MFSA MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS

PART B: STANDARD LICENCE CONDITIONS APPLICABLE TO ALTERNATIVE INVESTMENT FUNDS

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	22 July 2013	Applicable until 5 May 2019
2.00	6 May 2019	See: Circular dated 6 May 2019 on Revisions to CIS Rulebooks
3.00	4 May 2020	See: Circular dated 4 May 2020 on the MMF Guidelines
4.00	3 July 2020	See: Circular dated 3 July 2020 on the updates made to the ISP and CIS Rulebooks & Circular dated 3 July 2020 on the Fitness and Properness Assessment of Committee Members involved with ISPs and CIS'
5.00	12 October 2020	See: Circular dated 12 October 2020 on the Update to Investment Services Rulebooks
6.00	04 January 2021	See: Circular dated 04 January 2021 on the Update to Investment Services Rulebooks
7.00	12 April 2021	See: Circular dated 12 April 2021 on the Annual Fund Return
8.00	24 June 2021	See: Circular dated 24 June 2021 on the Revisiting of the MFSA Notified AIF Regime & Circular dated 3 July 2020 on the Fitness and Properness Assessment of Committee Members involved with ISPs and CIS
9.00	23 August 2021	See: Circular dated 23 August 2021 on the Update to the Investment Services Rulebooks
10.00	21 December 2021	See: Circular dated 21 December 2021 on the Annual Fund Return
11.00	28 March 2022	See: Circular dated 28 March 2022 on Amendments to the Investment Services Rulebooks
12.00	23 May 2022	See: Circular dated 23 May 2022 on Amendments to the Investment Services Rulebooks to transpose and implement EU Directives, Regulations and EBA Guidelines
13.00	4 October 2022	See: Circular dated 4 October 2022 on Amendments to the Investment Services Rulebooks to implement the revised ESMA Guidelines on stress test scenarios under the MMF Regulation

14.00	12 April 2023	See: Circular dated 12 April 2023 on Amendments to the Investment Services Rulebooks to implement the revised ESMA Guidelines on stress test scenarios under the MMF Regulation
15.00	4 September 2023	See: Circular dated 4 September 2023 on Various Amendments to the Investment Services Rulebooks
14.00	18 December 2023	See: Circular dated 18 December 2023 on the Launch of the Notified PIF Framework
15.00	28 March 2024	See: Circular dated 28 March 2024 on Amendments to the Investment Services Rulebooks in relation to the Money Market Funds Regulation
16.00	20 November 2024	See: Implementation of Various EBA & ESMA Guidelines
17.00	4 December 2024	See: Transposition of Directive (EU) 2022/2556 on Digital Operational Resilience for the Financial Sector – Amendments to the Authority's Rules
18.00	7 August 2025	See: Amendments to the Investment Services Rulebooks in relation to the Money Market Funds Regulations
19.00	2 February 2026	See: Amendments to the Annual Fund Return
20.00	9 March 2026	Update relating to: ESMA's Guidelines on Outsourcing to Cloud Service Providers

Applicability of Part B of the Investment Services Rules

Part B of the Investment Services Rules for Alternative Investment Funds shall apply as follows:

[I] Sections 1 to 7 shall apply to **all** AIFs whether these have appointed an external AIFM or are self-managed AIFs;

[II] Section 8 shall apply **exclusively** to self-managed AIFs. Therefore, self-managed AIFs are expected to comply with all the sections prescribed in this Part B of the Rules;

[III] Section 9 shall apply to AIFs sold **exclusively** to retail investors, irrespective whether these have appointed an external AIFM or are self-managed AIFs;

[IV] An AIF authorised as a **Money Market Fund ("MMF")** shall be subject to the provisions of this Part insofar as such provisions have not been superseded by the provisions of the Investment Services Act (Money Market Funds) Regulations, 2019 as implementing the Regulation (EU) 2017/1131 ("MMF Regulation") in its entirety. In the case of a conflict of provisions, the MMF Regulation shall prevail.

Applicability of Regulation (EU) No. 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and of Regulation (EU) No. 346/2013 of the European Parliament and of the Council of 17 April on European Social Entrepreneurship Funds

An AIF established as:

[I] a European venture capital fund in terms of Regulation (EU) No 345/2013;

[II] a European social entrepreneurship fund in terms of Regulation (EU) No 346/2013; or

[III] a European Long Term Investment Fund in terms of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, as amended by Regulation (EU) 2023/606, and as it may be amended from time to time.

shall also refer to and comply with the applicable provisions prescribed in the aforementioned Regulations in addition to the SLCs prescribed in this Rulebook.

1 GENERAL REQUIREMENTS

1.01 Every AIF shall comply with the provisions of the Act, the regulations and the Investment Services Rules issued thereunder. An AIF may be managed in one of two ways:

i. By an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF also referred to as "external AIFM"; or

ii. Where the legal form of the AIF permits an internal management, and where the AIF's governing body chooses not to appoint an external AIFM, by the AIF itself, which shall be licenced as a self-managed AIF.

1.02 Apart from the conditions listed in this Part of the Rules, where the AIF adopts different structures and strategies it shall also be subject to the supplementary conditions applicable to specific types of AIFs as prescribed in Appendix 1 to Part B of these Rules. In the case of umbrella AIFs, reference to the AIF shall be construed, where applicable, as reference to the sub-funds of the AIF.

1.03 The AIF shall commence its activities within twelve months of the date of issue of the Collective Investment Scheme Licence. If, for any reason the AIF is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason(s) for such a delay 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.

1.04 The AIF shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. It shall cooperate fully with any inspection or other enquiry carried out by or on behalf of the MFSA and provide promptly any relevant information. The AIF shall provide the MFSA with such information and returns as the MFSA may require to monitor compliance with the conditions referred to in the Act and any rules and regulations issued thereunder.

1.05 Where an SLC demands that the AIF 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.

1.06 The AIF shall notify the MFSA in writing of:

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

ii. DELETED;

iii. any material changes to the conditions for initial authorisation, in particular material changes to the information provided during the application process at least one month in advance of the change being made:

iv. the departure of a member of the governing body or Senior Manager, Portfolio Manager, Compliance Officer, MLRO, Risk Manager and any official engaged in the provision of investment management, risk management and valuation activities whose role does not require MFSA approval, within fourteen days of the departure.

v. In particular, the notification submitted by the Scheme shall include the following information:

(a) the name and role of the official departing;

(b) the reason of departure i.e. resignation, dismissal, re-organisation etc.;

(c) the effective date of resignation;

(d) the proposed replacement.

The Scheme shall also request the member of the governing body or Senior Manager, Portfolio Manager, Compliance Officer, MLRO and Risk Manager to confirm in writing to the MFSA:

(i) whether the departure has any regulatory implications, or if otherwise, to provide any relevant details;

(ii) the information required in terms of paragraphs (a) to (c) above.

A copy of the Scheme's request to the departing official shall be provided to the MFSA together with the Scheme's notification of departure.

An e-mail notification of resignation shall be sent to the MFSA on funds@mfsa.mt. This e-mail shall be followed up by the submission of original and hard copies to the MFSA. An e-mail notification relating to a proposed appointment shall be sent to the MFSA on ausecurities@mfsa.mt.

The Scheme shall ensure that the relevant forms related to the departure and approval of officials (where applicable) are filed with the Registry of Companies.

vi. the appointment of Investment Committee members who are not in charge of the day-to-day investment management of the assets of the Scheme (i.e. those persons who do not fall under the meaning of 'Portfolio Manager(s)' set out in 1.07(iii) below) and of any official engaged in the provision of risk management and valuation activities whose role does not require MFSA approval. Such notification should be submitted by the Scheme upon engagement of the official, and shall be accompanied by a declaration confirming that:

a. The Licence Holder has carried out a due diligence assessment on the appointed individual and is satisfied that he/ she complies with the standards of fitness and properness required by the MFSA, and that the Licence Holder shall notify the MFSA should such individual cease to comply with the mentioned standards;

b. the due diligence exercise undertaken has been fully documented, held at the registered office, and is available upon request by the MFSA; and

c. the due diligence exercise carried out will be updated at periodical intervals as applicable and the updates will be documented and will be made available upon request by the MFSA.

vii. a decision to make a material claim on any insurance policy held in relation to the AIF's business. Notification should be provided as soon as the decision is taken;

viii. any actual or intended legal proceedings of a material nature by or against the AIF immediately after the decision has been taken or on becoming aware of the matter;

ix. the fact, where applicable, that the collective investment scheme has not launched and does not have any investors notwithstanding repeated extensions of the initial offering period which have exceeded one year;

x. any instances of incorrect pricing:

Provided that the notification to the MFSA of a valuation error/incorrect pricing shall *inter alia* include:

(a) the manner in which the valuation error/incorrect pricing occurred;

(b) the date of identification and the full details of the dealing day effected;

(c) details of the financial impact of the valuation error and/or the incorrect prices on processed subscriptions/redemptions;

(d) details of any remedial measures taken; and

(e) the communications to be made to the investors particularly if remedial measures are/have been adopted.

xi. any other material information concerning the AIF, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.

1.07 The AIF shall obtain the written consent of the MFSA before:

i. taking any steps to cease its operations;

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

iii. the appointment of a member of the governing body or Senior Manager, Compliance Officer, MLRO and (and where the AIF is self-managed, also of a Risk Manager and Portfolio Manager(s)) in advance.

For the purposes of this point and 1.06 (vi) above, 'Portfolio Manager(s)' should be interpreted as being the person(s) in charge of the day-to-day investment management of the AIF, whether the person is also a member of the Investment Committee or otherwise. Provided that, when the Investment Committee is to be considered as being collectively responsible for the day-to-day investment management of the assets of the AIF, all its members would be required to obtain the written consent of the MFSA.
Where the prior approval of the Authority is required, the request for approval shall be submitted to the Authority together with a Personal Questionnaire duly completed by the person(s) proposed.

For the purposes of this sub-paragraph (iii) and sub-paragraph (iv) below, the term 'Senior Manager' should be interpreted as the person occupying the most senior role following that of a member of the governing body, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.

iv. the change in the responsibilities of a member of the governing body or senior manager in advance. The request for consent of the change in responsibilities of a member of the governing body or senior manager shall be accompanied by a Personal Questionnaire unless the individual concerned had within the previous five years submitted a Personal Questionnaire to the MFSA in connection with another role occupied by such individual with the same AIF, in which case it shall be accompanied by a confirmation by the member of the governing body or senior manager as to whether the information included in the Personal Questionnaire previously submitted is still current, and indicating any changes or updates thereto:

Provided that a change in the responsibilities of a member of the governing body or senior 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).

v. applying for a conversion of the AIF into a Notified AIF ('NAIF'). In this respect, the governing body of the AIF is to submit to the MFSA:

a. a signed confirmation in which:

i. Provides a 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 standard license conditions breaches (including investment breaches) relating to the licensed AIF, and provides the MFSA with an updated breaches register of the scheme;

iv. Declares that existing investors in the AIF have been duly notified of the prospective conversion:

Provided that the application for conversion to a NAIF of an existing AIF can only be made after any redemptions linked to investors opting to exiting the fund, have been duly satisfied and any applicable redemption fees would also need to be waived accordingly.

v. Confirms that any subscription fees for existing investors in the AIF entering the NAIF will be waived;

vi. Confirms that the AIF has informed its service providers of its intention to give up its licensed status and convert to a Notified AIF.

b. The original licence/s granted to it by the MFSA.

Requests for conversions from licensed AIFs to NAIFs, will be subject to the satisfactory resolution of the above requirements and at the discretion of the MFSA.

vi. applying for a conversion of the AIF into a Notified PIF ('NPIF'). In this respect:

a. the AIF shall inform the MFSA at an early stage of its intention to convert from an AIF into a Notified PIF;
b. requests for conversions from AIFs to NPIFs, will be subject to the satisfactory resolution of the requirements stipulated within this rule and are at the discretion of the MFSA.
c. 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.
d. the general procedure for conversion is outlined in this rule, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.
e. the governing body of the NAIF shall submit to the MFSA:
    i. a signed confirmation which:
        1. Provides the rationale for the required conversion;

2. Confirms that there are no regulatory implications associated with the required conversion;
3. Discloses whether there are any open breaches, in relation to any applicable framework, relating to the AIF, and provides the MFSA with an updated breaches register of the scheme;
4. Declares that existing investors in the AIF have been duly notified of the prospective conversion:
5. Provided that the application for conversion to a NPIF of an AIF can only be made after any redemptions linked to investors opting to exiting the fund have been duly satisfied and any applicable redemption fees would also need to be waived accordingly;
6. Confirms that there will be no subscription fees for existing investors in the AIF.;
7. Confirms that the AIF has informed its service providers of its intention to give up its licensed status and convert to a Notified PIF.

ii. A declaration by the service provider appointed in terms of Regulation 18 of S.L. 370.__ – the Investment Services Act (Notified CISs) Regulations – confirming that it has carried out the necessary due diligence with regards to the functionaries and the governing body of the NPIF. This declaration must include a statement that the service provider (appointed in terms of Regulation 18 of the Regulations) is satisfied with the outcome of this due diligence exercise.

iii. The original licence/s granted to it by the MFSA.

1.08 The AIF shall pay promptly all amounts due to the MFSA. The supervisory fee shall be payable by the AIF on the day the licence is first issued and, thereafter annually within one week from the anniversary of that date.

1.09 The AIF, or the AIFM on behalf of the AIF, shall ensure compliance with the SLCs included in this Rulebook.

1.10 Without prejudice to SLC 1.09, the AIF, or the AIFM on behalf of the AIF may submit to the MFSA a request for a derogation from any specific SLC included in the Rulebook.

1.11 A request submitted in terms of SLC 1.10 shall include the following:

i. an indication of the specific SLC and the content thereof;

ii. reasons why a derogation from this SLC is being requested;

iii. a description of the risks to the AIF and the investor if the MFSA approves the derogation and the manner in which these risks can be mitigated;

iv. the expected duration of the derogation; and

v. a resolution of the governing body of the AIF supporting the request for a derogation.

1.12 The MFSA will assess open-ended requests for derogations on a case-by-case basis. In any case, a derogation will not be granted for a period exceeding 1 year.

1.13 The AIF, or the AIFM on behalf of the AIF will be expected to assess on a continuous basis and certainly prior to expiration whether the derogation is still required.

1.14 In the case where prior to expiration, the AIF, or the AIFM on behalf of the AIF deems that the derogation is still appropriate and required, the AIF or the AIFM on behalf of the AIF shall submit to the MFSA an updated assessment prior to the expiration of such derogation.

1.15 The AIF, or the AIFM on behalf of the AIF shall notify the MFSA of any breach of the licence conditions or of any of the provisions of the offering document or Constitutional Documents of the AIF as soon as the AIF becomes aware of the breach.

1.15A The AIF is required to include a statement in the Directors' Report and/or in any prominent section of the annual report and audited financial statements regarding breaches of SLCs and/or other regulatory/statutory requirements which occurred during the reporting period covered. The statement should include:

i. a brief explanation of the nature of each breach;

ii. whether the breach was rectified both during the period and after; and

iii. any regulatory action that may have been taken by the Authority as a result of the breach.

If no such breaches occurred during the reporting period, this should be reported accordingly.

1.16 Any notification to the MFSA of a breach shall as a minimum include the following information:

i. an indication of the SLC or the investment restriction breached (in the case of advertent breaches) and the contents thereof;

ii. the date/period when the breach occurred and when/by whom it was discovered;

iii. the nature of the breach and the manner in which it occurred;

iv. the impact of the breach on the AIF and the underlying investors. In the case where the AIF or the investors suffered a loss, this loss shall be quantified;

v. the action taken to prevent the recurrence of the breach.

1.16A Without prejudice to SLC 1.16, in the case of an advertent breach, the Scheme shall be subject to provision of SLC 1.15A of this Part of the Rules.

1.17 The AIF – or the AIFM or Administrator on its behalf – shall submit copies of the AIF's annual audited financial statements.

1.18 The AIF shall disclose its identity as regulated entity and its regulator or regulators in all correspondence, advertisements and other documents. Wording similar to the following shall be used: "Licenced by the MFSA as an Alternative Investment Fund."

1.19 The MFSA shall not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.

1.20 The MFSA has the right from time to time, and following advance notification to the AIF, to vary or revoke any licence condition or impose new conditions.

1.21 The AIF shall not be required to make public the issue and redemption prices of its units. However, these must be made available to unit-holders upon request.

1.22 If the dealings in the units or shares and/or the issue of the net asset value[1] are suspended, the AIF – or the AIFM or the Administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension.

The notification to the MFSA informing of the suspension of dealings and/or NAV publication and the determination of the NAV of the AIF shall *inter alia* include:

i. the reason for the suspension of dealings and determination of the NAV;

ii. a confirmation from the Administrator that the underlying investors of the AIF have been informed of the suspension;

iii. a resolution from the governing body of the AIF confirming the approval of the suspension;

iv. a confirmation from the AIF, the AIFM or the Administrator on behalf of the AIF that any provision relating to the suspension of dealings and determination of the NAV in the offering document and Constitutional Document of the AIF have been fully complied with;

v. the envisaged timeframe by when the suspension of dealings and NAV is expected to be lifted.

[1] Hereinafter referred to as "NAV"

Provided that when the suspension of dealings is for two or three days as a result of closures of the main markets where the AIF invests or closures of the main exchanges where the assets of the AIF are traded, the documents requested in paragraphs (ii) and (iii) above need not be submitted.

1.23 The MFSA has the right to require the suspension of the subscription, repurchase or redemption of Units of the Scheme, where this is considered appropriate in the interests of unit-holders or of the public.

1.24 The AIF, its AIFM or Administrator on its behalf shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years, they shall be kept at a place from which they can be produced within two working days of their being requested. After the first two years, they shall be kept at a place from which they can be produced within five working days of their being requested.

1.25 In the event of a winding up, the AIF must give the MFSA at least two weeks' notice of this intention. The prior approval of the MFSA shall be obtained for such decision to be adopted. If requested to do so by the MFSA, the AIF or the AIFM shall do all in its power to delay the winding-up or to proceed with the winding up in accordance with the conditions imposed by the MFSA.

1.26 Any changes to the financial year-end of the AIF shall be notified to the MFSA and disclosed in the Offering Document.

2 GOVERNING BODY OF THE AIF

2.01 The governing body of the AIF (which includes the board of directors, trustee, or general partners, as applicable) shall be responsible for ensuring that the AIF complies with its obligations under these Rules.

2.02 The governing body of the AIF shall at all times have one or more members independent from the AIFM, the Custodian and other service providers. Furthermore, the governing body shall be composed of at least three members one of whom must be resident in Malta:

Provided that the governing body of the AIF could be required to have more than three members depending on the complexity and size of the AIF and the aggregate skill set desired.

2.03 The MFSA shall be satisfied on a continuing basis of the fitness and properness of the members of the governing body.

2.04 The members of the governing body shall act honestly and in good faith in what they consider to be the best interests of the AIF and its investors.

2.05 The members of the governing body shall exercise reasonable care, skill and diligence.

2.06 The members of the governing body have, both collectively and individually, an obligation to acquire and maintain sufficient knowledge and understanding of the AIF's business to enable them to discharge their functions as members of the governing body.

2.07 The governing body must not merely carry out a vetting function with regards to all the documents which are submitted for its attention. It is the duty of the governing body of an AIF to inform itself of its investment activities and have a proper understanding of its financial condition.

2.08 The members of the governing body shall exercise the powers they have for the purposes for which such powers were conferred and they shall not misuse such powers.

2.09 The governing body shall exercise its powers independently without subordinating such powers to the will of others.

2.10 Whilst the governing body of an AIF may be entitled under the Constitutional Document to delegate particular functions, the delegation of such functions shall not absolve the governing body from the duty to supervise the discharge of such delegated functions.

2.11 The members of the governing body shall carry out all the necessary checks to satisfy themselves that the overall structure of the AIF is consistent with the standards prescribed in the Act and in these SLCs and that the terms agreed to in the contracts with the service providers are reasonable and consistent with the standards adopted by the industry. Furthermore, the governing body must ensure that all the service providers appointed in relation to the AIF create an overall structure which will ensure an adequate division of responsibilities in relation to the AIF.

2.12 The governing body shall continuously monitor the execution of the functions delegated to the service providers and shall be satisfied that they are performing their functions in accordance with their statutory and contractual obligations.

2.13 The members of the governing body shall hold regular meetings and shall ensure that detailed minutes are taken to record accurately the matters discussed and considered. The agenda should be well structured and prepared, giving sufficient time to allow for the input of all the notice parties and service providers before the meeting.

2.14 Minutes of the meetings of the governing body must be held in Malta at the registered office of the AIF or at any other place as may be agreed with the MFSA.

2.15 The governing body shall also be guided by the provisions of the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes which has been issued by the MFSA.

3 SERVICE PROVIDERS

3.01 An AIF may appoint service providers as it deems necessary. The AIF is obliged to appoint an AIFM, a Custodian, an auditor, a Compliance Officer and a Money Laundering Reporting Officer.

3.02 The MFSA shall be satisfied on a continuing basis of the fitness and properness of any service provider appointed by the AIF.

3.03 The AIF together with the service providers appointed shall comply with any national or European applicable laws to which they may respectively be subject.

The AIFM

3.04 The AIF may appoint a single external AIFM with responsibility for portfolio management and risk management of the AIF and other permitted services. The AIFM shall be duly authorised in terms of the AIFMD.

3.05 The AIFM may either have an established place of business in Malta or be a European AIFM. If established in Malta, it shall be in possession of a Category 2 Investment Services Licence issued in terms of Article 6 of the Act and authorised by the MFSA as an AIFM in terms of the AIFMD.

3.06 Where an AIF does not appoint an external AIFM, it shall be subject to all the SLCs prescribed in this Part to the Rules, **including** the SLCs applicable to self-managed AIFs prescribed in Section 8 of these Rules.

3.07 The AIFM shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business, and such organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as AIFM. The AIF shall be required to satisfy the MFSA that the proposed AIFM meets the above requirements on a continuing basis.

3.08 An AIF may appoint a European AIFM in accordance with the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations, 2013. A European AIFM may seek to establish a branch in Malta or provide services pursuant to Regulations 6 and 7 of the said Regulations.

3.09 The appointment and/or replacement of the AIF's AIFM, the terms of that appointment and the contents of the agreement to which the appointment is subject, shall be agreed with the MFSA. The MFSA shall have the right to require the replacement of the AIFM.

3.10 The AIF shall be subject to the investment objectives, policies and restrictions outlined in its offering document. The AIFM shall take all reasonable steps to comply with the investment policies and restrictions of the AIF.

Administrator

3.11 The AIF (including self-managed AIF) or the AIFM may appoint an Administrator. Where an Administrator is not appointed, the AIFM shall be responsible for the Administration function (subject to the AIFM being authorised to undertake Administration activities).

3.12 Where the proposed Administrator is established in Malta, it should be in possession of a Recognition Certificate issued in terms of Article 9A of the Act.

3.13 The Administrator shall have the business organisations, systems, experience and expertise deemed necessary by the MFSA for it to act as an Administrator. The AIF shall satisfy the MFSA that the proposed Administrator meets the above requirements.

Custodian

3.14 The Custodian appointed by the AIF or by the AIFM on behalf of the AIF, shall ensure compliance with the applicable provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations[2] and the Rules prescribed in Part BIV of the Investment Services Rules for Investment Services Providers.

3.15 The written consent of the MFSA shall be obtained before the appointment or replacement of any party to act in the capacity of Custodian to the AIF. The MFSA reserves the right to object to the proposed replacement or

[2] S.L. 370.32

appointment and to require such additional information as it may consider appropriate.

Prime Broker and Counterparties

3.16 The AIF may appoint one or more Prime Brokers or counterparties.

3.17 Upon selecting and appointing counterparties and Prime Brokers, the AIFM on behalf of the AIF, shall enter into a written contract outlining the applicable terms. The contract shall also provide that the Custodian be informed thereof. In particular any possibility of transfer and reuse of AIF assets shall be provided for in the contract and shall comply with the AIF's Constitutional Document and offering document.

3.18 The AIF or the AIFM on behalf of the AIF shall exercise due skill, care and diligence before entering into an agreement and on an ongoing basis thereafter taking into account the full range and quality of their services.

3.19 When selecting Prime Brokers or counterparties of an AIFM or an AIF in an OTC derivatives transaction, in a securities lending or in a repurchase agreement, the AIFM on behalf of the AIF shall ensure that those Prime Brokers and counterparties fulfil all of the following conditions:

i. they are subject to ongoing supervision by a public authority;

ii. they are financially sound;

iii. they have the necessary organisational structure and resources for performing the services which are to be provided by them to the AIF or AIFM.

3.20 When appraising the financial soundness referred to in SLC 3.19(ii), the AIFM on behalf of the AIF shall take into account whether or not the Prime Broker or counterparty is subject to prudential supervision, including sufficient capital requirements and effective supervision.

3.21 The list of selected Prime Brokers shall be approved by the AIFM's Senior Management. In exceptional cases, Prime Brokers not included in the list may be appointed, provided they fulfil the requirements prescribed in SLC

3.19 and subject to approval by the AIFM. The AIFM shall be able to demonstrate the reasons for such choice and the due diligence that it exercised in selecting and monitoring the Prime Brokers which had not been listed.

Compliance Officer

3.22 Responsibility for the AIF's compliance with its licence conditions rests with the AIF's governing body.

3.23 In order to enable the compliance functions to be properly carried out, the AIF shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the AIF to comply with its obligations under the Act, the Regulations issued thereunder and these SLCs, 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.

3.24 In order to enable the compliance function to discharge its responsibilities properly, the AIF shall ensure that a Compliance Officer is appointed to assume responsibility for the compliance function and for any reporting as to compliance required by these SLCs. The Compliance Officer shall be based in Malta.

3.25 The AIF shall request its Compliance Officer to prepare a compliance report[3] at least on a six-monthly basis, which shall be presented to the AIF's governing body.

3.26 The Compliance Report should indicate any:

i. breaches to the investment and borrowing restrictions;

ii. breaches to the SLCs outlined in this Rulebook;

[3] Hereinafter referred to as the "Compliance Report"

iii. complaints from unit-holders in the AIF and the manner in which these have been handled (for AIFs sold to retail investors, the manner in which complaints shall have been handled should be in accordance with Appendix 10 to these Rules);

iv. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and

v. material compliance issues during the period covered by the Compliance Report.

3.27 The Compliance Report should also include a confirmation that all the local anti-money laundering/combating funding of terrorism[4] requirements have been satisfied.

This confirmation should be obtained from the AIF's MLRO.

3.28 A copy of the Compliance Report should be held in Malta at the registered office of the AIF and made available to the MFSA during compliance visits.

Money Laundering Reporting Officer

3.29 Responsibility for the AIF's compliance with its AML/CFT obligations rests with the AIF's governing body.

3.30 The AIF shall at all times have a Money Laundering Reporting Officer. In terms of the FIAU Implementing Procedures, the MLRO shall either be a senior official of the AIF or alternatively the MLRO of the Administrator.

Auditor

3.31 The AIF shall appoint an auditor approved by the MFSA. The auditor shall be a person empowered to audit accounts in terms of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.

[4] Hereinafter referred to as "AML/CFT"

3.32 The AIF shall replace its auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an auditor.

3.33 The AIF shall make available to its auditor the information and explanations he/she needs to discharge his/her responsibilities as an auditor and in order to meet the MFSA's requirements.

3.34 The AIF shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his/her firm is:

i. a member of the governing body, partner, Qualifying Shareholder, officer, representative or employee of the AIF;

ii. a partner of, or in the employment of, any person in (i) above;

iii. a spouse, Civil Partner, parent, step-parent, child, step-child or other close relative of any person in (i) above;

iv. a person who is not otherwise independent of the AIF;

v. a person disqualified by the MFSA from acting as an auditor of an AIF.

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

3.35 The AIF 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 AIF shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

3.36 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 vacate his/her office if he becomes disqualified to act as auditor for any reason;

iii. if he/ she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his 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;

iv. in accordance with Article 18 of the Act, to report immediately to the MFSA any fact or decision of which he becomes aware in his capacity as auditor of the AIF which:

(a) is likely to lead to a serious qualification or refusal of his/ her audit report on the accounts of the AIF; or

(b) constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the AIF in or under the Act; or

(c) gravely impairs the ability of the AIF to continue as a going concern; or

(d) relates to any other matter which has been prescribed.

3.37 If at any time the AIF fails to have an auditor in office for a period exceeding four weeks, the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the AIF.

3.38 In respect of each annual accounting period, the AIF shall require its auditor to prepare its management letter in accordance with International Standards on Auditing. The management letter shall be sent to the MFSA.

External Valuer

3.39 The valuation function of the AIFM (or self-managed AIF) shall be performed by:

i. an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with Close Links to the AIF or the AIFM; or

ii. the AIFM, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.

4 INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS

General

4.01 For the purposes of this chapter, the SLCs prescribed therein shall be applicable as follows:

i. SLC 4.02 to SLC 4.13 shall be applicable to **all** AIFs;

ii. SLCs 4.14 to SLC 4.41A shall be applicable **solely** to AIFs which are sold exclusively to retail investors;

iii. SLC 4.42 to SLC 4.60 shall be applicable **solely** to AIFs which are sold to Experienced Investors;

iv. SLC 4.61 to SLC 4.65 shall be applicable **solely** to AIFs which are sold to Qualifying Investors;

v. SLC 4.66 to SLC 4.70 shall be applicable **solely** to AIFs which are sold to Extraordinary Investors; and

vi. SLC 4.71 to SLC 4.74 shall be applicable **solely** to AIFs which are sold to Professional Investors.

4.02 The AIF shall be subject to the investment objectives, policies and restrictions outlined in its offering document. The AIFM or the AIF, where the AIF is self-managed, shall take all reasonable steps to comply with the investment policies and restrictions of the AIF. The Custodian shall supervise the operation of the AIF to ensure that the AIFM complies with the investment policies and restrictions of the AIF.

4.03 Changes to the investment policies and restrictions of the AIF shall be notified to the investors in advance of the change.

Distributions of Income

4.04 An AIF shall effect any distributions of income in accordance with the provisions of its Constitutional Document and/ or offering document.

4.05 Where the AIF is sold to retail investors it shall further comply with the SLCs prescribed in Appendix 2 to Part B of these Rules which in the event of conflict with the provision of the Constitutional Document and/or offering document shall take precedence.

Side Letters

4.06 Side letters to be entered into by the AIF must be circulated to and approved by the AIF's governing body prior to issue.

4.07 The fact that side letters detailing preferential treatment of certain investors may be issued shall be disclosed in the Constitutional Document and/or offering document.

4.08 Side letters issued by the AIF should be retained in Malta at the registered office of the AIF and should be available for inspection by the MFSA during compliance visits.

Side Pockets

4.09 Side pockets to be entered into by an AIF must conform to the Guidance Note on the use of Side Pockets by Collective Investment Schemes issued by the MFSA.

4.10 The fact that side pockets may be used shall be disclosed in the Constitutional Document and/or offering document.

Licence Conditions applicable to AIFs engaged in foreign currency lending

4.11 The AIF shall, in as far as these may be applicable to any foreign currency lending which it may carry out, abide by the high level principles on foreign currency lending as outlined in MFSA RULE 1 OF 2012 on foreign currency lending, which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1).

4.12 Foreign currency lending means lending in any currency other than the legal tender of the country in which the borrower is domiciled. This includes situations where the Euro is the foreign currency due to the borrower's domicile being outside the euro zone.

4.13 When the AIF has engaged in any form of foreign currency lending during the period under review, it shall submit a confirmation to this effect together with its annual report. Any foreign currency lending activity shall be indicated as a percentage of the AIF's total NAV. An AIF which has not carried out any foreign currency lending during the period under review is not required to submit a 'nil' return.

Supplementary Licence Conditions Applicable To AIFs Sold Exclusively To Retail Investors

Breach of Investment Restrictions

4.14 The AIF shall comply with the investment restrictions within six months from the launch of the AIF or upon reaching a value equivalent to EUR 2,500,000 whichever is sooner. However, provided it considers this to be in the best interest of its Unitholders and that it observes the principle of risk spreading, the AIF will not be required to comply with its investment restrictions upon reaching a value equivalent to EUR 2,500,000 subject to it complying with such restrictions within a maximum of six months from launch. The AIF shall take all reasonable steps to comply with the investment restrictions. The Custodian shall supervise the operation of the AIF or the AIFM to ensure that the AIF complies with the investment restrictions.

4.15 The following shall be the rules applicable in the event of an inadvertent breach of the AIF's investment restrictions:

i. If one or more of the AIF's investment restrictions are at any time contravened for reasons beyond the control of the AIFM or the AIF, the AIFM or the AIF shall take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the Unit-

holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s).

ii. The above is aimed at addressing circumstances which may arise following acquisition of the AIF's assets and include market price movements of the AIF's underlying assets or market illiquidity. The above is without prejudice to the duty of the AIFM and the AIF to comply with the AIF's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

Forthwith upon the Custodian becoming aware that circumstances of a kind described above have arisen, the Custodian shall take such steps as are necessary to ensure that the AIF or the AIFM comply with the requirement imposed by (i) above.

iii. A contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied by the AIFM or AIF within the maximum six-month period stipulated in (i) above, a breach of this licence condition is deemed to arise and the relevant notification requirements will apply.

4.16 The AIF's investment policies and restrictions shall be clearly defined in its offering document, and sufficient information shall be given to ensure that Unit-holders are fully aware of the risks to which they will be exposed.

Ancillary liquid cash

4.17 The AIF may hold ancillary liquid assets irrespective of its investment objective/s and policy/-ies.

Investments in securities

4.18 The AIF shall not invest more than 10% of its assets in securities which are not traded in or dealt on a market which:

i. is listed in the offering document;

ii. is regulated, operates regularly, is recognised and is open to the public;

iii. has adequate liquidity and adequate arrangements in respect of the transmission of income and capital; and

iv. is not the subject of an MFSA restriction.

4.19 The AIF shall not invest more than 10% of its assets in securities issued by the same body.

4.20 The AIF shall not hold more than 10% of any class of securities issued by any single issuer.

4.21 The AIF may, subject to the MFSA's prior approval, invest up to 100% of its assets in securities issued or guaranteed by any State, its constituent States, its local authorities, or public international bodies of which one or more States are members.

4.22 The AIF may invest in nil-paid or partly-paid shares and subscribe for placing or underwriting as long as the amount due to be paid does not exceed 5% of the value of the AIF, except that, if the amount exceeds that figure, cash not required for other purposes or for the efficient management of the portfolio shall be available to cover the full amount outstanding.

4.23 The AIF and its AIFM, taking into account all of the AIFs which the latter manages, shall not acquire sufficient instruments to give it the right to exercise control over 20% or more of the share capital or votes of a company, or sufficient instruments to enable it to exercise significant influence over the management of the issuer.

Deposits with credit institutions

4.24 No more than 10% of the assets of the AIF shall be kept on deposit with any one body. This limit may be increased to 30% in respect of money deposited with a credit institution licensed in Malta or in any other Member State or

EEA State, or with any other credit institution which has been approved by the MFSA.

Investments in other UCITS and/ or other Collective Investment Schemes

4.25 The AIF may acquire the Units of other Collective Investment Schemes subject to the following:

i. not more than 20% of the AIF's assets shall be invested in any one Scheme;

ii. where the AIF invests in the Units of another AIF managed by the same AIFM, the AIFM of the AIF into which the investment is made shall waive all charges which it is entitled to charge for its own account in relation to the acquisition or disposal of Units;

iii. where a commission is received by the AIFM of the AIF by virtue of an investment in the Units of another Scheme, that commission shall be paid into the property of the AIF.

Transactions in financial derivative instruments – for efficient portfolio management purposes

4.26 The AIF may employ techniques and instruments for the purpose of efficient portfolio management. These operations may concern the use of financial derivative instruments[5].

The reference in this SLC to techniques and Instruments for the purpose of efficient portfolio management shall be understood as a reference to techniques and Instruments which fulfil the following criteria:

i. they are economically appropriate in that they are realised in a cost-effective way;

ii. they are entered into for one or more of the following specific aims:

[5] Hereinafter referred to as "FDIs"

(a) reduction of risk; or
(b) reduction of cost.

4.27 The AIF shall only hold FDIs for the purposes of efficient portfolio management in terms of SLC 4.26 and shall not hold FDIs for investment purposes nor shall it be leveraged or geared in any manner through the use of FDIs.

4.28 In order to assure it is not leveraged or geared through the use of FDIs, the AIF shall calculate its exposure relating to FDIs on the basis of the 'commitment approach'. The AIF shall convert its derivatives positions into the equivalent positions of the underlying assets embedded in those FDIs. The commitment calculation for certain FDIs may be adjusted by a probability factor that aims to reflect the probability of the FDI's commitment occurring. For options and warrants, the 'delta approach' may be used. Where it is not possible to calculate a probability factor on a scientific and objective basis, the factor is assumed to be 1. Reference should be made to Appendix VI to Part B of the Investment Services Rules for Retail Collective Investment Schemes which set out the commitment rules for a non-exhaustive list of commonly traded FDIs.

4.29 The AIF's maximum exposure to one counterparty in an OTC-derivative transaction shall not be more than 5% of value of the assets of the AIF. This limit may be increased to 10% in respect of OTC-derivative transactions made with a counterparty which is a credit institution. The exposure per counterparty of an OTC-derivative should not be measured on the basis of the notional value of the OTC-derivative, but on the maximum potential loss incurred by the Scheme if the counterparty defaults.

4.30 The exposure to one counterparty in an OTC-derivative transaction may be reduced where the counterparty provides the AIF with collateral which satisfies the following criteria:

i. the collateral falls within one of the following categories:

(a) cash;

(b) government or other public securities;

(c) certificates of deposit issued by relevant institutions; and

(d) bonds/commercial paper issued by relevant institutions;

ii. collateral is:

(a) marked to market daily;

(b) transferred to the Custodian, or its agent; and

(c) immediately available to the AIF, without recourse to the counterparty, in the event of a default by that entity;

iii. in the case of non-cash collateral, the collateral:

(a) cannot be sold or pledged;

(b) has a minimum credit rating of A or equivalent;

(c) is held at the credit risk of the counterparty; and

(d) is issued by an entity independent of the counterparty;

iv. in the case of cash collateral, the collateral may not be invested other than in the following:

(a) deposits with relevant institutions, which are capable of being withdrawn within 5 working days;

(b) government or other public securities which have a minimum credit rating of A or equivalent; and

(c) certificates of deposit issued by relevant institutions, which have a minimum credit rating of A or equivalent.

Invested cash collateral which is held at the credit risk of the AIF, other than cash collateral invested in government or other public securities or

qualifying money market funds, shall be diversified so that no more than 20% of the collateral is invested in the securities of, or placed on deposit with, one institution. Invested cash collateral may not be placed on deposit with, or invested in securities issued by the counterparty or a related entity.

4.31 The AIF may net the mark-to-market value of its OTC-derivative positions with the same counterparty, thus reducing the AIF's exposure to its counterparty, provided that the AIF has a contractual netting agreement with its counterparty which creates a single legal obligation such that, in the event of the counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the AIF would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions.

4.32 Derivative transactions which are performed on an exchange where the clearing house meets the following conditions, shall be deemed to be free of counterparty risk:

i. is backed by an appropriate performance guarantee;

ii. is characterised by a daily mark-to-market valuation of the derivative positions; and

iii. is subject to at least daily margining.

4.33 The AIF shall only enter into OTC-derivatives for the purposes of efficient portfolio management with counterparties who:

i. are not the AIFM or Custodian of the AIF; and

ii. form part of a group whose head office or parent company is licensed, registered or based in Malta, any member of the Organisation for Economic Co-operation and Development[6], the EU or the EEA and is subject to prudential supervision; and

[6] Hereinafter referred to as "OECD"

iii. have a credit rating of at least A (Standards & Poor's) or A2 (Moody's) or such other rating acceptable to MFSA. The Scheme and/or the Manager shall not rely solely or mechanistically on credit rating.

Provided that where a counterparty is unrated, the Scheme and/or the Investment Manager shall submit a request to the MFSA to consider a derogation from SLC 5.23 (iii). In this case, the Scheme and/or the Investment Manager shall demonstrate that the counterparty satisfies the following conditions, on an ongoing basis:

(a) has sound financial standing;

(b) is located in a reputable jurisdiction;

(c) the exposure is capped at an appropriate aggregate limit; and

(d) procedures are in place so that such a limit/relationship is reviewed at periodic intervals (at least on an annual basis) and this review is documented with such document being retained within Scheme records.

In the case of OTC transactions, the Scheme and/or the Investment Manager shall be satisfied that the counterparty has:

- agreed to value the transaction at least on a weekly basis; and

- will close out the transaction at the request of the Manager or the Scheme at fair value.

4.34 When the AIF holds a FDI which automatically or at the AIF's or counterparty's discretion, requires cash or physical settlement on maturity or exercise, the AIF shall hold the underlying Instrument as cover. The level of cover should be calculated on the basis of the commitment approach as indicated in SLC 4.28.

4.35 When in view of the nature of the FDI, the AIF cannot hold the underlying as cover (e.g. in the case of index-based FDIs), SLC 4.34 shall not apply and the AIF shall hold any of the following assets as cover:

i. cash;

ii. liquid debt instruments (e.g. government bonds of first credit rating) prudently adjusted by appropriate haircuts (minimum of 5%);

iii. other highly liquid assets which are correlated with the underlying of the FDIs, prudently adjusted by appropriate haircuts (minimum 5%).

The level of cover should be calculated on the basis of the commitment approach as indicated in SLC 4.28.

For the purposes of the above, the instruments held as cover should be considered as 'liquid' when they can be converted into cash at no more than 7 business days at a price closely corresponding to the current valuation of the Financial Instrument. It has to be ensured that the respective cash amount is at the AIF's disposal at the maturity/ expiry or exercise date of the FDI.

Uncovered Sales

4.36 The AIF may not carry out uncovered sales of securities or other Financial Instruments. 'Uncovered sales' are all transactions in which the AIF is exposed to the risk of having to buy securities at a higher price than the price at which the securities are delivered, thus making a loss, and the risk of not being able to deliver the underlying for settlement at the time of the maturity of the transaction.

General Restrictions – Single Issuer Exposures

4.37 Notwithstanding the individual limits laid down in SLC 4.19, 4.24 and 4.29, the AIF may not combine:

i. investments in securities issued by;

ii. deposits made with; and/or

iii. counterparty exposures arising from OTC-derivative transactions undertaken with;

a single body in excess of 35% of its assets.

Borrowing Limits

4.38 An AIF may borrow up to a maximum of 10% of:

i. its assets, when the AIF is set up as an investment company or limited partnership; or

ii. the value of the AIF, when the AIF is set up as a unit trust or common contractual fund.

Provided that the borrowing is on a temporary basis and such that the AIF's overall risk exposure does not exceed 110% of its assets under any circumstances.

Provided further that the AIF may acquire foreign currency by means of a 'back to back' loan. Foreign currency obtained in this manner is not classed as borrowings for the purposes of this SLC provided that the offsetting deposit:

(a) is denominated in the base currency of the AIF; and

(b) equals or exceeds the value of the foreign currency loan outstanding.

Miscellaneous

4.39 A Sub-Fund of an AIF may invest in units of one (1) or more sub-funds within the same AIF provided that:

i. adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the AIF is made in the Constitutional Documents and/or the Offering Documentation;

ii. the AIF must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund are treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same AIF in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

iii. where the AIF is sold exclusively to Retail Investors the Sub-Fund is allowed to invest up to 10% of its assets into any Sub-Fund within the same AIF;

iv. the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);

v. in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

   Provided that the restriction in point (v) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

vi. for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net asset value of each Sub-Fund, cross sub-fund investments will be counted once;

vii. any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disapplied;

viii. clear disclosure of cross sub-fund investments shall be made in the AIF's Half-Yearly and Annual Audited Financial Statements;

   For the purpose of point (viii) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

ix. a Conflict of Interest Policy shall be in place and accordingly any conflicts of interest that arise shall be duly recorded, mitigated and disclosed as may be necessary.

This SLC does not apply to Schemes that fall within the scope of the Loan Fund Rules.

4.40 Material changes to the investment policies and restrictions of the AIF shall be notified to investors in advance of the change.

4.41 Changes to the investment objectives of the AIF shall be subject to the prior approval of the Unit-holders of the AIF. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

4.41A An AIF which is sold exclusively to Retail Investors and which conducts cross-selling practices by distributing a Tied or a Bundled Package is subject to provisions of Section 9 in Appendix I to this Part BII. Moreover, it shall be subject to provisions of as defined in the Glossary to the Investment Services Rules for Alternative Investment Funds.

Investment Policies, Objectives and Restrictions applicable to AIFs which are Sold to Experienced Investors

Note: On 26 May 2016, the Authority issued a circular to the industry informing that with effect from 3 June 2016, the MFSA would cease accepting application for the licencing of AIFs targeting Experienced Investors. SLCs 4.42 to 4.60 have been retained to regulate the current Collective Investment Schemes licenced as AIFs targeting Experienced Investors.

Investment Restrictions

4.42 The minimum investment which the AIF may accept is EUR 10,000 or its currency equivalent per investor. Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR 10,000 unless this is the result of a fall

in the NAV. In the case of an umbrella AIF, the EUR 10,000 threshold may apply on a per Scheme basis rather than on a per sub-fund basis.

4.43 The AIF shall comply with the investment restrictions within six months from the launch of the AIF or upon reaching a value equivalent to EUR 2,500,000 whichever is sooner. However, provided it considers this to be in the best interest of its Unitholders and that it observes the principle of risk spreading, the AIF will not be required to comply with its investment restrictions upon reaching a value equivalent to EUR 2,500,000 subject to it complying with such restrictions within a maximum of six months from launch.

4.44 The AIF may only enter into repurchase/reverse repurchase and stock lending or borrowing agreements:

i. When in the opinion of the AIF or the AIFM, the entering into such agreements by the AIF is appropriate and in the interest of the AIF, and entails an acceptable level of risk; and

ii. In accordance with good market practice, which involves the provision of adequate collateral to the satisfaction of the AIF or the AIFM.

4.45 Investment by the AIF in FDIs as part of the investment policy in order to obtain exposure to underlying assets shall be without prejudice to the limits prescribed in these SLCs which apply in the case of direct investments in such underlying assets. The exposure to the underlying assets should be calculated using the commitment approach.

4.46 Direct borrowing for investment purposes and leverage via the use of derivatives is restricted to 100% of the NAV. The AIF's exposure relating to derivative instruments is calculated taking into account:

i. the current value of the underlying asset;

ii. the counterparty risk;

iii. future market movements; and

iv. the time available to liquidate positions.

The AIF's exposure relating to borrowing for investment purposes is the amount so borrowed.

The assessment of the AIF's global exposure to derivative investments should be assessed on the basis of the value-at-risk approach or the commitment approach.

4.47 The AIFM or (in the case of a self-managed AIF), the AIF, must take reasonable steps to ensure that the AIF, is managed according to the principle of risk spreading. In particular, the AIF shall be required to adhere to the diversification requirements prescribed hereunder. In the case of an AIF investing in alternative assets, the Authority may impose tailored investment restrictions. Such AIF may utilise SPVs subject to the conditions prescribed in Appendix 1 to Part B of this Rulebook and subject to such other conditions as the MFSA may consider appropriate imposing, taking into account the nature of the underlying assets, and their proposed custody arrangements.

4.48 The AIF may invest up to 20% of its total assets in securities issued by the same body and up to 30% of its assets in money market instruments issued by the same body provided that:

i. The 20% / 30% limit set out above may be increased to a maximum of 100% in the case of securities and money market instruments issued or guaranteed by an OECD or EU/EEA Member State, its local authorities or public international bodies of which one or more such States are members;

ii. The 20% / 30% limit set out above may be increased to a maximum of 35% in the case of securities and money market instruments guaranteed by a credit institution authorised in the EU/EEA or which is subject to equivalent prudential requirements;

iii. The 20% limit set out above may be increased up to a maximum of 30% in the case of transferable securities traded in or dealt on a regulated market which operates regularly, is recognised and is open to the public.

4.49 The AIF may invest up to a maximum of 35% of its total assets in deposits held with a single body.

4.50 The AIF is not subject to any investment restrictions with respect to investments in a single Collective Investment Scheme provided that the underlying Scheme is a UCITS or other open-ended Collective Investment Scheme subject to risk spreading requirements which are at least comparable to those applicable to the AIF itself.

4.51 The AIF may invest up to a maximum of 30% of its total assets in any single Collective Investment Scheme which does not satisfy the conditions indicated in SLC 4.50 above.

4.52 Where the AIF is a fund of hedge funds it shall invest in at least five hedge funds.

4.53 Where the AIF enters into OTC derivative transactions, it shall ensure that its exposure to a single counterparty is limited to 20% of its total assets.

The exposure to one counterparty in an OTC derivative transaction may be reduced where the counterparty provides the AIF with acceptable collateral in accordance with good market practice to the satisfaction of the AIF or its AIFM.

The exposure per counterparty of an OTC derivative should not be measured on the basis of the notional value of the OTC derivative, but on the maximum potential loss incurred by the AIF if the counterparty defaults.

The AIF may net the mark-to-market value of its OTC derivative positions with the same counterparty, thus reducing its exposure to its counterparty, provided that the AIF has a contractual netting agreement with its counterparty which creates a single legal obligation such that, in the event of the counterparty's failure to perform owing to default, bankruptcy, liquidation or any similar circumstance, the AIF would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions.

4.54 The AIF shall limit its aggregate maximum exposure (through securities, money market instrument, deposits and OTC derivatives transactions) to a single issuer/ counterparty to 40% of its total assets.

4.55 Where the AIF has been set up as a Feeder AIF, the underlying AIF shall satisfy the leverage restrictions applicable to the AIF.

4.56 Changes to the investment policies and restrictions of the AIF shall be notified to investors in advance of the change.

4.57 Changes to the investment objectives of the AIF shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

4.58 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

i. if one or more of the AIF's investment restrictions are at any time contravened for reasons beyond the control of the AIFM or the AIF, the AIFM or the AIF must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the Unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s);

ii. the above is aimed at addressing circumstances which may arise following acquisition of the AIF's assets and include market price movements of the AIF's underlying assets or market illiquidity. The above is without prejudice to the duty of the AIFM and the AIF to comply with the AIF's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

iii. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to MFSA's notification requirements. However, where the contravention is not remedied by the AIFM or the AIF within the maximum six-month period

stipulated in (i) above, a breach of this licence condition is deemed to arise and the relevant notification requirements will apply.

4.59 Where the AIF invests directly or indirectly in immovable property, the following supplementary conditions shall apply:

i. the AIF may invest up to a maximum of 25% of its total assets directly or indirectly (through an SPV) in any one single immovable property. Subject to the AIF being operated according to the risk spreading principle, it will not be required to comply with this restriction before three years from its launch. For the purposes of this restriction, a property whose economic viability is linked to another property is not considered as a separate item of property for this purpose.

ii. were the AIF invests solely in immovable property (rather than also in property funds and/ or other securities), it should be exposed to not less than 5 different properties.

iii. the AIF may invest 100% of its total assets in any single property fund provided that such fund complies with the investment, borrowing and leverage conditions applicable to AIFs targeted to Experienced Investors, established as property funds and which are set out in these SLCs and in the MFSA's Property Fund Policy.

iv. the AIF may invest up to 100% of its assets in a SPV provided that the applicable investment, borrowing and leverage restrictions are satisfied at the level of the SPV.

4.60 A Sub-Fund of an AIF may invest in units of one (1) or more sub-funds within the same AIF provided that:

i. adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the AIF is made in the Constitutional Documents and/or the Offering Documentation;

ii. the AIF must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund are treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same

AIF in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

iii. where the AIF is sold exclusively to Experienced Investors, the Sub-Fund is allowed to invest up to 10% of its assets into any Sub-Fund within the same AIF;

iv. the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);

v. in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

Provided that the restriction in point (v) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

vi. for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net asset value of each Sub-Fund, cross sub-fund investments will be counted once;

vii. any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disapplied;

viii. clear disclosure of cross sub-fund investments shall be made in the AIF's Half-Yearly and Annual Audited Financial Statements;

For the purpose of point (viii) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

ix. a Conflict of Interest Policy shall be in place and accordingly conflicts of interest that arise are duly recorded, mitigated and disclosed as may be necessary.

This SLC does not apply to Schemes that fall within the scope of the Loan Fund Rules.

Investment Policies, Objectives and Restrictions Applicable to AIFs which are Sold to Qualifying Investors

Investment Restrictions

4.61 The minimum investment which the AIF may accept is EUR 100,000 or its currency equivalent per investor. Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR 100,000 unless this is the result of a fall in the NAV. In the case of an umbrella AIF, the EUR 100,000 may apply on a per Scheme basis rather than on a per sub-fund basis.

4.62 The AIF shall be subject to the investment objectives, policies and restrictions outlined in its offering document. In addition, where the AIF intends effecting its investments through the use of trading companies or SPVs, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix 1 to Part B of these Rules. The AIFM or the AIF shall take all reasonable steps to comply with the investment policies and restrictions of the AIF.

4.63 Changes to the investment objectives of the AIF shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

4.64 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

i. if one or more of the AIF's investment restrictions are at any time contravened for reasons beyond the control of the AIFM or the AIF, the AIFM or the AIF must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is

reasonably practicable having regard to the interests of the Unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s);

ii. the above is aimed at addressing circumstances which may arise following acquisition of the AIF's assets and include market price movements of the AIF's underlying assets or market illiquidity. The above is without prejudice to the duty of the AIFM and the AIF to comply with the AIF's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

iii. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied by the AIFM or the AIF within the maximum six-month period stipulated in (i) above, a breach of this licence condition is deemed to arise and the relevant notification requirements will apply.

4.65 A Sub-Fund of an AIF may invest in units of one (1) or more sub-funds within the same AIF provided that:

i. adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the AIF is made in the Constitutional Documents and/or the Offering Documentation;

ii. the AIF must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund are treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same AIF in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

iii. where the AIF is sold exclusively to Qualifying Investors, the Sub-Fund is allowed to invest up to 50% of its assets into any Sub-Fund within the same AIF;

iv. the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);

v. in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

Provided that the restriction in point (v) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

vi. for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net asset value of each Sub-Fund, cross sub-fund investments will be counted once;

vii. any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disapplied;

viii. clear disclosure of cross sub-fund investments shall be made in the AIF's Half-Yearly and Annual Financial Statements;

For the purpose of point (viii) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

ix. a Conflict of Interest Policy shall be in place and accordingly conflicts of interest that arise are duly recorded, mitigated and disclosed as may be necessary.

This SLC does not apply to Schemes that fall within the scope of the Loan Fund Rules.

Investment Policies, Objectives and Restrictions Applicable to AIFS which are Sold to Extraordinary Investors

Note: On 26th May 2016, the Authority issued a circular to the industry informing that with effect from 3rd June 2016, the MFSA would cease accepting applications for the licencing of AIFs targeting Extraordinary Investors. SLCs 4.66 to 4.70 have been retained to regulate the current Collective Investment Schemes licenced as AIFs targeting Extraordinary Investors.

Investment Restrictions

4.66 The minimum investment which the AIF may accept is EUR 750,000 or its currency equivalent per investor. Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR 750,000 unless this is the result of a fall in the NAV. In the case of an umbrella AIF, the EUR 750,000 may apply on a per Scheme basis rather than on a per sub-fund basis.

4.67 The AIF shall be subject to the investment objectives, policies and restrictions outlined in its offering document. In addition, where the AIF intends effecting its investments through the use of trading companies or SPVs, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I to Part B of these Rules. The AIFM or the AIF shall take all reasonable steps to comply with the investment policies and restrictions of the AIF.

4.68 Changes to the investment objectives of the AIF shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

4.69 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

i. if one or more of the AIF's investment restrictions are at any time contravened for reasons beyond the control of the AIFM or the AIF, the AIFM or the AIF must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the Unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s);

The above is aimed at addressing circumstances which may arise following acquisition of the AIF's assets and include market price movements of the AIF's underlying assets or market illiquidity. The above is without prejudice to the duty of the AIFM and the AIF to comply with the AIF's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

ii. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied by the AIFM or the AIF within the maximum six-month period stipulated in (i) above, a breach of this licence condition is deemed to arise and the relevant notification requirements will apply.

4.70 A Sub-Fund of an AIF may invest in units of one (1) or more sub-funds within the same AIF provided that:

i. adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the AIF is made in the Constitutional Documents and/or the Offering Documentation;

ii. the AIF must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund are treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same AIF in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

iii. where the AIF is sold exclusively to Extraordinary Investors, the Sub-Fund is allowed to invest up to 50% of its assets into any Sub-Fund within the same AIF;

iv. the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);

v. in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

Provided that the restriction in point (v) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

vi. for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net asset value of each Sub-Fund, cross sub-fund investments will be counted once;

vii. any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disapplied;

viii. clear disclosure of cross sub-fund investments shall be made in the AIF's Half-Yearly and Annual Audited Financial Statements;

For the purpose of point (viii) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

ix. a Conflict of Interest Policy shall be in place and accordingly conflicts of interest that arise are duly recorded, mitigated and disclosed as may be necessary.

This SLC does not apply to Schemes that fall within the scope of the Loan Fund Rules.

Investment Policies, Objectives and Restrictions applicable to AIFs which are Sold to Professional Investors

Investment Restrictions

4.71 The AIF shall be subject to the investment objectives, policies and restrictions outlined in its offering document. In addition, where the AIF intends effecting its investments through the use of trading companies or SPVs, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I to Part B of these Rules. The AIFM or the AIF shall take all reasonable steps to comply with the investment policies and restrictions of the AIF.

4.72 Changes to the investment objectives of the AIF shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

4.73 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

i. if one or more of the AIF's investment restrictions are at any time contravened for reasons beyond the control of the AIFM or the AIF, the AIFM or the AIF must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the Unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s);

The above is aimed at addressing circumstances which may arise following acquisition of the AIF's assets and include market price movements of the AIF's underlying assets or market illiquidity. The above is without prejudice to the duty of the AIFM and the AIF to comply with the AIF's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

ii. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to MFSA's notification requirements. However, where the contravention is not remedied by the AIFM or the AIF within the maximum six-month period stipulated in (i) above, a breach of this licence condition is deemed to arise and the relevant notification requirements will apply.

4.74 A Sub-Fund of an AIF may invest in units of one (1) or more sub-funds within the same AIF provided that:

i. adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the AIF is made in the Constitutional Documents and/or the Offering Documentation;

ii. the AIF must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund are treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same AIF in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

iii. where the AIF is sold exclusively to Professional Investors, the Sub-Fund is allowed to invest up to 50% of its assets into any Sub-Fund within the same AIF;

iv. the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);

v. in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

Provided that the restriction in point (v) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

vi. for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net asset value of each Sub-Fund, cross sub-fund investments will be counted once;

vii. any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disapplied;

viii. clear disclosure of cross sub-fund investments shall be made in the AIF's Half-Yearly and Annual Financial Statements;

For the purpose of point (viii) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

ix. a Conflict of Interest Policy shall be in place and accordingly conflicts of interest that arise are duly recorded, mitigated and disclosed as may be necessary.

This SLC does not apply to Schemes that fall within the scope of the Loan Fund Rules.

Note: AIFs targeting Professional or Qualifying Investors are not subject to the rules outlined in the MFSA Property Funds Policy [Ref: Feedback Statement 03/2017 issued on 15 January 2018].

5 TRANSPARENCY REQUIREMENTS

Constitutional Documents

THE AIFM SHALL ENSURE THAT ANY CHANGES TO THE CONSTITUTIONAL DOCUMENT OF THE AIF MUST BE APPROVED BY THE MFSA IN ADVANCE OF IMPLEMENTATION.

5.01 The Constitutional Document shall contain at least the information prescribed in Appendix 3 to Part B of these Rules.

Offering Document

5.02 The AIFM shall publish an offering document, which shall be dated and which shall be kept up to date. The offering document shall be offered to investors free of charge before they become committed to investing. Reference shall also be made to the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations.

5.03 The offering document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information prescribed in Appendix 4 to Part B of these Rules.

5.04 The AIF shall approve the offering document including any amendments thereto, and confirm its approval to the MFSA.

5.05 The offering document and any amendments thereto shall be sent to and agreed with the MFSA before publication. The AIFM must submit a copy of its approval of the offering document, when this is submitted for the MFSA's approval.

Annual Report

5.06 The AIF, the AIFM or Administrator on its behalf shall submit copies of the AIF's annual audited financial statements to the MFSA and such other

information, as the MFSA may from time to time request. The annual reports shall be published and provided to investors of the AIF upon request. The annual reports shall be submitted to the MFSA within six months from the end of the respective period concerned:
Provided that in respect of the AIF, admitted to listing on a regulated market in Malta, the annual reports shall submit to the MFSA within four months from the end of the respective period concerned.

Where applicable, the AIF, the AIFM or Administrator on its behalf shall also include with the annual report a confirmation on the involvement of the AIF in foreign currency lending during the period under review.

Seven months following the end of period concerned, through the LH Portal submission platform, the Licence Holder shall prepare and submit:

i. the Annual Fund Return in the form set out in Appendix 11 to these rules;

ii. the Representation Sheet as found in the Annual Fund Return template, signed by at least two directors.

The Representation Sheet is to be submitted in original to the MFSA.

5.07 The financial statements shall not be submitted to the MFSA unless these are a full and complete set of the required documentation and signed by all the signatories as required.

5.08 DELETED

5.09 The annual report shall be accompanied by a report by the Custodian on whether the AIF has been managed:

i. in accordance with the limitations imposed on the investment and borrowing powers of the AIF by the Constitutional Document and by the MFSA; and

ii. in accordance with its Constitutional Document and its licence conditions.

In the case of non-compliance with (i) or (ii) above, the Custodian's report should outline the steps taken to rectify the situation.

5.10 The accounting information given in the annual report shall be prepared in accordance with the International Financial Reporting Standards as adopted by the EU and with the accounting rules laid down in the Constitutional Document.

5.11 The accounting information given in the annual report shall be audited by a certified auditor in accordance with SLC 3.31. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

5.12 The AIF shall also submit to the MFSA, on the following e-mail address: fundreporting@mfsa.mt, any statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations.

5.13 In complying with the requirements prescribed in this section above, the AIFM shall also refer and comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision outlining the content and format of the annual report. The content and format of the annual report shall be adapted to the type of AIF to which it applies.

6 DEALINGS BY OFFICIALS OF AN AIF

6.01 Where the AIF allows its officials to deal for their own account, it is responsible for ensuring that such a practice does not lead to abuse. The standards and procedures to be adopted should include the following:

i. The AIF must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market manipulation.

ii. Internal mechanisms should be established to prompt the Compliance Officer's intervention if and when in respect of any staff member, abnormal behaviour or patterns concerning investment transactions are observed.

6.02 All transactions undertaken by officials on their own account should be at "arm's length" – but this does not preclude discounts being allowed to officials.

7 MARKETING OF AN AIF

7.01 The marketing of the AIF is subject to the provisions of Article 11 of the Act.

7.02 The AIFM may only market an AIF with a passport in jurisdictions outside Malta if it satisfies the relevant provisions prescribed in the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations and the Investment Services Act (Marketing of AIFs) Regulations. The marketing of an AIF in jurisdictions outside Malta to investors other than professional investors as defined in this Rulebook is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFMD.

8 SUPPLEMENTARY LICENCE CONDITIONS APPLICABLE TO SELF-MANAGED AIFS

For the purposes of this section, the term 'AIF' shall be understood as referring to a 'self-managed AIF".

The Scheme shall also refer and comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision as may be amended from time to time.

Permissible Activities

8.01 A self-managed AIF may only be authorised to provide the licensable activities which consist in the internal management of the AIF as provided hereunder:

i. Investment management functions which the AIF shall at least perform:

   a. Portfolio management;

   b. Risk management.

ii. Other functions that an AIF may additionally perform in the course of the collective management thereof:

   a. Administration:
      - legal and fund management accounting services;
      - customer inquiries;
      - valuation and pricing, including tax returns;
      - regulatory compliance monitoring;
      - maintenance of Unit-holders register;
      - distribution of income;
      - unit/shares issues and redemptions;
      - contract settlements including certificate dispatch;
      - record keeping.

   b. Marketing;

c. Activities related to the assets of the AIF, namely services necessary to meet the fiduciary duties of the AIF, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

8.02 Without prejudice to the generality of Article 6(6) of the Act, in the case of an application for a licence as a self-managed AIF, the MFSA shall inform the applicant in writing within three months of the submission of a complete application, whether or not the licence has been granted. The MFSA may prolong this period for up to three additional months, where it considers necessary due to the specific circumstances of the case and after having notified the applicant accordingly.

Provided that for the purpose of this SLC, an application is deemed to be complete if the applicant has at least submitted the information referred to in the checklist to the application form in Schedule 1 to Part A of these Rules to the satisfaction of the MFSA.

The AIF shall commence its activities as soon as the licence has been granted.

8.03 A self-managed AIF may start providing an investment service in Malta with investment strategies described in accordance with the application form submitted to the MFSA as soon as the licence is granted, but not earlier than one month after having submitted any missing information referred to hereunder:

i. Information on arrangements made for the Delegation and sub-Delegation to third parties of functions referred to in SLCs 8.76 to 8.84 of this Part of the Rules;

ii. The AIF's Constitutional Document;

iii. Information on the arrangements made for the appointment of the Custodian in accordance with the applicable provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations and the Rules prescribed in Part BIV of the Investment Services Rules for Investment Services Providers;

iv. Any additional information referred to in SLC 8.85 of this Part of the Rules.

8.04 The MFSA may restrict the scope of the authorisation in particular as regards the investment strategies an AIF is allowed to adopt.

8.04A The Scheme shall apply the Guidelines on funds' names using ESG or sustainability-related terms, where applicable.

Financial Resources Requirements

8.05 The AIF shall have sufficient financial resources at its disposal to enable it to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed.

8.06 Without prejudice to the generality of SLC 8.05, the AIF must have Own Funds which are equivalent to an initial capital of at least EUR 300,000.

8.07 The financial resources of the AIF shall at all times exceed the level prescribed. The AIF shall maintain Own Funds equal to or in excess of its capital resources requirement and these shall constitute the AIF's financial resources requirement.

8.08 Where the value of the portfolio of the AIF exceeds EUR 250 million, the AIF will be required to provide an additional amount of Own Funds which is equal to 0.02% of the amount by which the value of the portfolio of the AIF exceeds EUR 250 million:
Provided that the required total of the initial capital and the additional amount of Own Funds shall not exceed EUR 10 million.

8.09 Without prejudice to the amounts prescribed in SLC 8.08 above, the Own Funds of the AIF shall never be less than the amount required under Article

97 of Regulation (EU) No 575/2013 i.e. one quarter of the preceding year's fixed overheads.

8.10 The MFSA may authorise an AIF not to provide up to 50% of the additional amount of Own Funds referred to in SLC 8.08 above, if it benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in Malta, in another Member State or EEA State or in a third country where it is subject to prudential rules considered by the MFSA as equivalent to those prescribed by EU legislation.

8.11 The AIF shall comply with any further financial resources requirements set by the MFSA. If the MFSA so determines, the AIF will be given due notice in writing of the additional financial resources requirements which shall be applied.

8.12 The AIF shall immediately advise the MFSA if at any time it is in breach of its financial resources requirement. In this case, the MFSA may, if the circumstances justify it, allow the AIF a limited period within which to restore its financial resources to the required level.

Professional Liability Cover

8.13 To cover professional liability risks resulting from activities which the AIF may carry out pursuant to these SLCs, the AIF shall either:

i. have additional Own Funds which are appropriate to cover potential liability risks arising from professional negligence; or

ii. hold professional indemnity insurance[7] against liability arising from professional negligence which is appropriate to the risks covered.

8.14 The AIF shall purchase the PII from an EU or non-EU undertaking authorised to provide PII in accordance with EU or Maltese legislation. The PII can also be provided by a third-party entity.

[7] Hereinafter referred to as "PII"

8.15 The AIF shall submit a copy of the cover note or such other written evidence as the MFSA may require to establish compliance with these SLCs.

8.16 The AIF shall, within two days from the date it becomes aware of any circumstances specified in (i) to (vii) below, inform the MFSA in writing where:

i. during the term of the policy, the AIF has notified insurers of an incident which may give rise to a claim under the policy;

ii. during the term of a policy, the insurer has cancelled the policy or has notified its intention of doing so;

iii. the policy has not been renewed or has been cancelled and another policy satisfying the requirements prescribed in this section has not been taken out from the day on which the previous policy lapsed or was cancelled;

iv. during the term of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements prescribed in this section;

v. the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy;

vi. the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements prescribed in this section;

vii. during the term of a policy, the risks covered by the policy or the conditions or terms relating thereto are altered in any manner.

8.17 Own Funds including any additional Own Funds as referred to in SLC 8.13(i), shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

8.18 In complying with SLC 8.13 above, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Operational Arrangements

8.19 The AIF shall at all times use adequate and appropriate human and technical resources that are necessary for its proper management.

8.20 The AIF shall have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing, including with regard to network and information systems that are set up and managed in accordance with the DORA Regulation, as well as adequate internal control mechanisms, having also regard to the nature of the AIF itself.

8.21 In In particular, these shall include rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIF may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIF are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

8.22 In adhering with the requirements prescribed in SLCs 8.19 to 8.21 above, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.23 An AIF shall, taking into account the size, nature, scale and complexity of the said undertaking and on a best effort basis, refer to the DORA Regulation.

8.24 When entering into any and all outsourcing arrangements, the AIF shall make reference to the DORA Regulation.

Investment Committee

8.25 The management of the assets of the AIF is entrusted with the governing body, at least one member of whom must be resident in Malta.

8.26 The governing body shall establish an in-house Investment Committee made up of at least three members, whose composition may include members of the governing body.

The terms of reference of this Investment Committee– which regulate the proceedings of the Investment Committee – and any changes thereto, are subject to a notification to the MFSA.

8.27 The majority of Investment Committee meetings – the required frequency of which should depend on the nature of the AIF's investment policy, but which should be at least quarterly – are to be physically held in Malta. Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.

8.28 The minutes of meetings of the Investment Committee should be available in Malta for review during the MFSA's compliance visits.

8.29 The role of the Investment Committee will be to:

i. Monitor and review the investment policy of the AIF;

ii. Establish and review guidelines for investments by the AIF;

iii. Issue of rules for stock selection;

iv. Set up the portfolio structure and asset allocation; and

v. Make recommendations to the AIF's governing body.

8.30 Where the AIF has not appointed an Investment Committee, the functions mentioned in SLC 8.29 shall be undertaken by the members of the AIF's

governing body and any reference to Investment Committee throughout this section shall be construed as reference to the AIF's governing body. In such case, the MFSA would need to assess the competence of the members of the governing body to undertake the investment management of the Scheme.

8.31 The Investment Committee may delegate the day-to-day investment management of the assets of the AIF to one or more officials of the AIF referred to as "the Portfolio Manager/s". The Portfolio Manager/s will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objectives, policy and restrictions described in the AIF's offering document.

8.32 The AIF shall obtain the written consent of the MFSA before the appointment or replacement a member of a Portfolio Manager. For the purposes of the above and 8.33 below, 'Portfolio Manager(s)' should be interpreted as the person(s) in charge of the day-to-day investment management of the AIF, whether he/she is also a member of the Investment Committee or otherwise. Provided that, when the Investment Committee is to be considered as collectively responsible for the day-to-day investment management of the assets of the AIF, all its members would be required to obtain the written consent of the MFSA.

Where the prior approval of the Authority is required, the request for approval shall be submitted to the Authority together with a Personal Questionnaire duly completed by the person(s) proposed.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information as it may consider appropriate. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness, including competence, of the Portfolio Manager/s.

8.33 The AIF shall notify the MFSA in writing:

i. of the departure of a Portfolio Manager within fourteen days of the departure. The AIF shall also request the Portfolio Manager to confirm that his/ her departure has no regulatory implications or otherwise

provide any relevant details, as appropriate. A copy of such request shall be provided to the MFSA.

ii. of the appointment and departure of Investment Committee members which are not in charge of the day-to-day investment management of the assets of the Scheme (i.e. do not fall under the definition of 'Portfolio Manager(s)' of 8.32 above), upon engagement. The notification of appointment of committee members shall be accompanied by a declaration confirming that:

a. the Licence Holder has carried out a due diligence assessment on the appointed individual and is satisfied that he/ she complies with the standards of fitness and properness required by the MFSA, and that the Licence Holder shall notify the MFSA should such individual cease to comply with the mentioned standards;

b. the due diligence exercise undertaken has been fully documented, held at the registered office, and is available upon request by the MFSA; *and*

c. the due diligence exercise carried out will be updated at periodical intervals as applicable and the updates will be documented and will be made available upon request by the MFSA.

8.34 The AIF shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure adequate monitoring of the activities of the Portfolio Manager/s and the Investment Committee.

8.35 The AIF shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

Permanent Risk Management Function

8.36 The AIF shall functionally and hierarchically separate the functions of risk management from the operating units including from the functions of portfolio management.

8.37 The MFSA shall review the functional and hierarchical separation of the functions of risk management in accordance with SLC 8.36 above in accordance with the principle of proportionality, on the understanding that the AIF shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of SLCs 8.36 to 8.44 and is consistently effective.

8.38 The AIF shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to its investment strategy and to which it is or may be exposed.

8.39 The AIF shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.
Provided that the frequency of the periodic review shall be decided by the Senior Management in accordance with the principle of proportionality given the nature, scale and complexity of the business of the AIF.

8.40 The AIF shall at least:

i. Implement an appropriate, documented and regularly updated risk management policy, according to the AIF's investment strategy, objectives and risk profile;

ii. Ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;

iii. Ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as provided for in its Constitutional Document and/or offering document.

Provided that in complying with SLC 8.40 above, the AIF shall submit to the MFSA the information prescribed in Annex 3 to Appendix 8 to Part B of these Rules dealing with results of stress tests and shall further comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.41 The AIF shall set a maximum level of leverage which it may employ as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account inter alia:

i. The type of the AIF;

ii. The investment strategy of the AIF;

iii. The sources of leverage of the AIF;

iv. Any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;

v. The need to limit the exposure to any single counterparty;

vi. The extent to which the leverage is collateralised;

vii. The asset-liability ratio;

viii. The scale, nature and extent of the activity of the AIF on the markets concerned.

8.42 In complying with SLCs 8.36 to 8.41 above, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.43 The AIF shall regularly provide the MFSA with information on Money Market Funds ("MMFs") under management as stipulated in Article 37 of the MMF

Regulation (EU) 2017/1131. The AIF shall also comply with the ESMA Guidelines on reporting to competent authorities under article 37 of the MMF Regulation [ESMA34-49-168].

8.44 The AIF shall measure the impact of common reference stress test scenarios on all MMFs under management as stipulated in Article 28 of the MMF Regulation (EU) 2017/1131.

The AIF shall also submit to the MFSA the results of stress tests and, where applicable, the proposed action plan and shall further comply with the ESMA Guidelines on stress test scenarios under the MMF Regulation [ESMA50-43599798-12301].

8.44a The AIF shall make reference to Commission Implementing Regulation 2018/708 with regard to the template to be used by managers of money market funds when reporting to competent authorities as stipulated by Article 37.

Liquidity Management Policy

8.45 An AIF which is not an unleveraged closed-ended AIF shall employ an appropriate liquidity management system and adopt procedures which enable it to monitor the AIF's liquidity risk and to ensure that the liquidity profile of the investment of the AIF complies with its underlying obligations.

8.46 The AIF shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess the AIF's liquidity risk and monitor it accordingly. Liquidity stress testing should be undertaken at least annually and, where appropriate, employed at all stages in a fund's lifecycle. The Licence Holder shall abide by ESMA's Guidelines on Liquidity Stress Testing in accordance with the nature, scale and complexity of the funds managed.

8.47 In complying with SLC 8.46 above, the AIF shall submit to the MFSA the information prescribed in Annex 3 to Appendix 8 to these Rules dealing with results of stress tests and shall further comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European

Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.48 The AIF shall ensure that the investment strategy, the liquidity profile and the redemption policy are consistent.

8.49 In complying with SLC 8.45 to SLC 8.48, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Investment in securitisation positions

8.50 The AIF shall comply with the requirements on securitisation as prescribed in the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Valuation

8.51 The AIF shall ensure that appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with SLCs 8.52 to 8.67, the Constitutional Document and/or offering document.

8.52 The rules applicable to the valuation of assets and the calculation of the AIF's NAV shall be those prescribed in the SLCs, the Constitutional Document and/or offering document.

8.53 The AIF shall also ensure that the NAV is calculated and disclosed to investors in accordance with SLCs 8.51 to 8.67, the Constitutional Document and/or offering document.

8.54 The valuation procedures used shall ensure that the assets are valued and the NAV is calculated at least once a year.

8.55 If the AIF is an open-ended AIF, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

8.56 If the AIF is a closed-ended AIF, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the AIF.

8.57 The AIF shall inform the investors of the valuations and calculations as prescribed in the Constitutional Document and/or offering document.

8.58 The AIF shall ensure that the valuation function is either performed by:

i. An external valuer, being a legal or natural person independent from the AIF and any other persons with Close Links to the AIF; or

ii. The AIF itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.

8.59 The Custodian appointed for an AIF shall not be appointed as external valuer of such AIF, unless it has functionally and hierarchically separated the performance of its custody function from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

8.60 Where an external valuer performs the valuation function, the AIF shall demonstrate that:

i. The external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provision or rules of professional conduct;

ii. The external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with SLCs 8.51 to 8.57; and

iii. The appointment of the external valuer complies with the requirements of SLCs 8.60 to 8.62 and with the provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.61 The external valuer shall not delegate the valuation function to a third party.

8.62 The AIF shall notify the appointment of the external valuer to the MFSA. The MFSA may require that another external valuer be appointed instead, where the conditions prescribed in SLC 8.60 are not met.

8.63 The valuation shall be performed impartially and with all due skill, care and diligence.

8.64 Where the valuation function is not performed by an independent external valuer, the MFSA may require the AIF to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate by an auditor.

8.65 The AIF shall be responsible for the proper valuation of its assets, the calculation of the NAV and the publication of that NAV. The AIF's liability towards the AIF and its investors shall, therefore not be affected by the fact that the AIF has appointed an external valuer.

8.66 Notwithstanding SLC 8.65 and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable towards the AIF for any losses suffered by the AIF as a result of the external valuer's negligence or intentional failure to perform its tasks.

8.67 In complying with the provisions prescribed in SLCs 8.51 to 8.66, the AIF shall comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Conduct of Business

8.68 The AIF shall comply with the conduct of business rules prescribed hereunder. In particular the AIF shall:

i. act honestly, with due skill, care and diligence and fairly in conducting its activities;

ii. act in the best interests of the AIF, the investors and the integrity of the market;

iii. have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;

iv. take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIF and the investors and to ensure that the AIF is fairly treated;

v. comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the investors and the integrity of the market;

vi. treat all investors fairly.

8.69 **NO INVESTOR IN THE AIF SHALL OBTAIN PREFERENTIAL TREATMENT UNLESS SUCH PREFERENTIAL TREATMENT IS DISCLOSED IN THE RELEVANT AIF'S CONSTITUTIONAL DOCUMENT AND/OR OFFERING DOCUMENT.**

8.70 In complying with SLCs 8.68 and 8.69 the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.71 Where the AIF or the AIFM on behalf of the AIF offers or makes the AIF's units available to retail investors or potential retail investors resident in the EEA, 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.

Remuneration

8.72 The AIF shall have remuneration policies and practices for those categories of staff, including Senior Management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same Remuneration Bracket as Senior Management and risk takers, whose professional activities have a material impact on the risk profile of the AIF, that are consistent with and promote sound and effective risk management and do not encourage risk taking which is inconsistent with the risk profiles, the Constitutional Document and/or offering document of the AIF.

8.73 The AIF shall determine the remuneration policy and practice in accordance with the principles outlined in Appendix 7 to Part B of these Rules.

8.74 The AIF shall further comply with any guidelines on sound remuneration policies which are issued by ESMA.

Conflicts of Interest

8.75 The AIF shall act honestly, fairly and with integrity – in the best interests of its investors/Unit-holders and of the market. Such action shall include:

i. avoiding conflicts of interest where this is possible and, where it is not, ensuring - by way of disclosure, internal procedures or otherwise – that investors are treated fairly.

ii. the following procedures should be followed during meetings (including but not limited to Investment Committee meetings), where a member considers that s(he) has or may have a conflict of interest:

a. that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date

of the meeting interested in the issue, at the next meeting held after s(he) became so interested;

b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;

c. the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/ her vote shall not be counted in the quorum present at the meeting;

d. the minutes of the meeting should accurately record the sequence of such events.

iii. abiding by all relevant laws and regulations, including in respect of AML/CFT;

iv. not making any claim of independence or impartiality which is untrue or misleading; and

v. not making misleading or deceptive representations to investors.

8.76 The AIF shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the investors.

8.77 The AIF shall segregate within its operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest.

8.78 The AIF shall assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the investors.

8.79 Where organisational arrangements made by the AIF to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure with reasonable confidence, that risks of damage to investors'

interests will be prevented, the AIF shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

8.80 In complying with SLCs 8.74 to 8.78, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Delegation and sub-Delegation

8.81 An AIF which intends delegating to third parties the task of carrying out functions on its behalf shall notify the MFSA before the Delegation arrangements become effective. The AIF shall comply with the following requirements:

i. the AIF must be able to justify its entire Delegation structure on objective reasons;

ii. the delegate must possess sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;

iii. where the Delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision, or where that condition cannot be met, only subject to prior approval by the MFSA;

iv. where the Delegation concerns portfolio management or risk management and is conferred on a third country undertaking, in addition to the requirements outlined in point (iii) above, there must be a cooperation agreement in place between the MFSA and the Supervisory Authority of the third country;

v. the Delegation must not prevent the effectiveness of supervision of the AIF, and in particular, must not prevent the AIF from being managed, in the best interests of its investors;

vi. the AIF must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIF is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the Delegation with immediate effect when this is in the interest of investors.

8.82 The AIF shall review the services provided by each delegate on an ongoing basis.

8.83 No Delegation of portfolio management or risk management shall be conferred on:

i. The Custodian or a delegate of the Custodian; or

ii. Any other entity whose interests may conflict with those of the AIF or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

8.84 The liability of the AIF towards the investors shall not be affected by the fact that the AIF has delegated functions to a third party, or by any further sub-Delegation, nor shall the AIF delegate its functions to the extent that in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity.

8.85 The delegate may sub-delegate any of the functions delegated to it provided that the following conditions are met:

i. The AIF consented prior to the sub-Delegation;

ii. The AIF notified the MFSA before the sub-Delegation arrangements became effective;

iii. The conditions prescribed in SLCs 8.80 to 8.81 are fulfilled on the understanding that all references to the 'delegate' are read and construed as referring to the 'sub-delegate'.

8.86 No sub-Delegation of portfolio management or risk management shall be conferred on:

i. The Custodian or a delegate of the Custodian; or

ii. Any other entity whose interests may conflict with those of the AIF or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

8.87 The relevant delegate shall review the services provided by each sub-delegate on an ongoing basis.
8.88 Where the sub-delegate further delegates any of the functions delegated to it, the conditions prescribed in SLC 8.84 shall apply mutatis mutandis.

8.89 In complying with SLCs 8.80 to 8.87 above, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Additional Transparency Requirements applicable to self-managed AIFs

Disclosure to investors

8.90 The AIF shall make available to investors, in accordance with the Constitutional Document and/or offering document, the information prescribed in Appendix 4 to Part B of these Rules before they invest in the AIF as well as any material changes thereto.

8.91 The AIF shall also make available an annual report as outlined in Appendix 8 to Part B of these Rules. The annual report shall be provided to investors upon request.

Disclosure to the MFSA

8.92 In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system or to promote long-term sustainable growth, the MFSA may impose additional reporting requirements following a specific request by ESMA to do so.

Additional Reporting Obligations for Leveraged AIFs - Use of Information by the MFSA, Supervisory Cooperation and Limits to Leverage

8.93 The AIF shall demonstrate that the leverage limit set by it is reasonable and that it complies with that limit at all times. In line with the ESMA Guidelines on Article 25 of Directive 2011/61/EU (ESMA34-32-701), the MFSA shall assess the risks that the use of leverage by an AIF could entail, and, where deemed necessary in order to ensure the stability and integrity of the financial system, the MFSA, after having notified ESMA and the European Systemic Risk Board, shall impose limits to the level of leverage that the AIF is entitled to employ or other restrictions on the management of the AIF, to limit the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets. The MFSA shall duly inform ESMA and the European Systemic Risk Board of actions taken in this respect, through the procedure stipulated in the Malta Financial Services Authority Act[8] and the Act.

[8] Cap. 330 Laws of Malta

8.94 The notification referred to in SLC 8.92 shall be made not less than ten working days before the proposed measure is intended to take effect or to be renewed.

8.95 The notification referred to in SLC 8.92 shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect.

8.96 In exceptional circumstances, the MFSA may decide that the proposed measure takes effect within the period of ten working days referred to in SLC 8.93.

8.97 In complying with SLCs 8.92 to 8.95 above, the AIF shall also refer and comply with the applicable provisions of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

8.98 Licence Holders subject to measures imposed by the MFSA in accordance with SLC 8.90 above, shall take all reasonable steps to comply with the measures imposed within the timeframes and conditions stipulated by the MFSA.

SUPPLEMENTARY REQUIREMENTS FOR SELF-MANAGED AIFS INVESTING IN SHARES TRADED ON A REGULATED MARKET

8.99 Terms and notions referred to in this Section are defined in the Glossary to the Investment Services Rules for Investment Services Providers.

8.100 Provisions of this Section shall not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council.

Conflict of Interest

8.101 The AIF shall develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the

managed portfolios are to be exercised, to the exclusive benefit of the AIF concerned. A summary description of such strategies shall be made available to investors.

8.102 The strategy referred to in SLC 8.99 shall determine measures and procedures for:

a. monitoring relevant corporate events;

b. ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant AIF;

c. preventing or managing any conflicts of interest arising from the exercise of voting rights.

8.103 Details of the actions taken on the basis of the strategies referred to in SLCs 8.99 and 8.100 shall be made available to unit-holders free of charge upon request.

Engagement policy

8.104 The AIF shall develop and publicly disclose an engagement policy that describes how it integrates shareholder engagement in its investment strategy.

Such engagement policy stipulated how the AIF:

i. monitors the investee companies on relevant matters, including:

   a. strategy;

   b. financial and non-financial performance and risk;

   c. capital structure; and

   d. social and environmental impact and corporate governance;

ii. conducts dialogues with investee companies;

iii. exercises voting rights and other rights attached to shares;

iv. cooperates with other shareholders;

v. communicates with relevant stakeholders of the investee companies; and

vi. manages actual and potential conflicts of interests in relation to the engagement in line with SLCs 8.99 to 8.101.

8.105 Further to the SLC 8.102, the AIF shall publicly disclose, on an annual basis, how such engagement policy has been implemented, including:

i. a general description of voting behaviour;

ii. an explanation of the most significant votes; and

iii. the use of the services of proxy advisors.

The AIF shall publicly disclose how it has cast votes in the general meetings of listed companies in which it holds shares, provided that such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the listed company.

8.106 Any information referred to in SLCs 8.102 and 8.103 shall be available free of charge on the AIF's website. In addition, such information can be made available free of charge by other means that are easily accessible.

8.107 Where the AIF decides not to comply with SLCs 8.102 to 8.104 it shall publicly disclose a clear and reasoned explanation as to why it has chosen not to comply with one or more of those requirements.

Transparency provisions

8.108 Where the AIF has entered into the arrangements, as referred to in Article 3h of Directive 2007/36/EC[9], with institutional investor, as defined in the Glossary to the Investment Services Rules for Investment Services Providers, it shall disclose to such institutional investor how the investment strategy and implementation thereof, as referred to in SLCs 8.102 and 8.103, complies with that arrangement and contributes to the medium to long-term performance of the assets of the AIF.

Such disclosure shall be made together with the annual report of the AIF for the financial year and shall include reporting on:

i. the key material medium to long-term risks associated with the investments;

ii. portfolio composition;

iii. turn-over and turn-over costs;

iv. the use of any proxy advisors for the purpose of engagement activities; *and*

v. policy on securities lending and how it is applied to fulfil the engagement activities, if applicable, particularly at the time of the general meeting of the listed companies.

Such disclosure shall also include information on whether and, if so, how, the AIF makes investment decisions based on evaluation of medium to long-term performance of the listed company, including non-financial performance, and on whether and, if so, which conflicts of interests have arisen in connection with engagements activities and how the AIF has dealt with such conflicts of interest in line with SLCs 8.99 to 8.101.

[9] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies as amended by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 and Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017

8.109 Where the information disclosed pursuant to SLC 8.106 is already publicly available, the AIF is not required to provide the information to the institutional investor directly.

8.110 The AIF shall disclose the information pursuant to SLC 8.106 to other investors of the same AIF at least upon request.

8.111 If applicable, when the AIF is engaged in shareholder identification and/or is involved in the transmission of information, including the transmission of information along the chain of intermediaries and/or facilitate the exercise of shareholders rights, the AIF shall comply with the provisions of the Commission Implementing Regulation (EU) 2018/1212 in its entirety.

9. SUPPLEMENTARY LICENCE CONDITIONS IN RELATION TO PERFORMANCE FEES APPLICABLE TO AIFS WHICH ARE SOLD EXCLUSIVELY TO RETAIL INVESTORS

This section shall apply mutatis mutandis to the Self-Managed AIFs, which are sold exclusively to Retail Investors and the reference to the 'manager' or 'Investment Manager' shall be interpreted accordingly.

Performance fee calculation method

9.1. The performance fee calculation shall be verifiable and shall not allow any possibility of manipulation.

9.2. As a minimum, the performance fee calculation method should include, at least, the following elements:

a. the reference indicator to measure the relative performance of the fund. This reference indicator can be an index, a high water-mark ("HWM"), a hurdle rate, or a combination;

b. the crystallisation frequency at which the accrued performance fee, if any, becomes payable to the Investment Manager and a crystallisation date at which the performance fee is credited to the Investment Manager;

c. the performance reference period;

d. the rate of performance fee which may be applied across all models or the flat rate;

e. the performance fee methodology defining the method for the calculation of the performance fees based on the abovementioned inputs and any other relevant inputs; *and*

f. the computation frequency of the performance fee. The computation shall be in line with the calculation frequency of the NAV.

9.3. The performance fee calculation method shall be designed to ensure that performance fees are always proportionate to the actual investment performance of the fund. Artificial increases resulting from new subscriptions shall not be taken into account when calculating fund performance.

9.4. The Investment Manager shall ensure that the performance fee model of a fund it manages provides a reasonable incentive and is aligned with investors' interests.

9.5. The performance fee provisions and their final payments shall be allocated and reversed in a symmetrical way. For example, it shall not be possible to apply simultaneously an allocation rate and a different reversal rate.

9.6. Performance fees may be calculated on a single investor basis.

Consistency between the performance fee model and the AIF's investment objectives, strategy and policy

9.7. The Investment Manager shall implement and maintain a process in order to demonstrate and periodically review that the performance fee model is consistent with the AIF's investment objectives, strategy and policy.

9.8. When assessing the consistency between the performance fee model and the fund's investment objectives, strategy and policy, the Investment Manager shall assess:

i. whether the chosen performance fee model is suitable for the fund and is in line with its investment policy, strategy and objective of the fund;

ii. whether, for funds that calculate the performance fee with reference to a benchmark, the benchmark is appropriate in the context of the fund's investment policy and strategy and adequately represents the fund's risk-reward profile. This assessment should also take into account any material difference of risk (e.g. volatility) between the fund's investment objective and the chosen benchmark, as well as the consistency indicators included below under SLC 9.10.

9.9. If an AIF is managed in reference to a benchmark index and it employs a performance fee model based on a benchmark index, the two benchmarks shall be the same. This includes, inter alia, the case of:

i. performance measures: the fund has a performance objective linked to the performance of a benchmark;

ii. portfolio composition: the fund portfolio holdings are based upon the holdings of the benchmark index.

9.10. In case the AIF is managed in reference to a benchmark, but the AIF's portfolio holdings are not based upon the holdings of the benchmark index, the benchmark used for the portfolio composition shall be consistent with the benchmark used for the calculation of the performance fee. Consistency should be primarily assessed against the similar risk-return profile of different benchmarks (e.g.: they fall into the same category in terms of Synthetic Risk Reward Indicator and/or volatility and expected return). The following is a non-exhaustive cumulative list of "consistency indicators" which should be taken into account by the manager, based on the type of investment of the fund:

- expected return;
- investment universe;
- beta exposure to an underlying asset class;
- geographical exposure;
- sector exposure;
- income distribution of the fund;
- liquidity measures (e.g.: daily trading volumes, bid-ask spreads etc);
- duration;
- credit rating category;
- volatility and/or historical volatility.

9.11. Where performance fees are payable on the basis of out-performance of a benchmark, it would not be appropriate to take a reference indicator that would set a systematically lower threshold for fee calculation than the actual benchmark.

9.12. Where the calculation of the performance fee is based on a fulcrum fee model, the performance fee shall be based on the same benchmark used to determine excess performance.

9.13. The excess performance shall be calculated net of all costs, including management fees and administrative fees, but can be calculated without deducting the performance fee itself as long as this would be in the investor's best interest i.e. the investor will be paying lower fees).

9.14. If the reference indicator changes during the reference period, the performance of the reference indicator for this period shall be calculated by linking the benchmark index that was previously in force until the date of the change and the new reference indicator used afterwards.

Frequency for the crystallisation of the performance fee

9.15. The frequency for the crystallisation and the subsequent payment of the performance fee to the manager shall align the interests between the portfolio manager and investors.

9.16. The crystallisation frequency shall not be more than once a year. Funds adopting a fulcrum fee based model and other models with a symmetrical fee structure, whereby performance fees would decrease or increase based on the performance of the fund.

9.17. SLC 9.16 shall not be applied where the AIF employs a HWM model or a high-on-high model where the performance reference period is equal to the whole life of the AIF and it cannot be reset, as in this model performance fees cannot be accrued or paid more than once for the same level of performance over the whole life of the AIF.

9.18. The crystallisation date shall apply consistently for all share classes of an AIF that levies a performance fee.

9.19. In case of closure/merger of funds and/or upon investors' redemptions, performance fees, if any, shall crystallise in due proportions on the date of the closure/merger and/or investors' redemption. In case of merger of funds, the crystallisation of the performance fees of the merging fund shall be authorised subject to the best interest of investors of both the merging and the receiving fund. In case where all involved funds are managed by the same manager, crystallization of performance fees is presumed contrary to investors' best interest unless justified otherwise by the Investment Manager. The crystallisation date shall coincide with 31 December or with the end of the financial year of the fund.

Negative performance (loss) recovery

9.20. A performance fee shall only be payable in circumstances where positive performance has been accrued during the performance reference period. Any underperformance or loss previously incurred during the performance reference period shall be recovered before a performance fee becomes payable. A performance fee can also be payable in case the AIF has overperformed the reference benchmark but had a negative performance, as long as a prominent warning to the investor is provided.

9.21. The performance fee model shall be designed to ensure that the Investment Manager is not incentivised to take excessive risks and that cumulative gains are duly offset by cumulative losses.

9.22. The performance of the Investment Manager shall be assessed and remunerated on a time horizon that is, as far as possible, consistent with the recommended investors' holding period.

9.23. In case the AIF employs a performance fee model based on a benchmark index, the underperformance of the fund compared to the benchmark shall be clawed back before any performance fee becomes payable. If the length of the performance reference period is shorter than the whole life of the fund, the reference period shall be set equal to at least 5 years.

9.24. Where a fund utilises a HWM model, a performance fee shall be payable only where, during the performance reference period, the new HWM exceeds the last HWM. The starting point to be considered in the calculations shall be the initial offering price per share. For the HWM model, in case the performance reference period is shorter than the whole life of the fund, the performance reference period should be set equal to at least five years on a rolling basis. In this case, performance fee may only be claimed if the outperformance exceeds any underperformances during the previous five years and performance fees shall not crystallise more than once a year.

9.25. The performance reference period shall not apply to the fulcrum fee model and other models which provide for a symmetrical fee structure, as in these models the level of the performance fee increases or decreases proportionately with the investment performance of the fund.

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