

4 January 2021

Update to Investment Services Rulebooks

1. Introduction

The Authority has updated certain sections of the Investment Services Rules for Investment Services Providers to implement [ESMA's Guidance on performance fees in investment funds – applicable to Undertakings for the Collective Investment in Transferable Securities \(UCITS\) and certain types of Alternative Investment Funds \(AIFs\)](#) (the "Guidelines") and to ensure that performance methodologies applied are implemented in a harmonised manner and in the best interests of investors.

The Guidelines provide a comprehensive guidance to Fund Managers when designing performance fee models for the funds they manage, including the assessment of the consistency between the performance fee model and the fund's investment objective, policy and strategy, particularly when the fund is managed in reference to a benchmark.

The following parts of the rulebooks have been amended as explained in further detail below:

- a) Introduction of a new sub-section 6.3 and a new section 27 to Part BII of the Investment Services Rules for Retail Collective Investment Schemes ("the UCITS Rules");
- b) Addition of Section 9 to Part B of the Investment Services Rules for Alternative Investment Funds ("the AIF Rules");
- c) Addition of SLC 1.24 to Part BII of the Investment Services Rules for Investment Services Providers ("the UCITS Manco Rules"); and
- d) Amendment to Section 10 by way of introducing SLC 10.19 to Part BIII of the Investment Services Rules for Investment Services Providers (the "AIFM Rules").

2. Outline of the Guidelines

The Guidelines are structured in the following manner:

Guideline 1: Performance fee calculation method – outlines the mandatory elements of the performance calculation model and other salient guidelines pertaining to the performance fee calculation method, aimed to ensure that fees levied are proportionate and reflect actual investment performance of a fund;

Guideline 2: Consistency between the performance fee model and the fund's investment objectives, strategy and policy – includes principles to carry out a consistency assessment for funds with different fee calculation models;

Guideline 3: Frequency for the crystallisation of the performance fee – sets out principles, on which the crystallisation frequency should be assessed, based on different models for accrual and payment of performance fees, including such circumstances as closure or merger of funds.

Guideline 4: Negative performance (loss) recovery – outlines principles deemed to ensure that performance of a fund manager is fairly assessed and remunerated on a time horizon and is performed and takes into consideration the interests of both the fund manager and the investors.

Guideline 5: Disclosure of the performance fee model - provides relevant disclosures to be made by fund/fund manager to the investors in relation to the existence of performance fees and their potential impact on the investment return.

3. Overview of the changes to the UCITS Rules

[The UCITS Rules](#) have been amended by introducing a new sub-section 6.3 under the heading “Disclosures to Investors relating to performance fees model adopted by the Manager” and a new section 27 under the heading “Rules related to Performance fees” incorporating the main provisions of the Guidelines 1 to 5 into the UCITS Rules.

Respectively, the [Appendix I - Contents of the Prospectus to the UCITS Rules](#), and particularly sections 1.18 and 2.19 of Annex I and section 1.18 of Annex II have also been amended to align the disclosures requirements with the provisions of new sections 6.3 and 27 of the UCITS Rules.

4. Overview of the changes to the AIF Rules

[The AIF Rules](#) have been amended by introducing a new section 9 under the heading “Supplementary Licence Conditions in relation to Performance Fees Applicable to AIFs which are Sold Exclusively to Retail Investors” incorporating the main provisions of the Guidelines 1 to 4 into the AIF Rules.

Respectively, [Appendix 4 to Part B of AIFs Rules](#) has also been amended to introduce a new section 7 under the heading “Additional Disclosures to investors of the AIFs which are sold exclusively to retail investors” to align the disclosures requirements of the AIFs with the provisions of the Guideline 5.

5. Overview of the changes to the UCITS ManCo Rules

Section 1 “General Requirements” of the [UCITS ManCo Rules](#) has been amended by inserting a new SLC 1.24 introducing the new requirement for UCITS Mancos:

- 1.24 The Licence Holder shall at all times observe and be bound by the provisions of the [ESMA Guidelines on performance fees in investment funds, applicable to Undertakings for the Collective Investment in Transferable Securities \(UCITS\) and certain types of Alternative Investment Funds \(AIFs\)](#).

6. Overview of the changes to **the “AIFM Rules**

Section 10 “*Supplementary Licence Conditions Applicable to AIFMs Marketing AIFs in Malta to Retail Investors*” of the [AIFM Rules](#) has been amended by inserting a new SLC 10.19:

- 10.19 The AIFM shall at all times observe and be bound by the provisions of the [ESMA Guidelines on performance fees in investment funds, applicable to Undertakings for the Collective Investment in Transferable Securities \(UCITS\) and certain types of Alternative Investment Funds \(AIFs\)](#).

7. Conclusion

Any queries regarding the Rules mentioned in this Circular should be directed to the Securities and Market Supervision function for attention of the Funds Team (funds@mfsa.mt).