

INVESTMENT SERVICES RULES FOR NOTIFIED
PROFESSIONAL INVESTOR FUNDS AND RELATED DUE
DILIGENCE SERVICE PROVIDERS

PART B: ONGOING REQUIREMENTS

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REVISIONS LOG

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1. Applicability of the Investment Services Act (___) Regulations

1.01 The NPIF shall comply with the following requirements on an ongoing basis:

- i. the provisions of the Regulations;
- ii. the requirements set out in these Rules; and

Provided that the NPIF shall endeavour to comply with any applicable corporate governance codes, guidelines, and, or, manuals which the Authority may publish from time to time.

2. Ongoing due diligence

2.01 After the inclusion of the NPIF in the List of Notified PIFs, the service provider appointed in terms of Regulation ___ shall carry out the necessary due diligence exercise to ensure that the other service providers and functionaries, the governing body, founder shareholders and MLRO of the NPIF satisfy the fitness and properness standards expected by the MFSA on an ongoing basis, as referred to in Section 7 of Part A of these Rules.

2.02 The service provider appointed in terms of Regulation ___ shall immediately notify the MFSA of any change in such circumstances as they become known to it.

2.03 The service provider appointed in terms of Regulation ___ shall retain records of all evidence and correspondence related to the due diligence process carried out at the principal office of the Notified PIF. The documentation related to the due diligence exercise carried out shall be made available to MFSA upon.

2.04 The service provider appointed in terms of Regulation ___ shall update the relevant due diligence records and documents on a regular basis and at least annually and shall document the updates carried out.

2.05 All relevant due diligence records and documentation referred to in Rules 2.03 and 2.04 shall be retained at the principal office of the Notified PIF even in the event of a change of service provider (appointed in terms of Regulation ___) and shall be made available to the MFSA upon request.

2.06 The MFSA may carry out checks, including on the service provider appointed in terms of Regulation ___ of the Regulations, on the due diligence services carried out as well as compliance with the provisions of the Regulations and these Rules and give all the necessary directions it deems fit in the circumstances. Any adverse findings by the MFSA may lead, *inter alia*, to regulatory action both towards the NPIF and the service providers, as well as the removal of the NPIF from the List of Notified PIFs.

3. Audited Financial Statements and other reporting obligations

- 3.01 The governing body of the NPIF shall make the annual report of the NPIF available to the MFSA.
- 3.02 The NPIF's annual report shall be published and provided to investors in the NPIF and submitted to the MFSA within six (6) months of the end of the period concerned.

Seven (7) months following the end the of period concerned, through the LH Portal submission platform, the NPIF shall prepare and submit:

- i. the Annual Fund Return in the form set out in the Annex E to these rules;
- ii. the Representation Sheet as found in the Annual Fund Return template, signed by at least two members of the governing body; and
- iii. an Auditor's Report signed by the statutory approved auditor, confirming that:
 - the contents of items __ within the annual fund return agree with the independent auditor's report and the management letter issued by the Auditor, respectively;
 - the contents of items __ within the Annual Fund Return agree with the annual report and audited financial statements; and
 - the portfolio statement reported under item __ within the Annual Fund Return is consistent with the portfolio statement disclosed in the annual report and audited financial statements (or the underlying records of the NPIF).

Both the Representation Sheet and the Auditor's Report are also to be submitted in original to the MFSA.

- 3.03 The governing body of the NPIF shall submit to the MFSA any statistical returns in relation to the NPIFs which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations, on the following e-mail address: fundreporting@mfsa.mt.

4. Auditor

- 4.01 The NPIF shall appoint an auditor. The NPIF shall replace its auditor if requested to do so by the MFSA. The governing body of the NPIF shall notify the MFSA of the appointment or replacement of an auditor in advance of the change.
- 4.02 The NPIF shall make available to its auditor, the information and explanations they need to discharge their responsibilities as an auditor and in order to meet the MFSA's requirements.
- 4.03 The NPIF shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or their firm is:

- i. a director, partner, founder shareholder, officer, representative or employee of the NPIF;
- ii. a partner of, or in the employment of, any person in (a) above;
- iii. a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- iv. a person who is not otherwise independent of the NPIF; or
- v. a person disqualified by the MFSA from acting as an auditor of a NPIF.

For this purpose, an auditor shall not be regarded as an officer or an employee of the NPIF solely by reason of being auditor of that NPIF.

4.04 The NPIF shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his appointment. The NPIF shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

4.05 The letter of engagement shall include terms requiring the auditor:

- i. to provide such information or verification to the MFSA as the MFSA may request;
- ii. to afford another auditor all such assistance as he/ she may require;
- iii. to vacate his/ her office if he/ she becomes disqualified to act as auditor for any reason;
- iv. if he/ she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his/ her ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he/ she considers should be brought to the attention of the MFSA;
- v. to report immediately to the MFSA any fact or decision of which he/ she becomes aware in his/ her capacity as auditor of the NPIF which:
 - a. is likely to lead to a serious qualification or refusal of his audit report on the accounts of the NPIF; or
 - b. constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the NPIF in or under the Act; or
 - c. relates to any other matter which has been prescribed.

4.06 In respect of each annual accounting period, the NPIF shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.

4.07 Article 18 of the Investment Services Act shall *mutatis mutandis* apply to auditors of NPIFs.

5. Other Regulatory Obligations

- 5.01 The NPIF shall pay promptly all amounts due to the MFSA in terms of the Investment Services Act (Fees) Regulations.
- 5.02 The NPIF shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of, the MFSA and inform it promptly of any relevant information. The NPIF shall supply the MFSA with such information as the MFSA may require.
- 5.03 The NPIF and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 5.04 The MFSA shall be informed of any material information concerning the NPIF, its management or its operation, as soon as the NPIF becomes aware of that information. This shall include notifying the MFSA in writing of: i. any evidence of fraud or dishonesty by an official of the NPIF immediately upon becoming aware of the matter; ii. any actual or intended legal proceedings of a material nature by or against the NPIF immediately the decision has been taken or on becoming aware of the matter; iii. any other material information concerning the NPIF, its business or its officials in Malta or abroad immediately upon becoming aware of the matter.
- 5.05 Pursuant to Rule 6.04, the MFSA shall be notified of the appointment, removal, or replacement of any service provider to the NPIF in advance of the change. As applicable, this shall include the fund manager, the fund administrator, the service provider appointed in terms of Regulation __, and, where appointed, the custodian or any service provider responsible for the safekeeping of the Notified PIF's assets. Pursuant to a notification in terms of this rule, the MFSA may require the NPIF to provide any additional information it considers appropriate.
- 5.06 The NPIF shall maintain a 'breaches register'. This register shall include a log of any breaches of the Act, the Regulations issued thereunder, these rules, the Offering Documentation and/or other regulatory/statutory requirements. The log shall include:
- i. a brief explanation of the nature of each breach;
 - ii. whether such breach was rectified;
 - iii. the remedial action taken to rectify the breach; and
 - iv. any regulatory action that may have been taken by the Authority as a result of the breach.
- 5.07 The breaches register shall be held at the principal office of the Notified PIF and made available to the MFSA upon request.

6. Certificate of Compliance

- 6.01 The governing body shall submit to the Authority, on an annual basis, a Compliance Certificate in relation to the NPIF. Such certificate shall be drawn up and signed by the governing body.
- 6.02 The Compliance Certificate shall *inter alia* include the following:
- i. A confirmation that the NPIF is compliant with the applicable regulatory framework emanating from the Act, the Regulations, Rules, with the Offering Memorandum and/or other regulatory/statutory requirements; and
 - ii. A confirmation that all the local AML/CFT requirements have been satisfied. This confirmation should be obtained from the NPIF's Money Laundering Reporting Officer.

7. Removal from the List of Notified PIFs

- 7.01 The MFSA may remove a NPIF, including any sub-fund, from the List of NPIFs at any time at its sole discretion, following notification thereof to the governing body of the NPIF.
- 7.02 The governing body of the NPIF, or a person authorised by it to act on its behalf, shall submit a request to the competent authority for removal of the NPIF from the List of Notified PIFs in the following circumstances:
- a) Upon expiration of the duration of the NPIF or its winding up;
 - b) Where it becomes clear to the governing body of the Notified PIF that the condition stipulated in Rule 2.01(vi) of Part A of these Rules is no longer satisfied;
 - c) In any case where the fund manager of the NPIF has given notice of termination or is in liquidation or subject to bankruptcy proceedings or has had its authorisation to act as a fund manager suspended or cancelled and an eligible replacement fund manager has not been appointed;
 - d) In any case where any member of the governing body of the NPIF or any functionary or service provider appointed by the NPIF fails to comply on an ongoing basis with the required high standards of fitness and properness and no replacement member of the governing body or functionary or service provider has been appointed or has been arranged to be appointed;
 - e) In all other cases as may be specified in the agreement between the Notified PIF and its fund manager as grounds for requesting removal of the Notified PIF from the List of Notified PIFs in terms of the Regulations;
 - f) Where the NPIF has appointed a custodian, in all other cases as may be specified in the custody agreement between the Notified PIF and the custodian as grounds for requesting removal of the Notified PIF from the List of Notified PIFs in terms of the Regulations; and
 - g) In all other cases as prescribed in these Rules.

7.03 The governing body shall include with the notification to the MFSA a declaration:

- requesting the NPIF to be removed from the List of NPIFs;
- confirming that the relevant stakeholders have been informed that the NPIF will be removed from the List of NPIFs;
- confirming that there are no pending litigations or any other material issues concerning the NPIF;
- confirming that there are no investors in the NPIF;
- confirming that the accruals and liabilities of the NPIF have been cleared;
- confirming that the disbursement of the assets of the NPIF has been completed in order – where a custodian has been appointed, a confirmation from the custodian in this respect should also be included.

The declaration shall be signed by the governing body of the NPIF.

7.04 Following a notification for removal of a NPIF or sub-fund of a NPIF from the List of NPIFs, the MFSA will proceed to strike off the NPIF or sub-fund from the List of NPIFs and thereafter the NPIF or sub-fund shall cease trading other than for the purpose of winding down the operations of the NPIF or the sub-fund and the NPIF or sub-fund must be liquidated or otherwise terminated in accordance with the requirements of Maltese law.

8. Qualifying Investor Declaration Forms

8.01 Before investing in the NPIF, investors must sign the Declaration referred to in Annex F stating that they are “Qualifying Investors” and that they have read and understood the risk warnings in the Offering Memorandum. In the case of joint holders, all holders should individually qualify as “Qualifying Investors”. The NPIF may rely upon the declaration provided by the investor in the absence of information to the contrary.

8.02 Copies of the Qualifying Investor Declaration Forms and records evidencing compliance with the local Prevention of Money Laundering requirements should be held in Malta at the principal office of the NPIF and should be available to MFSA upon request.

Malta Financial Services Authority

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