

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

PART B: ONGOING REQUIREMENTS

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	18 Dec 2023	See Circular: MFSA Launches Framework for Notified PIFs

1. Applicability of the Investment Services Act (Notified CISs) 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 Due Diligence Service Provider 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, as applicable, satisfy the fitness and properness standards expected by the MFSA on an ongoing basis, as referred to in Section 10 of Part A of these Rules.

2.02 The Due Diligence Service Provider shall immediately notify the MFSA of any change in such circumstances as they become known to it, including when it is of the view that a person referred to in Rule 2.01 above no longer satisfies the fitness and properness standards expected by the MFSA.

2.03 The Due Diligence Service Provider shall retain records of all evidence and correspondence related to the due diligence process carried out at the address of the Notified PIF indicated in the offering memorandum. The documentation related to the due diligence exercise carried out shall be made available to MFSA upon request.

2.04 The Due Diligence Service Provider 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 address of the Notified PIF indicated in the offering memorandum, even in the event of a change of Due Diligence Service Provider and shall be made available to the MFSA upon request.

Provided that in the event of a change of Due Diligence Service Provider , the incoming Due Diligence Service Provider shall provide a written confirmation, to the Authority, that there are no material issues in relation to the due diligence carried out by the previous Due Diligence Service Provider, and if there are material issues, due diligence needs to be undertaken afresh and any issues resolved.

- 2.06 The MFSA may carry out checks, including on the Due Diligence Service Provider, on the due diligence services carried out as well as compliance of the Due Diligence Service Provider with the applicable 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 Due Diligence Service Provider, 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 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.
- 3.03 The NPIF shall also prepare and submit to the Authority, through the LH Portal, "Annex 2 - AIF – Specific Information to be reported (Article 3(3) and Article 24(1) AIFMD)";

Provided that:

- a) NPIFs managed by those managers referred to in point (i) of Rule 6.01 of Part A of these Rules shall be exempt from submitting "Annex 2 - AIF – Specific Information to be reported (Article 3(3) and Article 24(1) AIFMD)", in view that the manager would itself be submitting this documentation to the Authority in terms of the applicable Rules;
 - b) NPIFs managed by those managers referred to in points (ii) and (iii) of Rule 6.01 of Part A of these Rules shall be exempt from submitting certain parts of Annex 2, as the Authority may determine in Guidance Notes to these Rules.
- 3.04 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. Reference should be made to the [Circular on the Submission of the CBM Investment Funds Statistical Return](#) issued by the MFSA.

4. Auditor

- 4.01 The NPIF shall appoint an auditor in terms of the Accountancy Professions Act, Chapter 281 of the Laws of Malta. The NPIF shall replace its auditor if requested to do so by the MFSA. The NPIF shall notify the MFSA of the appointment or replacement of an auditor in advance of the change. The NPIF shall submit a copy of AX45 - Annex F to the Authority upon appointment (or change) of its auditor.
- 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.

Furthermore, the NPIF shall immediately inform the MFSA of any changes to the information it would have submitted at notification stage, pursuant to Section 4 of Part A of these Rules.

- 5.05 Pursuant to Rule 5.04, the MFSA shall be notified of the appointment, removal, or replacement of any material service provider to the NPIF in advance of the change. As applicable, this shall include the fund manager, the fund administrator, the Due Diligence

Service Provider, 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 address of the Notified PIF indicated in the offering memorandum, and made available to the MFSA upon request.
- 5.08 Where the NPIF offers or makes its units available to investors or potential investors resident in the EEA that do not qualify as professional clients in terms of MiFID, it shall follow the requirements laid down by Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as amended from time to time.

6. Certificate of Compliance

- 6.01 The NPIF 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. Investor Declaration Forms

- 7.01 Before investing in the NPIF, investors must sign the Declaration referred to in AX46 - Annex G stating that they are “Qualifying Investors” or “Professional Investors” respectively; 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 either “Qualifying Investors” or “Professional Investors”. The NPIF may rely upon the declaration provided by the investor in the absence of information to the contrary.
- 7.02 Copies of the Qualifying Investor/ Professional Investor Declaration Forms, as applicable, and records evidencing compliance with the local Prevention of Money Laundering requirements should be held in Malta at the address of the NPIF indicated in the offering memorandum, and should be available to MFSA upon request.

8. Conversions

- 8.01 The NPIF shall obtain the written consent of the MFSA before applying for a conversion of the NPIF into a PIF; an AIF or a Notified AIF. The Notified PIF shall inform the MFSA at an early stage of its intention to convert from a NPIF into any of the aforementioned type of CIS.
- 8.02 Requests for conversions of NPIFs will be subject to the satisfactory resolution of the requirements stipulated within this section and are at the discretion of the MFSA.
- 8.03 The MFSA may require the scheme to delay the conversion in accordance with conditions imposed by the MFSA, in order to protect the interests of unitholders.
- 8.04 The general procedure for conversion is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.
- 8.05 The NPIF shall submit to the MFSA:
- a. a signed declaration which:
 - i. Provides the rationale for the required conversion;
 - ii. Confirms that there are no regulatory implications associated with the required conversion;
 - iii. Discloses whether there are any open breaches, in relation to any applicable framework, relating to the Notified PIF, and provides the MFSA with an updated breaches register of the scheme;

- iv. Declares that existing investors in the NPIF have been duly notified of the prospective conversion:
Provided that the application for conversion of an NPIF to a PIF/AIF/NAIF can only be made after any redemptions linked to investors opting to exit the fund have been duly satisfied and any applicable redemption fees would also need to be waived accordingly;
 - v. Confirms that there will be no subscription fees for existing investors in the NPIF;
 - vi. Confirms that the NPIF has informed its service providers of its intention to give up its notified status and convert to a PIF/AIF/NAIF (as applicable).
- b. a declaration by the Due Diligence Service Provider confirming that it is satisfied with the outcome of this due diligence exercise.
- c. the original inclusion letter granted to it by the MFSA.

9. Removal from the List of Notified PIFs

- 9.01 Pursuant to Regulation 16(9) of the Investment Services Act (Notified CISs) Regulations, 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 where the MFSA deems this fit, in the interest of safeguarding investors, the integrity of markets and the stability and reputation of the financial sector.
- 9.02 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 circumstances listed in Regulation 22(1) of the Investment Services Act (Notified CISs) Regulations, and in all other cases as prescribed in these Rules.
- 9.03 The NPIF 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.

- 9.04 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.
- 9.05 Upon removal from the List of NPIFs, for whatever reason, 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.

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