guidelines in relation to the MMF Regulation**

Hyperlinks within the rulebooks relating to UCITS Management Companies, UCITS Schemes, Alternative Investment Fund Managers and Alternative Investor Funds have been updated to properly reference ESMA's [Guidelines on reporting to competent authorities](#).

Contact

Any queries should be directed to the Securities and Market Supervision function for attention of the Investment Firms Team (investmentfirms@mfsa.mt) or the Funds Team (funds@mfsa.mt).