MFSA MALTA FINANCIAL SERVICES AUTHORITY

CONDUCT OF BUSINESS RULEBOOK

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G.1.2.14A FOR THE PURPOSES OF THIS RULE REGULATED PERSONS SHALL USE THE FOLLOWING WORDING OR SUCH OTHER WORDING AS APPROPRIATE IN THE PARTICULAR CIRCUMSTANCES:

INFORMATION TO BE INCLUDED IN ADVERTISEMENTS

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Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP), (the *"PEPP Regulation"*) was published in the EU Official Journal on 25 July 2019, and has become applicable as from **22 March 2022.**

The PEPP Regulation is directly applicable, therefore, the purpose of this Chapter on Pan-European Personal Pension Product in the Rulebook is only primarily to provide an overview of the relevant conduct requirements and make any relevant references to the new PEPP regulatory framework.

The development of a Pan-European Personal Pension Product ("PEPP") aims to contribute to increasing choices for retirement saving, especially for mobile workers, and establish a Union market for PEPP providers. However, it is only considered to be complementary to the public pension systems. The PEPP Regulation lays down uniform rules on the registration, provision, distribution and supervision of personal pension products that are distributed in the Union under the designation of a PEPP.

The purpose of the PEPP Regulation, which is directly applicable, is to establish a more harmonised European market for this individual retirement savings products, the PEPP,

WHICH IS A REGULATED, NON-COMPULSORY INDIVIDUAL SUPPLEMENTARY PENSION PRODUCT THAT IS CHARACTERISED BY HIGH-PORTABILITY WITHIN THE EUROPEAN UNION.

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	20 December 2017	Issued
2.00	10 September 2018	Refer to Circular dated 10 September 2018
3.00	2 April 2019	Refer to Circular dated 3 April 2019
4.00	11 July 2019	Refer to Circular dated 11 July 2019
5.00	11 August 2019	Refer to Circular dated 20 August 2019
6.00	30 June 2020	N/A
7.00	20 January 2021	Refer to Circular dated 20 January 2021
8.00	20 July 2021	Refer to Circular dated 20 July 2021
9.00	2 September 2021	Refer to Circular dated 02 September 2021
10.00	16 November 2021	Refer to Circular dated 16 November 2021
11.00	14 February 2022	Refer to Circular dated 14 February 2022
12.00	4 July 2022	Refer to Circular dated 4 July 2022
13.00	29 July 2022	Refer to Circular dated 29 July 2022
14.00	19 October 2023	Refer to Circular dated 19 October 2023
15.00	10 December 2024	Refer to Dear CEO Letter dated 10 December 2024
16.00	21 November 2025	Refer to Circular dated 21 November 2025

INTRODUCTION

This Rulebook is being issued in terms of Article 16 of the MFSA Act (Cap. 330) and contains the Conduct of Business Obligations to which the following Regulated Persons would be required to adhere in their day to day operations:

i. Persons holding an investment services licence within the meaning of the Investment Services Act (Cap. 370), other than CRR Local Firms, Alternative Investment Fund Managers or persons licensed to act as custodians in relation to a collective investment scheme, in terms of the said Act and including a European Investment Firm which has established a branch in Malta in exercise of a European right in terms of the European Passport rights for Investment Firms (Amendment) Regulations (Legal Notice 397 of 2017) and a European management company which has established a branch in Malta in terms of the Investment Services Act(UCITS Management Company Passport) Regulations (Legal Notice 243 of 2011), in so far as it provides MiFID services in terms of Article 6(3) of the UCITS IV Directive or if it markets its UCITS in Malta;
ii. Persons registered under the Investment Services Act (Tied Agents) Regulations (Legal Notice 327 of 2007);
iii. Persons authorised to carry on the business of insurance under the Insurance Business Act (Cap.403), including a European Insurance Undertaking which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015) with the exception of undertakings whose business is restricted to Reinsurance;
iv. Persons enrolled under the Insurance Distribution Act (Cap. 487) to act as insurance brokers, insurance agents, insurance managers, tied insurance intermediaries or ancillary insurance intermediaries, including a European Insurance Intermediary which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Intermediaries Regulations (Legal Notice 238 of 2018);
v. Persons licensed as credit institutions under the Banking Act (Cap. 371) who sell or advise clients in relation to Structured Deposits.

The Rules contained in this Rulebook are essentially a transposition of the main EU Directives which apply in the area of Conduct of Business, namely the MIFID Directive (Directive 2014/65/EU) and the IDD (Directive 2016/97/EU) together with the respective Implementing Measures issued thereunder, as well as CCD II (Directive (EU) 2023/2225)[1].

The contents of this Rulebook should be read in conjunction with the requirements of the:

- **Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms**
- **Insurance Rules**
- **Insurance Distribution Rules**
- **Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investments products**

which prescribe the prudential requirements for the Regulated Persons in question and which are also binding on Regulated Persons.

[1] CCD II (Directive (EU) 2023/2225 will come into force on 20 November 2026.

With respect to Regulated Persons which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to this Rulebook, the requirements of this Rulebook commenced to apply as from the 3rd January 2018. Furthermore, the requirements of this Rulebook commenced to apply to insurance undertakings and insurance intermediaries, as defined in points (iii) and (iv) of the definition of Regulated Person in the Glossary to this Rulebook from 1st October 2018.

With respect to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to this Rulebook, the requirements relating to the marketing, distribution or selling of Binary Options to Retail Clients shall apply as from 11th July 2019 and the requirements relating to the marketing, distribution or selling of contracts for differences to Retail Clients shall apply as from 11th August 2019.

With respect to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to this Rulebook, the requirements of Part H, Section 4 of Chapter 1 shall apply as from 10th June 2019.

DEFINITIONS/ GLOSSARY

Additional Tier 1 instruments	Means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013 (the CRR).
Advertisement	Means any form or medium of marketing activity or communication, other than a prospectus, which promotes the purchase or procurement of a Service, Product or a Financial Instrument and which is addressed by a Regulated Person to a client or potential client. An advertisement shall not include the provision of a Personal Recommendation but shall include any advertisement which is disseminated to the public via all types of media. The form or medium of an advertisement may include any of the following: 1. Addressed or unaddressed printed matter; 2. Electronic message or advertisement received via a mobile telephone or pager; 3. Standard letters; 4. Press advertising with or without order form; 5. Catalogue; 6. Telephone with or without human intervention; 7. Seminars and presentations 8. Radio; 9. Videophone; 10. Videotext; 11. E-mail 12. Fax 13. Television 14. Notice 15. Billboards 16. Posters 17. Brochures 18. Web posting including internet banners.
Advice	Means the provision of a Personal Recommendation to a client, either upon their request or at the initiative of the Regulated Person in respect of one or more transactions relating to Products.
Affiliated insurance company	Means a company which carries on the business of a company authorised in terms of the Insurance

	Business Act (Cap. 403), whose head office is in Malta and which carries on business of insurance restricted to risks originating with shareholders or connected undertakings or entities and includes business carried on by an affiliated reinsurance company.
Ancillary insurance intermediary	Means an insurance intermediary, other than a credit institution or an investment firm, which conducts insurance distribution on an ancillary basis with respect to clearly identified insurance products, provided that all the following conditions are met: 1. the principal professional activity of the insurance distributor is other than insurance distribution; 2. the insurance distributor only distributes certain insurance products that are complementary to a good or service; the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.
Ancillary services	In the context of persons holding an investment services license within the meaning of the Investment Services Act (Cap. 370), means any of the following services: 1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level; 2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction; 3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings; 4. Foreign exchange services where these are connected to the provision of investment services;

	5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments; 6. Services related to underwriting. Investment services and activities as well as ancillary services of the type included under the First Schedule to the Investment Services Act or within this definition, related to the underlying of the derivatives included under points 5, 6, 7 and 10 of the Second Schedule to the Investment Services Act where these are connected to the provision of investment or ancillary services. In the context of persons authorised to carry on the business of insurance under the Insurance Business Act (Cap. 403) or persons enrolled under the Insurance Distribution Act (Cap. 487), 'ancillary services' shall be taken to mean any services as may be prescribed.
Bail-inable Liabilities	Means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU ("BRRD") and that are not excluded from the scope of the bail-in tool pursuant to Article 44(2) of the BRRD.
Binary Option	Means a derivative, irrespective of whether or not it is traded on a trading venue, which meets the following conditions: 1. It must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event; 2. It only provides for payment at its close-out or expiry; 3. Its payment is limited to: i. A predetermined fixed amount or zero if the underlying of the derivative meets one or more predetermined conditions; and ii. A predetermined fixed amount or zero if the underlying of the derivative does not meet one or more predetermined conditions.

Bundled Package	A package of products and/or services where each of the products or services offered is available separately and where the Client retains the choice to purchase each component of the package separately from the Regulated Person.
Client	Means a person who is the recipient of a Product or Service or is the purchaser of a Service or Product. In the context of Insurance contracts, the term 'client' shall be construed as referring to 'customer' and shall also cover beneficiaries, insured persons and policyholders. The term 'client' shall also be taken to refer to 'potential client' unless the context in which it is used infers otherwise.
Compliance Officer	Means the person appointed by the Regulated Person, responsible for ensuring compliance by the Regulated Person with its applicable licence conditions as well as any applicable legislation, rules and regulations. The term "compliance function" shall be construed accordingly.
Complaint	A statement of dissatisfaction addressed to a Regulated Person by a Client relating to the provision of an investment service/product provided under MiFID or related to an insurance contract (as applicable).
Component product	The separate product and/or service which constitute part of the bundled or tied package.
Contracts for Differences or CFDs	Means a derivative other than an option, future, swap or forward rate agreement, the purpose of which is to give the holder a long or short exposure to fluctuations in the price, level or value of an underlying, irrespective of whether it is traded on a trading venue, and that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.
Cross-selling practice	Means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.
CRR Local Firms	Means a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and

	being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets.
Dealing on own account	Means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.
Depositary Receipt	Means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer.
Designated Person	Means a person approved to act as Compliance Officer of a Regulated Person, including persons notified to the MFSA for specific regulatory purposes by Regulated Persons who are not required to appoint a Compliance Officer.
Distributor	Means: 1. Any of the following persons: i. Any person authorised under the Insurance Business Act (Cap. 403), the Insurance Distribution Act(Cap.487), or an investment services license holder within the meaning of the Investment Services Act (Cap.370); ii. A European Insurance Undertaking, a European Insurance Intermediary, or a European Investment Firm exercising a European right within the meaning of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015), the European Passport Rights for Intermediaries Regulations (Legal Notice 238 of 2018) and the European Passport rights for Investment Firms Regulations (Legal Notice 325 of 2007), respectively; who: iii. takes up or pursues the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, concluding such contracts, or assisting in the administration and performance of such contracts, in particular

	in the event of a claim. This shall include an 'Ancillary insurance intermediary'; or iv. is involved in the following investment services as defined in the First Schedule to the Investment Services Act, with respect to a product: reception and transmission of orders in relation to one or more instruments, Execution of orders on behalf of other persons, management of investments, investment advice and placing of instruments without a firm commitment basis; and 2. Any person licensed as a credit institution under the Banking Act (Cap. 371) who sells or advises clients in relation to Structured Deposits;
Durable medium	Means any instrument which: 1. enables a client to store Information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the Information ; and 2. allows the unchanged reproduction of the Information stored.
Electronic Format	Means any Durable Medium other than paper.
Eligible counterparty	Means investment firms, credit institutions, insurance companies, UCITS schemes and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under laws of the European Union or under Maltese law, national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations.
Eligible Liabilities	Means Bail-inable Liabilities that fulfil, as applicable, the conditions of Article 45b or point (a) of Article 45f(2) of Directive 2014/59/EU ("BRRD"), and Tier 2 instruments that meet the conditions of point (b) of Article 72a(1) of Regulation (EU) No 575/2013 ("CRR")
EEA State	Means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the

	Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts.
European Insurance Intermediary	Shall have the same meaning as that assigned to it in the European Passport Rights for Intermediaries Regulations (Legal Notice 238 of 2018).
European Insurance Undertaking	Shall have the same meaning as that assigned to it in the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015).
European Investment Firm	Shall have the same meaning as that assigned to it in the European Passport Rights for Investment Firms Regulations (Legal Notice 325 of 2007).
European management company	Shall have the same meaning as that assigned to it in the Investment Services Act (UCITS Management Company Passport) Regulations (Legal Notice 243 of 2011).
European regulatory authority	The body or bodies designated by a Member State or an EEA State other than Malta in accordance with any relevant Directive, to carry out each of the duties provided for under the different provisions of such Directive.
European UCITS Scheme	Shall have the same meaning as that assigned to it in the Investment Services Act (Marketing of UCITS) Regulations (Legal Notice 241 of 2011).
Execution of orders on behalf of Clients	Means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance.
Execution venue	Means a regulated market, an MTF, a systematic internaliser or a market maker or other liquidity provider or an entity that performs a similar function in a Third Country to the functions performed by any of the foregoing.
Excluded Non-Monetary Benefit	Means any non-monetary benefit other than, insofar as they relate to CFDs, information and research tools.
Feeder UCITS scheme	Means a UCITS or sub-fund thereof which has been approved to invest at least eighty-five per cent of its assets in units of another UCITS or sub-fund thereof in terms of the UCITS Directive.

Financial Instrument	Shall have the same meaning as the term 'instrument' as defined in the Investment Services Act (Cap. 370).
Identified target market	Means a group of clients or potential clients_to whom a particular Product or Service is being offered by a Regulated Person, or for whom a Manufacturer is developing a Product.
In good time	In determining what constitutes disclosure of Information in good time, the Regulated Person shall have regard to: 1. the client's need for sufficient time to read, understand and take a decision on the basis on such disclosed Information; 2. any specific circumstances or urgency, if any, which would affect the client's decision to be made on the basis on such disclosed Information; and 3. the nature of the Product or Service which is the subject of the disclosure. The Regulated Person should note that a client is likely to require less time to review Information about a simple or standardised Product or Services, or a Product or Service of a kind he has purchased previously, than he would require for a more complex or unfamiliar Product or Service.
Inducement	An inducement is a benefit offered by a third party to a Regulated person, or any person acting on its behalf, with a view to entice that Regulated person, or such other person, to adopt a particular course of action. This can include, but is not limited to, cash payments, cash equivalents, commission, goods, hospitality or training programmes.
Initial Margin	Means any payment for the purpose of entering into a CFD, excluding commission, transaction fees and any other related costs.
Information	Means any material provided to clients or potential clients by the Regulated Person with the purpose to inform such clients or potential clients of any Service, Product or financial instrument.
Inside Information	Shall have the same meaning as that assigned to it in the Prevention of Financial Markets Abuse Act (Cap.476).

Insurance-based investment product	Means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. Insurance-based investment products shall not include: 1. non-life insurance products as listed in Annex I of Directive 2009/138/EC (Classes of Non-life Insurance); 2. life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity; 3. pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitles the investor to certain benefits; 4. officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC; and 5. individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.
Insurance contract	Means any contract of insurance, as defined in the Insurance Business Act (Cap. 403), which shall also include an 'insurance-based investment product'.
Insurance intermediary	Means any natural or legal person, other than an insurance or reinsurance undertaking, who, for remuneration, takes up or pursues the activity of insurance distribution.
Insurance undertaking	Means a direct life or non-life insurance undertaking which has received authorisation from the regulatory authority of the home member state.
Investment research	Means research or other Information intended to suggest an investment strategy, explicitly or implicitly, concerning one or several Financial Instruments or the Issuers of Financial Instruments, including any opinion as to the present or future value or price of such financial instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

	1. the research or Information it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation; and 2. if the recommendation suggestion in question were made by a Regulated Person to a client, it would not constitute the provision of investment advice.
Issuer	Means any Company or other legal person or undertaking (including a Public Sector Issuer), any class of whose securities have been authorised as admissible to trading on a Regulated Market, a Multilateral trading facility or an organised trading facility.
Issuer-sponsored research	Research commissioned and paid for by the issuer about its own securities, typically produced by a third-party research provider and made publicly available.
Key Information Document	Means the document drawn up by PRIIP Manufacturers and provided to Retail Clients in order to enable them to understand and compare the key features and risks of the PRIIP.
Key Investor Information Document	Means the document relating to a UCITS scheme containing key Information for investors about the essential characteristics of the scheme to enable investors to understand the nature and risks of the investment product that is being offered to them, and should meet the requirements of section 6.2 of Part BII Investment Services Rules for Retail Collective Investment Schemes.
Large risks	Means: (a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I of the Solvency II Directive; (b) risks classified under classes 14 and 15 in Part A of Annex I of the Solvency II Directive, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity; (c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I of the Solvency II

	Directive in so far as the policy holder exceeds the limits of at least two of the following criteria: (i) a balance-sheet total of EUR 6,2 million; (ii) a net turnover, within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies of EUR 12,8 million; (iii) an average number of 250 employees during the financial year. If the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria set out in point (c) of the first subparagraph shall be applied on the basis of the consolidated accounts.
Linked long-term contract of insurance business	Means effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
Limit Order	Means an order to buy or sell a Financial Instrument at its specified price limit or better and for a specified size.
Locals	Means traders on future exchanges who may fill public orders occasionally, but will predominantly buy and sell for their own personal accounts.
Long-term insurance business	Means business of insurance of any of the classes specified in the Second Schedule to the Insurance Business Act (Cap. 403).
Make-Whole Clause	Means a clause that aims to protect the investor by ensuring that, in the event of early redemption of a bond, the issuer is required to pay to the investor holding the bond an amount equal to the sum of the net present value of the remaining coupon payments expected until maturity and the principal amount of the bond to be redeemed.

Management body	Means the person/s who either as a body constituted pursuant to law or as members of such body: 1. are authorised to represent the company in dealings with third parties and in legal proceedings; and 2. take part in the administration, supervision or control of the company. In the case of natural persons, this function shall be deemed to vest in the individual himself.
Manufacturer	Means any of the following persons who is responsible for the development and issuance of a product or makes changes to, or combines existing products: 1. any person authorised under the Insurance Business Act (Cap.403), or an investment services licence holder within the meaning of the Investment Services Act (Cap. 370); 2. a European insurance undertaking, or a European investment firm, provided that the clients to whom such products are to be offered by such firms, include clients resident in Malta; and 3. any person licensed as a credit institution under the Banking Act (Cap. 371) which manufactures structured deposits.
Margin Close-out Protection	Means the closure of one or more of a Retail Client's open CFDs on terms most favourable to the Client when the sum of funds in the CFD trading account and the unrealised net profits of all open CFDs connected to that account falls to less than half of the total initial margin protection for all those open CFDs.
Master UCITS	Means a UCITS which: 1. has, among its unit-holders, at least one feeder UCITS; 2. is not itself a feeder UCITS; and 3. Does not hold units of a feeder UCITS.
Member State	Means a Member State of the European Union.
Metadata	Means structured information that makes it easier to retrieve, use or manage an information resource, including by describing, explaining or locating the source of that information;

MFSA	Means the 'Malta Financial Services Authority'.
MiFID II (Directive 2014/65/EU)	Means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), as amended from time to time.
MiFID II Delegated Directive 2017/593	Means Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, as amended from time to time.
MiFID II Delegated Regulation 2017/565	Means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, as amended from time to time.
Multilateral trading facility or MTF	Means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of Directive 2014/65/EU (MiFID II).
Negative Balance Protection	Means the limit of a Retail Client's aggregate liability for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account.
Non-Member State	Means any state which is not a Member State of the European Union.
Offer of securities to the public	Shall have the same meaning as that assigned to it under Article 2(3) of the Companies Act (Cap. 386).
Personal Recommendation	Means a recommendation that is made to a person in his capacity as a Client or in his capacity as an agent of a Client. That recommendation shall be based on a consideration of the circumstances of that person and shall constitute a recommendation to take one of the following steps:

	1. to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular Product; and 2. to exercise or not to exercise any right conferred by a particular Product to buy sell, subscribe for, exchange, or redeem a Product. A recommendation is not a 'Personal Recommendation' if it is issued exclusively to the public.
Portfolio Management	Means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments.
Packaged Retail and Insurance-Based Investment Product or "PRIIP"	Means an investment, including instruments issued by special purpose vehicles as defined in point (26) of Article 13 of Directive 2009/138/EC or securitisation special purpose entities as defined in point (an) of Article 4(1) of the Directive 2011/61/EU of the European Parliament and of the Council, where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor.
PRIIP Manufacturer	Means the following: (a) any entity that manufacturers PRIIPs; (b) any entity that makes changes to an existing PRIIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in a PRIIP.
PRIIPS Regulation	Means Regulation (EU) No1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as amended from time to time.
Product	Means any financial instrument or contract of insurance or Structured Deposit.
Product Governance and Oversight Arrangements	Refers to the responsibilities of Manufacturers and distributors, to organise processes, functions and strategies aimed at designing, operating and bringing Products to the market as well as offering such Products to clients, and reviewing them over the life of the Product in order to minimise potential

	client detriment, avoid potential conflicts of interest and ensure that the interests and objectives of target markets are duly protected.
Professional Client	**For the purposes of services offered with respect to Financial Instruments and Insurance-based investment products the term 'Professional Client'** shall mean a Client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. The following should all be regarded as professionals in all investment services and activities and with respect to all the financial instruments mentioned in Schedule 2 to the Investment Services Act (Cap. 370): 1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a Non-Member State: i. Credit Institutions ii. Investment Firms iii. Other authorised or regulated financial institutions iv. Insurance Companies v. Collective investment schemes and management companies of such schemes vi. Pension funds and management companies of such funds vii. Commodity and commodity derivatives dealers viii. Locals ix. Other institutional investors 2. Large undertakings meeting two of the following size requirements on a company basis: i. balance sheet total: EUR20,000,000 ii. net turnover: EUR40,000,000 iii. own funds: EUR2,000,000

	3. National and regional governments, public bodies that manage public debt, Central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations. 4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions. Clients not falling under any of the above categories, including public sector bodies, local public authorities, municipalities and private individual investors may also be treated as Professional Clients upon request subject to the conditions and procedure set out in Section 2 of Chapter 4 of this Rulebook. **For the purposes of services offered with respect to Insurance contracts** the term 'Professional Client' shall mean a person to whom, or on whose account, or to whose beneficiaries, a sum of money or other consideration is payable on the happening of a specified event under the following policies: i. Employers' Liability ii. Public Liability iii. Products Liability iv. Contractors All Risk v. Combined Policies which can include Industrial All Risks, Business Machines, Goods in Transit, SME Policies and/or any of the abovementioned policies.
Register	1. Means any of the following registers or lists: 2. The "Agents List" established and maintained in terms of Article 9 of the Insurance Distribution Act (Cap. 487) , comprising the list of persons acting as insurance agents; 3. The "Agents Register" established and maintained in terms of Article 7 of the Insurance Distribution Act (Cap. 487), of persons (individuals) carrying on the insurance intermediaries activities of insurance agents; 4. The "Brokers List" established and maintained in terms of Article 9 of the Insurance Distribution Act (Cap. 487),

	comprising the list of persons carrying on business as insurance brokers; 5. The "Brokers Register" established and maintained in terms of Article 7 of the Insurance Distribution Act (Cap. 487), of persons (individuals) carrying on the insurance intermediaries activities of insurance brokers; 6. The "Managers List" established and maintained in terms of Article 9 of the Insurance Distribution Act (Cap. 487), comprising the list of persons carrying on business as insurance managers; 7. The "Managers Register" established and maintained in terms of Article 7 of the Insurance Distribution Act (Cap. 487), of persons (individuals) carrying on the insurance intermediaries activities of insurance managers; 8. The "Tied Insurance Intermediaries List" established and maintained in terms of Article 36 of the Insurance Distribution Act (Cap. 487), comprising the list of persons carrying out tied insurance intermediaries activities; 9. The "Ancillary Insurance Intermediaries List" established in terms of article 43D of the Insurance Distribution Act; 10. The "Investment Firm List" List, established and maintained by the MFSA comprising the list of persons licensed under the Investment Services Act (Cap. 370) to provide investment services except fund management services; 11. The "Investment Advisors" List, established and maintained by the MFSA, comprising the list of approved by the MFSA provide investment advice and/or Portfolio Management services; 12. The "UCITS Management Companies" List, established and maintained by the MFSA comprising the list of persons licensed under the Investment Services Act (Cap. 370) to provide fund management services to UCITS Schemes.
Regulated Activity	Means any activity which would require an authorisation, license, enrolment or registration in terms of the Investment Services Act (Cap. 370), the Insurance Business Act (Cap. 403), the Insurance Distribution Act (Cap. 487), the Banking Act (Cap. 371), or the Financial Institutions Act (Cap. 376).

Regulated Person	Means any of the following persons: i. persons holding an investment services license within the meaning of the Investment Services Act (Cap. 370), other than CRR Local Firms and Alternative Investment Fund managers or person licensed to act as custodians in relation to a collective investment scheme, in terms of the said Act, including a European Investment Firm which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Investment Firms (Amendment) Regulations (Legal Notice 397 of 2017) and a European management company which has established a branch in Malta in terms of the Investment Services Act (UCITS Management Company Passport) Regulations (Legal Notice 243 of 2011), in so far as it provides MiFID services in terms of Article 6(3) of the Directive 2009/65/EC (UCITS IV Directive) or if it markets its UCITS in Malta; ii. persons registered under the Investment Services Act (Tied Agents) Regulations, (Legal Notice 327 of 2007); iii. persons authorised to carry on the business of insurance under the Insurance Business Act (Cap. 403), including a European Insurance Undertaking which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015) with the exception of undertakings whose business is restricted to Reinsurance; iv. persons enrolled under the Insurance Distribution Act (Cap.487) to act as insurance brokers, insurance agents, insurance managers, tied insurance intermediaries or ancillary insurance intermediaries including a European insurance intermediary which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Intermediaries Regulations (Legal Notice 238 of 2018); v. Persons licensed as credit institutions under the Banking Act (Cap. 371) who sell or advise clients in relation to Structured Deposits.

Regulated Market	Means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments-in the system and in accordance with its non-discretionary rules- in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly in accordance with Title III of MiFID II (Directive 2014/65/EU.
Reinsurance	Means the activity consisting in accepting risks ceded by an Insurance undertaking or by another reinsurance undertaking.
Relevant Person	Shall mean any of the following: 1. a director, partner or equivalent, or manager of the Regulated Person; 2. an employee of the Regulated Person, as well as any other natural person whose services are placed at the disposal and under the control of the Regulated Person and who is involved in the provision by the Regulated Person of Products and Services; 3. a person who is directly involved in the provision of services to the Regulated Person under an outsourcing arrangement for the purpose of the provision by the Regulated Peron of Products and Services.
Retail Client	Means a client who is not a Professional Client.
Service	Means: 1. an investment service within the meaning of the Investment Services Act (Cap. 370); 2. services provided by a Tied Agent within the meaning of the Investment Services Act (Tied Agents) Regulations (Legal Notice 327 of 2007); 3. the provision of the business of insurance in terms of the Insurance Business Act (Cap. 403), or the carrying out of insurance intermediaries activities within the meaning of the Insurance Distribution Act (Cap. 487).
Structured Deposit	Means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

	1. an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor; 2. a financial instrument or combination of financial instruments; 3. a commodity or combination of commodities or other physical or non-physical non-fungible assets; or 4. a foreign exchange rate or combination of foreign exchange rates.
Structured Products	Means compound financial instruments that have the characteristics of combining a base financial instrument with an embedded derivative that provides economic exposure to reference assets, indices or portfolios.
SFDR (Regulation (EU) 2019/2088)	Means Regulation (EU) 2019/2088 of the European Parliament and of the Council 27 November 2019 on sustainability-related disclosures in the financial services sector, as amended from time to time.
SFDR RTS (Commission Delegated Regulation (EU) 2022/1288)	Means Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports; as amended from time to time.
Sustainability Factors	Means sustainability factors as defined in Article 2, point (24), of the SFDR (Regulation (EU) 2019/2088).
Sustainability Preferences	Means the following: **1.** in the case of Financial Instruments, a Client's choice as to whether and, if so, to what extent, one or more of the following Financial Instruments shall be integrated into his or her investment:

	(a) a Financial instrument for which the Client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of the Taxonomy Regulation (Regulation (EU) 2020/852); (b) a Financial Instrument for which the Client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of the SFDR (Regulation (EU) 2019/2088); (c) a Financial Instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the Client; **2.** in the case of Insurance-based investment products, a Client's choice as to whether and, if so, to what extent, one or more of the following financial products should be integrated into his or her investment: (a) an Insurance-based investment product for which the Client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of the Taxonomy Regulation (Regulation (EU) 2020/852); (b) an Insurance-based investment product for which the Client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of the SFDR (Regulation (EU) 2019/2088); (c) an Insurance-based investment product that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the Client.
Switching of Financial Instruments	Means selling a financial instrument and buying another financial instrument or exercising a right to make a change with regard to an existing financial instrument.
Taxonomy Regulation (Regulation (EU) 2020/852)	Means Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate

	sustainable investment, and amending Regulation (EU) 2019/2088, as amended from time to time.
Third Country	Means a country which is not an EU or an EEA Member State.
Tied Agent	Means a natural person or legal person, who under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and, or Ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or instruments, places instruments or provides advice to clients or prospective clients in respect of those instruments or services.
Tied insurance intermediary	Shall mean a person carrying on tied insurance intermediaries activities in terms of paragraph 4 of the Third Column of the Schedule to the Insurance Distribution Act (Cap. 487) and any person who carries on insurance intermediaries activities, in addition to his principal professional activity, shall also be considered as a tied insurance intermediary acting under the responsibility of a company authorised or any person deemed authorised, under the Insurance Business Act (Cap. 403), to carry on business of insurance for the Products offered on its behalf if the insurance is complementary to the goods supplied or services provided in relation to his principal professional activity, whether or not the person collects premiums or amounts intended for the policyholder concerned.
Tied package	A package of products and/or services where at least one of the products or services offered in the package is not available separately to the Client from the Regulated Person.
Tier 2 instruments	Means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013 (the CRR).
Trading Venue	Means a regulated market, a Multilateral trading facility (MTF) or an organised trading facility (OTF) in terms of paragraphs 21-23 of Articles 4(1) of Directive 2014/65/EU (MIFID II).
UCITS	Means a collective investment scheme, whether constituted as a unit trust or as an open-ended

	investment company, falling within the scope of and authorised in terms of the UCITS Directive.
UCITS Directive	Means Directive 2009/65/EC of the European Parliament and of the Council of the 13th July, 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending as regards depositary functions, remuneration policies and sanction.
UCITS Management Company	A person licensed by the MFSA under the Investment Services Act (Cap. 370) to provide the service of the management of investments (in relation to a collective investment scheme), and the regular business of which is the management of UCITS.

CHAPTER 1 DISCLOSURE

Introduction

Disclosures should be made in a comprehensible form in such a manner that Clients are reasonably able to understand the nature and risks of the Service to be provided by the Regulated Person and of the type of Product that is being offered, and consequently to take decisions on an informed basis. Furthermore, any Advertisements issued by the Regulated Persons should be fair, clear and not misleading. Certain disclosures are to be made in good time prior to the provision of the Service or conclusion of the contract leading to the purchase of the Product, such that the Client has adequate time to process the Information resulting from the disclosures made before deciding whether to purchase such Service or Product.

To this end, this Chapter deals with the disclosures a Regulated Person is required to make to a Client, and the manner in which a Regulated Person is required to communicate with the Client. In particular, the Rules and Guidance contained in this Chapter aim to ensure that all material Information about the Regulated Person itself and about the Products and Services which the Regulated Person provides or may provide to the Client, as well as any real or potential conflicts of interest, is duly disclosed.

Applicability

The Rules and the relevant Guidance in this Chapter shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Chapter with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

Section 1: MEDIUM OF DISCLOSURE

Application

R.1.1.1 The Rules and any relative Guidance set out under the heading 'General Rule' shall apply to all Regulated Persons, except to Affiliated insurance companies and to pure re-insurance companies.

General Rule

R.1.1.2 Where in terms of this Rulebook, Information is required to be disclosed to Clients in a Durable medium, it shall be disclosed:

(a) on paper;
(b) in a clear and accurate manner, comprehensible to the Client;
(c) in one of the official languages of Malta, or in any other language agreed by the parties; provided that

i. The Long-Term Business Notice required in terms of R.4.1.29; and
ii. The General Business Notice required in terms of R.4.1.29

are to be made out in both Maltese and English, in the case of Clients resident in Malta.

Provided that where the subject of the Insurance contract relates to the business of Reinsurance or to Large risks, the Information referred to in this paragraph shall be provided in English, or in any other language agreed to by the parties.

Provided further that in the case of Insurance undertakings or Insurance intermediaries, this paragraph shall only apply where such Regulated Persons are providing personal line products, health or long term policies; and

(d) free of charge.

R.1.1.3 The Regulated Person shall also ensure that any Information provided pursuant to this Rule shall be up to date.

R.1.1.4 The Regulated Person shall warn the Client that in the case where the application form, the proposal form or the order form has also been drawn up in Maltese and an English version thereof has to be transmitted to an overseas party for final execution, the wording of the English version of the order form or application form shall prevail.

R.1.1.5 By way of derogation from R.1.1.2 (a), the Regulated Person may disclose to the Client, any Information it is required to disclose in terms of this Rulebook in any one of the following means:

(a) through a Durable medium other than paper, where the conditions laid down in R.1.1.6 are met; or
(b) by means of a website where the conditions laid down in R.1.1.7 are met.

R.1.1.6 Where Information is required to be disclosed in a Durable medium, Regulated Persons shall have the right to provide that Information, in a Durable medium other than on paper, only if:

(a) the provision of that Information in that medium is appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on; and
(b) the person to whom the Information is to be disclosed, when offered the choice between Information on paper or in that other Durable medium, specifically chooses the provision of the Information in that other medium.

R.1.1.7 Where, in terms of this Rulebook a Regulated Person is permitted to disclose Information to a Client by means of a website, and where that Information is not addressed personally to the Client, the following conditions must be satisfied:

(a) the provision of that Information in that medium is appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on;
(b) the Client shall specifically consent to the provision of that Information in that form;
(c) the Client shall be notified electronically of the address of the website, and the place on the website where the Information may be accessed;
(d) the Information must be up to date; and
(e) the Information must be accessible continuously by means of that website for such period of time as the Client may reasonably need to inspect it.

R.1.1.8 Where the Information to be disclosed in a Durable medium, is disclosed by the Regulated Person using a Durable medium other than paper or by means of a website, a paper copy shall be disclosed to the Client upon request and free of charge.

R.1.1.9 For the purposes of R.1.1.6 and R.1.1.7, the provision of Information by means of electronic communications shall be treated as appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on if there is evidence that the Client has regular access to the internet. The provision by the Client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Regulated Persons Carrying on a Service through the Internet

R.1.1.10 Where in the course of carrying out a Service, a Regulated Person carries on such Service through the internet, the internet site shall satisfy the conditions indicated in R.1.1.11 which the Regulated Person is required to comply with when operating such site and should, as a minimum, include the Information indicated under R.1.1.12.

R.1.1.11 Where the Service is carried on through the internet, the following conditions shall be satisfied at all times:

(a) the Regulated Person assumes full responsibility for all Information that is communicated or displayed on the internet site and of the overall quality of any such Information communicated or displayed thereon;
(b) the Regulated Person shall designate a senior officer to act as a main point of contact with the MFSA in respect of the said site. The Designated Person and any change of the Designated Person shall be immediately communicated to the MFSA ;
(c) the Regulated Person shall ensure that all data and Information explained on the internet site is complete and constantly updated;
(d) the Regulated Person shall ensure that the appropriate warnings and disclaimers can be viewed in the same browser format as the rest of the site so as to be visible to all visitors to the site;
(e) the Regulated Person includes appropriate statements the Client or prospective Client is leaving the internet site and accessing another in cases where the internet site of the Regulated Person is hyperlinked to other sites.

R.1.1.12 The internet site, shall, as a minimum, include the following Information:

(a) the name, address and contact details of the Regulated Person;
(b) a statement that such Regulated Person is authorised or enrolled to carry on the Service;
(c) a list of the jurisdictions in which such Regulated Person is authorised or enrolled to carry on the Service.

The term "authorised" includes a Regulated Person establishing a branch or providing services in a Member State or an EEA State in exercise of a European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015);

(d) procedures for the submission of claims and a description of the claims handling procedure of the Regulated Person;
(e) contact details of the officer of the Regulated Person responsible for consumer complaints and Information that complaints may be referred by the complainant to the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act (Cap. 555), if the complainant is not satisfied with the manner in which his complaint has been resolved by the Regulated Peron;
(f) statements as to whom the website is targeted, for example, residents in Malta and for all risks situated in Malta.

Record Keeping Requirements for Activities Carried Out by Regulated Persons through a Website

R.1.1.13 Where a Regulated Person communicates with a Client by means of a website, it must ensure that it has in place appropriate arrangements in order to record all the specific Information disclosed to the Client by means of its website, including dated logs of such disclosures, in order to demonstrate that it has complied with all its regulatory requirements.

Internet Sites Operated by Tied Insurance Intermediaries or Ancillary Insurance Intermediaries

R.1.1.14 In addition to the requirements of R.1.1.10 to R.1.1.12, a Tied insurance intermediary or Ancillary insurance intermediary shall not carry on Tied insurance intermediaries or Ancillary insurance intermediary activities through the internet, except with the consent of the Insurance undertaking in relation to which it acts as a Tied insurance intermediary or Ancillary insurance intermediary.

R.1.1.15 The Insurance undertaking on whose behalf the Tied insurance intermediaries activities or Ancillary insurance intermediaries are being carried out shall assume full responsibility for all the Information that is communicated or displayed on the internet site relating to such activities.

R.1.1.16 The Insurance undertaking to which the Tied insurance intermediaries' or Ancillary insurance intermediaries' activities being carried out relate shall ensure that:

a) the provisions contained in sub-paragraphs (c) to (e) of Rule 1.1.11 are satisfied at all times;
b) the internet site contains the following Information:
   i. the name, address and contact details of the Tied insurance intermediary, Ancillary insurance intermediary and the Insurance undertaking;
   ii. a statement that the Tied insurance intermediary or Ancillary insurance intermediary is enrolled to carry out Tied insurance intermediaries activities or Ancillary insurance intermediaries activities in terms of the Insurance Distribution Act (Cap. 487);
   iii. statements as to whom the website is targeted, for example residents in Malta or for risks situated in Malta.

Section 2: MARKETING RULES

Application

R.1.2.1 The Rules and any relative Guidance set out under the subtitle "General Rules" shall apply to all Regulated Persons, except as otherwise indicated.

R.1.2.2 The Rules and the relative Guidance set out under Part A below are applicable to Regulated Persons which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary, irrespective of their licence category.

R.1.2.3 The Rules and relative Guidance set out in Part B below are applicable to Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.1.2.4 The Rules and relative Guidance set out in:

(a) Part C below are applicable to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules who market, distribute or sell contracts for differences to Retail Clients in or from Malta;

(b) Part D below are applicable to: Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary and which qualify as UCITS Management Companies; and to the UCITS, where the UCITS has not designated a UCITS Management Company.

R.1.2.5 These Rules shall apply to:

(a) any Advertisement or Information issued in or from Malta; and
(b) Any Advertisement or Information which is circulated, published, broadcast or otherwise received in Malta.

General Rules

R.1.2.6 Advertisements and Information shall be fair, clear and not misleading. Advertisements shall be clearly identifiable as such.

In issuing, approving or disseminating Advertisements, the Regulated Person shall ensure that:

(a) the design, presentation and content of an Advertisement is clear, fair, and accurate and not misleading such that any Client can reasonably be expected to know immediately that it is an Advertisement.
(b) the Advertisement shall not seek to influence a person's attitude to the advertised Product or Service or the Regulated Person either by ambiguity, exaggeration or omission;
(c) the nature and type of the advertised Product or Service shall be clear and shall not be disguised in any way;
(d) important items, statements or warnings are not disguised, diminished or obscured; and
(e) it avoids taking any improper advantage of any characteristic or circumstances that may make the Client vulnerable.

R.1.2.6A Research produced by Regulated Persons or by third parties and used by, or distributed to, investment firms, their clients or potential clients, shall be fair, clear and not misleading. Research shall be clearly identifiable as such or in similar terms, provided that all conditions laid down in Rules R.3.45 to R.3.57, applicable to the research are met.

R.1.2.6B Regulated Persons providing portfolio management or other investment services or ancillary services shall ensure that the research they distribute to clients or potential clients which is paid for, in full or in part, by an issuer shall be labelled as "issuer-sponsored research" only if it is produced in compliance with the EU code of conduct for issuer sponsored research which may be published in due course by ESMA.

R.1.2.6C Any issuer may submit its issuer-sponsored research, as referred to in Rule R.1.2.6B above, to the designated collection body in Malta as defined in Article 2(2) of Regulation (EU) 2023/2859 ESAP Regulation.

When submitting issuer-sponsored research to the designated collection body in Malta as defined in Article 2(2) of Regulation (EU) 2023/2859 ESAP Regulation, the issuer shall ensure that it is accompanied by metadata

specifying that the information complies with the EU code of conduct for issuer sponsored research which may be published in due course by ESMA. Such research shall not be considered to be regulated information within the meaning of Capital Markets Rules issued by the MFSA nor investment research within the meaning of this Rulebook and shall therefore not be subject to the same level of regulatory scrutiny as regulated information or investment research.

R.1.2.6D Research that is labelled as "issuer-sponsored research" shall indicate on its front page in a clear and prominent way that it has been prepared in accordance with the EU code of conduct for issuer sponsored research which may be published in due course by ESMA. Any other research material paid, in full or in part by the issuer but not prepared in compliance with the EU code of conduct for issuer sponsored research which may be published in due course by ESMA, shall be labelled as a marketing communication.

R.1.2.6E Regulated Persons that produce or distribute issuer-sponsored research shall have in place organisational arrangements to ensure that such research is produced in compliance with the EU code of conduct for issuer sponsored research which may be published in due course by ESMA, and complies with Rules R.1.2.6A to R.1.2.6D above.

R.1.2.6F For the purposes of R.1.2.6A to R.1.2.6E, trading commentary and other bespoke trade advisory services intrinsically linked to the execution of a transaction in financial instruments shall not be considered to be research.

R.1.2.7 Without prejudice to the generality of R.1.2.6, a Regulated Person shall ensure that any Advertisement and Information is not misleading in relation to:

(a) the nature of the advertised Product or Service;
(b) the Regulated Person's independence or the independence of the Information it provides;
(c) the Regulated Person's ability to provide the advertised Product or Service and about the nature and type of such Product or Service;
(d) the scale of the Regulated Person's activities;
(e) the extent of the resources of the Regulated Person;
(f) the nature of the Regulated Person's or any other person's involvement in the advertised Product or Service;
(g) the scarcity of the advertised Product or Service;
(h) past performance or possible future performance of the advertised Product or Service;
(i) any relevant risks and, in particular, shall not emphasise any potential benefits of a Product or Service without also giving a fair and prominent indication of relevant risks.

G.1.2.1 *An Advertisement or other Information provided to Clients should be considered to be 'misleading' if it has a tendency to mislead the person or persons to whom it is addressed or by whom it is likely to be received, whether or not the person who issues the Advertisement considers or intends it to be misleading.*

R.1.2.7A The Rules in this Section shall not apply where the Advertisement approved or disseminated or the Information provided consists only of one or more of the following:

(a) The name of the Regulated Person;
(b) A logo or other image associated with the Regulated Person;
(c) A contact point.

G.1.2.2 This guidance has been deleted.

R.1.2.8 The Regulated Person shall ensure that Advertisements or Information it approves or circulates shall:

(a) be sufficient for, and presented in a way that is likely to be understood by, its Identified target market; and
(b) identify the Member State where the Regulated Person is registered.

Gifts, Rewards and Giveaways

R.1.2.8A Any gifts, rewards and giveaways offered by Regulated Persons to their Clients should:

(a) not be of substantial value when compared to the minimum amount required to acquire the product or service, including but not limited to, cruises, holidays, jewellery, electronic gadgets);
(b) not be given at the stage where the client merely makes an appointment with the Regulated Person with a view to discuss a Product or Service offered by the latter;
(c) be related to the nature of the service being provided or enhance the nature of the Product or Service (example: roadside membership assistance offered with motor insurance)

R.1.2.8B Regulated Persons are prohibited from:

(a) offering gifts, rewards and giveaways purposely to entice Clients to purchase a Product or Service;
(b) clouding the Client's decision by the potential acquisition of gifts, rewards, giveaways which are not linked to the product or service itself;
(c) rush Clients into taking a decision by putting pressure to obtain any sort of gift, rewards, giveaways or enticing participation in lotteries;
(d) Promoting gifts, rewards and giveaways in greater prominence that the main feature of the product or service being sold.

Issuing and Approving Advertisements

R.1.2.9 No person, other than a Regulated Person, may issue or cause to be issued, Advertisements in or from Malta, unless its contents have been approved by a Regulated Person. Furthermore, the Regulated Person approving such Advertisements shall ensure that any Advertisements disseminated or circulated principally in or from Malta comply with the requirements of these Rules and any other relevant legislation.

Advertisements relating to Financial Instruments or Structured Deposits, are required to be approved by a Regulated Person which falls under point (i) of the definition of Regulated Person in the Glossary to these Rules.

R.1.2.10 When issuing or approving such Advertisements Regulated Persons, other than Tied or Ancillary insurance intermediaries, shall:

(a) appoint the Compliance Officer, or where the Regulated Person is not required to appoint a Compliance Officer, a designated officer to be notified to the MFSA to:

i. approve Advertisements to be issued by the Regulated Person in its own name;
ii. approve Advertisements to be issued by a third party but which are required to be approved by a Regulated Person; and
iii. report to the MFSA any Advertisement issued or purporting to be issued by a Regulated Person without the approval referred to in (a) (i) above.

(b) establish internal procedures relating to the approval of Advertisements to be issued by the Regulated Person;
(c) identify the target market of Client for whom the Advertisement is intended and ensures that the method of circulating the Advertisement is appropriate for the Identified target market.
(d) keep records of all Advertisements issued and approved, including:

i. an approved certification in electronic format by the Compliance Officer or the designated officer in terms of (a) above, that each Advertisement complies with the requirements of these Rules;
ii. the name of the individual who approved the Advertisements;
iii. the date of approval of the Advertisements;
iv. the publications in which the Advertisement was included; and
v. documentary evidence in support of any statement made in the Advertisement.

R.1.2.11 Where the Regulated Person appoints Tied insurance intermediaries, Tied Agents or Ancillary insurance intermediaries it shall approve all the Advertisements relating to the business carried on by the Regulated Person, issued by such Tied insurance intermediaries, Tied Agents or Ancillary insurance intermediaries. The Regulated Person shall also accept responsibility for such Advertisements and ensure that they comply with the applicable legal and regulatory requirements. Moreover, the Regulated Person shall also keep a separate record of all such Advertisements and of the monitoring which it carries out in this regard.

G.1.2.3 *For the purposes of complying with R.1.2.11, where Advertisements are issued on social media, the Regulated Person may consider issuing to such Tied insurance intermediaries and Tied Agents specific requirements to be adhered to with respect to the contents of Advertisements issued by such Tied insurance intermediaries and Tied Agents on social media. Any Advertisements issued by Tied insurance intermediaries and Tied Agents, complying with the requirements issued by the Regulated Person, shall be deemed to be approved in terms of*

R.1.2.11. In such cases, the Regulated Person should carry out ex-post monitoring of Advertisements issued by its Tied insurance intermediaries or its Tied Agents.

R.1.2.12 For the purposes of R.1.2.10 and R.1.2.11, the words "*keep a record of all Advertisements*" means that the Regulated Person is required to keep a copy of each, different kind of Advertisement issued or approved by it, for a period of not less than 5years.

General Requirements

R.1.2.13 Any disclosure, warning or any other disclaimer which is required to be included in any Advertisement or Information shall be shown prominently, clearly and intelligibly.

G.1.2.3A Disclosure shall be considered as shown prominently if, having regards to the content it is presented alongside, it is likely that the attention of the average Client would be drawn to it.

When providing disclosures electronically, disclosures is likely to be presented prominently as long as it consists of sufficient disclosures that are not solely dependent on having the Client access a separate webpage or providing him/her with the option to download and open a separate file containing it.

G.1.2.4 When issuing an Advertisement or communicating Information to a Client about a Product or a Service, a Regulated Person should consider whether omission of any relevant fact will result in the Advertisement or Information being insufficient, unclear, unfair or misleading.

G.1.2.5 Regulated Persons should:

(a) take account of the means of communication used to publish the Advertisement or communicate the Information to Clients and of the limitations and/ or disadvantages associated with a particular means of communication. To this effect G.1.2.32 should be noted for additional guidance with respect to publication of Information on different types of media;
(b) ensure that disclaimers, risk warnings and other footnotes used in the Information should be of sufficient size and prominence to be clearly legible and not diminished, disguised or obscured in any way by the content, design or format of the Information;
(c) ensure that quoted performance figures are not selected so as to exaggerate the success or disguise the lack of success of the Product;
(d) include a statement in the Information regarding any significant position or holding in the Product which is the subject of the Information or Advertisement;
(e) ensure that only Information which is material to the Advertisement being published, is included. The Advertisement should indicate that further Information about the Product or Service which is the subject of the Advertisement is available and from where.

R.1.2.14 A Regulated Person shall include a regulatory disclosure statement in all the Advertisements it issues except for those Advertisements consisting of the information as provided in R.1.2.7A. This regulatory disclosure statement shall indicate that the Regulated Person is regulated by the MFSA or by a European regulatory authority, as applicable, as well as a reference to the legislation under which such regulation is afforded.

Provided that, in exceptional cases only, whereby the medium used for the publication of the Advertisement (such as website or Mobile App banners) is limited by time or space and does not permit the regulatory disclosure statement to appear in full, the Regulated Person may instead indicate that the full regulatory disclosure is found one click away from the Advertisement itself.

The regulatory disclosure statement required by this Rule should also be made by the Regulated Person when providing Information to Clients.

R.1.2.15 A Regulated Person shall ensure that Information shall not use the name of the MFSA or any other competent authority in such a way that would indicate or suggest endorsement or approval by the MFSA or any other competent authority of the Products or Services of the Regulated Person.

R.1.2.15A Regulatory disclosures shall only be intended to ensure compliance with regulatory requirements and shall not purport to influence, promote or induce believe that the Products or Services are of a better quality than others. Regulatory disclosures shall not be used as a marketing or sales tool, nor shall they be communicated or displayed in such a way to be perceived as offering an advantage or incentive to the Client.

R.1.2.16 A Regulated Person shall ensure that any Advertisement or Information it issues, which indicates the MFSA as the regulator of the Regulated Person issuing the Advertisement and which refer to matters not regulated by the MFSA, makes it clear that those matters are not regulated by the MFSA.

R.1.2.17 Where an Advertisement is issued by a Tied insurance intermediary, by an Ancillary insurance intermediary or by a Tied Agent, the Advertisement shall contain a statement that the entity appointing the intermediary is regulated by the MFSA, or by a European regulatory authority, as applicable, as well as a reference to the legislation under which such regulation is afforded.

The regulatory disclosure statement required by this Rule should also be made by the Tied insurance intermediary, the Ancillary insurance intermediary or a Tied Agent when providing Information to Clients.

R.1.2.18 The Regulated Person shall ensure that any Information and Advertisement addressed to, or disseminated in such a way that it is likely to be received by, Clients shall include the name and address of the Regulated Person and identify in the same prominence both the Manufacturer of the Product and the Distributor which issued the Advertisement or the Information. It should also

distinguish between which of the parties is the Manufacturer and which is the Distributor of the Product.

G.1.2.6 For the purposes of the above Rule R.1.2.18, the Information relating to the Manufacturer and the Distributor should be clearly legible and not diminished, disguised or obscured in any way by the content, design or format of the Information or Advertisement. In particular, with respect to white labelled insurance Products, the Regulated Persons should use the following wording or such other wording as appropriate in particular circumstances:

This Product is manufactured by *[name of the Manufacturer],* which provides the cover under this policy, and is distributed by *[name of the Distributor]*.

Provided that, in this context the term *"white labelled insurance Products"* refers to insurance Products which are manufactured by an entity, but which are marketed by another entity under the brand of such other entity (which other entity would normally be a Distributor; and which is not the Manufacturer or Co-Manufacturer of the Product in question), for example, by attaching the name of the distributing entity in the name of the Product.

Provided further that, it is expected that the Compliance Function of Regulated Persons should monitor, at least on annual basis, that the requirements of Rule R.1.2.18 and of this guidance are appropriately complied with.

R.1.2.19 A Regulated Person shall ensure that an Advertisement or Information which contains any initials or acronyms (for example AER, EAR, CAR, APR etc.) also states what the initials or acronyms stand for.

R.1.2.20 A Regulated Person shall ensure that the advertised Product or Service is described as free only where the Product or Service in its entirety is available free of charge to the Client.

R.1.2.21 A Regulated Person shall ensure that any Information contained in a marketing communication is consistent with any Information the Regulated Person provides to a Client in the course of carrying on Services and Ancillary services.

R.1.2.22 In deciding whether and how, to issue an Advertisement to an Identified target market, a Regulated Person shall ensure that the medium selected for this purpose is commensurate with the nature of the Product or Service and its likely Information requirements as well as the role and extent of the Information provided, the risks involved, the risk profile of the target audience in the sales process.

Where the medium selected by the Regulated Person to disseminate the Advertisement is such that it does not allow the recipient to assimilate all the Information included therein (for example billboards), there should be no references to performance rates.

G.1.2.7 The medium, content and format of the Advertisement should be such that it is easily understood that it is only intended for its Identified target market. The Advertisement itself should also be understood by such Identified target market.

Therefore, where possible, simple and accurate terms should be used as opposed to complicated and technical jargon.

R.1.2.23 The Regulated Person shall ensure that an Advertisement or Information which is being aimed at an Identified target market, shall also include a statement indicating such Identified target market.

Provided that the requirement of this rule shall apply to a Regulated Person falling under points (i), (ii) and (v) of the definition of 'Regulated Person' as provided in the Glossary insofar as new Product/s offered to Clients as from 3rd January 2018.

Provided further that the requirement of this rule shall apply to a Regulated Person falling under points (iii) and (iv) of the definition of 'Regulated Person' as provided in the Glossary insofar as new Product/s offered to Clients as from 1st October 2018.

G.1.2.8 With respect to Advertisements and Information disseminated via the Internet, Regulated Persons should also:

(a) include a statement indicating the identified target market which the website or email or Mobile App is intended for;
(b) include appropriate statements that the Client is leaving the Regulated Person's website or Mobile App and accessing another in cases where the Regulated Person's website or Mobile App is hyperlinked to other sites.

Warning Statements Which Should Be Included in Advertisements and, where Applicable, Information

R.1.2.24 A Regulated Person shall ensure that warning statements:

(a) are prominently situated and of a font size that is visible and proportionate to the predominant font size used throughout the document or Advertisement or Information; and
(b) appear together with the benefits of the advertised Product or Service.

In the case of non-print media, it is sufficient that the warning statements are mentioned at the end of the Advertisement.

R.1.2.24A By way of derogation from R.1.2.24 above, if the advertisement is limited by time or space and hence the risk warning cannot fit in full because it exceeds the available space of the medium used for the Advertisement or Information, the risk warning may instead be in the following format:

Warning: All investments carry risks

R.1.2.24B If the risk warning specified in the R.1.2.24A above is used, the Advertisement or Information shall also include a direct link to the webpage of the Regulated Person containing the risk warning in full.

R.1.2.25 A Regulated Person shall ensure that an Advertisement for a Product, which is not readily realisable, states that it may be difficult for Client to sell or exit the

Product and/or obtain reliable Information about its value or extent of the risks to which it is exposed.

R.1.2.26 A Regulated Person shall ensure that an Advertisement or Information relating to a Product that cannot be redeemed prior to maturity, or which incurs an early redemption charge if redeemed prior to maturity, clearly states that this is the case.

R.1.2.27 A Regulated Person shall ensure that an Advertisement or Information relating to a Product subject to front-end loading states, where applicable, that:

(a) deductions for charges and expenses are not made uniformly throughout the life of the Product, but are loaded onto the early period;
(b) if the Client withdraws from the Product in the early period, the practice of front-end loading will impact on the amount of money which the Client receives; and
(c) if applicable, that a Client may not get back the full amount invested.

R.1.2.28 Regulated Persons issuing an Advertisement shall ensure that:

(a) where the Product is complex, a warning is included to the effect that it may not be suitable for Retail Clients;
(b) that the Information provided therein is not in conflict, in any way, with the relevant prospectus or Product documentation. Phrases similar to or derivatives of 'fixed annual income, 'minimum return'', 'monthly distributions'' amongst others may only be used in accordance with the provisions of the Product prospectus or Product documentation;
(c) that the terminology used to describe the rate of return is adequate terminology for that particular Product or Service. When quoting rates of return for bond funds the term 'yield' should be used to describe such a return in lieu of 'interest rate' or 'return'. Care shall also be exercised in using the correct terminology when advertising in Maltese so that the term 'qliegh' is only used where appropriate as opposed to 'rata ta' imghax'.

R.1.2.29 A Regulated Person shall ensure that where any Advertisement or Information relates to a Product or Service that is denominated or priced in a foreign currency, or where the value of such Product or Service may be directly affected by changes in foreign exchange rates, the relevant warning statements are disclosed.

G.1.2.9 Further to the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:

Warning: This [*Product/Service*] may be affected by changes in currency exchange rates.

R.1.2.30 A Regulated Person shall ensure that Advertisements should clearly indicate whether the Product or Service being advertised places a Client's capital at risk. An Advertisement for a Product where the consumer may not get back 100% of the initial capital invested should contain the relevant warning.

G.1.2.10 *For the purpose of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

Warning: If you invest in this Product you may lose some or all of the money you invest.

R.1.2.31 A Regulated Person shall ensure that an Advertisement for a Product that quotes a yield figure, a balanced impression of both the short and long term prospects for the investment, is given;

R.1.2.32 A Regulated Person shall ensure that for a Product where the promised return of capital is only applicable on a specific date, an appropriate warning is given.

G.1.2.11 *For the purposes of the above Rule, Regulated Persons should use the following warning or such other wording as appropriate in the particular circumstances:*

Warning: If you cash in your Product or redeem your investment before [specify the particular date] you may lose some or all of the money you invest.

R.1.2.33 A Regulated Person shall ensure that Advertisements for a Product where there is no access to funds for the term of the Product a specific warning in this regard should be included.

G.1.2.12 *For the purposes of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

Warning: If you invest in this Product you will not have any access to your money for [insert time required before the Product matures].

R.1.2.34 A Regulated Person shall ensure that Advertisements that promote a Product or Service whose charging structure is complex shall include the Information necessary to ensure that the Advertisements are fair, clear and not misleading. Such Advertisements should also contain sufficient Information taking into account the needs of the recipients.

R.1.2.35 A Regulated Person shall ensure that Advertisements that offer packaged Products which are not manufactured by the Regulated Person issuing the Advertisements, indicate clearly that the Regulated Person is not the Manufacturer of the Product advertised.

R.1.2.36 A Regulated Person shall ensure that where the advertised Product or Service can fluctuate in price or value, the relative Advertisement contains a corresponding warning statement.

G.1.2.13 *For the purposes of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

Warning: The value of your investment may go down as well as up.

R.1.2.37 A Regulated Person shall ensure that where the return on an advertised Product or Service is not set until a particular date (for example, the maturity date of the advertised Product or Service), this should be clearly stated.

R.1.2.38 A Regulated Person shall ensure that where the subject of an Advertisement is a Product described as being likely to yield income, or interest in the case of Structured Deposits, or as being suitable for a Client particularly seeking income, the relevant risk warnings are included where the income from such Product can fluctuate.

G.1.2.14 For the purposes of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:

Warning: The income you get from this investment may go down as well as up.

R.1.2.38A When the Advertisement or Information promotes the possibility to be classified as Elective Professional Client, the Regulated Person shall ensure that the Advertisement or Information entails an explanation on the limitations to Client protection, that such different categorisation would entail.

G.1.2.14A *For the purposes of this Rule Regulated Persons shall use the following wording or such other wording as appropriate in the particular circumstances:*

Warning: Re-classification to Elective Professional Clients comes with less client protection, in view that Elective Professional Clients are deemed to be capable of making their own investment decision.

Information to be Included in Advertisements

R.1.2.39 A Regulated Person shall ensure that an Advertisement that uses promotional or introductory interest rates clearly states the expiry date of that interest rate and provides an indication of the rate that will apply thereafter.

R.1.2.40 An Advertisement should not describe a feature of a Product or Service as "guaranteed", "protected" or "secure", or use a similar or equivalent term unless the Regulated Person issuing the Advertisement has made an assessment of the guarantee in question and has found it to be adequate. If such terms are included, then the Regulated Person shall ensure that the terms used are capable of being a fair, clear and not misleading description of the advertised Product and that all relevant Information is communicated in the Advertisement with sufficient clarity and prominence, to make the use of those terms fair, clear and not misleading. Furthermore, such Advertisements should also include:

a) the name and a description of the guarantor, where the guarantor is a third party;
b) specify the legally binding nature of the guarantee (such as for example, but not limited to, suretyship agreements, contracts between the service provider and guarantor) and what it relates to;

c) where the guarantee is subject to limitation, this should be clearly indicated as a risk warning within the Advertisement and the Regulated Person shall include the following text:

Warning: This product or service is guaranteed by a third party guarantor (Name of Guarantor and regulated status if applicable) subject to terms and conditions outlined in the product or service documentation

d) information as to whether there are any conditions, restrictions or other matters which may affect the Client's ability to benefit from it.

R.1.2.41 A Regulated Person shall ensure that any assumptions, on which a statement, promise or forecast contained in an Advertisement is based, are clearly stated, reasonable and up to date.

R.1.2.42 A Regulated Person shall ensure that an Advertisement that promotes more than one Product or Service sets out clearly the key Information relating to each Product or Service in such a way that a Client can distinguish between the Products and Services in question.

R.1.2.43 Where an Advertisement contains a statement or report attributed to a person, the Advertisement should also disclose the name of that person, his business address, qualifications and any material interest in the Issuer of the Advertisement or in the Products or Services which are the subject of the Advertisement in question.

R.1.2.44 Where the Information contained in an Advertisement is sourced from a third party, the Regulated Person issuing the Advertisement should also confirm that this Information has been accurately reproduced and that no facts have been omitted which would render the reproduced Information inaccurate or misleading. In addition, the Regulated Person should also identify the source(s) of the Information.

Advertisements Issued by Tied Insurance Intermediaries, Ancillary Insurance Intermediaries or Tied Agents

R.1.2.45 Where a Tied insurance intermediary, Ancillary insurance intermediary or a Tied Agent is tied to a single provider for a particular Product or Service, the Tied insurance intermediary, Ancillary insurance intermediary or the Tied Agent shall disclose this fact in all Advertisements for the Product or Service in question.

Advertisements Containing Pricing Claims

R.1.2.46 This Rule applies in relation to an Advertisement that makes pricing claims, including financial promotions that indicate or imply that a Regulated Person can reduce the premium or fees, provide the cheapest premium or fees or otherwise reduce a Client's costs:

A Regulated Person shall ensure that any qualifying criteria in relation to:

(a) obtaining a minimum price for the advertised Product or Service; or

(b) benefiting from potential maximum savings relating to the Advertised Product or Service,

is included in the main body of the Advertisement.

R.1.2.47 Such an Advertisement should:

(a) be consistent with the result reasonably expected to be achieved by the majority of Clients who respond, unless the proportion of those Clients who are likely to achieve the pricing claims is stated prominently;
(b) state prominently the basis for any claimed benefits and any significant limitations; and
(c) comply with other relevant legislative requirements.

Disclosures Relating to Taxation

R.1.2.48 If any Advertisement or Information refers to a particular tax treatment of a particular Product or Service, a Regulated Person shall ensure that the Advertisement or Information in question contains:

(a) details on the tax treatment of the Product or Services, which is complete, fair, relevant, accurate and not misleading;
(b) an indication as to whether the Regulated Person assumes responsibility for the withholding of the taxes at source;
(c) an indication that the Information relates to any appropriate current legislation as at the date of submission of that Information and that such tax arrangements may change in the future.

R.1.2.49 Where the Information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each Client and may be subject to change in the future.

Information Provided to Clients which Refer to Past Performance

R.1.2.50 A Regulated Person shall ensure that when providing any Information to Client containing an indication of past performance of a financial index or a Service or a Product, the following conditions are satisfied:

(a) that indication is not the most prominent feature of the communication;
(b) the reference period and the source of Information is clearly stated;
(c) the Information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
(d) where the indication relies on figures denominated in a currency other than that of the Member State in which the Client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
(e) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed;

G.1.2.15 The obligations relating to describing performance should be applied in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the Information the communication is intended to convey.

G.1.2.16 *For the purposes of the above Rule, the Regulated Person is recommended to use the following wording or such other wording as is appropriate in the circumstances:*

(a) with respect to R.1.2.50(c):

Warning: The performance figures quoted refer to the past and past performance is not a guarantee of future performance or a reliable guide to future performance'

(b) with respect to R.1.2.50(d)

Warning: This [Product] may be affected by changes in currency exchange rate movements thereby affecting your investment return therefrom.

G.1.2.17 *In order to comply with R.1.2.50(e), Regulated Persons may either quote performance figure:*

(a) net of all applicable fees, commissions and other charges; or
(b) gross, but clearly highlighting all applicable fees, commissions and charges in the disclaimers contained in the Advertisement or Information and which could have an impact on the value of the quoted performance. In this regard,

- *for Financial Instruments and for Insurance-based investment products subject to front- end fees, Regulated Persons should use the following wording or such other wording as is appropriate in the circumstances:*

Warning: A commission or sales fee may be charged at the time of the initial purchase for an investment and may be deducted from the invested amount therefore lowering the size of your investment';

- *for Products subject to exit fees, Regulated Persons should to use the following wording or such other wording as is appropriate in the circumstances:*

Warning: '*A fee/surrender penalty may be charged at the time you redeem your investment [or if you wish to withdraw your investment in the early period] /surrender penalty which may have an impact on the amount of money you receive*'.

G.1.2.18 *In relation to packaged products Information required in R.1.2.50 should be given on:*

(a) an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other investments; or
(b) an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of units; or
(c) a single pricing basis with allowance for charges.

G.1.2.19 *If the pricing policy of the packaged product has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.*

G.1.2.20 *Performance figure/s (including the use of graphs or other phrases used in the Information or Advertisement which could give an indication of the rate of return) are considered to be the most prominent feature of the Information or Advertisement when the font size/s used to illustrate the performance figure/s*

(a) is larger than that used for any other item of Information within the same communication;
(b) is disproportionate to the font size used for any other item of Information including the disclaimers, footnotes, warnings; and
(c) Gives the performance rate excessive prominence.

G.1.2.21 *Where necessary footnotes or other Information included to supplement or elaborate on the key Information in the main body of the Advertisement, shall be of sufficient size and prominence to be clearly legible. Where an asterisk is used to add explanation, the explanatory text may appear as a footnote provided that the linkage is absolutely clear.*

G.1.2.22 *Regulated Persons should ensure that the reference period and the source of Information is quoted even when disclosing and/ or illustrating past performance figures or indicators in pie charts or any other types of graphs or illustrations.*

Information Showing Simulated Past Performance

R.1.2.51 A Regulated Person shall ensure that where Information it provides includes or refers to simulated past performance, satisfies the following conditions:

(a) it relates to a Financial Instrument or a financial index;
(b) the simulated past performance is based on the actual past performance of one or more Financial Instruments or financial indices which are the same as, or substantially the same as, or underlie, the Financial Instrument concerned;
(c) in respect of the actual past performance referred to in point (b) above the conditions set out in points (a) to (c) and (e) of R.1.2.50 are satisfied;
(d) the Information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

G.1.2.23 *The guidance noted in G.1.2.15 to G.1.2.22 above and G.1.2.39 should be considered as relevant guidance for the implementation of R.1.2.51 (b).*

G.1.2.24 *For the purposes of Rule 1.2.51(d), Regulated Persons are recommended to use the following wording or such other wording as may be appropriate in the circumstances.*

Warning: The performance figures quoted are only estimates and may not be a reliable indicator of future performance of this investment'.

Advertisements or Information Showing Future Performance

R.1.2.52 A Regulated Person shall ensure that any Information containing an indication of future performance satisfies the following conditions:

(a) the Information is not based on or refer to simulated past performance;
(b) the Information is based on reasonable assumptions supported by objective data;
(c) the effect of commissions, fees or other charges is disclosed where the indication is based on gross performance; and
(d) the Information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis.
(e) the Information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

G.1.2.25 A Regulated Person should refrain from approving Advertisements or providing Information to Clients referring to future performance if it is not in possession of the objective data needed to comply with the rule on future performance.

G.1.2.26 Regulated Persons should not illustrate future performance figures in a way which indicates or gives the impression that the future performance of the investment is correlated in any way to the past performance of the investment.

G.1.2.27 In order to comply with R.1.2.52(c), Regulated Persons may either quote performance figures:

(a) net of all applicable commissions, fees and charges; or
(b) gross, but clearly highlighting all applicable commissions, fees and charges in the Information disclaimers which could have an impact on the value of the quoted performance as follows:

- *for Products subject to front- end fees, Regulated Persons should use the following wording or such other wording as is appropriate in the circumstances:*

A commission or sales fee may be charged at the time of the initial purchase for an investment, or at the time of the entering into an Insurance contract, as applicable, and may be deducted from the amount invested or from the surrender value, as applicable, therefore lowering the size of the proceeds from your investment or insurance policy, as applicable.

- *for Products subject to exit fees or surrender charges, Regulated Persons are recommended to use the following wording or such other wording as is appropriate in the circumstances:*

A fee may be charged at the time you redeem your investment [or if you wish to withdraw your investment in the early period] or on the surrender of the policy, as applicable. This may have an impact on the amount of money you receive'.

G.1.2.28 *In order to comply with R.1.2.51(d), Regulated Persons are recommended to use the following wording for the applicable warning or such other wording as is appropriate in the circumstances.*

The performance figures quoted should only be considered as forecasts and may not be a reliable indicator of future performance of this investment.

Guidance on Advertisements to be disclosed in Advertisements Broadcasted on Television, Radio, Social Media, Video and Audio.

G.1.2.29 *With respect to all types of Advertisements broadcast on television, radio, social media, video and audio (including but not limited to, websites, Mobile Apps, YouTube, TikTok, X formerly Twitter, Facebook and Instagram) apart from the guidance provided in the above-sections, Regulated Persons should:*

(a) state the regulatory disclosure statement as set out in R.1.2.14;
(b) have clear and legible risk warnings indicated on a caption at the very bottom of the visual which should take up not less than 20% of the whole screen;
(c) indicate the captions on a black background and using bold, white text . Captions at the bottom of the screen should not exceed 4 lines each and should only be updated at intervals of not less than 4 seconds each during broadcast of the visual;
(d) include a voice over of all the relevant risk warnings relative to the investment;
(e) not include any reference to past or future performance rates if the broadcast is less than 30 seconds long.

Guidance on Advertisements Issued on Social Media

G.1.2.30 *"Social media" share the characteristic of being digital and can be defined as websites, Mobile Apps and other applications that enable users to create and share content or participate in social networking. The following is a non-exhaustive list: blogs, microblogs (X formerly Twitter), BlueSky, social and professional networks (Facebook and Linkedin), forums, image and video-sharing platforms (YouTube, Instagram, TikTok, Pinterest).*

G.1.2.31 *The rules under Chapter 1 "Disclosures" of the Conduct of Business Rulebook are media neutral; therefore they apply to social media as they would to any other medium.*

G.1.2.32 *Any form of communication through social media is capable of being an Advertisement, depending on whether it includes an invitation or Inducement to engage in financial activity.*

G.1.2.33 *An Advertisement must be made within the "course of business", that is, it requires a commercial interest on the part of the communicator, for it to be captured within the regulatory regime.*

G.1.2.34 *When deciding whether to promote or advertise through social media, Regulated Persons should take into consideration the nature of their promotions together*

with the fact that communications through social media can reach a wide audience very rapidly. Due to the possibility of promotions through social media being circulated by users to unintended recipients, Regulated Persons should take adequate measures to label and target their communications. The target audience, the nature of the Product and the likely Information needs of the average recipient should be considered.

G.1.2.35 *In order for Regulated Persons to adhere with the requirement to be "clear, fair and not misleading" as outlined in R.1.2.6, when promoting their Products or Services through social media, such Regulated Persons should ensure that Clients have an appreciation of the relevant risks in addition to the potential benefits. Regulated Persons should ensure that relevant text is sufficiently prominent.*

G.1.2.36 *In view that adverts on some social media are subject to character-limitations, the use of images and infographics is recommended to ensure that all the relevant risk warnings and other required statements are included in the advert. It is also possible to include a link to more comprehensive Information, provided that the promotion is compliant with the applicable regulatory requirements on a stand-alone basis.*

G.1.2.37 *Where a recipient shares or forwards a Regulated Person's communication, responsibility lies with the communicator (i.e. the recipient); therefore the Regulated Person would not be responsible. Notwithstanding, any breaches of rules in the original communication are still the responsibility of the Regulated Person and the MFSA will take up the matter with the Regulated Person.*

G.1.2.38 *If a Regulated Person shares a Client's post, and if the Client's post endorse the benefits of a regulated financial Product or Service, sharing of such comment by the Regulated Person will constitute a promotion. Sharing by a Regulated Person of a Client's post expressing satisfaction on good customer service, is not considered to be a promotion.*

G.1.2.39 *The Issuer of the Advertisement on social media should be clearly identifiable. Where a personal social media account is used by someone associated with a particular Regulated Person, such as a senior person at the business, that individual and the Regulated Person should take necessary measures to clearly distinguish personal communications from those that are made in the course of that business.*

Part A: ***Rules and Guidance applicable to Regulated Persons which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary to these Rules***

R. 1.2.53 For the purposes of this Part the term "Regulated Person" shall refer to a person which falls under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

Advertisements or Information Relating to a Feeder UCITS schemes or European UCITS Schemes

R.1.2.54 A Regulated Person shall ensure that any Advertisement or Information which comprises an invitation to purchase units in a UCITS scheme or a European UCITS Scheme and that contains specific details about the scheme:

(a) makes no statement that contradicts or diminishes the significance of the Information contained in the prospectus and the Key Investor I Information Document for the scheme;
(b) indicates that a prospectus exists for the scheme and that the Key Investor Information Document or document is available; and
(c) specifies where and in which language such Information or documents may be obtained by investors or potential investors or how they may obtain access to them.

R.1.2.55 Where a UCITS scheme or a European scheme may invest more than 35% of its scheme property in transferable securities and money market instruments issued or guaranteed by an Member State or EEA State, one or more of its local authorities, a Third Country or a public international body to which one or more Member States or EEA States belong, the Regulated Person shall ensure that Advertisements relating to the scheme contain a prominent statement drawing attention to the investment policy and indicating the particular Member States or EEA States, local authorities, third countries or public international bodies in the securities of which the scheme intends to invest or has invested more than 35% of its scheme property.

R.1.2.56 Where a UCITS scheme or European UCITS Scheme invests principally in units in collective investment schemes, deposits or derivatives, or replicates a stock or debt securities index or as indicated in Standard Licence Condition 5.37 of Part BII of the Investment Services Rules for Retail Collective Investment Schemes, the Regulated Person shall ensure that Advertisement relating to the scheme contains a prominent statement drawing attention to the investment policy.

R.1.2.57 Where the net asset value of a UCITS scheme or a European UCITS Scheme has, or is likely to have, high volatility owing to its portfolio composition or the Portfolio Management techniques that are or may be used, the Regulated Person shall ensure that an Advertisement relating to the scheme contains a prominent statement drawing attention to that characteristic.

Advertisements and Information Relating to UCITS Schemes or European UCITS Schemes

R.1.2.58 A Regulated Person shall ensure that an Advertisement and Information (other than a Key Investor Information Document) relating to a Feeder UCITS Scheme contains a statement that the Feeder UCITS Scheme permanently invests at least 85% in value of its assets in units of its Master UCITS.

Advertisements Relating to an Offer of Securities to the Public or to an Admission to Trading on a Regulated Market in Malta

R.1.2.59 Where no prospectus is required in accordance with the Directive 2003/71/EC (Prospectus Directive), any Advertisement relating to an Offer of securities to

the public or for an admission to trading on a Regulated Market in Malta shall include a warning to that effect unless the Issuer, the offer or the person asking for admission to trading on a Regulated Market in Malta chooses to publish a prospectus which complies with the requirements of Directive 2003/71/EC and Regulation (EC) 809/2004.

Advertisements Containing an Offer or Invitation

R.1.2.60 Marketing communications containing an offer or invitation of the following nature and specifying the manner of response or including a form by which any response may be made, shall include such of the Information referred in R.1.4.16, R.1.4.17, ,R.1.4.32 to R.1.4.36, R.1.4.47, R.1.4.48 and R.1.4.59 to R.1.4.63

as is relevant to the offer or invitation:

(a) an offer to enter into an agreement in relation to a Financial Instrument or investment services or Ancillary service with any person who responds to the communication;
(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a Financial Instrument or investment service or Ancillary service.

However, paragraph (a) shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential Client must refer to another document or documents, which, alone or in combination, contain that Information.

Advertisements or Information Containing Comparative Information

R.1.2.61 Where the Information compares investment or Ancillary services, Financial Instruments, or persons providing investment or Ancillary services, Regulated Persons shall ensure that the following conditions are satisfied:

(a) the comparison is meaningful and presented in a fair and balanced way;
(b) the sources of the Information used for the comparison shall be specified;
(c) the key facts and assumptions used to make the comparison shall be included.

Information Provided to Clients, Which Refer to Past Performance

R. 1.2.62 In addition to the disclosure requirements made in terms of R.1.2.50, a Regulated Person shall ensure that when providing any Information to Client containing an indication of past performance of a financial index or a Service or a Product, the Information shall only include appropriate performance Information which covers the preceding five years, or the whole period for which the Product has been offered, the financial index has been established, or the Service has been provided where less than five years, or such longer period as the Regulated Person may decide, and in every case that performance Information is based on complete 12-month periods.

G.1.2.40 *With respect to R.1.2.62 Regulated Persons should ensure that all performance figures quoted in the Information or in the Advertisement are annualised but are not the most prominent feature within such information or Advertisement. In addition, where Regulated Persons, annualise a rate of return using figures which do not span over a year, they should clearly disclose the basis period over which the annualised rate is calculated and include the following disclaimer or such other wording as is appropriate in the circumstances:*

'The annualised rate is an indication of the average growth of the investment over one year'.

Part B: ***Rules and Guidance applicable to Regulated Persons which fall under points (iii) or (iv) of the definition of 'Regulated Person' in the Glossary to these Rules***

R.1.2.63 For the purposes of this Part the term "Regulated Person" shall refer to a person which falls under points (iii) or (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

Advertisements and Information Relating to Linked long-term contract of insurance

R.1.2.64 In Advertisements and Information relating to an Insurance contract which is a Linked long-term contract of insurance, the Regulated Person concerned shall include a statement that the Client's investment decision should be based on the full details of the Product Information document, and shall state from where this document may be obtained or accessed.

R.1.2.65 A box advert carried in print media indicating prices ("price box") for Linked long-term contracts of insurance shall include:

(a) the name and contact details of the Regulated Person responsible for the publication of the Advertisement;
(b) names of the funds which may be linked thereto;
(c) the price(s) and their relevant date;
(d) the change from the previously quoted price(s);
(e) an indication that initial and/or exit fees apply or may apply, as appropriate.

Advertisements and Information relating to Long-term insurance business

R.1.2.66 In Advertisements or Information relating to a Long-term insurance business insurance policy which gives particulars of any of the benefits payable under the policy, the Regulated Person responsible for that Advertisement shall state:

(a) which of the benefits under the contract (if any) are of fixed amounts and what those amounts are; and
(b) which of them (if any) are not of fixed amounts.

R.1.2.67 In addition to the disclosure requirements made in terms of R.1.2.50, where an Advertisement is issued in accordance with the requirements of Rules under Part B above, the Regulated Person shall ensure that the Advertisement:-

(a) contains a statement that further Information will be supplied If requested; and
(b) information furnished to a Regulated Person shall not contain a statement relating to past performance unless the basis on which such performance is measured is clearly furnished;
(c) referring to past performance is relevant to the Regulated Person or the policies offered by such Regulated Person.

Part C: Rules and Guidance applicable to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules who market, distribute or sell contracts for differences to Retail Clients in or from Malta.

R.1.2.68 For the purposes of this section, a Regulated Person means a person falling under point (i) of the definition of Regulated Person in the Glossary to these Rules.

R.1.2.69 The Regulated Person shall not send directly or indirectly a communication to or publish information accessible by a Retail Client relating to the marketing, distribution or sale of a CFD unless it includes the appropriate risk warning as specified by and complying with the conditions set out in this Part.

Risk Warning Conditions

R.1.2.70 The risk warning referred to in R.1.2.69 above, shall be in a layout ensuring its prominence, in a font size at least equal to the predominant font size and in the same language as that used in the communication or published information.

R.1.2.71 If the communication or published information is in a Durable Medium or a webpage, the risk warning shall be in the following format:

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **[insert percentage applicable to Regulated Person]% of retail investor accounts lose money when trading CFDs with [insert name of Regulated Person who is issuing the information/communication].** You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

R.1.2.72 If the communication or published information is in a medium other than a Durable Medium or a webpage, the risk warning shall be in the following format:

[Insert percentage applicable to Regulated Person]% of Retail Client accounts lose money when trading CFDs with [insert name of Regulated Person who is issuing the information/communication]. You should consider whether you can afford to take the high risk of losing your money.

R.1.2.73 By way of derogation to Rule R.1.2.71 and R.1.2.72 above, if the number of characters contained in the risk warning in the format specified therein

exceeds the character limited permitted in the standard terms of a third party marketing provider, the risk warning may instead be in the following format:

[Insert percentage applicable to Regulated Person]% of retail CFD accounts lose money.

R.1.2.74 If the risk warning specified in the R.1.2.73 above is used, the communication or published information shall also include a direct link to the webpage of the Regulated Person containing the risk warning in the format specified in R.1.2.71.

R.1.2.75 The risk warning shall include an up-to-date specific loss percentage which is specific to the Regulated Person and which is based on a calculation of the percentage of CFD trading accounts provided to retail clients by the Regulated Person that lost money. The calculation shall be performed every three months and shall cover the 12 month period preceding the date on which it is performed ("12 month calculation period"). For the purposes of the calculation:

(a) an individual Retail Client CFD trading account shall be considered to have lost money if the sum of all realised and unrealised net profits on CFDs connected to the CFD trading account during the 12 month calculation period is negative;
(b) any costs relating to the CFDs connected to the CFD trading account shall be included in the calculation, including all charges, fees and commissions;
(c) the following items shall be excluded from the calculation:
    i. any CFD trading account that did not have an open CFD connected to it within the calculation period;
    ii. any profits or losses from products other than CFDs connected to the CFD trading account;
    iii. any deposits or withdrawals of funds from the CFD trading account.

R.1.2.76 By way of derogation from R.1.2.71 to R.1.2.75, if in the last 12-month calculation period a Regulated Person has not provided an open CFD connected to a Retail Client CFD trading account, that Regulated Person shall use the standard risk warning in the following formats, as appropriate:

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **Between 74-89% of retail investor accounts lose money when trading with CFDs.** You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money. **Between 74-89% of retail investor accounts lose money when trading with CFDs.**

You should consider whether you can afford to take the high risk of losing your money.

74-89% of retail CFD accounts lose money.

R.1.2.77 The Regulated Person shall ensure that its website or Mobile App contains the appropriate educational material aimed at guiding clients who are new to this kind of trading, including inter alia on the nature and specificities of these products; provide a clear explanation of how an online trade can be made over the system and explain what type of skills are required to carry out online trading activity and to limit trading risk.

Part D: ***Rules and Guidance applicable: to Regulated Persons which fall under point (i) of the definition of 'Regulated Person in the Glossary to these Rules and which qualify as UCITS Management Companies; and to the UCITS, where the UCITS has not designated a UCITS Management Company***

R.1.2.78 The requirements set out in R.1.2.79 and R.1.2.80 shall apply as from 2 August 2021; whilst R.1.2.81 shall apply as from 2 February 2022.

R.1.2.79 A UCITS Management Company or the UCITS (where the UCITS has not designated a UCITS Management Company) shall ensure that:

(a) it makes adequate arrangements for the marketing of units of UCITS, including adequate distribution arrangements;

(b) all marketing communications addressed to investors or potential investors are clearly identifiable as such and describe the risks and rewards of purchasing units of a UCITS in an equally prominent manner; and

(c) all information included in marketing communications is fair, clear and not misleading.

R.1.2.80 A UCITS Management Company or the UCITS (where the UCITS has not designated a UCITS Management Company) shall also ensure that:

(a) marketing communications that contain specific information about a UCITS do not contradict or diminish the significance of the information contained in the prospectus and in the key investor information, referred to in Article 68 and Article 78 of Directive 2009/65/EC (UCITS IV Directive), respectively;

(b) all marketing communications indicate that a prospectus exists and that the key investor information is available. Such marketing communications shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key

investor information and shall provide hyperlinks to or website addresses or Mobile App for the said documentation; and

(c) marketing communications referred to in paragraphs (a) and (b) above shall:

i. specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, information on access to collective redress mechanisms at a European Union level and at Member State level in the event of litigation; and

ii. contain clear information that Regulated Person may decide to terminate the arrangements made for the marketing of its collective investment undertakings in accordance with the UCITS IV Directive.

R.1.2.81 A UCITs Management Company or the UCITS (where the UCITS has not designated a UCITS Management Company) shall comply with all the applicable requirements contained in Appendix 9 to this Chapter which implements the *ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds* [ESMA34-45-1272].

Section 3: DISCLOSURE OF INFORMATION ON REGULATED PERSONS

Application

R.1.3.1 The Rules and any relative Guidance set out under the heading 'General Rules' shall apply to all Regulated Persons, except as otherwise indicated.

R.1.3.2 The Rules and any relative Guidance set out under Part A apply to Regulated Persons which fall under point (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary, irrespective of their licence category.

R.1.3.3 The Rules and any relative Guidance set out under the heading Part B shall apply to all Regulated Persons which fall under the point (i) of the definition of 'Regulated Person' in the Glossary and which qualify as UCITS Management Companies.

R.1.3.4 The Rules and any relative Guidance set out under the heading Part C shall apply to Regulated Persons which fall under point (iii) of the relevant definition in the Glossary.

R.1.3.5 The Rules and any relative Guidance set out under the Part D shall apply to Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary.

General Rules

R.1.3.6 A Regulated Person shall in good time, prior to the conclusion of any contract, or if there is a material change after the conclusion of a contract for the provision of a Service or Product, make the following disclosures to Clients:

(a) its name and address and the Product or Service which is being provided or carried out which, shall include the address of the head office of the Regulated Person (including where applicable, the name of the Member State or Third Country where such head office is situated) and, where appropriate, the address of the agent or branch concluding the contract (including where applicable, the name of the Member State or Third Country where such branch is situated). Where the Regulated Person is a Third Country Insurance undertaking, such Regulated Person shall provide the address of the Maltese branch;

(b) a statement of the fact that the Regulated Person is licensed by the MFSA, together with the address of the MFSA. Where applicable, a Regulated Person shall also disclose to the Client the Register in which the Regulated Person has been included and the means for verifying that it has been registered or notified;

(c) information relating to the procedures allowing Clients or other interested persons to register complaints about the Regulated Person;

(d) information about any compensation which may be available to the Client under any compensation scheme which may be applicable.

Provided that information required in terms of this Rule need not be provided by the Regulated Person when carrying out distribution activities in relation to insurance of Large risks.

R.1.3.7 A Regulated Person which decides to appoint a Tied Agent, Tied insurance intermediary and Ancillary insurance intermediary shall ensure that, when contacting or before dealing with any Client such Tied Agent or Tied insurance intermediary or Ancillary insurance intermediary discloses the capacity in which he is acting and the Regulated Persons which he is representing. In the case of a Tied insurance intermediary and an Ancillary insurance intermediary such disclosure shall also include the enrolment number and show the company's business card.

Provided that information required in terms of this Rule need not be provided by the Regulated Person when carrying out distribution activities in relation to insurance of Large risks.

R.1.3.8 A Regulated Person shall ensure that any designation given to its employees reflects the Service being provided by such employee. The employee shall clearly disclose whether he is authorised to give Advice and whether the Service being provided is of an advisory nature or otherwise.

R.1.3.9 Where a Regulated Person is either:

(a) enrolled in the Brokers List and proposes to place a Client's insurance requirements with an Insurance undertaking which is neither a company authorised under the Insurance Business Act (Cap. 403) nor a European Insurance Undertaking; or

(b) licensed under the Investment Services Act (Cap. 370), and proposes to transmit a Client's order for execution by another entity which is neither licenced under the Investment Services Act (Cap. 370) nor a European Investment Firm,

the Regulated Person shall in good time, prior to the conclusion of a contract,

inform the Client of the following:

i. that the insurer with whom the Client's requirements are proposed to be placed or the company to which the order is proposed to be transmitted, is not a company authorised under the Insurance Business Act (Cap. 403) or the Investment Services Act (Cap. 370) as applicable;
ii. if the insurer with whom the Client's requirements are proposed to be placed or the company to which an order is proposed to be transmitted becomes insolvent, the Client may not be protected by the Protection and Compensation Fund established by the Insurance Business Act (Cap. 403) or by the Investor Compensation Scheme established by the Investor Compensation Scheme Regulations (Legal Notice 368 of 2003), as applicable;
iii. that the insurer with whom the Client's requirements are proposed to be placed or the company to which an order is proposed to be transmitted may not have a general representative in Malta and the Client may have difficulty in suing or executing judgement against the insurer or the company in question, as applicable;
iv. whether the parties to the contract are entitled to choose the law applicable to the contract;
v. that any premiums to be paid in respect of an Insurance contract or any funds provided to the Regulated Person for the purposes of purchasing a Product, any claim that may arise in respect of the Insurance contract or any proceeds paid from such investments may have to be paid in foreign currency which is subject to exchange rate fluctuations.

R.1.3.10 A Regulated Person shall also, in good time, prior to the conclusion of a contract, provide the Client with at least the following Information:

(a) whether a Manufacturer, an Insurance undertaking or a parent undertaking of an Insurance undertaking or a UCITS Management Company has a holding directly or indirectly, representing 10% or more of the voting rights of the capital in a Distributor, such Insurance intermediary or UCITS Scheme;

(b) whether a Distributor or an Insurance intermediary or a UCITS Scheme has a holding direct, or indirect, representing 10% or more of the voting rights or of the capital in the Manufacturer, an Insurance undertaking or a parent undertaking of such Insurance undertaking or of a UCITS Management Company.

Provided that the information referred to in this Rule need not be provided when Regulated Persons carry out distribution activities in relation to insurance of Large risks.

Part A: ***Rules and Guidance applicable to Regulated Persons which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary to these Rules.***

R.1.3.11 For the purposes of this Part, a "Regulated Person" means a person which fall under point (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary.

R.1.3.12 A Regulated Person shall provide, in good time, appropriate Information to Clients about:

(a) Financial instruments and proposed investment strategies;
(b) Execution venues, and
(c) All costs and related charges.

The Information referred to in (a) and (b) above shall include the details set out in R.1.4.17 (b) to (d) and R.1.4.72.

Such Information shall be provided in a comprehensible form in such a manner that Clients are reasonably able to understand the nature and risks of the investment service and of the specific type of Financial Instrument that is being offered and, consequently, to take investment decisions on an informed basis.

R.1.3.13 A Regulated Person shall provide appropriate Information to its Clients on its order execution policy. The Information provided shall explain clearly, in sufficient detail and in a way that can be easily understood by Clients, how orders will be executed for that Client. A Regulated person is required to obtain the prior consent of its Clients to the execution policy.

Where the order execution policy provides for the possibility that Client orders may be executed outside a Trading venue, the Regulated Person shall, in particular, inform its Clients about this possibility. The Regulated Person shall obtain the prior express consent of its Clients before proceeding to execute their orders outside a Trading Venue. This consent may either be obtained in the form of a general agreement or in respect of individual transactions.

R.1.3.14 The Regulated Person should inform Clients about the Inducements that the Regulated Person may receive from the Execution venues. The Information should specify the fees charged by the Regulated Person to all counterparties involved in the transaction, and where the fees vary depending on the Client, the Information should indicate the maximum fees or range of fees that may be payable. Where the Regulated Person charges more than one participant in a transaction, it shall inform its Clients of the value of any monetary or non-monetary benefits received by it.

R.1.3.15 Notwithstanding the provisions set out in R.1.1.2(a), R.1.1.5(a) and R.1.1.6, the Regulated Person shall provide all information required to be provided pursuant to Directive 2014/65/EU (MIFID II) to Clients or potential Clients in electronic format, except where the Client or potential Client is a Retail Client or potential Retail Client has made a request to the Regulated Person to receive the relevant information on paper, in which case the Regulated Person shall provide that information on paper and free of charge.

Provided that, the Regulated Person shall inform:

(a) Retail Clients or potential Retail Clients that he or she has the option of receiving the information on paper;

(b) existing Retail Clients that receive the information required to be provided pursuant to MIFID II (Directive 2014/65/EU) on paper, of the fact that such Retail Clients:

(i) will receive that information in electronic format, at least eight weeks before the Regulated Person would be sending such information in electronic format;

(ii) have the choice either to continue receiving information on paper or to switch to information in electronic format.

In this respect, the Regulated Person shall also inform such Retail Clients that an automatic switch to the electronic format will occur if they do not request the continuation of the provision of the information on paper within that eight-week period.

For the avoidance of doubt, the Regulated Person does not need to provide information on this switch to existing Retail Clients who already receive the information required to be provided by MIFID II Directive 2014/65/EU in electronic format.

Part B: ***Rules applicable to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary and which qualify as UCITS Management Companies***

R.1.3.16 For the purposes of this Part, a 'Regulated Person' means a person which fall under point (i) of the definition of 'Regulated Person' and which qualifies as a UCITS Management Company.

R.1.3.17 Where the Regulated Person has carried out a subscription or redemption order received from a Client, it shall notify the said Client, by means of a Durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution, or where the confirmation is received by the Regulated Person from a third party, no later than the first business day following receipt of the confirmation from the third party. The notice shall, *inter alia*, include the identification of the Regulated Person and the Client.

Part C: ***Rules applicable to Regulated Persons which fall under point (iii) of the definition of 'Regulated Person' in the Glossary to these Rules***

R.1.3.18 For the purposes of this section, a "Regulated Person" means a person which fall under point (iii) of the definition of 'Regulated Person' in the Glossary that carries on Long-term insurance business.

R.1.3.19 Regulated Persons shall provide a concrete reference to the report on its solvency and financial condition as laid down in Article 51 of Directive 2009/138/EC (Solvency II Directive) allowing the Client easy access to this Information.

Part D: ***Rules applicable to Regulated Persons which fall under point (iv) of the Definition of 'Regulated Person' in the Glossary to these Rules***

R.1.3.20 For the purposes of this section, the term "Regulated Person" shall mean a person which fall under point (iv) of the definition of 'Regulated Person' in the Glossary that acts as an insurance broker, an insurance agent or an insurance manager holding an appointment with authority to enter into Insurance contracts and whose appointment is governed by an agreement which has the effect of an agency agreement.

R.1.3.21 A Regulated Person shall in good time, prior to the conclusion of any contract, inform the Client whether it is representing the Client or is acting for and on behalf of an Insurance undertaking.

R.1.3.22 This rule has been deleted.

Section 4: DISCLOSURES ON THE SERVICES AND PRODUCTS PROVIDED BY THE REGULATED PERSON

Application

R.1.4.1 The Rules and any relative Guidance set out under the heading "General Rules" and under Parts A and C below shall apply to all Regulated Persons, except as otherwise indicated.

R.1.4.2 The Rules and the relative Guidance set out under Parts B shall apply to Regulated Persons which fall under point (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary or to UCITS Management Companies, as applicable.

R.1.4.3 The Rules and any relative Guidance set out under Part D and E shall apply to Regulated Persons which fall under point (i) or (ii) of the definition of 'Regulated Person' in the Glossary, UCITS Management Companies or a collective investment schemes licensed under the Investment Services Act (Cap. 370) and qualifying as a UCITS.

R.1.4.4 The Rules and any relative Guidance set out under Part F below shall apply to Regulated Persons which fall under points (iii) or (iv) of the definition of 'Regulated Person' in the Glossary.

R.1.4.5 The Rules and any relative Guidance set out under Part G shall apply to Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary.

R.1.4.6 The Rules and any relative Guidance asset out under Part H shall apply to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary and insofar as they provide services to shareholders or other intermediaries in relation to shares that are admitted to trading on a Regulated Market.

R 1.4.7 The requirements of this Chapter are without prejudice to the requirements of the Distance Selling (Retail Financial Services) Regulations (Subsidiary Legislation 330.07)

General Rules

R.1.4.8 A Regulated Person shall ensure that all Information it addresses to, or disseminates to Clients, including marketing communications, satisfies the conditions laid down in R.1.4.9, R.1.2.14, R.1.2.49, R.1.2.50, R.1.2.51, R.1.2.52, R.1.2.57.

R.1.4.9 A Regulated Person shall ensure that the Information referred to in R.1.4.8 complies with the following conditions:

(a) the Information includes the name of the Regulated Person;
(b) the Information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of a Product or Service;
(c) the Information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the Information provided, as well as a layout ensuring such indication is prominent;
(d) the Information is sufficient for, and presented in a way that is likely to be understood by, the average member of the Identified target market to whom it is directed, or by whom it is likely to be received;
(e) the Information not disguise, diminish or obscure important items,statements or warnings;
(f) the Information is consistently presented in the same language throughout all forms of Information and marketing materials that are provided to each Client, unless the Client has accepted to receive Information in more than one language.
(g) the Information is up to date and relevant to the means of communication used.

R.1.4.10 When a Service is offered together with another Product or Service as part of a package or as a condition for the same agreement or package, the Regulated Person shall inform the Client whether it is possible to buy the different components separately and, in such case, shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component.

In the case of Insurance contracts, the provisions of this Rule shall also apply where a Product is ancillary to a good or Service which is not insurance, as part of a package or the same agreement, with the exception of Products ancillary to an investment service or activity as defined in point 2 of article 4(1) of Directive 2014/65/EU, a credit agreement as defined in point 3 of article 4 of Directive 2014/17/EU or a payment account as defined in point 3 of article 2 of Directive 2014/92/EU.

R.1.4.11 Where the risks, and, in the case of Insurance contracts, insurance coverage, resulting from such an agreement or package offered to a Retail Client are likely to be different from the risks associated with the components taken separately,

the Regulated Person shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks, and insurance coverage.

Provided that, in the case of Insurance contracts, the provisions of this Rule and of R.1.4.9 shall not prevent the distribution of Products with different levels of insurance coverage or multi-risk insurance policies.

R.1.4.12 A Regulated Person must provide each Client with the terms and conditions attaching to a Product or Service, in a Durable medium, before the Client enters into a contract for that Product or Service.

G.1.4.1 ***The requirements of the above Rule will be satisfied when the Regulated Persons which fall under points (iii) and (iv) of the*** *definition of 'Regulated Person' in the Glossary provides the insurance product information document or the key information document with respect to insurance based investment products to clients.*

Disclosure Duties

R.1.4.13 The Regulated Person shall explain to the Client his duty to disclose all circumstances material to the Product or Service being provided and the consequences of any failure to make such a disclosure, both before the Product or Service is provided and throughout the duration of the Service provided. The Regulated Person shall also take account of the Information the Client discloses.

R.1.4.14 In the completion of an application form, proposal form, claim form, or any other material document, as applicable, the Regulated Person shall make it clear that all the answers or statements are the Client's own responsibility. The Client should always be requested to check the details. In the case of an Insurance contract, the Regulated Person shall inform the client that incomplete and/or inaccurate Information may result in a claim being repudiated.

Telephone Sales

R 1.4.15 If a Regulated Person's initial contact with a Client with a view to providing a Product or Service is by telephone then the following Information should be provided before proceeding further:

(a) the name of the Regulated Person and, if the call is initiated by or on behalf of a Regulated Person, the commercial purpose of the call;
(b) where relevant, whether the Regulated Person provides independent advice or restricted advice.
(c) the Regulated Person's charging structure, where applicable; and
(d) that the Information given under (a) to (c) will subsequently be confirmed in writing in case the Client is interested to proceed further.

R.1.4.16 In cases where Regulated Persons make initial contact with a Client on the telephone a Regulated Person shall, in addition, take into account and comply with the requirements of Distance Selling (Retail Financial Services)

Regulations (Subsidiary Legislation 330.07), where these are applicable. If the Client has chosen to obtain Information given prior to the conclusion of the contract on Durable medium other than paper in accordance with R.1.1.8, Information shall be provided by the Regulated Person to the Client in accordance with R.1.1.2 and R.1.1.6 immediately after the conclusion of the Insurance contract.

Part A: Rules and Guidance applying generally to all Regulated Persons with respect to disclosure of Information on the Service being provided to Clients, unless otherwise specified

Information about the Services Provided by the Regulated Person

R.1.4.17 A Regulated Person shall provide Clients, in a Durable medium, in good time before the provision of a Service or Ancillary service, the following general Information, where relevant:

(a) the name and address of the Regulated Person, and the contact details necessary to enable Clients to communicate effectively with the Regulated Person;
(b) the languages in which the Client may communicate with the Regulated Person, and receive documents and other Information from the Regulated Person;
(c) the methods of communication to be used between the Regulated Person and the Client including, where relevant, those for the sending and reception of orders, or the placing of insurance;
(d) a statement of the fact that the Regulated Person is authorised and the name and contact address of the MFSA that has authorised it;
(e) where the Regulated Person is acting through a Tied Agent, a statement of this fact specifying the Member State in which that agent is registered;
(f) the nature, frequency and timing of the reports on the performance of the Service to be provided by the Regulated Person to the Client;
(g) a description, which may be disclosed in summary form, of the policy required in terms of Chapter 3 of the Rulebook. Provided that Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary shall adhere to this requirement insofar as they provide Insurance-based investment product;
(h) the nature, frequency and timing of the reports on the performance of the Service to be provided by the Regulated Person to the Client. In the case of an Insurance contract, this requirement would only apply to Long-term Insurance contracts;
(i) at the request of the Client, further details of that conflicts of interest policy in a Durable medium or by means of a website or Mobile App(where that does not constitute a Durable medium). Provided that Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary shall adhere to this requirement insofar as they provide Insurance-based investment product;
(j) the Information on Financial Instruments, Structured Deposits and Insurance-based investment products and proposed investment strategies which the Regulated Person is to provide to Client in good time shall include appropriate guidance on, and warnings of, the risks

associated with investment in those Financial Instruments and/or Structured Deposits and/or Insurance-based investment products or in respect of particular investment strategies.

In addition, Regulated Persons which fall under points (i), (ii) or (v) of the definition of Regulated Persons in the Glossary and UCITS Management Companies shall specify whether the Financial Instrument and/or Structured Deposit is intended for Retail or Professional Clients, taking account of the Identified target market.

In particular, the Regulated Person should specifically disclose the risk of Financial Instruments and/or Structured Deposits involving impediments or restrictions for the disinvestment or withdrawal. Information on impediments or restrictions shall include an illustration of the possible exit methods and consequences of any exit, possible constraints and issues and the estimated time frame for the sale of the Financial Instrument or the withdrawal of the Structured Deposit before recovering the initial costs of the transaction or deposit.

R.1.4.18 Notwithstanding the provisions of R.1.4.17, above, where the Regulated Person is a Distributor of Products in Malta, the Information referred to in R.1.4.17 (as applicable) need not be given when such Distributor carries out distribution activities in relation to:

(a) The business of Reinsurance;
(b) Large risks;
(c) Professional Clients.

Description of the Nature of a Regulated Person's Service

R.1.4.19 Regulated Persons shall provide Retail Clients within good time, in a Durable medium, before a Retail Client is bound by any agreement for the provision of Services or Ancillary services or before the provision of those Services, whichever is the earlier on whether:

(a) it provides any type of Advice about the Products sold, provided that in the case of Insurance contracts, this requirement applies only to Insurance-based investment products;

(b) advice is provided on an independent basis or not. Regulated Persons shall inform Clients about the nature and type of the Advice provided to them. Regulated Persons should explain in a clear and concise way whether and why investment advice qualifies Advice as independent or non-independent and the type and nature of the restrictions that apply, including the prohibition to receive and retain Inducements.

Where both independent and restricted advice are intended to be proposed or provided to the same Client, Regulated Persons shall:

i. Explain the scope of both services to allow clients to understand the differences between them ; and

ii. Not present themselves as an independent investment advisor for the overall activity. Regulated Persons shall not give undue prominence to their independent advisory services over non-independent services in their communications with Clients;

(c) advice is based on a fair and personal analysis or a more restricted analysis of different types of Products or Financial Instruments and, in particular, whether the range is limited to Products or Financial Instruments issued or provided by entities having close links the with Regulated Person or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the Advice provided.

When a Regulated Person provides Advice on an independent or a non-independent basis, it must explain to the Client the range of Products that may be recommended, including its relationship with the Issuers or providers of the instruments.

Regulated Persons shall provide a description of the types of Products considered, the range of Products and providers analysed per each type of Product according to the scope of the Service, and, when providing independent Advice, how the Service provided satisfies the conditions for the provision of advice on an independent basis and the factors taken into consideration in the selection process used by the Regulated Person to recommend Products, such as risks, costs and complexity of the Financial Instruments.

When the range of Products assessed by the Regulated Person providing Advice on an independent basis includes the Regulated Person's own Products or those issued or provided by entities having close links or any other close legal or economic relationship with the Regulated Person as well as other Issuers or providers, the Regulated Person shall distinguish, for each type of Product the range of the Products issued or provided by entities not having any links with the Regulated Person.

Provided that in the case of Insurance contracts, this requirement applies only to Insurance-based investment products. Provided further that the information required in this paragraph need not be provided by the Regulated Person when carrying out distribution activities in relation to insurance of Large risks.

(d) where the service provided is Advice, the Regulated Person shall provide the Client with a periodic assessment of the suitability of the Product recommended to the Client; Such periodic report shall contain an updated statement of how the investment product meets the Client's preferences, objectives and other characteristics of the Client;

Provided that in the case of Insurance contracts, this requirement applies only to Insurance-based investment products, in the context where an

Insurance intermediary or an Insurance undertaking has informed the Client that it will carry out a periodic assessment of suitability.

In providing the Client with a periodic assessment of the suitability, the Regulated Person shall disclose:

i. the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
ii. the extent to which the Information previously collected will be subjected to re-assessment;
iii. the way in which an updated recommendation will be communicated to the Client.

In providing periodic suitability statements, Regulated Persons shall review the suitability of the recommendations given in order to enhance the Service at least annually. The frequency of his assessment should be increased depending on the risk profile of the Client and the type of Financial Instruments recommended.

(e) it is under a contractual obligation to conduct its activity exclusively with one or more Manufacturers. In that case, it shall provide the names of those Manufacturers. Where the Regulated Person is not under such a contractual obligation, and does not give Advice on the basis of a fair and personal analysis, it shall provide the names of the Manufacturers with which it may and does conduct business. Provided that the information required in this paragraph need not be provided by the Regulated Person when carrying out distribution activities in relation to insurance of Large risks.

R.1.4.20 The Regulated Person shall provide the Client with adequate reports on the Service provided in a Durable medium. Those reports shall include periodic communication to Clients, taking into account the type and the complexity of the Products involved and the nature of the Service provided to the Client and shall include, where applicable, the costs associated with the transactions and Services undertaken on behalf of the Client.

When providing Advice, the Regulated Person shall, before the transaction is made or prior to the conclusion of the contract, provide the Retail Client with a statement on suitability in a Durable medium specifying the Advice given and how that Advice meets the preferences, objectives and other characteristics of that Client.

Where the agreement to buy or sell a Product using a means of distance communication which prevents the prior delivery of the suitability statement, the Regulated Person providing the Service, may provide the written statement on suitability in a Durable medium immediately after the Client is bound by any agreement, provided both the following conditions are met:

(a) the Client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction; and

(b) the Regulated Person has given the Client the option of delaying the transaction in order to receive the statement on suitability in advance.

Provided that the provisions laid down in R.1.4.19(d) and in this Rule shall not apply to services provided by the Regulated Person to Professional Clients, unless the Professional Client informs the Regulated Person, either in electronic format or on paper, that he or she wishes to benefit from the rights provided for in the said provisions. The Regulated Person shall ensure that proper records of the client communications in respect of this opt-in by the Professional Client are kept.

Content and Wording of Disclosure Relating to the Independence of the Services Offered

R.1.4.21 A Regulated Person must include the term "independent advice" or "restricted advice" or both, as applicable, in the disclosure. Where no Advice has been given, the Regulated Person must also disclose this fact.

Provided that in the case of Insurance contracts, the requirement of this Rule and R.1.4.22 to 1.4.26 shall apply only to Insurance-based investment products.

R.1.4.22 If a Regulated Person provides independent advice in respect of a particular Product for which there is a restricted market, a Regulated Person must include in the disclosure an explanation of that market, including the types of Products which constitute that market.

R.1.4.23 If a Regulated Person provides restricted advice, its disclosure must explain the nature of the restriction.

R.1.4.24 If a Regulated Person provides both independent advice and restricted advice, the disclosure must clearly explain the different nature of the independent advice and restricted advice services.

G.1.4.1 *A Regulated Person that provides both independent advice and restricted advice should not hold itself out as acting independently for its business as a whole.*

G.1.4.2 *A Regulated Person that gives Advice in relation to Insurance contracts on the basis of a fair and personal analysis, but offers restricted advice on retail investment products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it gives Advice in relation to Insurance contracts on the basis of a fair analysis provided it makes clear in accordance with the fair, clear and not misleading rule that it provides restricted advice for retail investment products.*

R.1.4.25 Where a Regulated Person does not provide a Product or Service on the basis of a fair and personal analysis of the market, it must clearly disclose to the Client the names of those Manufacturers whose Products or Services, the Regulated Person intends to consider as part of its analysis.

R.1.4.26 Where a Regulated Person is tied to a single Manufacturer for a particular Product or Service, it must disclose this fact to the Client in all communications with the Client in relation to that particular Product or Service.

G.1.4.3 *Where a Regulated Person does not provide all of its Services in an independent capacity, it must explain the different nature of its Services in a way that seeks to inform the Client. It must ensure that there is no ambiguity about the range of Services that it provides in an independent capacity.*

Disclosure of Applicable Costs and Charges

R.1.4.27 Regulated Persons shall, in good time, prior to providing a Product or a Service to a Client, disclose to such Client information relating to all costs and associated charges related to a Product or Service and its Distributor, which must include the cost of Advice, where relevant, the cost of the Product recommended or marketed to the Client also encompassing any third party payments. The Regulated Person should also specify how the Client may pay such costs.

The information referred to in the paragraph above, including costs and charges in connection with the Products and/or Services disclosed to the Client, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the Client to understand the overall cost as well as the cumulative effect on return of the Product, and where the Client so requests, an itemised breakdown of such costs shall be disclosed. Where applicable, such information shall be disclosed to the Client on a regular basis, at least annually, until the Product matures or is redeemed by the Client.

Provided that, in the case of Regulated Persons which fall under points (i) of the definition of 'Regulated Person' in the Glossary:

(a) the requirements laid down in the first paragraph above shall not apply to investment services provided by Regulated Persons to Professional Clients, except for Advice and Portfolio Management Services;

(b) where an agreement to buy or sell a Financial Instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs and charges, the Regulated Person may provide the information on costs and charges without undue delay after the conclusion of the transaction, provided that all of the following conditions are met:

i. such information is provided by the Regulated Person either in electronic format or, where requested by a Retail Client, on paper:

ii. the Client has consented to receiving the information without undue delay after the conclusion of the transaction; and

iii. the Regulated Person has given the Client the option of delaying the conclusion of the transaction until the client has received the information; and

(c) in addition to the requirements set out in paragraph (b) above, such Regulated Person shall be required to provide the Client with another option, that is, the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction.

G.1.4.4 *In good time prior to providing a Product or Service to a Client, a Regulated Person should provide the Client on a Durable medium, a breakdown of all charges, including third party charges, which will be passed on to the Client and where such charges cannot be ascertained in advance, notify the Client that such charges will be levied as part of the transaction.*

G.1.4.5 *A Regulated Person is recommended to display in its public offices, in a manner that is easily accessible to Clients, a schedule of fees and charges imposed by that Regulated Person. If the Regulated Person has a website or Mobile App, it should also include in it its schedule of fees and charges.*

Part B: ***Rules and Guidance applicable to Regulated Persons which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary or to UCITS Management Companies, as applicable***

R.1.4.28 For the purposes of this section, the term "Regulated Person" shall mean a person which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary or UCITS Management Companies, as applicable.

R.1.4.29 Regulated Persons shall, in good time before a Client is bound by any agreement for the provision of Services or Ancillary services or before the provision of those Services, whichever is the earlier, to provide that Client with the following Information:

(a) the terms of any such agreement;
(b) the Information required by R.1.4.17, R.1.4.47 and R.1.4.48 relating to that agreement or to those investment or Ancillary services.
(c) in addition to the requirements of R.1.4.17, the Regulated Person which fall under point (i) of the definition of Regulated Person in the Glossary and holding Client Financial Instruments or Clients' monies, shall provide a summary description of the steps which it takes to ensure their protection, including the Information referred to in R. 1.3.6 (iv).

Regulated Persons shall, in good time before the provision of Services or Ancillary services to Clients or potential Clients, provide the Information required under R.1.4.17, R.1.4.30 to R.1.4.33, R.1.4.35, R.1.4.47, R.1.4.48, and R.1.4.58 to R.1.4.63, R.1.4.66 to R.1.4.68, R.1.4.71, R.1.4.72, R.1.4.74 and R.1.4.76 to R.1.4.80.

The Information referred to in this Rule shall be provided in a Durable medium or by means of a website or Mobile App (where it does not constitute a Durable medium) provided that the conditions specified in R.1.1.7 are satisfied.

R.1.4.30 The Regulated Person shall provide Clients in good time before the provision of investment services or Ancillary services to Clients with a general description of the nature and risks of Financial Instruments, taking into

account, in particular, the Client's categorisation as either a Retail Client, Professional Client or Eligible counterparty. That description shall explain the nature of the specific type of Financial Instrument concerned, the functioning and performance of Financial Instruments and/or Structured Deposits in different market conditions, including both positive and negative performance, as well as the risks particular to that specific type of Financial Instrument in sufficient detail to enable the Client to take investment decisions on an informed basis.

R.1.4.31 The description of risks shall include, where relevant to the specific type of Financial Instrument concerned and the status and level of knowledge of the Client, the following elements:

(a) the risks associated with that type of Financial Instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the Issuer or related events, such as bail in;
(b) the volatility of the price of such instruments and any limitations on the available market for such instruments ;
(c) information on impediments or restrictions for disinvestment, for example as may be the case for illiquid Financial Instruments of Financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the Financial Instrument before recovering the initial costs of the transaction in that type of Financial Instruments;
(d) the fact that an investor might assume financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the Financial Instruments in question, as a result of transactions in such Financial Instruments;
(e) any margin requirements or similar obligations, applicable to Financial Instruments of that type.

R.1.4.32 If a Regulated Person provides a Retail Client with Information about a Financial Instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC (Prospectus Directive), that Regulated Person shall in good time before the provision of investment services or Ancillary services to Clients inform the Client where that prospectus is made available to the public.

R.1.4.33 Where a Financial Instrument is composed of two or more different Financial Instruments or Services, the Regulated Person shall provide an adequate description of the legal nature of the Financial Instrument, the component of that Financial Instrument and the way in which its interaction between the components affects the risks of the investment. In case of Financial Instruments that incorporate a guarantee or capital protection, the Regulated Person shall provide a Client with Information about the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, the Information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the Retail Client to make a fair assessment of the guarantee.

R.1.4.34 In the case of instruments that incorporate a guarantee by a third party, the Information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the Retail Client to make a fair assessment of the guarantee.

R.1.4.35 A Regulated Person, before entering into securities financing transactions in relation to Financial Instruments held by it on behalf of a Client, or before otherwise using such Financial Instruments for its own account or on the account of another Client, shall in good time before the use of those Financial Instruments provide the Client, in a Durable medium, with clear, full and accurate Information on the obligations and responsibilities of the Regulated Person with respect to the use of those Financial Instruments, including the terms for their restitution, and on the risks involved.

R.1.4.36 In addition to the disclosures required under R.1.4.17 (b) to (d), R.1.4.17(g) as well as the disclosures required in terms of R.1.5.12 and R.1.5.15, The Regulated Person shall provide the Client with the relevant Information about the investment strategies being proposed by the Regulated Person (including appropriate guidance on and warnings of the risks associated with such investment strategies) and Execution venues used by the Regulated Person for the execution of the Client's orders, if applicable. This Information shall include:

(a) the name of the Regulated Person and its Services;
(b) Structured Deposits, Financial Instruments or proposed investment strategies, as applicable. This should include appropriate guidance on and warnings of the risks associated with the Structured Deposit or Financial Instrument or in respect of particular investment strategies;
(c) Execution venues, where applicable;
(d) costs and associated charges.

The Information for the purposes of this Rule may be provided in standardized format.

Information Provided in Accordance with Directive 2009/65/EC (UCITS IV Directive) and Regulation (EU) No1286/2014 (PRIIPS Regulation)

R.1.4.37 Regulated Persons distributing units in collective investment schemes or PRIIPs shall additionally inform their Clients about any other costs and associated charges related to the Product which may have not been included in the UCITS KID or PRIIPs KID and about the costs and charges relating to their provision of investment services in relation to that Financial Instrument.

Information Concerning Client Categorisation

R.1.4.38 Regulated Persons shall notify new Clients and existing Clients of their categorisation as a Retail Client, a Professional Client or an Eligible counterparty).

R.1.4.39 Regulated Persons shall inform Clients in a Durable medium about any right that a Client has to request a different categorisation and about any limitations to the level of Client protection that it would entail.

R.1.4.40 Where the Client of a Regulated Person is an undertaking which falls under the definition of 'Professional Client', the Regulated Person must inform it prior to any provision of Services that, on the basis of the Information available to the Regulated Person, the Client is deemed to be a Professional Client, and will be treated as such unless the Regulated Person and the Client agree otherwise. The Regulated Person must also inform the Client that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

Reporting Obligations in Respect of Execution of Orders Other Than for Portfolio Management

R.1.4.41 Where a Regulated Person has executed an order, other than for Portfolio Management, on behalf of a Client, it shall in respect of that order:

(a) promptly provide the Client, in a Durable medium, with the essential Information concerning the execution of that order;
(b) send a notice to the Client in a Durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the Regulated Person from a third party, no later than the first business day following receipt of the confirmation from the third party;
(c) in the case of Eligible counterparties, Regulated Persons shall be allowed to enter into agreements with such counterparties to determine content and timing of reporting which are different from those applicable to Retail and Professional Clients.

Point (b) shall not apply where the confirmation would contain the same Information as a confirmation that is to be promptly dispatched to the Retail Client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of Clients relate to bonds funding mortgage loan agreements with the said Clients, in which case the report on the transaction shall be made together with the consolidated terms of the mortgage loan, but no later than one month after the execution of the order.

R.1.4.42 In addition to the requirements set out in R.1.4.41 above, the Regulated Person shall supply the Client, on request, with Information about the status of his order.

R.1.4.43 In the case of Client orders relating to units or shares in a collective investment undertaking which are executed periodically, the Regulated Person shall either

take the action specified in point (b) of R.1.4.41 or provide the Retail Client, at least once every six months, with the Information listed in R.1.4.44 in respect of those transactions.

R.1.4.44 The notice referred to in point (b) of R.1.4.41 shall include such of the following Information as is applicable, and where relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) no 600/2014 (MIFIR):

(a) the reporting Regulated Person's identification;
(b) the name or designation of the Client;
(c) the trading day;
(d) the trading time;
(e) the type of the order;
(f) the venue identification;
(g) the instrument identification;
(h) the buy/sell indicator;
(i) the nature of the order if other than buy/sell;
(j) the quantity;
(k) the unit price;
(l) the total consideration;
(m) a total sum of the commissions and expenses charged and, where the Client so requests, an itemised breakdown, including where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when Dealing on own account, and the Regulated Person owes a duty of best execution to the client
(n) the rate of exchange obtained where the transaction involves a conversion of currency;
(o) the Client's responsibilities in relation to the settlement of the transaction including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the Client;
(p) where the Client's counterparty was the Regulated Person itself or any person in the Regulated Person's group or another Client of the Regulated Person, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of (k) above, where the order is executed in tranches, the Regulated Person may supply the Client with Information about the price of each tranche or the average price. Where the average price is disclosed, the Regulated Person shall supply the Retail Client with Information about the price of each tranche upon request.

R.1.4.45 The Regulated Person may provide the Client with the Information referred to in R.1.4.44 using standard codes if it also provides an explanation of the codes used.

R.1.4.46 Where the Regulated Person has carried out a subscription or redemption order from a unit-holder with respect to a UCITS, it shall notify the Client, by means of a Durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution, or where the confirmation is received by the Regulated Person from a third party, no later

than the first business day following receipt of the confirmation from the third party. Provided that the above shall not apply where the notice to the unit-holder would contain the same Information as a confirmation that is to be promptly dispatched to the unit-holder by another person.

In the case of UCITS where orders for a unit-holder are executed periodically, the Regulated Person shall either take the action specified above or provide the unit-holder, at least once every six months, with the notice referred to above in respect of those transactions.

The notice referred to above shall, where applicable, include the following Information:

(a) the identification of the Regulated Person as referred to in R.1.3.17;
(b) the name or other designation of the unit-holder as referred to in R.1.3.17;
(c) the date and time of receipt of the order and method of payment;
(d) the date of execution;
(e) the UCITS identification;
(f) the nature of the order (subscription or redemption);
(g) the number of units involved;
(h) the unit value at which the units were subscribed or redeemed;
(i) the reference value date;
(j) the gross value of the order including charges for subscription or net amount after charges for redemptions;
(k) a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

The Regulated Person shall provide the unit-holder, upon request, with Information about the status of the order.

Reporting obligations in respect of Portfolio Management Services

R.1.4.47 Where a Regulated Person proposes to provide Portfolio Management services to a Client, it shall provide the Client, in good time before the provision of Services or Ancillary services to Retail Clients, in addition to the Information required under R.1.4.17, with such of the following Information as is applicable:

(a) information on the method and frequency of valuation of the Financial Instruments in the Client portfolio;
(b) details of any delegation of the discretionary management of all or part of the Financial Instruments or funds in the Client portfolio
(c) a specification of any benchmark against which the performance of the Client portfolio will be compared
(d) the types of Financial Instrument that may be included in the Client portfolio and types of transaction that may be carried out in such Financial Instruments, including any limits;
(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

R.1.4.48 When providing the service of Portfolio Management, the Regulated Person shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the Client and the types of Financial Instruments included in the Client portfolio, so as to enable the Client for whom the Services provided to assess the Regulated Person's performance.

R.1.4.49 The Regulated Person which provides the Service of Portfolio Management to Clients shall provide each such Client with a periodic statement in a Durable medium of the Portfolio Management activities carried out on behalf of that Client unless such a statement is provided by another person.

R.1.4.50 In the case of Clients, the periodic statement required above shall provide a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period and shall include wherever relevant, the following Information:

(a) the name of the Regulated Person;
(b) the name or other designation of the Client's account;
(c) a statement of the contents and the valuation of the portfolio, including details of each Financial Instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and the end of the reporting period, and the performance of the portfolio during the reporting period;
(d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including where relevant, a statement that a more detailed breakdown will be disclosed on request;
(e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the Regulated Person and the Client;
(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the Client's portfolio;
(g) information about other corporate actions giving rights in relation to Financial Instruments held in the portfolio;
(h) for each transaction executed during the period, the Information referred in R.1.4.44(c) to (l) where relevant, unless the Client elects to receive Information about executed transactions on a transaction-by-transaction basis, in which case R.1.4.52 shall apply.

R. 1.4.51 The periodic statement referred to in R.1.4.49 shall be provided every quarter, except in the following cases:

(a) where the Regulated Person provides its Clients with access to an online system, which qualifies as a Durable medium, where up to date valuations of the Client's portfolio can be accessed and where the Client can easily access the Information required by R.1.4.57 and the Regulated Person has evidence that the Client has accessed a valuation of their portfolio at least once during the quarter.
(b) in cases where R.1.4.52 applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between a Regulated Person and a Client for a Portfolio Management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The exception provided for in point (b) shall not apply in case of transactions in securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures or in Instruments included in points (4) to (10) of the Second Schedule to the Investment Services Act (Cap. 370).

R.1.4.52 The Regulated Person shall, in cases where the Client elects to receive Information about executed transactions on a transaction-by-transaction basis, disclose promptly to the Client, on the execution of a transaction by the portfolio manager, the essential Information concerning that transaction in a Durable medium.

The Regulated Person shall send the Client a notice confirming the transaction and containing the Information referred to in R.1.4.44 no later than the first business day following that execution or, where the confirmation is received by the Regulated Person from a third party, no later than the first business day following receipt of the confirmation from the third party.

The second subparagraph shall not apply where the confirmation would contain the same Information as a confirmation that is to be promptly dispatched to the Client by another person.

Where the Client concerned is a Retail Client, the Regulated Person must send him a notice confirming the transaction and containing the Information referred to in R.1.4.44 no later than the first business day following that execution or, if the confirmation is received by the Regulated Person from third party, no later than the first business day following sub-paragraph shall not apply where the confirmation would contain the same Information as a confirmation that is to be promptly dispatched to the Retail Client by another person.

R.1.4.53 A Regulated Person shall ensure, for each portfolio transaction relating to UCITS, that a record of Information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay. Such record shall include:

(a) the name or other designation of the UCITS and of the person acting on account of the UCITS;
(b) the details necessary to identify the instrument in question;
(c) the quantity;
(d) the type of the order or transaction;
(e) the price;
(f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;
(g) the name of the person transmitting the order or executing the transaction;

(h) where applicable, the reasons for the revocation of an order;
(i) for executed transactions, the counterparty and Execution venue identification.

Additional Reporting Obligations for Portfolio Management or Contingent Liability Transactions

R.1.4.54 Regulated Persons providing the service of Portfolio Management shall inform the Client where the overall value of the portfolio, as evaluated at the beginning of each reporting period, depreciates by 10% and thereafter at multiples of 10%, no later than the end of the business day in which the abovementioned threshold is exceeded or, in a case where the said threshold is exceeded on a non-business day, the close of the next business day.

R.1.4.55 Regulated Persons that hold a Retail Client account that includes positions in leveraged Financial Instruments or contingent liability transactions shall inform the Client, where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%. Reporting under this Rule should be on an instrument-by-instrument basis, unless otherwise agreed with the Client, and shall take place no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

Statement of Client Financial Instruments or Client Money

R.1.4.56 A Regulated Person that holds Client Financial Instruments or Client money shall send at least on a quarterly basis , to each Client for whom it holds Financial Instruments or funds, a statement in a Durable medium of those Financial Instruments or funds unless such a statement has been provided in any other periodic statement. Such statements shall be provided more frequently on Client request at commercial costs.

Provided that this Rule shall not apply to a credit institution authorised under Directive 2000/12/EC, relating to the taking up and pursuit of the business of credit institutions, in respect of deposits within the meaning of that Directive held by that institution.

R.1.4.57 The statement of Client assets referred to in R.1.4.56 above, shall include the following Information:

(a) details of all the Financial Instruments or funds held by the Regulated Person for the Client at the end of the period covered by the statement;
(b) the extent to which any Client Financial Instruments or Client funds have been the subject of securities financing transactions;
(c) the extent of any benefit that has accrued to the Clients by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued;
(d) a clear indication of the assets or funds which are subject to the rules of Directive 2014/65/EU (MIFID II) and its implementing measures and those that are not, such as those that are subject to a Title Transfer Collateral Arrangements (TTCA);
(e) a clear indication of which assets are affected by some peculiarities in their ownership status, for instance due to some security interest; and

(f) the market or estimated value, when the market value is not available, of the Financial instrument included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity. The evolution of the estimated value shall be done by the Regulated Person on a best effort basis.

In cases where the portfolio of a Client includes the proceeds of one or more unsettled transactions, the Information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such Information in the statement.

The periodic statement of Client assets referred to in R.1.4.56 shall not be provided where the Regulated Person provides its Clients with access to an online system, which qualifies as a Durable medium, where up-to-date statements of Client's Financial instruments or funds can be easily accessed by the Client and the Regulated Person has evidence that the Client has accessed this statement at least once during the relevant quarter.

R.1.4.58 A Regulated Person which holds Financial Instruments or funds and which carries out the service of Portfolio Management for a Client may include the statement of Client assets referred to in R.1.4.56 in the periodic statement it provides to that Client pursuant to R.1.4.49.

Where the Regulated Person holds or controls Financial Instruments or money belonging to Retail the Regulated Person shall provide those Clients with the Information specified in R.1.4.36 and R.1.4.59 to R.1.4.63 as is relevant.

R.1.4.59 The Regulated Person shall inform the Client where the Financial Instrument or funds of that Client may be held by a third party on behalf of the Regulated Person and of the responsibility of the Regulated Person for any acts or omissions of the third party and the consequences for the Client of the insolvency of the third party.

R.1.4.60 Where Financial Instruments of the Client may, be held in a nominee account by a third party, the Regulated Person shall inform the Client of this fact and shall provide a prominent warning of the resulting risks.

R.1.4.61 The Regulated Person shall inform the Client where it is not possible for Client Financial Instruments held with a third party to be separately identifiable from the proprietary Financial Instruments of that third party or of the Regulated Person and shall provide a prominent warning of the resulting risks.

R.1.4.62 The Regulated Person shall inform the Client where accounts that contain Financial Instruments or funds belonging to that Client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the Client relating to those Financial Instruments or money may differ accordingly.

R.1.4.63 A Regulated Person shall inform the Client about the existence and the terms of any security interest or lien which the Regulated Person has or may have over the Client's Financial Instruments or funds, or any right of set-off it holds in relation to those Financial Instruments or funds. Where applicable, it shall

also inform the Client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those Financial Instruments or funds.

Initial Information for Retail Clients on the Costs of Services Provided

R. 1.4.64 The Regulated Persons shall allow their Clients sufficient time to consider material Information when they make their investment decisions. Therefore, the aggregated Information about all costs and charges should be provided to Clients in good time.

G.1.4.6 *A Regulated Person may wish to consider disclosing as its charging structure a list of the Services it offers with the associated charges which will be used for calculating the charge for each Service.*

G.1.4.7 *In order to meet the requirement in R.1.4.64, a Regulated Person should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses cash terms. If a Regulated Person's charging structure is in non-cash terms, examples in cash terms should be used to illustrate how the charging structure will be applied in practice.*

G.1.4.8 *In order to meet its obligations under the fair, clear and not misleading rule and the Client's best interests rule, the Regulated Person should ensure that:*

(a) *the charging structure it discloses reflects, as closely as is practicable, the total charges to be paid and*
(b) *if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each Service is likely to require.*

R.1.4.65 A disclosure under R.1.4.27 shall:

(a) be in cash terms (non-cash terms should be converted into illustrative cash equivalents);
(b) be in a Durable medium in terms of Section 1 of this Chapter of this Rulebook on the Medium of Disclosure; and
(c) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the adviser charge is payable and the implications for the Retail Client if the Product is cancelled;
before the adviser charge is paid and, if there is no ongoing Service, the sum total of all payments to date.

G.1.4.9 *If the price of the Product may vary as a result of fluctuations in the financial markets and the adviser charge is expressed as a percentage of that price, a Regulated Person need not disclose to the Retail Client the total adviser charge payable to the Regulated Person or any of its associates by the Retail Client until after execution of the transaction, provided it then does so promptly.*

G.1.4.10 *To comply with the Rule on disclosure of total charges and the fair, clear and not misleading rule, a Regulated Person's disclosure of the total charge should:*

(a) *provide Information to the Retail Client as to which particular Service a charge applied to;*
(b) *include Information as to when payment of the charge is due;*
(c) *inform the Retail Client if the total charges varies materially from the charges indicated for that Service in the Regulated Person's charging structure;*
(d) *if an ongoing adviser charge is expressed as a percentage of funds under management, clearly reflect that the adviser charge may increase as the fund grows; and*
(e) *If an ongoing adviser charge applies for an ongoing Service, clearly confirm the details of the ongoing Service, its associated charges, and how the Retail Client can cancel this Service and cease payment of the associated charges.*

Scope of Disclosures – Point of Sale Disclosures (ex ante)

R.1.4.66 For the purposes of providing Information to Clients on all costs and charges pursuant to, R.1.4.19, R.1.4.27 and R.1.4.36, Regulated Persons shall comply with the requirements set out in the foregoing rules. Without prejudice to the obligations set out in, R.1.4.19, R.1.4.27 and R.1.4.36, Regulated Persons providing Services to Professional Clients shall have the right to agree to a limited application of the detailed requirements set out in these Rules with these Clients. Regulated Persons shall not be allowed to agree such limitations when the services of investment advice or Portfolio Management are provided or when, irrespective of the Service provided, the Products concerned embed a derivative.

R.1.4.67 Without prejudice to the requirements of R.1.4.19, R.1.4.27 and R.1.4.36, when providing Services to Eligible counterparties, Regulated Persons shall have the right to agree to a limited application of these detailed requirements, except when, irrespective of the Service provided, the Products concerned embed a derivative and the Eligible counterparty intends to offer them to its own Clients.

Post Sale Periodic Disclosures on Costs

R.1.4.68 Regulated Persons shall provide annual post-sale Information about all costs and charges related to both the Product(s) and Services, including Ancillary service(s) where they have recommended or marketed the said Product(s) or where they have provided the Client with the KID/KIID in relation to the Product (s) and they have/or have had an ongoing Client relationship during the year. Such Information shall be based on costs incurred and shall be provided on a personalised basis.

R.1.4.69 Regulated Persons may choose to provide aggregated Information on costs and charges of the investment Services and the Products together with any existing periodic reporting to Clients.

Costs and Charges to be Aggregated

R.1.4.70 Costs and charges listed in the Appendix to this Chapter shall be aggregated both for ex-ante and ex-post disclosure to Clients.

R.1.4.71 For ex-ante and ex-post disclosure of Information on costs and charges to Clients, Regulated Persons shall aggregate:

(a) all costs and associated charges levied by the Regulated Person or other parties where the client has been directed to such other parties, for the Service(s) and/or Ancillary services provided to the Client; and
(b) all costs and associated charges associated with the manufacturing and managing of the Products.

Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, Regulated Persons shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Regulated Persons shall also inform about the arrangements for payment of other performance.

R.1.4.72 Third party payments received by a Regulated Person in connection with the investment Service provided to a Client shall be and itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.

R.1.4.73 Regulated Persons are allowed to provide Clients with separate figures comprising:

(a) aggregated initial costs and chargers;
(b) aggregated on going costs and charges; and
(c) aggregated exit costs.

R.1.4.74 When more than one Regulated Person provides Services or Ancillary services to the Client, each Regulated Person should provide Information about the costs of the investment or Ancillary services it provides. A Regulated Person that recommends or markets to its Clients the Services provided by another Regulated Person, shall aggregate the cost and charges of its Services together with the cost and charges of the Services provided by the other Regulated Person. A Regulated person shall take into account the costs and charges associated to the provision by other Regulated Persons of other Services or Ancillary services in addition to the costs and charges associated to the provision of other Service or Ancillary services by other Regulated Persons where it has directed the Client to these other Regulated Persons.

R.1.4.75 A Regulated Person shall disclose the duty on documents and any other tax payable by the Client on the purchase of the Product separately to any charges or fees.

R.1.4.76 The obligation to provide in good time a full ex-ante disclosure of Information about the aggregated costs and charges related to the Financial Instrument and to the Service or Ancillary service provided shall apply to Regulated Persons in the following situations:

(a) where the Regulated Person recommends or markets Financial Instruments to Clients; or

(b) where the Regulated Person providing any investment services is required to provide Clients with a UCITS KIID or PRIIPs KID in relation to the relevant Financial Instruments, in accordance with relevant European Union legislation.

R.1.4.77 Regulated Persons that do not recommend or market a Financial Instrument to the Client or are not obliged to provide the Client with a KID/KIID in accordance with relevant Union legislation shall inform their Clients about all costs and charges relating to the Service and/or Ancillary service provided.

In relation to the disclosure of Product costs and charges that are not included in the UCITS KIID, the Regulated Persons shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant Information.

Methodology for the Calculation of Ex-ante Figures

R.1.4.78 The methodology for calculating ex ante figures should be based on the principle that the Regulated Person should use actually incurred costs as a proxy for the expected costs and charges. If actual cost are not available, the Regulated Person should make reasonable estimations of these costs.

R.1.4.79 Regulated Persons shall review ex ante assumptions based on the ex post experience and should make adjustments to these assumptions, if necessary.

Cumulative Effect of Costs on the Return of the Client's Investments

R.1.4.80 A Regulated Person shall provide its Clients with an illustration who own the cumulative effect of costs on the return when providing Services. Such an illustration should be provided both on an ex-ante and ex-post basis. Regulated Person shall ensure that the illustration meets the following requirements:

(a) the illustration shows the effect of the overall costs and charges on the return of the investment;
(b) the illustration shows any anticipated spikes or fluctuations in the costs; and
(c) the illustration is accompanied by a description of the illustration.

R.1.4.81 Regulated Persons shall notify a Client in good time about any material change the Information provided under R.1.4.17, R.1.4.30, R.1.4.32-R.1.4.34, R.1.4.36, R.1.4.47, R.1.4.48, and R.1.4.58-R.1.4.62, R.1.4.66, R.1.4.67, R.1.4.69, R.1.4.70, R.1.4.71-R.1.4.74, R.1.4.76, R.1.4.77-R.1.4.80 which is relevant to a Service that the Regulated Person is providing to that Client. That notification shall be given in a Durable medium if the Information to which it relates is given in a Durable medium.

Full Disclosure of Price and Cost Information of Tied and/or Bundled Packaged Products

R.1.4.82 Regulated Persons which distribute a Tied or a Bundled package must provide Clients with information on the price of both the package and of its Component products.

R.1.4.83 Regulated Persons which distribute a Tied or a Bundled package must provide Clients with a clear breakdown and aggregation of all relevant known costs associated with the purchase of the package and its Component products (such as administration fees, transaction costs, and exit or pre-payment penalty charges). Where costs cannot be calculated with precision on an ex ante basis but nevertheless will be incurred by Clients after the purchase of the package, the Regulated Person must provide an estimation of these costs based on reasonable assumptions.

G.1.4.11 For instance, when cross-selling an interest rate swap with a variable rate loan to allow a Client to hedge interest rate risk (i.e. the Client swaps his/her floating rate payment for a fixed interest rate payment) the Regulated Person provides key information to the Client on all aspects of the swap agreement which will materially affect the cost the Client finally incurs such as the Client's potential payment liability when interest rates change and the exit charges from the swap contract.

Prominent Display and Timely Communication of Price and Cost Information for Tied and/or Bundled Packaged Products

R.1.4.84 Regulated Persons which distribute a Tied or Bundled package must make available in good time before the Client is bound to the agreement, information on price and all relevant costs of the package and on each of its Component products, allowing Client to make an informed decision.

R.1.4.85 Regulated Persons which distribute a Tied or Bundled package must ensure that price on cost information of the package and its Component products is communicated to Clients in a prominent, accurate manner an in simple language (with any technical terminology explained).

R.1.4.86 Regulated Persons which distribute a Tied or Bundled package must ensure that when promoting any of the Component products that will form a Bundled or Tied package, equal prominence is assigned to the price and cost information of these Component products so that a Client can properly and quickly discern the cost impact upon them as a result of purchasing both as a package.

G.1.4.12 In any marketing communications used by the Regulated Person, the font used to communicate the relevant price and cost information of each of the Component products intended to be sold as a package is the same. Relevant information concerning one of the Component products is not given more emphasis with the use of a bigger or bolder font.

G.1.4.13 Where the sale takes place on the internet or through another channel without a sales person directly involved, the price and cost information of both products that will form the package appears early-on in the relevant webpages and is easily navigated by Clients i.e. the price and cost information of any product which will form part of the Bundled package is not placed or 'hidden' further down in the firm's on-line sales form.

R.1.4.87 Regulated Persons which distribute the Tied or Bundled package must ensure that the price and cost information is presented to Clients in a way which is not

misleading or which distorts or obscures the real cost to the Client or prevents meaningful comparison with alternative products.

Full Disclosure of Key Information on Non-Price Features and Risks, where applicable to Tied and/or Bundled Packaged Products

R.1.4.88 Regulated Persons which distribute the Tied or Bundled package must ensure that Clients are provided with key information relating to the non-price features and risks - where applicable - of each of the Component products and the package, including in particular the information on how the risks are modified as a result of purchasing the Bundled package rather than each of the components separately.

G.1.4.14 A Regulated Person offers a preferential rate savings account only when purchased with a structured bond. In this case, the level of risk posed by this total package is different from the risks posed by the savings account alone: the initial capital in a savings account is guaranteed, and the only variable is the interest paid. But initial capital invested in a structured investment product may not be guaranteed, and so it could be lost in part or altogether. In such example, the risk profiles of the components are clearly very different and, when combined, the level of risk associated with the structured product component could negate the safety of the savings product component to the extent that the overall risk profile of the package is significantly increased. The Regulated Person should clearly inform the Client about how the risk is modified as a result of purchasing the Bundled package rather than each of the components separately.

Prominent Display and Timely Communication of Key Information on Non-Price Features and Risks, where applicable to Tied and/or Bundled Packaged Products

R.1.4.89 Regulated Persons which distribute the Tied or Bundled package must ensure that key non-price factors and the relevant risks are promoted to Clients with the same prominence and weight as information on price and cost of the Component products or Bundled/Tied package and these must be made clear to Clients in simple language (with any technical terminology explained) in good time before the Client is bound to the agreement.

R.1.4.90 Regulated Persons which distribute the Tied or Bundled package must ensure that information on the non-price features and risks of the package is presented to Clients in a way which is not misleading or which distorts the impact of these factors for the Client.

G.1.4.15 A Regulated Person should draw the Client's attention to the limitations and risks (if relevant) of the Tied or Bundled package and the Component products and guides the Client through the relevant information which sets out the key benefits, limitations and risks (if relevant) of the package and the Component products. The sales person explains carefully and in due time (i.e. before the Client is bound to the agreement) how these non-price factors materially change according to (i) whether the Component product is purchased and (ii) which component is selected. The Regulated Person should alert the Client of the Tied package to the overall benefits, limitations and risks (if relevant) of the package.

G.1.4.16 A Regulated Person should refrain from exclusively relying on a general reference to their Terms & Conditions to alert or disclose to key non-price

information to Clients. Instead, the Regulated Person should explain the risks (if relevant) and non-price information to the Client in plain language.

Prominent Display and Communication of 'Optionality of Purchase'

R.1.4.91 Regulated Persons which distribute Bundled or Tied packages must ensure that Clients are properly informed whether it is possible to purchase the Component products separately.

R.1.4.92 Regulated Persons which distribute a Bundled package must design their purchase options in a way which enables Clients to actively select a purchase and therefore to make a conscious decision to buy the Component product or the Bundled package. Regulated Persons must not use pre-ticked boxes (on-line or in any other sales document) when they cross-sell one product or service with another.

R.1.4.93 Regulated Persons which distribute a Bundled package must present their purchase options in a way which avoids giving a false perception that the purchase of the bundled package is compulsory when in fact it is an optional purchase.

G.1.4.17 A Regulated Person offers a range of different Financial Instruments. The Regulated Person should set out the Client's options clearly. For example, it is clear that the Client has the option to purchase an execution only service with no additional products such as market data and financial analysis. Similarly, it is clear whether the Client's choice is restricted to particular bundles of Component products, or if he/she has a free choice as to which ones they can combine together.

G.1.4.18 The purchase option for a Bundled package of execution only service and markets research on the Regulated Person's sales internet pages is left blank. The Client has to opt-in to the purchase by clicking 'yes' to a simple question about whether the Client wants to buy the add-on product (in this case the market research) (and therefore bundled package) in addition to the 'core' product.

Part C: Rules and Guidance applicable to all Regulated Persons regarding disclosure of Information on the Product being offered to Clients

Provision of Product Information to Clients

R.1.4.94 A Regulated Person that sells a Packaged Retail Investment Product and/or an Insurance-based investment product or a Structured Deposit product to a Retail Client or potential Retail Client, must provide to that Client, prior to conclusion of a contract, a Key Investor Information Document which document shall be in line with the Regulation of the European Parliament and of the Council on key information documents for investment products (PRIPs) and any Implementing Measures issued thereunder.

G.1.4.19 A Regulated Person need not treat each of several transactions in respect of the same type of Product as a new or different Service and so does not need to comply with the disclosure rules in this chapter in relation to each transaction. Nonetheless a Regulated Person should ensure that the Client has received all

relevant Information in relation to a subsequent transaction, such as details of Product charges that differ from those disclosed in respect of a previous transaction.

R.1.4.95 Prior to offering, recommending, arranging or providing a Product, a Regulated Person must provide Information, in a Durable medium, to the Client about the main features and restrictions of the Product to assist the Client in understanding the Product.

G.1.4.20 Where a Regulated Person provides Information in accordance with the Rules in this Chapter, it must not do anything that might reasonably cause a Client to be mistaken about the identity of the Manufacturer of the Product sold to the Client.

Part D: Rules applicable to Regulated Persons which fall points (i) or (ii), of the definition of 'Regulated Person' in the Glossary, UCITS Management Companies or a collective investment scheme licensed under the Investment Services Act (Cap. 370) and qualifying as UCITS

Provision of Product Information to Clients

R.1.4.96 Prior to offering, recommending, arranging or providing a Product, a Regulated Person must provide a Client with Information on the following, where relevant:

(a) capital security;
(b) the risk that some or all of the investment may be lost;
(c) leverage and its effects;
(d) any limitations on the sale or disposal of the Product;
(e) restrictions on access to funds invested;
(f) restrictions on the redemption of the Product;
(g) the impact, including the cost, of exiting the Product early;
(h) the minimum recommended investment period;
(i) the risk that the estimated or anticipated return on the Product will not be achieved;
(j) the potential effects of volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment; and
(k) the level, nature, extent and limitations of any guarantee and the name of the guarantor.

Part E: Rules and Guidance applicable to Regulated Persons which falls under point (i) or (ii) of the Definition of 'Regulated Person'", UCITS Management Companies or a Collective Investment Schemes Licensed under the Investment Services Act (Cap. 370) and Qualifying as a UCITS.

R.1.4.97 For the purposes of this Part, the term Regulated Person shall mean:

(a) a Regulated Person which falls under point (i) or (ii) of the definition of 'Regulated Person' in the Glossary ;or
(b) a UCITS Management Company; or
(c) a collective investment scheme licensed under the Investment Services Act, 1994 and qualifying as a UCITS.

Key Investor Information on UCITS

R.1.4.98 Self-managed UCITS Schemes licensed under the Investment Services Act (Cap. 370) as well as UCITS Management Companies which sell UCITS directly or through another Regulated Person who acts on its behalf and under its full and unconditional responsibility (for every UCITS which they manage) shall provide Clients with a Key Investor Information Document on such UCITS in good time before their proposed subscription of units in such UCITS.

R.1.4.99 If a Regulated Person provides a Client with a Key Investor Information Document that meets the requirements provided in Section 6 of this Chapter or of Standard Licence Conditions 6.2.1 to 6.2.6 and 6.2.8 to 6.2.11 of https://www.mfsa.com.mt/firms/regulation/securities-and-market/collective-investment-schemes/rules-for-retail-collective-investment-schemes/Part BII of the Investment Services Rules for Retail Collective Investment Schemes and the Commission Regulation (EU) 583/2010, it will have provided appropriate Information for the purpose of the requirement to disclose Information to Clients under the Directive 2014/65/EU(MIFID II) or, as applicable, on:

(a) on the investments and investment strategies of the UCITS and
(b) on costs and associated charges in respect of the UCITS itself, including the exit and entry commissions.

G.1.4.21 A Key Investor Information Document provides sufficient Information in relation to the costs and associated charges in respect of the UCITS itself. However, a Regulated Person distributing units in a UCITS should also inform a Client about all of the other costs and associated charges related to the provision of its Services in relation to units in the UCITS.

R.1.4.100 Self-managed UCITS Schemes licensed under the Investment Services Act (Cap. 370) as well as Regulated Persons managing UCITS Schemes and which do not sell UCITS directly or through another Regulated Person who acts on its behalf and under its full and unconditional responsibility (for every UCITS which they manage) shall provide Key Investor Information Document to Manufacturers and Distributors offering units in such UCITS or in Products offering exposure to such UCITS upon their request. Any Regulated Persons selling or advising Clients on potential investments in UCITS, shall provide the Key Investor Information Document to their Clients.

R.1.4.101 A paper copy of the Key Investor Information Document shall be provided to investors free of charge.

R.1.4.102 Self-managed UCITS Schemes as well as UCITS Management Companies, shall provide the following documents for every UCITS managed, in a Durable medium or by means of a website or Mobile App:

(a) Key Investor Information Document containing the Information prescribed in R.1.4.98
(b) the prospectus and the latest published annual and half yearly reports

A paper copy of the above documents shall be delivered to the investor on request and free of charge.

R.1.4.103 A paper copy of the prospectus and the annual and half yearly reports of the Master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

Products Requiring a Prospectus under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the Prospectus to be Published When Securities Are Offered to the Public or Admitted to Trading and Amending Directive 2001/34/EC ("the Prospectus Directive")

R.1.4.104 The Rules under this Part apply to Regulated Persons which sell Products which require a prospectus to be issued under the Prospectus Directive.

R.1.4.105 Where a prospectus, other than a prospectus falling within the scope of the Prospectus Directive represents or contains the terms of a contract between a Regulated Person and one or more of its Clients, this fact must be clearly stated in the prospectus.

Part F: Rules and Guidance applicable to Regulated Persons which fall under points (iii) and (iv) of the Definition of 'Regulated Person' in the Glossary

R.1.4.106 For the purposes of this Part, the term "Regulated Person" shall mean a Regulated Person which falls under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary.

Provided that the information referred to in R.1.4.107 and R.1.4.115 to 1.4.118 need not be provided when the Regulated Person carries out distribution activities in relation to the insurance of Large risks.

Disclosures to be made before All Insurance Contracts Are Concluded

R.1.4.107 The Regulated Person shall, prior to the conclusion of an Insurance contract, provide the Client with objective and relevant Information about the Product in a comprehensible form to allow that Client to make an informed decision, while taking into account the complexity of the Product and the type of Client.

R.1.4.108 No Information given shall be sufficient if the Information given is accompanied by any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.

R.1.4.109 The burden of proof that any Information required has been furnished in accordance with the requirements of this Part rests on the Regulated Person.

Disclosures to be made before Certain Insurance Contracts Are Concluded

R.1.4.110 R.1.4.111 apply to a contract entered into by a Regulated Person when the effecting of the contract constitutes the carrying on in Malta of general business contracts and the risk covered by the contract is a risk situated in Malta.

R.1.4.111 Before a life insurance contract is concluded the Regulated Person shall inform the Client about:

(a) the definition of each benefit and each option;
(b) the term of the contract;
(c) the means of terminating the contract;

(d) the means of payment of premiums and duration of payments;
(e) the means of calculation and distribution of bonuses;
(f) an indication of surrender and paid-up values and the extent to which they are guaranteed;
(g) information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;
(h) for unit-linked policies, the definition of the units to which the benefits are linked;
(i) an indication of the nature of the underlying assets for unit-linked policies;
(j) arrangements for application of the cooling-off period;
(k) general information on the tax arrangements applicable to the type of policy;
(l) whether the parties to the contract are entitled to choose the law applicable to the contract and, if so, of the law which the Regulated Person proposes to choose, otherwise, if not, of the law which will be so applicable;
(m) of the arrangements for handling complaints concerning contracts by policy holders, including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;
(n) of any limited compensation which may be available under the Protection and Compensation Fund Regulations, 2003, if the Regulated Person is insolvent and unable to meet its obligations under the contract;
(o) the amount and purpose of any charge or fee in addition to the premium. The amount of document duty is to be disclosed separately;
(p) the date of inception of the policy.

In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the Client.

R.1.4.112 The Regulated Person shall inform the Client throughout the term of the contract of any change:

(a) concerning the policy conditions (both general and special);
(b) in any of the information listed in points (d) to (j) of R.1.4.111;
(c) in the policy conditions or amendments of the law applicable to the contract;
(d) so that, if an Insurance contract provides for the payment of bonuses, the Regulated Person shall, at least, annually, once in every calendar year, provide information to the Client on the state of bonuses and the amount of any bonuses:

(i) which have become payable under the contract; and
(ii) of which that Client has not been previously informed of.

In the case of non-life insurance products, general and special policy conditions shall not include any conditions intended to meet, in an individual case the particular circumstances of the risk to be covered.

R.1.4.113 Before a non-life insurance contract is concluded the Regulated Person shall inform the Client of the following:

(a) the law applicable to the contract, where the parties do not have a free choice;
(b) the fact that the parties are free to choose the law applicable and the law the Regulated Person proposes to choose.

R.1.4.114 In relation to the distribution of non-life insurance products, the Information referred to in R.1.4.107 shall be provided by way of a standardised Product Information document on paper or on another Durable medium.

R.1.4.115 The Product Information document referred to in R.1.4.116 shall be drawn up by the Manufacturer of the non-life insurance product.

R.1.4.116 The Product Information document shall:

(a) be a short and stand-alone document;
(b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
(c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
(d) notwithstanding the requirements of R.1.1.2 and R.1.4.17(b) be written in English;
(e) be accurate and not misleading;
(f) contain the title ' Product Information document' on the top of the first page;
(g) include a statement that complete pre-contractual and contractual Information on the Product is provided in other documents.

R.1.4.117 The Product Information document shall contain the following Information:

(a) information about the type of insurance;
(b) a summary of the insurance cover, including the main risks insured, the insured sum, and where applicable, the geographical scope and a summary of the excluded risks;
(c) the means of payment of premiums and the duration of payments;
(d) main exclusions where claims cannot be made;
(e) obligations at the start of the contract;
(f) obligations during the term of the contract;
(g) obligations in the event that a claim is made;
(h) the term of the contract including the start and end dates of the contract;
(i) the means of terminating the contract.

In order to satisfy the requirements of this Rule, Regulated Persons may choose to provide some of or all of the appropriate information in the Product Information Document if it considers this to be a comprehensible form in which to provide that information. Provided that the form used by the Regulated Person must contain the information provided in Commission Implementing Regulation (EU) 2017/1469.

G.1.4.22 *In order to satisfy the requirements of R.1.4.111 (l) to (p), the Manufacturer may also wish to refer to the downloadable format of the Product Information document provided by the Commission and which is available on EIOPA's website (accessible through the following link: https://eiopa.europa.eu/Pages/Supervision/Insurance/Editable-Template-for-the-Insurance-Product-Information-Document-(IPID).aspx)*

R.1.4.118 Where, in connection with an offer for or conclusion of a life insurance contract, the Regulated Person provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the Regulated Person shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The Regulated Person shall inform the Client in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the Client shall not derive any contractual claims from the specimen calculation.

In the case of insurances with profit participation, the Regulated Person shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation. Furthermore, where the Regulated Person has provided figures about the potential future development of the profit participation, the Regulated Person shall inform the Client of differences between the actual development and the initial data.

The Regulated Person shall inform the Client of the long-term nature of the life insurance contract and, where appropriate, to the consequent effects of early discontinuance and surrender.

R.1.4.119 The Information referred to in R.1.4.95 shall be provided in a clear and accurate manner, using a Durable medium, in an official language of the Member State of commitment. In the case where the Client resides in Malta, the provisions of Rule 1.1.2(c) shall apply.

R.1.4.120 A Regulated Person providing an insurance quotation to a potential Retail Client must include the following Information in the quotation, assuming that all details provided by the potential Retail Client are correct and do not change:

(a) the monetary amount of the quotation;
(b) the length of time for which the quotation is valid; and
(c) the full legal name of the relevant underwriter.

R.1.4.121 A Regulated Person must set out clearly in the quotation provided to the Retail Client any warranties or endorsements that apply to the policy. Where the quotation is provided on paper or on another Durable medium, this Information must not be in a smaller font size than other Information provided in the document.

R.1.4.122 A Regulated Person providing an insurance quotation to a Client must set out clearly any discounts or loadings that have been applied in generating the quotation.

R.1.4.123 A Regulated Person must, when offering a motor insurance policy to a Client, set out clearly for the Client the basis on which a Regulated Person may calculate the value of the vehicle for the purposes of settling a claim where the vehicle is deemed to be beyond economic repair following a road traffic accident, fire or theft.

R.1.4.124 A Regulated Person must state the full legal name of the relevant insurer on all insurance policy documentation and renewal notices issued to a Client.

R.1.4.125 A Regulated Person must explain to a Retail Client, at the proposal stage, the consequences for the Client of failure to make full disclosure of relevant facts. The explanation must include, where relevant,

(a) that a policy may be cancelled;
(b) that claims may not be paid;
(c) the difficulty the consumer may encounter in trying to purchase insurance elsewhere.

R.1.4.126 When offering a property or motor insurance policy to a Client, a Regulated Person must, where relevant, explain to the Client that, in the event of a claim, the Regulated Person may appoint its own builder or other expert to undertake restitution work on a property or motor vehicle.

G.1.4.23 Prior to offering, recommending, arranging or providing an insurance policy where the premium may be subject to review by the Insurance undertaking during the term of the policy, a Regulated Person must:

(a) explain clearly to the Client the risk that the premium may increase; and
(b) provide the Client with details of the period for which the initial premium is fixed.

This Rule shall not apply where the premium may be subject to review as a result of an alteration to the policy that is requested by the Client.

R.1.4.127 The Regulated Person shall provide the following to Clients, as applicable:

(a) the Long-Term Business Notice required in terms of R.4.1.29 at the time the contract is entered into;
(b) the General Business Notice required in terms of R.4.1.29 prior to the conclusion of any initial contract and if necessary, upon amendment or renewal thereof.

Furthermore, where the Regulated Person is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the Regulated Person shall provide the information referred to in R.1.1.2, R.1.1.5-1.1.9, R.1.2.6, R.1.3.6(i)-(iv), R.1.3.7, R.1.3.10, R.1.4.10, R.1.4.11, R.1.4.16, R.1.4.18, R.1.4.19(a) and (c), R.1.4.107, R.1.4.123-R.1.4.126, R.1.5.17 to R.1.5.21, R.2.5, R.2.7, R.2.9, R.2.15, R.2.16, R.3.2, R.3.8, R.3.35 and R.4.4.59

to R.4.4.61 to the employee promptly after their enrolment in the arrangement concerned.

Part G: ***Rules applying to Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary***

R.1.4.128 For the purposes of this Part, the term "Regulated Person" shall mean Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary.

R.1.4.129 Where a Regulated Person enrolled as an insurance broker accepts its own Client's risk on behalf of an Insurance undertaking under any underwriting agreement or a computer link arrangement, the said Regulated Person shall disclose that fact in a Durable medium and in good time prior to the provision of the Service, to the Client.

Part H: ***Requirements Applicable to Regulated Persons falling under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules***

R.1.4.130 For the purposes of this section, the requirements provided hereunder shall apply to Regulated Persons falling under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules and insofar as they provide services to shareholders or other intermediaries in relation to shares that are admitted to trading on a Regulated Market.

R.1.4.131 Regulated Persons are required to publicly disclose any applicable charges for services provided under this section and in terms of Section 10, Title 7 of Chapter 4 of Part B1: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms. Regulated Persons shall make the required disclosures separately for each service.

R.1.4.132 Any charges levied by Regulated Persons on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.

R.1.4.133 Regulated Persons may charge fees for the services provided for under this section and for the services provided in terms of Section 10, Title 7 of Chapter 4 of Part B1: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms.

Section 5: DISCLOSURES ON CONFLICTS OF INTEREST

Application

R.1.5.1 The Rules and any relative Guidance set out under the heading "General Rules" shall apply to all Regulated Persons, except as otherwise indicated.

G.1.5.1 *The requirements in the 'General Rules' section only apply where a Product or Service is provided by a Regulated Person. The status of the Client to whom the*

Product or Service is provided (as a Retail Client, Professional Client or Eligible counterparty) is irrelevant for this purpose.

R.1.5.2 The Rules and any relative Guidance set out under Part A shall apply to Regulated Persons which fall under points (i) and (v) of the definition of 'Regulated Person' in the Glossary, including UCITS Management Companies, except as otherwise indicated.

R.1.5.3 The Rules and any relative Guidance set out under Part B shall apply to Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary.

R.1.5.4 The Rules and any relative Guidance set out under Part C shall apply to Regulated Persons under point (iii) of the definition of 'Regulated Person' in the Glossary.

General Rules

R.1.5.5 Where organisational or administrative arrangements made by the Regulated Person to prevent conflicts of interest from adversely affecting the interest of its Client are not sufficient to ensure, with reasonable confidence, that risks of damage to Client interests (or in the case of UCITS Management Companies, to the interests of UCITS or its unit-holders) will be prevented, the Regulated Person shall clearly disclose to the Client the general nature and sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf.

The disclosure shall:

(a) be made in a Durable medium; and
(b) include sufficient detail, taking into account the nature of the Client, to enable that Client to take an informed decision with respect to the Service in the context of which the conflict of interest arises.

R.1.5.6 Regulated Persons shall ensure that disclosure to Clients pursuant to R.1.5.5 above, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the Regulated Person to prevent or manage its conflicts of interests, in accordance with R.3.15 are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented.

R.1.5.7 When disclosure of specific conflicts of interests is required, the disclosure shall clearly state that the organisational and administrative arrangements established by the Regulated Person to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence that the risk of damage to the interest of the Client will be prevented. The disclosure to Clients must be made in a Durable medium and it must also include a specific description of the conflict of interest that arises in the provision of the Services and/or Ancillary services, taking into account the nature of the Clients to whom the disclosure is being made. That description must explain the general nature and sources of conflicts of interest, as well as the risks to the Client that arise as a result of the conflict and the steps undertaken to mitigate these risks, in sufficient detail

to enable that Client to make an informed decision with respect to the Service or Ancillary service in the context of which the conflicts of interest arise.

R.1.5.8 In the case of Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, the disclosure referred to in R.1.5.5 shall be made by the Distributor offering the Product in relation to which such disclosure is to be made.

G.1.5.2 *Regulated Persons have a duty to take effective steps to identify, and prevent or manage conflicts of interest between themselves, including their managers, employees and Tied Agents or Tied insurance intermediaries or Ancillary insurance intermediaries, or any person indirectly linked to them by control and their Clients or between one Client and another and mitigate the potential impact of these risks as far as possible. When some residual risk of detriment to the Client's interests, or in the case of UCITS to one or more UCITS or other Clients nonetheless remains, clear disclosure to the Client of the general nature and sources of conflicts of interest to the Client and the steps taken to mitigate these risks shall be made before undertaking business on its behalf.*

G.1.5.3 *Where conflicts of interest arise and cannot be reasonably avoided, Regulated Persons shall disclose the general nature and source of the conflicts of interest to the Client, and shall ensure that any conflict does not result in damage to the interests of the Client.*

G.1.5.4 *The disclosure of conflicts of interest by a Regulated Person should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements relating to the prevention of conflicts of interest. While disclosure of specific conflicts of interest is required by R.1.5.5, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.*

R.1.5.9 Regulated Persons who charge a fee and also receive commission in respect of the Product or Service provided to the Client, shall disclose to the Client, in good time, prior to the provision of a Service or Product, whether or not the commission will be offset against the fee, either in full or in part.

R.1.5.10 A Regulated Person shall also be required to disclose at any time that the Client requests it, further details of the conflicts of interest policy in a Durable medium or by means of a website or Mobile App. Provided that in the case of Regulated Persons which fall under points (iii) or (iv) of the definition of 'Regulated Person' in the Glossary, the requirement of this Rule shall apply insofar as they provide Insurance-based investment products.

Part A: ***Rules applicable to Regulated Persons which fall under Point (i) of the Definition of 'Regulated Person' in the Glossary, including UCITS Management Companies, and Regulated Persons which fall under Point (v), as applicable***

R.1.5.11 For the purposes of this Part, a "Regulated Person" means a person which falls under point (i) of the definition of 'Regulated Person' in the Glossary including a UCITS Management Companies, or a person which falls under point (v) of the definition of 'Regulated Person' in the Glossary, as applicable.

R.1.5.12 A Regulated Person shall, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant Services or Ancillary service, clearly disclose to the Client the existence, nature and amount of any payment or benefit designed to enhance the quality of the relevant Service to the Client, as defined in R.3.20 of this Rulebook or, where the amount cannot be ascertained, the method of calculating that amount. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid to the Regulated Person in connection with the Service provided to a Client shall be priced and disclosed separately.

R.1.5.13 Where a Regulated Person is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead discloses to the Client the method of calculating that amount in terms of R.1.5.12, the Regulated Person shall also provide its Clients with Information of the exact amount of the payment or benefit received or paid on an ex-post basis.

R.1.5.14 At least once a year, as long as (on-going) Inducements are received by the Regulated Person in relation to the Services provided to the relevant Clients, the Regulated Person shall inform its Clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

R.1.5.15 Where applicable, the Regulated Person shall also inform the Client on mechanisms for transferring to the Client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the Service or Ancillary service.

Part B: ***Rules applicable to all Regulated Persons which fall under Point (iv) of the Definition of 'Regulated Person' in the Glossary, unless specified otherwise***

R.1.5.16 For the purposes of this section, a Regulated Person means a person which falls under point (iv) of the definition of 'Regulated Person' in the Glossary.

Provided that the information required in R.1.5.17and R.1.5.18 need not be provided when the Regulated Person carries out distribution activities in relation to the insurance of Large risks.

R.1.5.17 A Regulated Person shall, in good time before the conclusion of any Insurance contract, including an invitation to renew (renewal notice) an insurance contract, provide the Client with at least the following Information:

(a) the nature of the remuneration received by the Regulated Person in relation to the Insurance contract;
(b) whether in relation to the Insurance contract, the Regulated Person works:

i) on the basis of a fee, that is the remuneration paid directly by the Client; or
ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium; or

iii) on the basis of other type of remuneration, including an economic benefit of any kind offered or given in connection with the Insurance contract; or
iv) on the basis of a combination of both (i) , (ii) and (iii);

Where the fee is payable directly by the Client, the Regulated Person shall provide the amount of the fee or where this is not possible, the method for calculating it.

R.1.5.18 If any payments, other than the ongoing premium and scheduled payments, are made by the Client under the Insurance contract after its conclusion, the Regulated Person shall also make the disclosures in accordance with R.1.3.10, R.1.4.19(c), R.1.4.19(e) and R.1.5.17.

R.1.5.19 In the case of a Regulated Person enrolled in the Brokers List in terms of the Insurance Distribution Act, where the Regulated Person has entered into a credit transfer agreement with any one or more insurance undertakings whose products it also distributes, such Person shall:

(a) disclose this fact to its clients, as well as the implications of such agreement;

(b) ensure that it establishes, maintains and keeps up to date adequate procedures to mitigate any real or perceived conflicts of interest, which may arise out of such agreement, vis-à-vis the Regulated Persons' duty to act in the best interests of the Client in terms of R.4.1.5 of Chapter 4 of this Rulebook.

For the purposes of this Rule, a 'credit transfer agreement' is the agreement as referred in the context of the Second Schedule to Chapter 4 of Part A of the Insurance Distribution Rules.

Part C: ***Rules applicable to Regulated Persons which fall under Point (iii) of the Definition of 'Regulated Person' in the Glossary***

R.1.5.20 The Regulated Person shall, in good time before the conclusion of an Insurance contract, communicate to its Client the nature of the remuneration received by its employees in relation to the Insurance contract.

Provided that the information required in this Rule need not be provided when the Regulated Person carries out distribution activities in relation to the insurance of Large risks.

R.1.5.21 If any payments, other than the ongoing premium and scheduled payments, are made by the Client under the Insurance contract after its conclusion, the Regulated Person shall also make the disclosures in accordance with R.1.3.10, R.1.4.19(c), R.1.4.19(e) and R.1.5.17.

Provided that the information required in this Rule need not be provided when the Regulated Person carries out distribution activities in relation to the insurance of Large risks.

Section 6: Key Information Documents for Packaged Retail and Insurance-Based Investment Products ['PRIIPs']

Application

R.1.6.1 The Rules provided in this Section shall apply to persons falling under points (iii) and (iv) of the definition 'Regulated Person' in the Glossary when they act as PRIIP Manufacturer and/or when they offer or conclude a PRIIP contract with a Retail Client.

Management companies as defined in Article 2(1)(b) of Directive 2009/65/EC, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units of UCITS as referred to in Article 1(2) thereof shall be exempt from the obligations under this Section until 31 December 2019.

R.1.6.2 The requirements under this Section shall not apply to the following products:

(i) Non-life insurance products referred to under the third schedule of the Insurance Business Act (Cap. 403);
(ii) Life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
(iii) Deposits other than Structured Deposits;
(iv) Securities referred to in Section 4.6 of the Capital Markets Rules;
(v) Pension products which are recognised as having the primary purpose of providing the Client with an income in retirement and which entitle the Client to certain benefits;
(vi) Occupational pension schemes;
(vii) Individual pension products for which a financial contribution from the employer is required and where the employer or the employee has no choice as to the pension product or provider.

Key Information Document

General Requirements

R.1.6.3 Before a PRIIP is made available to Retail Clients, the PRIIP Manufacturer must draw up for that product a key information document in accordance with these rules and must publish the document on its website or Mobile App.

R.1.6.4 A PRIIP Manufacturer or Regulated Person selling a PRIIP shall notify the MFSA on an ex ante basis of the Key Information Document for PRIIPs marketed in Malta.

R.1.6.5 The Key Information Document shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PRIIP.

The Key Information Document shall be a stand-alone document, clearly separate from marketing materials. It shall not contain cross-references to marketing material. It may contain cross-references to other documents including a prospectus where applicable, and only where the cross-reference is related to the information required to be included in the Key Information Document.

R.1.6.6 Where a PRIIP offers the Retail Client a range of options for investments, such that all information required in R.1.6.14 with regard to each underlying investment option cannot be provided within a single, concise stand-alone document, the Key Information Document shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found.

R.1.6.7 The Key Information Document shall be drawn up as a short document written in a concise manner and of a maximum of three sides of A4-sized paper when printed, which promotes comparability. It shall:

(a) be presented and laid out in a way that is easy to read, using characters of readable size;
(b) focus on the key information that Retail Clients need;
(c) be clearly expressed and written in language and a style that communicate in a way that facilitates the understanding of the information, in particular, in language that is clear, succinct and comprehensible.

R.1.6.8 Where colours are used in the Key Information Document, they shall not diminish the comprehensibility of the information if the Key Information Document is printed or photocopied in black and white.

R.1.6.9 Where the corporate branding or logo of the PRIIP Manufacturer or the group to which it belongs is used in the Key Information Document, it shall not distract the Retail Client from the information contained in the document or obscure the text.

R.1.6.10 The Key Information Document shall be written in English. However, where the Key Information Document has been written in a different language and is marketed in Malta, then it must be translated in English. The translation must faithfully and accurately reflect the content of the original Key Information Document.

R.1.6.11 If a PRIIP is promoted in a Member State through marketing documents written in one or more official languages of that Member State, the Key Information Document shall at least be written in the corresponding official languages.

R.1.6.12 The title 'Key Information Document' must appear prominently at the top of the first page of the Key Information Document.

The Key Information Document must be presented in the sequence laid down in R.1.6.13 and R.1.6.14.

R.1.6.13 An explanatory statement must appear directly underneath the title of the Key Information Document and must read:

'This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.'.

R.1.6.14 The Key Information Document must contain the following information:

(a) at the beginning of the document, the name of the PRIIP, the identity and contact details of the PRIIP Manufacturer, information about the competent authority of the PRIIP Manufacturer and the date of the document;

(b) where applicable, a comprehension alert which shall read: 'You are about to purchase a product that is not simple and may be difficult to understand.';

(c) the Key Information Document must contain the following information in relation to the respective sections:

i. '**What is this product?'**: the nature and main features of the PRIIP, including:
- the type of the PRIIP;
- its objectives and the means for achieving them, in particular whether the objectives are achieved by means of direct or indirect exposure to the underlying investment assets, including a description of the underlying instruments or reference values, including a specification of the markets the PRIIP invests in, including, where applicable, specific environmental or social objectives targeted by the product, as well as how the return is determined;
- a description of the type of Retail Client to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon;
- where the PRIIP offers insurance benefits, details of those insurance benefits, including the circumstances that would trigger them;
- the term of the PRIIP, if known;

ii. '**What are the risks and what could I get in return?'**, a brief description of the risk-reward profile comprising the following elements:
- a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the PRIIP and which are not adequately captured by the summary risk indicator;

- the possible maximum loss of invested capital, including, information on:
— whether the Retail Client can lose all invested capital, or
— whether the Retail Client bears the risk of incurring additional financial commitments or obligations, including contingent liabilities in addition to the capital invested in the PRIIP, and
— where applicable, whether the PRIIP includes capital protection against market risk, and the details of its cover and limitations, in particular with respect to the timing of when it applies;
- appropriate performance scenarios, and the assumptions made to produce them;
- where applicable, information on conditions for returns to Retail Clients or built-in performance caps;
- a statement that the applicable tax legislation may have an impact on the actual payout;

iii. **'What happens if [the name of the PRIIP Manufacturer] is unable to pay out?'**, a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;

iv. **'What are the costs?'**, the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the Retail Client, including one-off and recurring costs, presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment.

The Key Information Document shall include a clear indication that advisors, distributors or any other Regulated Person advising on, or selling, the PRIIP will provide information detailing any cost of distribution that is not already included in the costs specified above, so as to enable the Retail Client to understand the cumulative effect that these aggregate costs have on the return of the investment;

v. **'How long should I hold it and can I take money out early?',**
- where applicable, whether there is a cooling off period or cancellation period for the PRIIP;
- an indication of the recommended and, where applicable, required minimum holding period;
- the ability to make, and the conditions for, any disinvestments before maturity, including all applicable fees and penalties, having regard to the risk and reward profile of the PRIIP and the market evolution it targets;
- information about the potential consequences of cashing in before the end of the term or recommended holding period, such as the loss of capital protection or additional contingent fees;

vi. **'How can I complain?'**, information about how and to whom a Retail Client can make a complaint about the Product or the conduct of the PRIIP Manufacturer or a Regulated Person advising on, or selling, the Product;

vii. **'Other relevant information'**, a brief indication of any additional information documents to be provided to the Retail Client at the pre-contractual and/or the post-contractual stage, excluding any marketing material.

R.1.6.15 Marketing communications that contain specific information relating to the PRIIP must not include any statement that contradicts the information contained in the Key Information Document or diminishes the significance of the Key Information Document. Marketing communications must indicate that a Key Information Document is available and supply information on how and from where to obtain it, including the PRIIP Manufacturer's website or Mobile App.

R.1.6.16 The PRIIP Manufacturer must review the information contained in the Key Information Document on a regular basis and must review the information every time there is a change that significantly affects or is likely to significantly affect the information contained in the Key Information Document and, at least, every twelve months following the date of the initial publication of the Key Information Document.

R.1.6.17 The review referred to in R.1.6.16 must verify whether the information contained in the Key Information Document remains accurate, fair, clear and non-misleading. In particular, it must verify the following:

(a) whether the information contained in the Key Information Document is compliant with the general form and content requirements under these Rules;

(b) whether the PRIIP's market risk or credit risk measures have changed, where such a change has the combined effect that necessitates the PRIIP's move to a different class of the summary risk indicator from that attributed in the Key Information Document subject to review;

(c) whether the mean return for the PRIIP's moderate performance scenario, expressed as an annualised percentage return, has changed by more than five percentage points.

R.1.6.18 The PRIIP Manufacturer must, without undue delay, revise the Key Information Document where the review indicates that changes are required to be made. The PRIIP Manufacturer must ensure that all sections of the Key Information Document affected by the changes are updated. The revised version must be made available promptly and published on the PRIIP Manufacturer's website or Mobile App.

R.1.6.19 For the purposes of R.1.6.16, a PRIIP Manufacturer must establish and maintain adequate processes throughout the life of the PRIIP where it remains available to Retail Clients to identify without undue delay any circumstances

which might result in a change that affects or is likely to affect the accuracy, fairness or clarity of the information contained in the Key Information Document.

R.1.6.20 The PRIIP Manufacturer shall not incur civil liability solely on the basis of the Key Information Document, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre- contractual and contractual documents or with the requirements laid down in Rules 1.6.12 to 1.6.14.

R.1.6.21 A Retail Client who demonstrates loss resulting from reliance on a Key Information Document under the circumstances referred to in R.1.6.20, when making an investment into the PRIIP for which that Key Information Document was produced, may claim damages from the PRIIP Manufacturer for that loss in accordance with national law. This Rule does not exclude further civil liability claims made in accordance with Maltese legislation.

R.1.6.22 Elements such as 'loss' or 'damages' as referred to in paragraph R.1.6.21 which are not defined shall be interpreted and applied in accordance with the applicable law.

R.1.6.23 The obligations and requirements under Rules 1.6.20 to 1.6.22 shall not be limited or waived by contractual clauses.

R.1.6.24 Where the Key Information Document concerns an Insurance contract, the Regulated Person's obligations under these Rules are only towards the policyholder of the Insurance contract and not towards the beneficiary of the Insurance contract.

Content and Presentation of the Key Information Document

General information section

R.1.6.25 The section in the Key Information Document that relates to the identity of the PRIIP Manufacturer and its competent authority shall contain all of the following information:

(a) the name of the PRIIP assigned by the PRIIP Manufacturer and, where present, the PRIIP's International Securities Identification Number or Unique Product Identifier;
(b) the legal name of the PRIIP Manufacturer;
(c) the PRIIP Manufacturer's specific website address or Mobile App providing Retail Clients with information on how to get in contact with the PRIIP Manufacturer, and a telephone number;
(d) the name of the competent authority responsible for the supervision of the PRIIP Manufacturer in relation to the Key Information Document;
(e) the date of production or, where the Key Information Document has been subsequently revised, the date of the latest revision of the Key Information Document.

The information referred to in this rule must also include the comprehension alert referred to in R.1.6.14 where the PRIIP meets one of the following conditions:

(a) it is an Insurance-Based Investment Product which does not meet the requirements laid down in R.4.4.90;
(b) it is a PRIIP which does not meet the requirements laid down in R.4.4.45(a).

'What is this product?' section

R.1.6.26 Information relating to the type of the PRIIP in the section entitled 'What is this product?' of the Key Information Document shall describe its legal form.

R.1.6.27 Information stating the objectives of the PRIIP and the means for achieving those objectives in the section entitled 'What is this product?' of the Key Information Document shall be summarised in a brief, clear and easily understandable manner. That information shall identify the main factors upon which return depends, the underlying investment assets or reference values, and how the return is determined, as well as the relationship between the PRIIP's return and that of the underlying investment assets or reference values. That information shall reflect the relationship between the recommended holding period and the risk and reward profile of the PRIIP.

Where the number of assets or reference values referred to above is such that specific references to all of them cannot be provided within a Key Information Document, only the market segments or instrument types in respect of the underlying investment assets or reference values shall be identified.

R.1.6.28 The description of the type of Retail Client to whom the PRIIP is intended to be marketed in the section entitled 'What is this product?' of the Key Information Document, must include information on the target Retail Clients identified by the PRIIP Manufacturer, in particular depending on the needs, characteristics and objectives of the type of client for whom the PRIIPs is compatible. This determination shall be based upon the ability of Retail Clients to bear investment loss and their investment horizon preferences, their theoretical knowledge of, and past experience with PRIIPs, the financial markets as well as the needs, characteristics and objectives of potential end clients.

R.1.6.29 The details of insurance benefits in the section entitled 'What is this product?' of the Key Information Document shall include in a general summary, namely, the key features of the Insurance contract, a definition of each benefit included, with an explanatory statement indicating that the value of those benefits is shown in the section entitled 'What are the risks and what I could get in return' and information which reflects the typical biometric characteristics of the target Retail Clients, showing the overall premium, the biometric risk premium that forms part of that overall premium and either the impact of the biometric risk premium on the investment return at the end of the recommended holding period or the impact of the cost part of the biometric risk premium taken into account in the recurring costs of the 'Costs over the time table' calculated in accordance with Appendix 8. Where the premium is paid in the form of a single lump sum, the details shall include the amount invested. Where the premium is paid periodically, the number of periodic payments, an estimation of the average biometric risk premium as a percentage of the annual premium, and an estimation of the average amount invested shall be included in the information.

The details referred above shall also include an explanation of the impact of the insurance premium payments, equivalent to the estimated value of insurance benefits, on the returns of the investment for the Retail Client.

R.1.6.30 The information relating to the term of the PRIIP in the section entitled 'What is this product?' of the Key Information Document shall include all of the following:

(a) the maturity date of the PRIIP or an indication that there is no maturity date;
(b) an indication of whether the PRIIP Manufacturer is entitled to terminate the PRIIP unilaterally;
(c) a description of the circumstances under which the PRIIP can be automatically terminated, and the termination dates, if known.

'What are the risks and what could I get in return?' section

R.1.6.31 In the section entitled 'What are the risks and what could I get in return?' of the Key Information Document, PRIIP Manufacturers shall apply the methodology for the presentation of risk as set out in Appendix 3, include the technical aspects for the presentation of the summary risk indicator as set out in Appendix 4 and comply with the technical guidance, the formats and the methodology for the presentation of performance scenarios, as set out in Appendices 5 and 6.

R.1.6.32 In the section entitled 'What are the risks and what could I get in return?' of the Key Information Document, PRIIP Manufacturers shall include the following:

(a) the level of risk of the PRIIP in the form of a risk class by using a summary risk indicator having a numerical scale from 1 to 7;
(b) an explicit reference to any illiquid PRIIP or PRIIP with materially relevant liquidity risk, as defined in Part 4 of Appendix 3, in the form of a warning to this effect in the presentation of the summary risk indicator;
(c) a narrative below the summary risk indicator explaining that if a PRIIP is denominated in a currency other than the official currency of the Member State where the PRIIP is being marketed, the return, when expressed in the official currency of the Member State where the PRIIP is being marketed, may change depending on currency fluctuations;
(d) a brief description of the PRIIP's risk and reward profile and a warning to the effect that the risk of the PRIIP may be significantly higher than the one represented in the summary risk indicator where the PRIIP is not held to maturity or for the recommended holding period, where appropriate;
(e) for PRIIPs with contractually agreed-upon early exit penalties or long disinvestment notice periods, a reference to the relevant underlying conditions in the section 'How long should I hold it and can I take money out early?';
(f) an indication of the possible maximum loss, and information that the investment may be lost if it is not protected or where the PRIIP Manufacturer is unable to pay out, or that necessary additional investment payments to the initial investment may be required and that the total loss may significantly exceed the total initial investment.

R.1.6.33 PRIIP Manufacturers shall include four appropriate performance scenarios, as set out in Appendix 6 in the section entitled 'What are the risks and what could I get in return?' of the Key Information Document. Those four performance scenarios shall represent a stress scenario, an unfavourable scenario, a moderate scenario and a favourable scenario.

R.1.6.34 For Insurance-Based Investment Products, an additional performance scenario shall be included in the section entitled 'What are the risks and what could I get in return?' of the Key Information Document reflecting the insurance benefit the beneficiary receives where a covered insured event occurs.

R.1.6.35 For PRIIPs that are futures, call options and put options traded on a Regulated Market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014, performance scenarios shall be included in the form of pay-off structure graphs as set out in Appendix 6 in the section entitled 'What are the risks and what could I get in return?' of the Key Information Document.

'What happens if [the name of the PRIIP manufacturer] is unable to pay out?' section

R.1.6.36 PRIIP Manufacturers shall include the following in the section entitled 'What happens if [the name of the PRIIP manufacturer] is unable to pay out?' of the Key Information Document:

(a) an indication whether the Retail Client may face a financial loss due to the default of the PRIIP Manufacturer or to the default of an entity other than the PRIIP Manufacturer, and the identity of that entity;
(b) a clarification whether the loss referred to in point (a) is covered by an investor compensation or guarantee scheme, and whether there are any limitations or conditions to that cover.

'What are the costs?' section

R.1.6.37 PRIIP Manufacturers shall apply the following in the section entitled 'What are the costs?' of the Key Information Document:
(a) the methodology for the calculation of costs set out in Appendix 7;
(b) the 'Costs over time' and 'Composition of costs' tables to information on costs, as set out in Appendix 8 in accordance with the relevant technical guidance therein.

R.1.6.38 In the 'Costs over time' table in the section entitled 'What are the costs?' of the Key Information Document, PRIIP Manufacturers shall specify the summary cost indicator of the total aggregated costs of the PRIIP as a single number in monetary and percentage terms for the different time periods set out in Appendix 7.

R.1.6.39 In the 'Composition of costs' table in the section entitled 'What are the costs?' of the Key Information Document, PRIIP Manufacturers shall specify the following:
(a) any one-off costs, as entry and exit costs, presented in percentage terms;
(b) any recurring costs, as portfolio transaction costs per year, and other recurring costs per year, presented in percentage terms;

(c) any incidental costs, such as performance fees or carried interest, presented in percentage terms.

R.1.6.40 PRIIP Manufacturers shall insert a description of each of the different costs included in the 'Composition of costs' table in the section entitled 'What are the costs?' of the Key Information Document, specifying where and how such costs may differ from the actual costs the Retail Client may incur or may depend on the retail investor choosing to exercise or not exercise certain options.

'How long should I hold it and can I take my money out early?' section

R.1.6.41 PRIIP Manufacturers shall include the following in the section entitled 'How long should I hold it and can I take my money out early?' of the Key Information Document:

(a) a brief description of the reasons for the selection of the recommended, or the minimum required, holding period;

(b) a description of the features of the disinvestment procedure and when disinvestment is possible, including an indication of the impact of cashing-in early on the risk or performance profile of the PRIIP, or on the applicability of capital guarantees;

(c) information about any fees and penalties which are incurred for disinvestments prior to maturity or any other specified date other than the recommended holding period, including a cross reference to the information on costs to be included in the Key Information Document pursuant to Rules 1.6.37 to 1.6.40 and a clarification of the impact of such fees and penalties for different holding periods.

'How can I complain?' section

R.1.6.42 PRIIP Manufacturers shall provide the following information in the section entitled 'How can I complain?' of the Key Information Document, in summary format:

(a) steps to be followed for lodging a complaint about the product or about the conduct of the PRIIP Manufacturer or the person advising on, or selling, the product;

(b) a link to the relevant website or Mobile App for such complaints;

(c) an up-to-date postal address and an email address to which such complaints may be submitted.

'Other relevant information' section

R.1.6.43 PRIIP Manufacturers shall indicate in the section entitled 'Other relevant information' of the Key Information Document any additional information documents that may be provided, and whether such additional information documents are made available based on a legal requirement or only at the request of the Retail Client.

R.1.6.44 The information included in the section entitled 'Other relevant information' of the Key Information Document may be provided in summary format, including a link to the website or Mobile App where further details other than the documents referred to in R.1.6.43 are made available.

Template

R.1.6.45 PRIIP Manufacturers shall present the Key Information Document by means of the template laid down in Appendix 2. The template must be completed in accordance with the requirements set out in these Rules.

Specific Provisions on the Key Information Document

R.1.6.46 Where a PRIIP offers a range of underlying investment options, and the information regarding those underlying investment options cannot be provided within a single, concise, stand-alone Key Information Document, PRIIP Manufacturers are required to produce one of the following:

(a) a Key Information Document for each underlying investment option within the PRIIP including information about the PRIIP in accordance with the requirements provided in R.1.6.25 to R.1.6.45;

(b) a generic Key Information Document describing the PRIIP in accordance with the requirements provided in R.1.6.25 to R.1.6.45, unless otherwise specified in R.1.6.47 to R.1.6.54.

'What is this product' section in the generic Key Information Document

R.1.6.47 In the section entitled 'What is this product', by way of derogation from the requirements provided in R.1.6.27 and R.1.6.28, PRIIP Manufacturers must specify the following:

(a) a description of the types of underlying investment options, including the market segments or instrument types, as well as the main factors upon which return depends;

(b) a statement indicating that the type of investors to whom the PRIIP is intended to be marketed varies on the basis of the underlying investment option;

(c) an indication where the specific information on each underlying investment option is to be found.

'What are the risks and what could I get in return?' section in the generic Key Information Document

R.1.6.48 In the section entitled 'What are the risks and what could I get in return?' by way of derogation from the requirements provided in R.1.6.32 (a) and R.1.6.33, PRIIP Manufacturers must specify the following:

(a) the range of risk classes of all underlying investment options offered within the PRIIP by using a summary risk indicator having a numerical scale from 1 to 7, as set out in Appendix 4,

(b) a statement indicating that the risk and return of the investment varies on the basis of the underlying investment option;

(c) a brief description on how the performance of the PRIIP as a whole depends on the underlying investment options;

(d) an indication where the specific information on each underlying investment option is to be found.

R.1.6.49 Where PRIIP Manufacturers use the key investor information document in accordance with R.1.6.54, for the purposes of specifying the risk classes referred to paragraph (a) of R.1.6.48, they shall use the synthetic risk and reward indicator pursuant to Article 8 of Commission Regulation (EU)

583/2010 in relation to UCITS or non-UCITS funds as underlying investment options.

What are the costs?' section in the generic Key Information Document

R.1.6.50 In the section entitled 'What are the costs?', by way of derogation from the requirement of R.1.6.37 (b), PRIIP Manufacturers shall specify the following:

(a) the range of costs for the PRIIP in the 'Costs over time' and 'Composition of costs' tables set out in Appendix 8,

(b) a statement indicating that the costs to the retail investor vary on the basis of the underlying investment option;

(c) an indication where the specific information on each underlying investment option is to be found.

R.1.6.51 Notwithstanding the requirements laid down in R.1.6.37 (a), and by way of derogation from points 12 to 20 of Appendix 7 to this Chapter, where PRIIP Manufacturers use the key investor information document in accordance with R.1.6.54, they may apply the methodology set out in point 21 of the said Appendix to existing UCITS or non-UCITS funds.

R.1.6.52 Where PRIIP Manufacturers use the key investor information document in accordance with R.1.6.54 with UCITS or non-UCITS funds as the only underlying investment options, they may specify the range of charges for the PRIIP in accordance with Article 10 of Commission Regulation (EU) 583/2010.

Specific Information on Each Underlying Investment Option

R.1.6.53 In relation to the specific information referred to in R.1.6.47 to R.1.6.52, PRIIP Manufacturers are required to include for each underlying investment option — all of the following:

(a) a comprehension alert, where relevant;

(b) the investment objectives, the means for achieving them, and the intended target market in accordance with R.1.6.27 and R.1.6.28;

(c) a summary risk indicator and narrative, and performance scenarios in accordance with R.1.6.31 to R.1.6.35;

(d) a presentation of the costs in accordance with R.1.6.37 to R.1.6.40.

R.1.6.54 PRIIP Manufacturers may use the key investor information document drawn up in accordance with Section 6.2 of Part BII of the Investment Services Rules for Retail Collective Investment Schemes to provide specific information for the purposes of R.1.6.47 to R.1.6.52 where at least one of the underlying investment option referred to in R.1.6.53 is a UCITS or non-UCITS fund offered to Retail Clients.

Delivery of the Key Information Document

R.1.6.55 The Regulated Person advising on, or selling a PRIIP shall provide the Key Information Document sufficiently early so as to allow Retail Clients enough time to consider the document before being bound by any contract or offer relating to that PRIIP, regardless of whether or not the Retail Client is provided with a cooling off period.

R.1.6.56 For the purposes of R.1.6.55, the Regulated Person advising on or selling a PRIIP shall assess the time needed by each Retail Client to consider the Key Information Document, taking into account the following:

(a) the knowledge and experience of the Retail Client with the PRIIP or with PRIIPs of a similar nature or with risks similar to those arising from the PRIIP;
(b) the complexity of the PRIIP;
(c) where the advice or sale is at the initiative of the Retail Client, the urgency explicitly expressed by the Retail Client of concluding the proposed contract or offer.

R.1.6.57 A Regulated Person advising on, or selling, a PRIIP may satisfy the requirements of R.1.6.55 by providing the Key Information Document to a person with written authority to make investment decisions on behalf of the Retail Client in respect of transactions concluded under that written authority.

R.1.6.58 Subject to the requirements of Rules 5(1) and 7 of the Distance Selling (Retail Financial Services) Regulations (Subsidiary Legislation 330.07), a Regulated Person selling a PRIIP may provide the Retail Client with the Key Information Document after conclusion of the transaction, without undue delay, where all of the following conditions are met:

(a) the Retail Client chooses, on his own initiative, to contact the Regulated Person selling a PRIIP and conclude the transaction using a means of distance communication;
(b) provision of the Key Information Document in accordance with Rule 1.6.55 above is not possible;
(c) the Regulated Person advising on or selling the PRIIP has informed the Retail Client that provision of the Key Information Document is not possible and has clearly stated that the Retail Client may delay the transaction in order to receive and read the Key Information Document before concluding the transaction;
(d) the Retail Client consents to receiving the Key Information Document without undue delay after conclusion of the transaction, rather than delaying the transaction in order to receive the document in advance.

R.1.6.59 Where successive transactions regarding the same PRIIP are carried out on behalf of a Retail Client in accordance with instructions given by that client to the Regulated Person selling the PRIIP prior to the first transaction, the obligation to provide a Key Information Document under R.1.6.55 shall apply only to the first transaction, and to the first transaction after the Key Information Document has been revised in accordance with R.1.6.18.

R.1.6.60 The Regulated Person advising on, or selling, a PRIIP shall provide the Key Information Document to Retail Clients free of charge.

R.1.6.61 The Regulated Person advising on, or selling, a PRIIP shall provide the Key Information Document to the Retail Client in one of the following media:

(a) on paper, which should be the default option where the PRIIP is offered on a face-to-face basis, unless the Retail Client requests otherwise;
(b) using a durable medium other than paper, where the conditions laid down in R.1.6.63 are met; or

(c) by means of a website or Mobile App where the conditions laid down in R.1.6.64 are met.

R.1.6.62 Where the Key Information Document is provided using a durable medium other than paper or by means of a website or Mobile App, a paper copy shall be provided to Retail Clients upon request and free of charge. Retail Clients shall be informed about their right to request a paper copy free of charge.

R.1.6.63 The Key Information Document may be provided using a durable medium other than paper if the following conditions are met:

(a) the use of the durable medium is appropriate in the context of the business conducted between the Regulated Person advising on, or selling, a PRIIP and the Retail Client; and

(b) the Retail Client has been given the choice between information on paper and in the durable medium, and has chosen that other medium in a way that can be evidenced.

R.1.6.64 The Key Information Document may be provided by the means of a website or Mobile App that does not meet the definition of a durable medium if all of the following conditions are met:

(a) the provision of the Key Information Document by means of a website or Mobile App is appropriate in the context of the business conducted between the Regulated Person advising on, or selling, a PRIIP and the Retail Client;

(b) the Retail Client has been given the choice between information provided on paper and by means of a website or Mobile App and has chosen the latter in a way that can be evidenced;

(c) the Retail Client has been notified electronically, or in written form, of the address of the website or Mobile App, and the place on the website or Mobile App where the Key Information Document can be accessed;

(d) the Key Information Document remains accessible on the website or Mobile App, capable of being downloaded and stored in a durable medium, for such period of time as the Retail Client may need to consult it.

Where the Key Information Document has been revised in accordance with R.1.6.18, previous versions shall also be provided on request of the Retail Client.

R.1.6.65 For the purposes of R.1.6.63 and R.1.6.64, the provision of information using a durable medium other than paper or by means of a website or Mobile App shall be regarded as appropriate in the context of the business conducted between the Regulated Person advising on or selling a PRIIP and the Retail Client if there is evidence that the retail client has regular access to the internet. The provision by the Retail Client of an email address for the purposes of that business shall be regarded as such evidence.

Complaints and Redress Procedures

R.1.6.66 The PRIIP Manufacturer and the Regulated Person advising on, or selling, the PRIIP must establish appropriate procedures and arrangements which ensure that:

(a) Retail Clients have an effective way of submitting a complaint against the PRIIP Manufacturer;
(b) Retail Clients who have submitted a complaint in relation to the Key Information Document receive a substantive reply in a timely and proper manner; and
(c) effective redress procedures are also available to Retail Clients in the event of cross-border disputes, in particular where the PRIIP Manufacturer is located in another Member State or in a third country.

Appendix 1

Table 1 *- All costs and associated charges charged for the Service(s) and/or Ancillary services provided to the Client that should form part of the amount to be disclosed*

Cost items to be disclosed		Examples:
One-off charges related to the provision of a Service	All costs and charges paid to the Regulated Person at the beginning or at the end of the provided Service(s).	Deposit fees, termination fees and switching costs[2].
On-going related to the provision of a Service charges	All on-going costs and charges paid to Regulated Persons for their Services provided to the Client.	Management fees, advisory fees, custodian fees.
All costs related to transactions initiated in the course of the provision of a Service	All costs and charges that are related to transactions performed by the Regulated Persons or other parties.	Broker commissions[3], entry- and exit charges paid to the fund manager, platform fees, marks up (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.
Any charges that are related to Ancillary services	Any costs and charges that are related to Ancillary services that are not included in the costs mentioned above.	Research costs. Custody costs.
Incidental costs		Performance fees

[2] Switching costs should be understood as costs (if any) that are incurred by Clients by switching from one Regulated Person to another Regulated Person.

[3] Broker commissions should be understood as costs that are charged by Regulated Person for the execution of orders.

Table 2 - *All costs and associated charges related to the Financial Instrument that should form part of the amount to be disclosed*

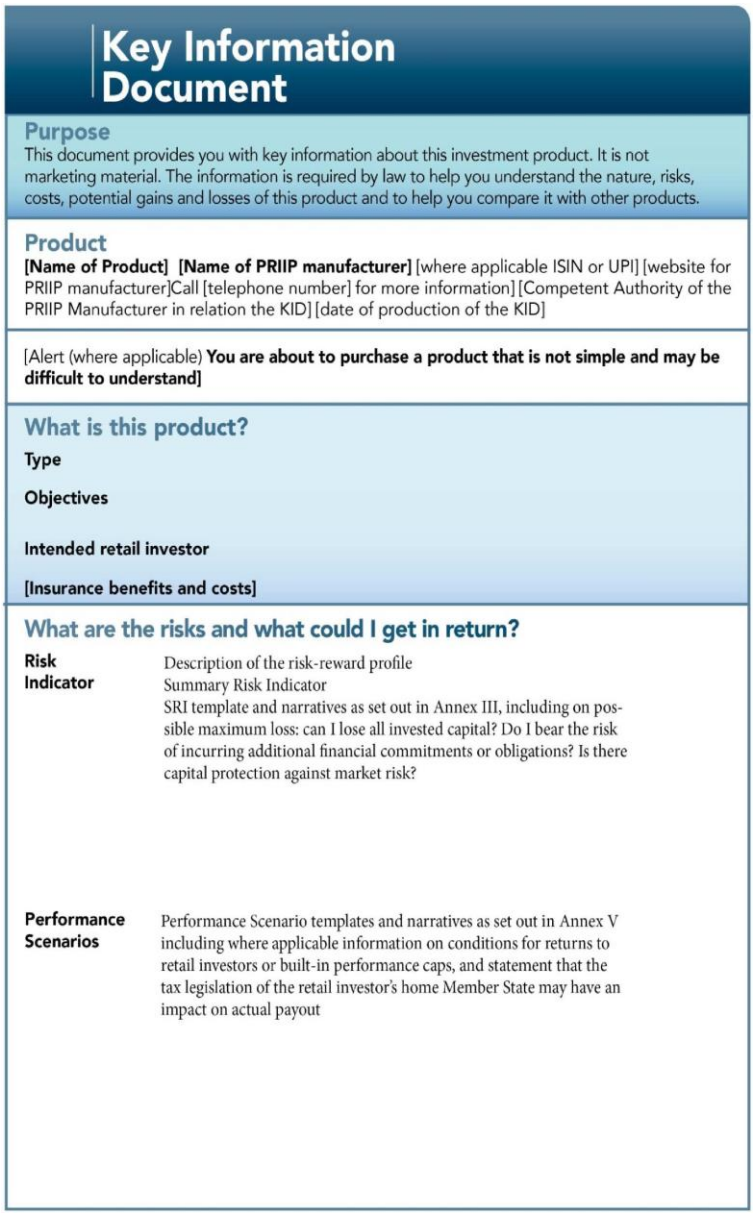
Cost items to be disclosed		Examples:
One-off charges	All costs and charges (included in the price or in addition to the price of the Financial Instrument) paid to Product suppliers at the beginning or at the end of the investment in the Financial Instrument.	Front-loaded management fee, structuring fee[4], distribution fee.
On-going charges	All on-going costs and charges related to the management of the financial Product that are deducted from the value of the Financial Instrument during the investment in the Financial Instrument.	Management fees, service costs, swap fees, securities lending costs and taxes, financing costs.
All costs related to the transactions	All costs and charges that incurred as a result of the acquisition and disposal of investments within the fund.	Broker commissions, entry- and exit charges paid by the fund, marks up embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
Incidental costs		Performance fees

[4]Structuring fees should be understood as fees charged by Manufacturers of Structured Products for structuring the Products. They may cover a broader range of Services provided by the Manufacturer.

Appendix 2

Template for the Key Information Document

PRIIP Manufacturers must comply with the section order and titles set out in the template, which however does not fix parameters regarding the length of individual sections and the placing of page breaks, and is subject to an overall maximum of three sides of A4-sized paper when printed.



Key Information Document

Purpose

This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.

Product

[Name of Product] **[Name of PRIIP manufacturer]** [where applicable ISIN or UPI] [website for PRIIP manufacturer]Call [telephone number] for more information] [Competent Authority of the PRIIP Manufacturer in relation the KID] [date of production of the KID]

[Alert (where applicable) **You are about to purchase a product that is not simple and may be difficult to understand]**

What is this product?

Type

Objectives

Intended retail investor

[Insurance benefits and costs]

What are the risks and what could I get in return?

Risk Indicator	Description of the risk-reward profile Summary Risk Indicator SRI template and narratives as set out in Annex III, including on possible maximum loss: can I lose all invested capital? Do I bear the risk of incurring additional financial commitments or obligations? Is there capital protection against market risk?
Performance Scenarios	Performance Scenario templates and narratives as set out in Annex V including where applicable information on conditions for returns to retail investors or built-in performance caps, and statement that the tax legislation of the retail investor's home Member State may have an impact on actual payout

What happens if [PRIIP Manufacturer] is unable to pay out?

Information on whether there is a guarantee scheme, the name of the guarantor or investor compensation scheme operator, including the risks covered and those not covered.

What are the costs?

Costs over Time Template and narratives according to Annex VII

Composition of Costs Template and narratives according to Annex VII

Narratives on information to be included on other distribution costs

How long should I hold it and can I take money out early?

Recommended [required minimum] holding period: [x]

Information on whether one can disinvest before maturity, the conditions on this, and applicable fees and penalties if any. Information on the consequences of cashing-in before the end of the term or before the end of the recommended holding period

How can I complain?

Other relevant information

Appendix 3

Methodology for the Presentation of Risk

PART 1

Market Risk Assessment

Determination of the Market Risk Measure (MRM)

1. Market risk is measured by the annualised volatility corresponding to the value-at-risk (VaR) at a confidence level of 97,5 % over the recommended holding period, unless stated otherwise. The VaR is the percentage of the amount invested that is returned to the Retail Client.

2. The PRIIP shall be assigned a MRM class according to the following table:

Table 1: MRM Class

MRM class	VaR-equivalent volatility (VEV)
1	< 0,5 %
2	0,5 % - 5,0 %
3	5,0 % - 12 %
4	12 % - 20 %
5	20 % - 30 %
6	30 % - 80 %
7	> 80 %

Specification of PRIIP Categories for the Purposes of the Market Risk Assessment

3. For the purposes of determining market risk, PRIIPs are divided into four categories.

4. Category 1 covers the following:
   (a) PRIIPs where Clients could lose more than the amount they invested;
   (b) PRIIPs that fall within one of the categories referred to in items 4 to 10 of Section C of Annex I to Directive 2014/65/EU on markets in financial instruments;
   (c) PRIIPs or underlying investments of PRIIPs which are priced on a less regular basis than monthly, or which do not have an appropriate benchmark or proxy, or whose appropriate benchmark or proxy is priced on a less regular basis than monthly.

5. Category 2 covers PRIIPs which, either directly or on a synthetic basis, offer non-leveraged exposure to the prices of underlying investments, or a leveraged exposure

on underlying investments that pays a constant multiple of the prices of those underlying investments, where at least 2 years of historical daily prices, or 4 years of historical weekly prices, or 5 years of monthly prices are available for the PRIIP, or where existing appropriate benchmarks or proxies are available, provided that such benchmarks or proxies fulfil the same criteria for the length and frequency of the price history.

6. Category 3 covers PRIIPs whose values reflect the prices of underlying investments, but not as a constant multiple of the prices of those underlying investments, where at least 2 years of daily prices of the underlying assets, 4 years of weekly prices or 5 years of monthly prices, or where existing appropriate benchmarks or proxies are available, provided that such benchmarks or proxies fulfil the same criteria for the length and frequency of the price history.

7. Category 4 covers PRIIPs whose values depend in part on factors not observed in the market, including insurance- based PRIIPs which distribute a portion of the PRIIP Manufacturer's profits to Retail Clients.

Use of Appropriate Benchmarks or Proxies to Specify PRIIPs Categories

Where appropriate benchmarks or proxies are used by a PRIIP Manufacturer, those benchmarks or proxies shall be representative of the assets or exposures that determine the performance of the PRIIP. The PRIIP Manufacturer shall document the use of such benchmarks or proxies.

MRM Class Determination for Category 1 PRIIPs

8. The MRM class for Category 1 PRIIPs shall be 7, with the exception of PRIIPs referred to in point 4(c) of this Appendix, where the MRM class shall be 6.

MRM Class Determination for Category 2 PRIIPs

9. The VaR shall be calculated from the moments of the observed distribution of returns of the PRIIP's or its benchmark or proxy's price during the past 5 years. The minimum frequency of observations is monthly. Where prices are available on a daily basis, the frequency shall be daily. Where prices are available on a weekly basis, the frequency shall be weekly. Where prices are available on a bi-monthly basis, the frequency shall be bi-monthly.
10. Where data on daily prices covering a period of 5 years are not available, a shorter period may be used. For daily observations of a PRIIP's or its benchmark or proxy's price, there shall be at least 2 years of observed returns. For weekly observations of a PRIIP's price, there shall be at least 4 years of observed data. For monthly observations of a PRIIP's price, there shall be observed data covering a period of at least 5 years.
11. The return over each period is defined as the natural logarithm of the ratio of the price at the market close at the end of the current period to the market close at the end of the preceding period.

12. The VaR measure in return space is given by the Cornish-Fisher expansion, as follows:

$$VaR_{RETURN\ SPACE} = \sigma\sqrt{N} * (-1{,}96 + 0{,}474 * \mu_1/\sqrt{N} - 0{,}0687 * \mu_2/N + 0{,}146 * \mu_1^2/N) - 0{,}5\,\sigma^2 N$$

where N is the number of trading periods in the recommended holding period; and σ, μ_1, μ_2 are respectively the volatility, skew and excess kurtosis measured from the return distribution. The volatility, skew and excess kurtosis are calculated from the measured moments of the distribution of returns in accordance with the following:

— the zero moment, M_0, is the count of the number of observations in the period as under point 10 of this Appendix

— the first moment, M_1, is the mean of all the observed returns in the sample

— the second M_2, third M_3 and fourth M_4 moments are defined in the standard manner:

$$M_2 = \sum_i (r_i - M_1)^2 / M_0,$$

$$M_3 = \sum_i (r_i - M_1)^3 / M_0,$$

$$M_4 = \sum_i (r_i - M_1)^4 / M_0,$$

where *ri* is the return measured on the ith period in the history of returns.

— the volatility, σ, is given by $\sqrt{M_2}$.

— the skew, μ_1, is equal to M_3/σ^3.

— the excess kurtosis, μ_2, is equal to $M_4/\sigma^4 - 3$.

13. The VEV is given by:

$$VEV = \left\{\sqrt{(3{,}842 - 2 * VaR_{RETURN\ SPACE}) - 1{,}96}\right\}/\sqrt{T}$$

where *T* is the length of the recommended holding period in years.

14. For PRIIPs that are managed according to investment policies or strategies that pursue certain reward objectives by participating through flexible investment in different financial asset classes (e.g. in both equity and fixed-income markets), the VEV that shall be used shall be determined as follows:

(a) where there has been no revision of the investment policy over the period referred to in point 10 of this Appendix, the VEV that shall be used is the highest of the following VEVs

(i) the VEV computed in accordance with points 9 to 13 of this Appendix;

(ii) the VEV of the returns of the pro-forma asset mix that is consistent with the reference asset allocation of the fund at the time of the computation;

(iii) the VEV which is consistent with the risk limit of the fund, if any and appropriate.

(b) where investment policy has been revised during the period referred to in point 10 of this Appendix, the VEV that shall be used is the highest of the VEVs referred to in point (a)(ii) and (iii).

15. The PRIIP shall be assigned to a MRM class as laid down under point 2 of this Appendix depending on the VEV. In the case of a PRIIP having only monthly price data, the MRM class assigned under point 2 of this Appendix shall be increased by one additional class.

MRM Class Determination for Category 3 PRIIPs

16. The VaR in price space shall be calculated from a distribution of PRIIP values at the end of the recommended holding period. The distribution shall be obtained by simulating the price or prices, which determine the value of the PRIIP, at the end of the recommended holding period. The VaR shall be the value of the PRIIP at a confidence level of 97,5 % at the end of the recommended holding period discounted to the present date using the expected risk-free discount factor from the present date to the end of the recommended holding period.

17. The VEV is given by:

$$VEV = \left\{\sqrt{(3{,}842 - 2 * ln(VaR_{PRICE\ SPACE})) - 1{,}96}\right\}/\sqrt{\mathrm{T}}$$

where *T* is the length of the recommended holding period in years. Only in cases where the product is called or cancelled before the end of the recommended holding period according to the simulation, the period in years until the call or cancellation is used in the calculation.

18. The PRIIP shall be assigned to a MRM class as laid down in point 2 of this Appendix, depending on the VEV. In the case of a PRIIP having only monthly price data, the MRM class assigned under point 2 of this Appendix shall be increased by one additional class.

19. The minimum number of simulations is 10 000.

20. The simulation is based on bootstrapping the expected distribution of prices or price levels for the PRIIP's underlying contracts from the observed distribution of returns for these contracts with replacement.

21. For the purposes of the simulation referred to in points 16 to 20 of this Appendix, there are two types of market observables that may contribute to a PRIIP's value: spot prices (or price levels) and curves.

22. For each simulation of a spot price (or level), the PRIIP Manufacturer shall:
    (a) calculate the return for each observed period in the past 5 years, or the years referred to in point 6 of this Appendix, by taking the logarithm of the price at the end of each period divided by the price at the end of the previous period;
    (b) randomly select one observed period which corresponds to the return for all underlying contracts for each simulated period in the recommended holding period (the same observed period may be used more than once in the same simulation);
    (c) calculate the return for each contract by summing the returns from the selected periods and correcting this return to ensure that the expected return measured from the simulated distribution of returns is the risk-neutral expectation of the

return over the recommended holding period. The final value of the return is given by:

$$\text{Return} = E\left[\text{Return}_{\text{risk-neutral}}\right] - E\left[\text{Return}_{\text{measured}}\right] - 0{,}5\,\sigma^2 N - \rho\,\sigma\,\sigma_{ccy} N$$

Where:

— the second term corrects for the impact of the mean of the observed returns;

— the third term corrects for the impact of the variance of the observed returns;

— the last term corrects for the quanto impact if the strike currency is different from the asset currency. The terms contributing to the correction are as follows:

— ρ is the correlation between the asset price and the relevant F_x rate — measured over the recommended holding period;

— σ is the measured volatility of the asset;

— σ_{ccy} is the measured volatility of the F_x rate.

(d) calculate the price of each underlying contract by taking the exponential of the return.

23. For curves, a principal component analysis (PCA) shall be performed to ensure that the simulation of the movements of each point on the curve over a long period results in a consistent curve.

(a) The PCA is performed by:

(i) collecting the historical record of tenor points that define the curve for each trading period over the past 5 years, or the years referred to in point 6 of this Appendix;

(ii) ensuring that each tenor point is positive — where there is a negative tenor point, all tenor points shall be shifted by the minimum whole number or percentage to ensure positive values for all tenor points;

(iii) calculating the return over each period for each tenor point by taking the natural logarithm of the ratio between the price/level at the end of each observed period and the price/level at the end of the preceding period;

(iv) correcting the returns observed at each tenor point so that the resulting set of returns at each tenor point has a zero mean;

(v) calculating the covariance matrix between the different tenors by summing over returns;

(vi) calculating the eigenvectors and eigenvalues of the covariance matrix;

(vii) selecting the eigenvectors that correspond to the three largest eigenvalues;

(viii) forming a matrix with 3 columns where the first column is the eigenvector with the largest eigenvalue; the middle column is the eigenvector with the second-largest eigenvalue and the last column is the eigenvector with the third-largest eigenvalue;

(ix) projecting the returns onto the 3 principal eigenvectors calculated in the previous step by multiplying the N×M matrix of returns obtained in point (iv) by the M×3 matrix of eigenvectors obtained in point (viii);

(x) calculating the matrix of returns to be used in the simulation by multiplying the results in point (ix) with the transpose of the matrix of eigenvectors obtained in point (viii). This is the set of values to be used in the simulation.

(b) The curve simulation is performed as follows:

(i) the time step in the simulation is one period. For each observation period in the recommended holding period select a row at random from the calculated matrix of returns. The return for each tenor point, *T*, is the sum over the selected rows of the column corresponding to tenor point, *T*.

(ii) the simulated rate for each tenor point *T*, is the current rate at tenor point *T*:

— multiplied by the exponential of the simulated return,

— adjusted for any shifts used to ensure positive values for all tenor point, and

— adjusted so that the expected mean matches current expectations for the rate at tenor point *T*, at the end of the recommended holding period.

24. For PRIIPS in Category 3 that are characterized by an unconditional protection of capital, the PRIIP Manufacturer may assume that the VaR at a confidence level of 97,5 % is equal to the level of the unconditional capital protection at the end of the recommended holding period, discounted to the present date using the expected risk-free discount factor.

MRM Class Determination for Category 4 PRIIPs

25. Where the PRIIP performance depends on a factor or factors unobserved in the market or to some extent under the control of the PRIIP Manufacturer, or this is the case for a component of the PRIIP, the PRIIP Manufacturer shall follow the method in this section to account for this factor or factors.

26. The different components of the PRIIP that contribute to the performance of the PRIIP shall be identified, in order for those components that are not wholly or partly dependent on a factor or factors that are unobserved in the market to be treated according to the relevant methods set out in this Appendix for Category 1, 2 or 3 PRIIPs. For each of these components a VEV shall be calculated.

27. The component of the PRIIP that depends wholly or partly on a factor or factors that are unobserved in the market shall follow robust and well recognised industry and regulatory standards for determining relevant expectations as to the future contribution of these factors and the uncertainty that may exist in respect of that contribution. Where the component is not wholly dependent on a factor that is unobserved in the market, a bootstrap methodology shall be used to account for the market factors, as set out for Category 3 PRIIPs. The VEV for the component of the PRIIP shall be the result of the combination of the bootstrap methodology and robust and well recognised industry and regulatory standards for determining relevant expectations as to the future contribution of these factors that are unobserved in the market.

28. The VEV of each component of the PRIIP shall be weighted proportionally in order to arrive at an overall VEV of the PRIIP. When weighing the components, product features shall be taken into account. Where relevant, product algorithms mitigating the market risk as well as specificities of the with-profit component shall be considered.

28. For Category 4 PRIIPs that are characterized by an unconditional protection of capital, the PRIIP Manufacturer may assume that VaR at a confidence level of 97,5 % is equal to the level of unconditional capital protection at the end of the recommended holding period, discounted to the present date using the expected risk-free discount factor.

PART 2

Methodology for Assessing Credit Risk

I. General Requirements

30. A PRIIP or its underlying investments or exposures shall be taken to entail credit risk where the return of the PRIIP or its underlying investments or exposures depends on the creditworthiness of a manufacturer or party bound to make, directly or indirectly, relevant payments to the investor. A PRIIP with a MRM of 7 is not required to assess credit risk.

31. Where an entity directly engages to make a payment to a Retail Client for a PRIIP, credit risk shall be assessed for the entity that is the direct obligor.

32. If all payment obligations of an obligor or one or more indirect obligors are unconditionally and irrevocably guaranteed by another entity (the guarantor), the credit risk assessment of the guarantor can be used if it is more favourable than the credit risk assessment of the respective obligor or obligors.

33. For PRIIPs which are exposed to underlying investments or techniques, including PRIIPs which themselves entail credit risk or in turn make underlying investments that entail credit risk, the credit risk shall be assessed in relation to the credit risk entailed both by the PRIIP itself and the underlying investments or exposures (including exposures to other PRIIPs), on a look-through basis and adopting a cascade assessment where necessary.

34. Where the credit risk is entailed solely at the level of underlying investments or exposures (including to other PRIIPs), the credit risk shall not be assessed at the level of the PRIIP itself but instead at the level of these underlying investments or exposures on a look-through basis. Where the PRIIP is an Undertaking for Collective Investment in Transferable Securities (UCITS), the UCITS itself shall be taken to entail no credit risk, whereas the underlying investments or exposures of the UCITS shall be assessed where necessary.

35. Where a PRIIP is exposed to multiple underlying investments entailing a credit risk exposure, the credit risk entailed by each underlying investment representing an exposure of 10 % or more of the total assets or value of the PRIIP shall be separately assessed.

36. Underlying investments or exposures to exchange-traded derivatives or cleared OTC derivatives shall be assumed for the purposes of the credit risk assessment to carry no credit risk. No credit risk shall be taken to be entailed where an exposure is fully and appropriately collateralised, or where uncollateralised exposures that entail credit risk amount to less than 10 % of the total assets or value of the PRIIP.

II. Credit Risk Assessment

Credit Assessment of Obligors

37. Where available, a PRIIP Manufacturer shall define ex-ante one or more external credit assessment institutions (ECAI) certified or registered with the European Securities and Markets Authority (ESMA) in accordance with Regulation (EC) 1060/2009 on credit rating agencies whose credit assessments will consistently be referred to for the purpose of the credit risk assessment. Where multiple credit assessments are available according to that policy, the median rating shall be used, defaulting to the lower of the two middle values in case of an even number of assessments.

38. The level of credit risk of the PRIIP and each relevant obligor shall be assessed on the basis of, as applicable:

    (a) The credit assessment assigned to the PRIIP by an ECAI;
    (b) the credit assessment assigned to the relevant obligor by an ECAI;
    (c) in the absence of a credit assessment under either (a) or (b) or both, a default credit assessment as set out in point 43 of this Appendix.

Allocation of Credit Assessments to Credit Quality Steps

39. The allocation of credit assessments of ECAIs to an objective scale of credit quality steps shall be based on Commission Implementing Regulation (EU) 2016/1800.
40. In the case of credit risks assessed on a look-through basis, the credit quality step assigned shall correspond to the weighted average credit quality steps of each relevant obligor for which a credit assessment needs to be undertaken, in proportion to the total assets they respectively represent.
41. In the case of credit risks assessed on a cascade basis, all credit risk exposures shall be separately assessed, per layer, and the credit quality step assigned shall be the highest credit quality step, being understood that between a credit quality step set at 1 and a credit quality step set at 3, the higher of the two is 3.
42. The credit quality step pursuant to point 38 of this Appendix shall be adjusted to the maturity or recommended holding period of the PRIIP, according to the following table, except where a credit assessment has been assigned that reflects that maturity or recommended holding period):

Table 2: Credit Quality Step

Credit Quality Step pursuant to point 38 of this Appendix	Adjusted credit quality step, in the case where the maturity of the PRIIP, or its recommended holding period where a PRIIP does not have a maturity, is up to one year	Adjusted credit quality step, in the case where the maturity of the PRIIP, or its recommended holding period where a PRIIP does not have a maturity, ranges from one year up to 12 years	Adjusted credit quality step, in the case where the maturity of the PRIIP, or its recommended holding period where a PRIIP does not have a maturity, exceeds 12 years
0	0	0	0
1	1	1	1
2	1	2	2
3	2	3	3
4	3	4	5
5	4	5	6
6	6	6	6

43. If the obligor has no external credit assessments, the default credit assessment as referred to in point 38 of this Appendix shall be:

(a) credit quality step 3, if the obligor is regulated as a credit institution or an insurance undertaking under the applicable Union law or the legal framework deemed equivalent under Union law and if the rating of the Member State where the obligor is domiciled would be credit quality step 3;

(b) credit quality step 5, for any other obligor.

III. Credit Risk Measure

44. A PRIIP shall be allocated to a credit risk measure (CRM) on a scale ranging from 1 to 6 on the basis of the mapping table laid down in point 45 of this Appendix and by applying the credit risk mitigating factors under points 46, 47, 48 and 49 of this Appendix, or the credit risk escalating factors under points 50 and 51 of this Appendix, as appropriate.

45. Table on the mapping of credit quality steps into a CRM:

Table 3: Mapping of Credit Quality Steps

Adjusted credit quality step	Credit risk measure
0	1
1	1

Adjusted credit quality step	Credit risk measure
2	2
3	3
4	4
5	5
6	6

46. The CRM may be assigned as 1 where the assets of a PRIIP or appropriate collateral, or assets backing the payment obligation of the PRIIP, are:

(a) at all times until maturity equivalent to the payment obligations of the PRIIP to its Clients;

(b) held with a third party on a segregated account under equivalent terms and conditions as those laid down in Directive 2011/61/EU on Alternative Investment Fund Managers or Directive 2014/91/EU amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions; and

(c) not, under any circumstances, accessible to any other creditors of the manufacturer under applicable law.

47. The CRM may be assigned as 2 where the assets of a PRIIP or appropriate collateral, or assets backing the payment obligation of the PRIIP, are:

(a) at all times until maturity equivalent to the payment obligations of the PRIIP to its Clients;

(b) identified and held on accounts or registers, based on applicable law, including Articles 275 and 276 of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); and

(c) such that the claims of retail investors have priority over the claims of other creditors of the PRIIP Manufacturer or party bound to make, directly or indirectly, relevant payments to the investor.

48. Where credit risk is to be assessed on a look-through or cascade basis, the mitigation factors under point 46 and 47 of this Appendix may also be applied when assessing credit risk in relation to each underlying obligor.

49. Where a PRIIP is not able to satisfy the criteria under point 47 of this Appendix, the CRM pursuant to point 45 of this Appendix may be reduced by one class where the claims of retail investors have priority over the claims of ordinary creditors, as set out in Article 108 of Directive 2014/59/EU, of the PRIIP Manufacturer or party bound to

make, directly or indirectly, relevant payments to the investor, in so far as the obligor is subject to relevant prudential requirements in respect of ensuring an appropriate matching of assets and liabilities.

50. The CRM pursuant to point 45 of this Appendix shall be increased by two classes where the claim of a Retail Client is subordinate to the claims of senior creditors.

51. The CRM pursuant to point 45 of this Appendix shall be increased by three classes where a PRIIP is part of the own funds of the PRIIP obligor, as defined in Article 4(1)(118) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms amending Regulation (EU) No 648/2012 or in Article 93 of Directive 2009/138/EU

PART 3

Aggregation of Market and Credit Risk into the Summary Risk Indicator

52. The overall summary risk indicator (SRI) is assigned according to the combination of the CRM and the MRM classes, in accordance with the following table:

CRM class \ MRM class	MR1	MR2	MR3	MR4	MR5	MR6	MR7
CR1	1	2	3	4	5	6	7
CR2	1	2	3	4	5	6	7
CR3	3	3	3	4	5	6	7
CR4	5	5	5	5	5	6	7
CR5	5	5	5	5	5	6	7
CR6	6	6	6	6	6	6	7

Monitoring Data with Relevance for the Summary Risk Indicator

53. The PRIIP Manufacturer shall monitor market data relevant to the calculation of the MRM class and, if the MRM class changes to a different MRM class, the PRIIP manufacturer shall attribute the corresponding MRM class to the MRM class which the PRIIP has matched for the majority of the reference points over the preceding four months.

54. The PRIIP Manufacturer shall also monitor credit risk criteria relevant to the calculation of the CRM and, if according to these criteria the CRM would change to a different CRM class, the PRIIP shall re-attribute the CRM to the relevant CRM class.

55. A review of the MRM class shall always be carried out following a decision by the PRIIP Manufacturer in respect of the PRIIP's investment policy and/or strategy. In those circumstances, any changes to the MRM shall be understood as a new determination of the PRIIP's MRM class, and consequently, be carried out according to the general rules concerning the determination of an MRM class for the PRIIP category.

PART 4

Liquidity Risk

56. A PRIIP shall be considered as having a materially relevant liquidity risk where either of the following criteria are fulfilled:

(a) the PRIIP is admitted to trading on a secondary market or alternative liquidity facility and there is no committed liquidity offered by market makers or the PRIIP Manufacturer, so that the liquidity depends only on the availability of buyers and sellers on the secondary market or alternative liquidity facility, taking into account that regular trading of a product at one point in time does not guarantee the regular trading of the same product at any other point in time;

(b) the average liquidity profile of the underlying investments is significantly lower than the regular reimbursement frequency for the PRIIP, when and to the extent liquidity offered by the PRIIP is conditional to the liquidation of its underlying assets;

(c) the PRIIP Manufacturer estimates that the Retail Client may face significant difficulties in terms of time or costs for disinvesting during the life of the product, subject to specific market conditions.

57. A PRIIP shall be considered illiquid, whether contractually or not, if either of the following criteria are fulfilled:

(a) the PRIIP is not admitted to trading on a secondary market, and no alternative liquidity facility is promoted by the PRIIP Manufacturer or a third party, or the alternative liquidity facility is subject to significant limiting conditions, including significant early exit penalties or discretionary redemption prices, or where there is an absence of liquidity arrangements;

(b) the PRIIP offers potential early exit or redemption possibilities prior to the applicable maturity, but these are subject to significant limiting conditions, including significant exist penalties or discretionary redemption prices, or to the prior consent and discretion of the PRIIP Manufacturer;

(c) the PRIIP does not offer potential early exit or redemption possibilities prior to the applicable maturity.

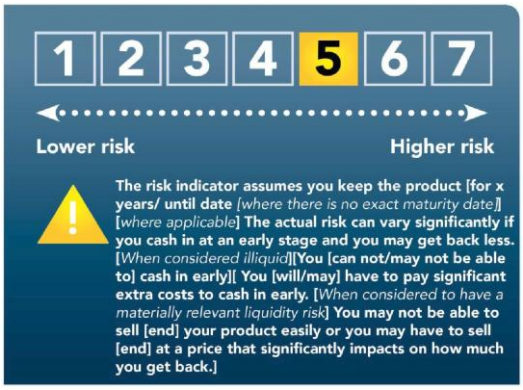
58. A PRIIP shall be considered liquid in all other cases.

Appendix 4

Presentation of SRI

Presentation format

1. PRIIP Manufacturers shall use the format below for the presentation of the SRI in the Key Information Document. The relevant number shall be highlighted as shown depending on the SRI for the PRIIP.



Completion Guidance with regard to the SRI

2. The narrative explanation after the SRI shall briefly explain the purpose of the SRI and the underlying risks.

3. Immediately below the SRI, the time frame of the recommended holding period shall be indicated. In addition, a warning shall be included directly below the SRI in the following cases:

   (a) where the risk of the PRIIP is considered to be significantly higher if the holding period is different;

   (b) where a PRIIP is considered to have a materially relevant liquidity risk or to be illiquid, whether this is contractual in nature or not.

4. As applicable for each PRIIP, the narrative explanation shall include:

   (a) a warning in bold font where:

      (i) a PRIIP is considered to have currency risk as referred to R.1.6.32(c) (Element C);

      (ii) a PRIIP holds a possible obligation to add to the initial investment, (Element D);

   (b) where applicable, an explanation of risks materially relevant to the PRIIP which could not be adequately captured by the SRI (Element E);

   (c) a clarification:

(i) that the PRIIP holds a (partial) capital protection against market risk where relevant, including a specification of the percentage of the invested capital that is protected (Element F);

(ii) of the specific conditions of the limitations where the (partial) capital protection against market risk is limited (Element G);

(iii) that the PRIIP holds no capital protection against market risk, where relevant (Element H);

(iv) that the PRIIP holds no capital guarantee against credit risk, where relevant (Element I);

(v) of the specific conditions of the limitations where the protection against credit risk is limited (Element J).

5. For PRIIPs offering a range of options for investment, PRIIP Manufacturers shall use the format referred to point 1 of this Appendix for the presentation of the SRI, indicating all of the risk classes offered from the lowest risk class to the highest risk class.

6. For derivatives that are futures, call options and put options traded on a Regulated Market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014, Elements A, B, and, where relevant, H, shall be included.

Narrative Explanations

7. For the purposes of the SRI presentation, including point 4 of this Appendix, the following narrative explanations shall be used, as appropriate:
[Element A] The summary risk indicator is a guide to the level of risk of this product compared to other products. It shows how likely it is that the product will lose money because of movements in the markets or because we are not able to pay you.
[Element B] We have classified this product as [1/2/3/4/5/6/7] out of 7, which is [1='the lowest'/2='a low'/ 3='a medium-low'/4='a medium'/5='a medium-high'/6='the second-highest'/7='the highest'] risk class.
[In addition, insert a brief explanation of the classification of the product with a maximum of 300 characters in plain language]
[An example explanation: This rates the potential losses from future performance at a [1='very low'/2='low'/ 3='medium-low'/4='medium'/5='medium-high'/6='high'/7='very high'] level, and poor market conditions [1, 2='are very unlikely to'/3='are unlikely to'/4='could'/5='will likely'/6='are very likely to'] impact [our] [the] capacity [of X] to pay you].
[[Where applicable:] Element C, in bold] Be aware of currency risk. You will receive payments in a different currency, so the final return you will get depend on the exchange rate between the two currencies. This risk is not considered in the indicator shown above.
[[Where applicable:] Element D] In some circumstances you may be required to make further payments to pay for losses. (in bold) The total loss you may incur may significantly exceed the amount invested.

[Where applicable:] [Element E] [Other risks materially relevant to the PRIIP not included in the summary risk indicator to be explained with a maximum of 200 characters]
[Where applicable:] [Element F] [You are entitled to receive back at least [insert %] of your capital. Any amount over this, and any additional return, depends on future market performance and is uncertain.]
[Where applicable:] [Element G] [However, this protection against future market performance will not apply if you
[..]
— [Where early exit conditions apply] cash-in before [… years/months/days]]
— [Where ongoing payments must be made] fail to make your payments in time.
— [Where other limitations apply: explain these in a maximum of […] characters in plain language.]
[Where applicable:] [Element H] [This product does not include any protection from future market performance so you could lose some or all of your investment.]
[Where applicable:] [Element I] [If (we) (are) not able to pay you what is owed, you could lose your entire investment.]
[Where applicable:] [Element J] [However, you may benefit from a consumer protection scheme (see the section 'what happens if we are unable to pay you'). The indicator shown above does not consider this protection.]

Appendix 5

Performance Scenarios

1. The four performance scenarios under this Regulation which shall show a range of possible returns, shall be the following:

   a) favourable scenario;
   b) moderate scenario;
   c) an unfavourable scenario;
   d) a stress scenario.

2. The stress scenario shall set out significant unfavourable impacts of the product not covered in the unfavourable scenario referred to in point 1(c) of this Appendix. The stress scenario shall show intermediate periods where those periods would be shown for the performance scenarios under point 1(a) to (c) of this Appendix.

3. An additional scenario for Insurance-based investment products shall be based on the moderate scenario referred to in point 1(b), where the performance is relevant in respect of the return of the investment.

Calculation of Scenario Values for the Recommended Holding Period

4. The scenario values under different performance scenarios shall be calculated in a similar manner as the market risk measure. The scenarios values shall be calculated for the recommended holding period.

5. The unfavourable scenario shall be the value of the PRIIP at the 10th percentile.

6. The moderate scenario shall be the value of the PRIIP at the 50th percentile.

7. The favourable scenario shall be the value of the PRIIP value at the 90th percentile.

8. The stress scenario shall be the value of the PRIIP that results from the methodology outlined in points 10 and 11 of this Appendix for Category 2 PRIIPs and in points 12 and 13 of this Appendix for Category 3 PRIIPs.

9. For Category 2 PRIIPs, the expected values at the end of the recommended holding period shall be:

   (a) The unfavourable scenario:

   $$\mathrm{Exp}\left[M1{*}N + \sigma\sqrt{N} * (-1{,}28 + 0{,}107 * \mu_1/\sqrt{N} + 0{,}0724 * \mu_2/N - 0{,}0611 * \mu_1^2/N) - 0{,}5\,\sigma^2 N\right]$$

   (b) The moderate scenario:

   $$\mathrm{Exp}\left[M1{*}N - \sigma\,\mu_1/6 - 0{,}5\,\sigma^2 N\right]$$

   (c) The favourable scenario:

   $$\mathrm{Exp}\left[M1{*}N + \sigma\sqrt{N} * (1{,}28 + 0{,}107 * \mu_1/\sqrt{N} - 0{,}0724 * \mu_2/N + 0{,}0611 * \mu_1^2/N) - 0{,}5\,\sigma^2 N\right]$$

where *N* is the number of trading periods in the recommended holding period, and where the other terms are defined in point 12 of Appendix 3.

10. For Category 2 PRIIPs, the calculation of the stress scenario has the following steps:

(a) Identify a sub interval of length *w* which corresponds to the following intervals:

	1 year	> 1 year
Daily prices	21	63
Weekly prices	8	16
Monthly prices	6	12

(b) Identify for each sub interval of length w the historical lognormal returns *rt*, where *t = t0, t1, t2, …, tN*.

(c) Measure the volatility based on the formula below starting from ti = t0 rolling until ${}^{t_i = t_{N-w}}$

$$ {}^{w}_{t_i}\sigma_S = \sqrt{\frac{\sum_{t_i}^{t_i+w}\left(r_{t_i} - {}^{t_i+w}_{t_i}M_1\right)^2}{M_w}} $$

Where M_w is the count of number of observations in the sub interval and ${}^{t_i+w}_{t_i}M_1$ is the mean of all the historical lognormal returns in the corresponding sub interval.

(d) Infer the value that corresponds to the 99th percentile for 1 year and the 90th percentile for the other holding periods. This value shall be the stressed volatility ${}^{w}\sigma_S$.

11. For Category 2 PRIIPs, the expected values at the end of the recommended holding period for the stress scenario shall be:

$$ \text{Scenario}_{\text{Stress}} = e^{\left[{}^{w}\sigma_S * \sqrt{N} * \left(z_\alpha + \left[\frac{(Z_\alpha^2 - 1)}{6}\right] * \frac{\mu_1}{\sqrt{N}} + \left[\frac{(z_\alpha^3 - 3z_\alpha)}{24}\right] * \frac{\mu_2}{N} - \left[\frac{(2z_\alpha^3 - 5z_\alpha)}{36}\right] * \frac{\mu_1^2}{N}\right) - 0{,}5\,{}^{w}\sigma_S^2 N\right]} $$

where z_α is a proper selected value of the PRIIP at the extreme percentile that corresponds to 1 % for 1 year and to 5 % for the other holding periods.

12. For Category 3 PRIIPs, the following adjustments shall be made to the calculation of favourable, moderate and unfavourable performance scenarios:

(a) the expected return for each asset or assets shall be the return observed over the period as determined under point 6 of Appendix 3;

(b) the expected performance shall be calculated at the end of the recommended holding period, and without discounting the expected performance using the expected risk-free discount factor.

13. For Category 3 PRIIPs, the following adjustments shall be made for the calculation of the stress scenario:

(a) Infer stress volatility ${}^{w}\sigma_s$ based on methodology defined in point 10 of this Appendix;

(b) Rescale historical returns r_t, based on the formula set out below;

$$r_t^{adj} = r_t * \frac{{}^{w}\sigma_S}{\sigma_S}$$

(c) Conduct bootstrapping on r^{adj}_t as described in point 22 of Appendix 3;

(d) Calculate the return for each contract by summing returns from selected periods and correcting these returns to ensure that the expected return measured from the simulated return's distribution is as below

where $E^*[r_{bootstrapped}]$ is the new simulated mean.

14. For Category 3 PRIIPs, the stress scenario shall be the value of the PRIIP at the extreme z_α percentile as defined in point 11 of this Appendix of the simulated distribution as set out in point 13 of this Appendix.

15. For Category 4 PRIIPs, the method under point 27 of Appendix 3 shall be used in respect of those factors that are not observed in the market, combined as necessary with the method for Category 3 PRIIPs. The relevant methods for Category 2 PRIIPs set out in points 9 to 11 of this Appendix and the relevant methods for Category 3 PRIIPs set out in points 12 to 14 of this Appendix shall be used for the relevant components of the PRIIP where the PRIIP combines different components. The performance scenarios shall be a weighted average of the relevant components. Product features and capital guarantees shall be taken into consideration in the performance calculations.

16. For Category 1 PRIIPs as defined in point 4(a) of Appendix 3, and Category 1 PRIIPs as defined in point 4(b) of Appendix 3 that are not futures, call options and put options traded on a Regulated Market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014, performance scenarios shall be calculated in accordance with points 12 to 14 of this Appendix.

17. For Category 1 PRIIPs, that are futures, call options and put options traded on a Regulated Market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014, performance scenarios shall be shown in the form of pay-off structure graphs. A

graph shall be included to show performance for all scenarios for the different levels of the underlying value. The horizontal axis of the graph shall show the various possible prices of the underlying value and the vertical axis shall show the profit or loss at the different prices of the underlying value. For every price of the underlying value, the graph shall show the resulting profit or loss and at which price of the underlying value the profit or loss shall be zero.

18. For Category 1 PRIIPs as defined in point 4(c) of Appendix 3 a reasonable and conservative best estimate of the expected values for the performance scenarios set out in point 1(a) to (c) of this Appendix at the end of the recommended holding period shall be provided.

The scenarios selected and shown shall be consistent with and complement the other information contained in the Key Information Document, including the overall risk profile for the PRIIP. The PRIIP Manufacturer shall ensure the consistency of the scenarios with internal product governance conclusions, including amongst other things, any stress-testing undertaken by the PRIIP Manufacturer for the PRIIP, and data and analysis used for the purposes of producing the other information contained with the Key Information Document.
The scenarios shall be selected to give a balanced presentation of the possible outcomes of the product in both favourable and unfavourable conditions, but only scenarios that can be reasonably expected shall be shown. The scenarios shall not be selected so as give undue prominence to favourable outcomes at the expense of unfavourable ones.

Calculation of Expected Values for Intermediate Holding Periods

19. For PRIIPs with a recommended holding period between 1 and 3 years, performance shall be shown at 2 different holding periods: at the end of the first year and at the end of the recommended holding period.

20. For PRIIPs with a recommended holding period of 3 years or more, performance shall be shown at 3 holding periods: at the end of the first year, after half the recommended holding period rounded up to the end of the nearest year, and at the end of the recommended holding period.

21. For PRIIPs with a recommended holding period of 1 year or less, no performance scenarios for intermediate holding periods shall be shown.

22. For Category 2 PRIIPs, the values to be shown for the intermediate periods shall be calculated using the formulas in point 9 to 11 of this Appendix with the *N* defined to be the number of trading periods from the start date to the end of the intermediate period.

23. For Category 1 PRIIPs and Category 4 PRIIPs, the values to be shown for the intermediate periods shall be estimated by the PRIIP Manufacturer in a manner consistent with the estimation at the end of the recommended holding period. To this end, the method used to estimate the value of the PRIIP at the start of each

intermediate period needs to produce the same value for the entire recommended holding period, as under the method prescribed in points 16 and 15 of this Appendix respectively.

24. For Category 3 PRIIPs, to produce the favourable, moderate, unfavourable and stress scenarios at an intermediate period before the end of the recommended holding period, the Manufacturer shall pick three underlying simulations as referred to in points 16 to 24 of Appendix 3 used for the calculation of the MRM and one underlying simulation as referred to in point 13 of this Appendix, on the basis of underlying levels only and in such a manner that the simulated value of the PRIIPs for that intermediate period is likely to be consistent with the relevant scenario.

(a) To produce the favourable, moderate, unfavourable and stress scenarios at an intermediate period for a Category 3 PRIIP with one underlying and whose value is known to be a increasing function of its underlying level, the Manufacturer shall pick three underlying simulations as referred to in points 16 to 24 of Appendix 3 used for the calculation of the MRM and one underlying simulation as referred to in point 13 of this Appendix, leading respectively to the 90th percentile level for the favourable scenario, the 50th percentile level for the moderate scenario, the 10th percentile level for the unfavourable scenario and the percentile level that corresponds to 1 % for 1 year and to 5 % for the other holding periods for the stress scenario.

(b) To produce the favourable, moderate, unfavourable and stress scenarios at an intermediate period for a Category 3 PRIIP with one underlying and whose value is known to be an decreasing function of its underlying level, the Manufacturer shall pick three underlying simulations as referred to in points 16 to 24 of Appendix 3 used for the calculation of the MRM and one underlying simulation as referred to in point 13 of this Appendix, leading respectively to the 90 the percentile level for the unfavourable scenario, the 50th percentile level for the moderate scenario, the 10th percentile level for the favourable scenario and the percentile level that corresponds to 1 % for 1 year and to 5 % for the other holding periods for the stress scenario.

(c) To produce the favourable, moderate, unfavourable and stress scenarios at an intermediate period for a Category 3 PRIIP other than those mentioned in points (a) and (b) the Manufacturer shall choose underlying values consistent with the 90th, the 50th, and the 10th percentile levels and the percentile level that corresponds to 1 % for 1 year and to 5 % for the other holding periods of the PRIIP and use these values as the seed values for a simulation to determine the value of the PRIIP.

25. For Category 1 PRIIPs that are futures, call options and put options traded on a Regulated Market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014, performance scenarios for intermediate holding periods shall not be included.

26. For favourable, moderate and unfavourable scenarios at intermediate periods, the estimate of the distribution used to read the value of the PRIIP at different percentiles shall be consistent with the observed return and volatility observed over the past 5

years of all market instruments that determine the PRIIP's value. For the stress scenario at intermediate periods, the estimate of the distribution used to read the value of the PRIIP at different percentiles shall be consistent with the simulated distribution of all market instruments that determine the PRIIP's value as set out in points 11 and 13.

27. The unfavourable scenario shall be the estimate of the value of the PRIIP at the start of the intermediate period consistent with the 10th percentile.

28. The moderate scenario shall be the estimate of the value of the PRIIP at the start of the intermediate period consistent with the 50th percentile.

29. The favourable scenario shall be the estimate of the value of the PRIIP at the start of the intermediate period consistent with the 90th percentile.

30. The stress scenario shall be the estimate of the value of the PRIIP at the start of the intermediate period consistent with the percentile level that corresponds to 1 % for 1 year and to 5 % for the other holding periods of the simulated distribution as set out in point 13.

General Requirements

31. The performance of the PRIIP shall be calculated net of all applicable costs in accordance with Appendix 7 for the scenario and holding period being presented.

32. Performance shall be presented in monetary units. The amounts used shall be consistent with the amounts referred to in point 90 of Appendix 7.

33. Performance shall also be presented in percentage terms, as the average annual return of the investment. That figure shall be calculated considering net performance as numerator and the initial investment amount or the price paid as denominator.

For those PRIIPs where there is no initial investment or price paid such as future contracts or swaps, the percentage shall be calculated considering the nominal value of the contract and a footnote shall be added to explain that calculation.

34. For an Insurance based investment product, the following shall apply in addition to the methods referred above including under point 15 when calculating the performance scenarios in respect of the investment:

a) future profit participation shall be taken into account;
b) assumptions on future profit participation shall be consistent with the assumption on the annual rates of return of the underlying assets;
c) assumptions on how future profits are shared between the PRIIP Manufacturer and the Retail Client and other assumptions on future profit sharing shall be realistic and in line with the current business practice and business strategy of the PRIIP Manufacturer. Where there is sufficient evidence that the undertaking will change its practices or strategy, the assumptions on future profit sharing shall be consistent with the changed practices or strategy. For life insurers within the scope of Directive 2009/138/EC, these assumptions shall be consistent with the assumptions

on future management actions used for the valuation of technical provisions in the Solvency II- balance-sheet;

d) where a component of the performance relates to profit participation that is payable on a discretionary basis, this component shall only be assumed in the favourable performance scenarios:

e) the performance scenarios shall be calculated on the basis of the investment amounts set out in point 32 of this Appendix.

Appendix 6

Methodology for the Presentation of Performance Scenarios

PART 1

General Presentation Specifications

1. The performance scenarios shall be presented in a way that is fair, accurate, clear and not misleading, and that is likely to be understood by the average Retail Client.

2. Where performance scenarios may be shown only at maturity or at the end of the recommended holding period, as for the PRIIPs referred to in point 21 of Appendix 5, that shall be clearly explained in the narrative set out in element E in Part 2 of this Appendix.

3. In all cases, the narrative explanations set out in elements A, B, C, D and F in Part 2 of this Appendix shall be included, except in the case of Category 1 PRIIPs referred to in point 17 of Appendix 5, where the narrative explanations set in elements G to K shall be used instead.

PART 2

Presentation of Performance Scenarios

For all PRIIPs except for category 1 PRIIPs referred to in point 17 of Appendix 5, PRIIP Manufacturers shall present the performance scenarios by means of the formats below, depending on whether the PRIIP is a single investment or premium or a regular payment or premium PRIIP. The interim periods may differ depending on the length of the recommended holding period. For Insurance-based investment products additional rows are included in respect of the scenario for the insurance benefits including the cumulative biometric risk premium for a regular premium Insurance- based investment product. Returns for that scenario shall only be shown in absolute values.

Template A: Single investment and/or single premium is paid.

Single investment paid

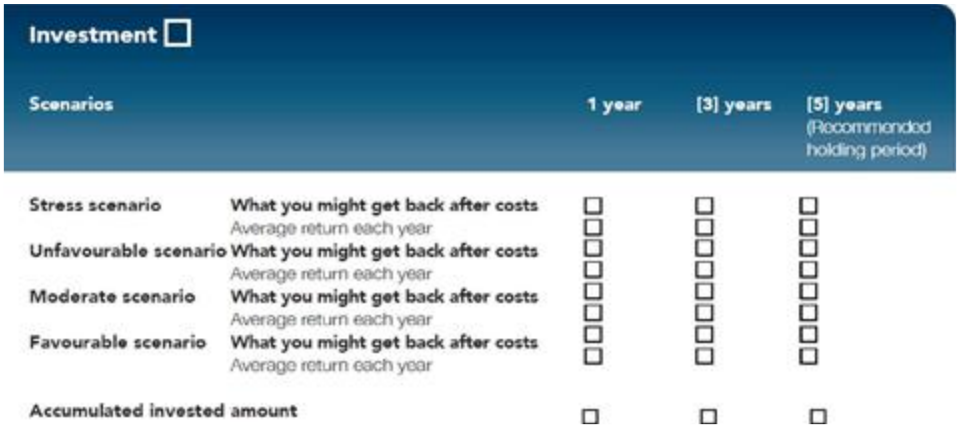
Investment ☐ Scenarios		1 year	[3] years	[5] years (Recommended holding period)
Stress scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
Unfavourable scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
Moderate scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
Favourable scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐

Single premium paid

Investment ☐ Insurance premium ☐		1 year	[3] years	[5] years (Recommended holding period)
[Survival] Scenarios				
Stress scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
Unfavourable scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
Moderate scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
Favourable scenario	What you might get back after costs	☐	☐	☐
	Average return each year	☐	☐	☐
[Death] Scenario				
[Insured event]	What your beneficiaries might get back after costs	☐	☐	☐

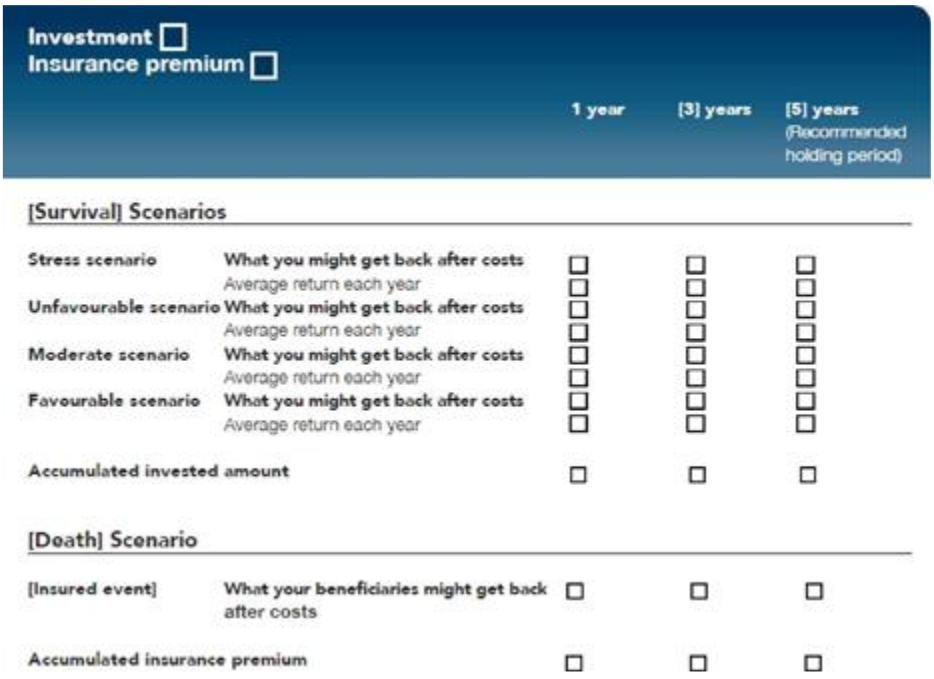
Template B: Regular investments and/or premiums are paid.

Regular investments paid



Investment ☐				
Scenarios		**1 year**	**[3] years**	**[5] years (Recommended holding period)**
Stress scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Unfavourable scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Moderate scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Favourable scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Accumulated invested amount		☐	☐	☐

Regular premiums paid



Investment ☐ Insurance premium ☐				
		1 year	**[3] years**	**[5] years (Recommended holding period)**
[Survival] Scenarios				
Stress scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Unfavourable scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Moderate scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Favourable scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Accumulated invested amount		☐	☐	☐
[Death] Scenario				
[Insured event]	**What your beneficiaries might get back after costs**	☐	☐	☐
Accumulated insurance premium		☐	☐	☐

Performance scenarios

[Element A] This [table/graph] shows the money you could get back over the next [recommended holding period] years, under different scenarios, assuming that you invest EUR […] [per year].

[Element B] The scenarios shown illustrate how your investment could perform. You can compare them with the scenarios of other products.

[Element C] The scenarios presented are an estimate of future performance based on evidence from the past on how the value of this investment varies, and are not an exact indicator. What you get will vary depending on how the market performs and how long you keep the investment/product.

[Element D] The stress scenario shows what you might get back in extreme market circumstances, and it does not take into account the situation where we are not able to pay you.

[Where applicable][Element E] This product cannot be [easily] cashed in. This means it is difficult to estimate how much you would get back if you cash in before [the end of the recommended holding period/maturity]. You will either be unable to cash in early or you will have to pay high costs or make a large loss if you do so.

[Element F] The figures shown include all the costs of the product itself, [where applicable]:[but may not include all the costs that you pay to your advisor or distributor][and includes the costs of your advisor or distributor]. The figures do not take into account your personal tax situation, which may also affect how much you get back.

[Element G] This graph illustrates how your investment could perform. You can compare them with the pay-off graphs of other derivatives.

[Element H] The graph presented gives a range of possible outcomes and is not an exact indication of what you might get back. What you get will vary depending on how the underlying will develop. For each value of the underlying, the graph shows what the profit or loss of the product would be. The horizontal axis shows the various possible prices of the underlying value on the expiry date and the vertical axis shows the profit or loss.

[Element I] Buying this product holds that you think the underlying price will [increase/decrease].

[Element J] Your maximum loss would be that you will lose all your investment (premium paid).

[Element K] The figures shown include all the costs of the product itself, but may not include all the costs that you pay to your advisor or distributor. The figures do not take into account your personal tax situation, which may also affect how much you get back.

Appendix 7

Methodology for the Calculation of Costs

PART 1

List of costs

I. LIST OF COSTS OF INVESTMENTS FUNDS (UCITS)

Costs to be disclosed

One-off costs

1. A one-off cost is an entry or exit cost which is either:

   (a) paid directly by the Retail Client; or

   (b) deducted from a payment received by or due to the Retail Client.

2. One-off costs are costs borne by the Retail Client that are not deducted from the assets of the UCITS.

3. One-off costs include, but are not limited to, the following types of up-front initial costs that shall be taken into account in the cost amount to be disclosed in the Key Information Document:

   (a) distribution fee, to the extent that the amount is known to the management company. If the actual amount is not known to the management company, the maximum of the possible known distribution costs for the specific PRIIP shall be shown;

   (b) constitution costs (up-front part);

   (c) marketing costs (up-front part);

   (d) subscription fee including taxes.

Recurring Costs

4. Recurring costs are payments deducted from the assets of a UCITS, and represent the following:

   (a) expenses necessarily incurred in their operations;

   (b) any payments, including remunerations, to parties connected with the UCITS or providing services to them;

   (c) transaction costs.

5. Recurring costs include, but are not limited to, the following types of costs that are deducted from the assets of the UCITS, and shall be taken into account in the cost amount to be disclosed in the Key Information Document:

(a) all payments to the following persons, including any of the following persons to whom they have delegated any function:

(i) the management company of the fund;

(ii) directors of the fund if an investment company;

(iii) the depositary;

(iv) the custodian(s);

(v) any investment adviser;

(b) all payments to any person providing outsourced services to any of the above, including:

(i) providers of valuation and fund accounting services;

(ii) shareholder service providers, such as the transfer agent and broker dealers that are record owners of the fund' shares and provide sub-accounting services to the beneficial owners of those shares;

(iii) providers of collateral management services; providers of prime-brokerage services;

(iv) securities lending agents;

(v) providers of property management and similar services;

(c) registration charges, listing fees, regulatory charges and similar charges, including passporting fees;
(d) provisioned fees for specific treatment of gain and losses;
(e) audit fees;
(f) payments to legal and professional advisers;
(g) any costs of distribution or marketing, to the extent that the amount is known to the management company. If the actual amount is not known to the management company, the maximum of the possible known distribution costs for the specific PRIIP shall be shown;
(h) financing costs, related to borrowing (provided by related parties);
(i) costs of capital guarantee provided by a third party guarantor;
(j) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset in the fund's portfolio (including transaction costs as referred to in points 7 to 23 of this Appendix);
(k) the value of goods or services received by the management company or any connected person in exchange for placing of dealing orders;

(l) where a fund invests its assets in UCITS, its summary cost indicator shall take account of the charges incurred in the UCITS. The following shall be included in the calculation:

(i) if the underlying is a UCITS its most recently available summary cost indicator figure shall be used; this may be the figure published by the UCITS or its operator or management company, or a figure

calculated by a reliable third-party source if more up-to-date than the published figure;

(ii) the summary cost indicator may be reduced to the extent that there is any arrangement in place (and that is not already reflected in the fund's profit and loss account) for the investing fund to receive a rebate or retrocession of charges from the underlying UCITS;

(iii) where the acquisition or disposal of units does not occur at the mid price of the UCITS, the value of the difference between the transaction price and the mid price shall be taken into account as transaction costs, to the extent that this is not included in the summary cost indicator;

(m) where a fund invests in a PRIIP other than UCITS, its summary cost indicator shall take account of the charges incurred in the underlying PRIIP. The following shall be included in the calculation:

(i) the most recently available summary cost indicator of the underlying PRIIP shall be included in the calculation;

(ii) the summary cost indicator may be reduced to the extent that there is any arrangement in place (and that is not already reflected in the fund's profit and loss account) for the investing fund to receive a rebate or retrocession of charges from the underlying PRIIP;

(iii) in cases where the acquisition or disposal of units does not occur at the mid price of the underlying PRIIP, the value of the difference between the transaction price and the mid price shall be taken into account as transaction costs, to the extent that this is not included in the summary cost indicator;

(n) where a fund invests in an investment product other than a PRIIP its summary cost indicator shall take account of the charges incurred in the underlying investment product. The PRIIP Manufacturer shall either use any published information that represents a reasonable substitute for summary cost indicator or else shall make a best estimate of its maximum level based on scrutiny of the investment product's current prospectus and most recently published report and accounts;

(o) operating costs (or any remuneration) under a fee-sharing arrangement with a third party to the extent that they have not been already included in another type of cost mentioned above;

(p) earnings from efficient portfolio management techniques if they are not paid into the portfolio;

(q) implicit costs incurred by structured funds as referred to in section II of this Appendix, and notably points 36 to 46 of this Appendix;

(r) dividends served by the shares held in the portfolio of the funds, shall the dividends not accrue to the fund.

Incidental costs

6. The following types of incidental costs shall be taken into account in the amount to be disclosed:
   (a) a performance–related fee payable to the management company or any investment adviser, including performance fees as referred to in point 24 of this Appendix;
   (b) carried interests as referred to in point 25 of this Appendix.

Calculation of Specific Types of Costs of Investments Funds

Transaction Costs

7. Transaction costs shall be calculated on an annualised basis, based on an average of the transaction costs incurred by the PRIIP over the previous three years. Where the PRIIP has been operating for less than three years, transaction costs shall be calculated using the methodology set out in point 21 of this Appendix.

8. The aggregate transaction costs for a PRIIP shall be calculated as the sum of the transaction costs as calculated in accordance with points 9 to 23 of this Appendix in the base currency of the PRIIP for all individual transactions undertaken by the PRIIP in the specified period. This sum shall be converted into a percentage by dividing by the average net assets of the PRIIP over the same period.

9. When calculating the transaction costs incurred by the PRIIP over the previous three years, actual transaction costs must be calculated using the methodology described in points 12 to 18 of this Appendix for investments in the following instruments:

   (a) transferable securities as defined by Article 2 of Directive 2007/16/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions;

   (b) other instruments that there are frequent opportunities to dispose of, redeem, or otherwise realise at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer.

10. Estimates of transaction costs using the methodology described below in points 19 to 20 of this Appendix must be used for investments in other instruments or assets.

Treatment of Anti-Dilution Mechanisms

11. Where a PRIIP has a pricing mechanism that offsets the impact of dilution from transactions in the PRIIP itself, the amount of benefit accruing to the ongoing holders of the PRIIP from anti-dilution mechanisms may be deducted from the transaction costs incurred within the PRIIP using the following methodology:
    (a) the monetary amount of any anti-dilution levy, or other payment in connection with a transaction in the PRIIP itself, that is paid to the PRIIP may be subtracted from the total transaction costs
    (b) the benefit to the PRIIP of issuing units (or otherwise enabling investment in the PRIIP) at a price other than the mid price, or of cancelling units (or otherwise enabling redemption of funds from the PRIIP) at a price other

than the mid price, provided that the PRIIP itself receives the benefit, shall be calculated as follows and may be subtracted from the total transaction costs:

(i) the difference between the price of units issued and the mid price, multiplied by the net number of units issued;

(ii) the difference between the price of units cancelled and the mid-price, multiplied by the net number of units cancelled.

Actual transaction costs

12. The actual transaction costs for each transaction shall be calculated on the following basis:

(a) for each purchase undertaken by the PRIIP, the price of the instrument at the time the purchase order is transmitted to another person for execution (the purchase 'arrival price') shall be subtracted from the net realised execution price of the transaction. The resulting value shall be multiplied by the number of units purchased;

(b) for each sale undertaken by the PRIIP, the net realised execution price of the transaction shall be subtracted from the price of the instrument at the time the order to sell is transmitted to another person for execution (the sale 'arrival price'). The resulting value shall be multiplied by the number of units sold.

13. The net realised execution price shall be determined as the price at which the transaction is executed, including all charges, commissions, taxes and other payments (such as anti-dilution levies) associated with the transaction, either directly or indirectly, where those payments are made from the assets of the PRIIP.

14. The arrival price shall be determined as the mid-market price of the investment at the time when the order to transact is transmitted to another person. For orders that are transacted on a day that is not the day that the order was originally transmitted to another person, the arrival price shall be determined as the opening price of the investment on the day of the transaction or, where the opening price is not available, the previous closing price. Where a price is not available at the time when the order to transact is transmitted to another person (due to the order initiated outside market opening hours or in over-the-counter markets where there is no transparency of intra-day prices for example), the arrival price shall be determined as the opening price on the day of the transaction or, where the opening price is not available, the previous closing price. Where an order is executed without being transmitted to another person, the arrival price shall be determined as the mid-market price of the investment at the time when the transaction was executed.

15. Where information about the time when the order to transact is transmitted to another person is not available (or not available to a sufficient level of accuracy), or where information about the price at that time is not available, it is permissible to use as the arrival price the opening price of the investment on the day of the transaction or, where the opening price is not available, the previous closing price. When calculating transaction costs using data prior to 31 December 2017, intra-day prices may be considered as not available.

16. Costs associated with transactions undertaken by PRIIPs and concerning financial instruments that fall within one of the categories referred to in items 4 to 10 of Section C of Annex I to Directive 2014/65/EU shall be calculated in the following way:

(a) for instruments that are standardised and where there is regular trading in the instrument itself (for example an index future on a major equity index), transaction costs shall be calculated with reference to the instrument itself. The arrival price shall be determined as the mid-price of the instrument;
(b) for linear instruments that are customised, and where there is no price transparency or regular trading in the instrument itself, transaction costs shall be calculated with reference to the underlying asset(s). The arrival price shall be calculated based on the price(s) of the underlying assets, using appropriate weightings if there is more than one underlying asset. Where the cost of transacting in the instrument is materially higher than the cost of transacting in the underlying asset, this must be reflected in the transaction cost calculation;
(c) for non-linear instruments, it is permissible to calculate the transaction costs as the difference between the price paid or received for the instruments and the fair value of the instrument, on the basis described in points 36 to 46 of this Appendix.

17. In calculating the costs associated with foreign exchange, the arrival price must reflect a reasonable estimate of the consolidated price, and must not simply be the price available from a single counterparty or foreign exchange platform, even if an agreement exists to undertake all foreign exchange transactions with a single counterparty.

18. In calculating the costs associated with orders that are initially entered into an auction, the arrival price shall be calculated as the mid-price immediately prior to the auction.

Transaction Costs for Other Assets

19. When estimating transaction costs for assets other than assets as referred to in point 9 of this Appendix, the methodology in point 12 of this Appendix shall be used and the arrival price shall be calculated as follows:

(a) for a sale:

(i) the arrival price shall be calculated as the previous independent valuation price of the asset, adjusted for market movements, where appropriate, using an appropriate benchmark index;
(ii) where a previous independent valuation price is not available, the transaction costs must be estimated based on the difference between the transaction price and an appraisal of the fair value of the asset prior to sale;

(b) for a purchase:

(i) the arrival price shall be calculated as the previous independent valuation price of the asset, adjusted for market movements, where appropriate, using an appropriate benchmark index, where such a price is available;
(ii) where a previous independent valuation price is not available, the transaction costs must be estimated based on the difference between the transaction price and an appraisal of the fair value of the asset prior to purchase.

20. The transaction cost estimate must not be less than the amount of actual identifiable costs directly associated with *the transaction*.

Transaction Costs for New PRIIPs

21. For PRIIPs that have been operating for less than 3 years and that invest predominantly in assets as referred to in point 9 of this Appendix, transaction costs may be calculated either by multiplying an estimate of portfolio turnover in each asset class with the costs calculated according to the methodology referred to in point (c), or as an average of the actual transaction costs incurred during the period of operation and a standardised estimate on the following basis:

(a) for the highest multiple of six months that the PRIIP has been operating, transaction costs shall be calculated on the basis described in points 12 to 18 of this Appendix;
(b) for the remaining period up to three years, transaction costs shall be estimated by multiplying an estimate of portfolio turnover in each asset class according to the methodology referred to in point (c);

(c) the methodology to be used differs depending on the asset class and shall be determined as follows:

(i) For the asset classes indicated in the table below, transaction costs shall be calculated as the average of the estimated cost of transaction (based on bid-ask spreads divided by two) for the relevant asset class under normal market conditions.

To estimate the cost, one or more reference indexes shall be identified for each asset class. Then, the average bid-ask spreads of the underlying indexes shall be collected. The data collected shall refer to the closing bid-ask spread at the tenth business day of each month during the last year.

The bid-ask spreads collected shall then be divided by two to obtain the estimated cost of transaction for each point in time. The average of those values is the estimated cost of transaction in each asset class under normal market conditions.

Table 3: Asset Classes-Government and Other Corporate Bonds

Asset Classes	
Government bonds	Government bonds and similar instruments developed market rating AAA-A
	Government bonds and similar instruments developed market different rating below A

Asset Classes	
Government bonds emerging markets (hard and soft currency)	Government bonds emerging markets (hard and soft currency)
Investment grade corporate bonds	Investment grade corporate bonds
Other corporate bonds	High yield corporate bonds

(ii) For the asset classes indicated in the table below, transaction costs (including explicit costs and implicit costs) shall be estimated either by using comparable information or by adding estimates of explicit costs to estimates of half the bid-ask spread, using the methodology described in point (i).

Table 4: Asset Classes-Shares, Money Market Instruments and Derivatives

Asset Classes	
Liquidity	Money market instruments (for the sake of clarity, money markets funds not included)
Shares developed markets	Large-cap shares (developed markets)
	Mid-cap shares (developed markets)
	Small-cap shares (developed markets)
Shares emerging markets	Large-cap shares (emerging markets)
	Mid-cap shares (emerging markets)
	Small-cap shares (emerging markets)

Listed derivatives	Listed derivatives

(iii) For the asset classes indicated in the table below, the transaction cost is the average of the observed cost of transaction (based on bid-ask spreads divided by two) in this asset class under normal market conditions.

When identifying the observed cost of transaction, results of a panel survey may be taken into account.

Table 5: Asset Classes- Over-the-Counter Derivatives

Asset Classes	
OTC	OTC Exotic options
	OTC Plain vanilla options
	OTC IRS, CDS and similar
	OTC Swaps and similar instruments (different from IRS, CDS and similar)
	OTC FX Forwards developed markets
	OTC FX Forwards emerging markets

22. Estimates of portfolio turnover for a PRIIP that has been operating for less than one year must be made on a consistent basis with the investment policy disclosed in the offering documents. Estimates of portfolio turnover for a PRIIP that has been operating for more than one year must be consistent with actual portfolio turnover.

23. For PRIIPs that have been operating for less than three years and that invest predominantly in assets other than assets as referred to in point 9 of this Appendix, the PRIIP Manufacturer shall estimate the transaction costs on the basis of the fair value method using comparable assets.

Performance related fees

24. To calculate performance related fees, the following steps shall be taken:
(a) compute the fees on the basis of historical data covering the last 5 years. The average annual performance fees shall be computed in percentage terms,
(b) where a full performance fees history is not available because the fund/share class is new or the fund's terms have changed due to the introduction of the

performance fee or the change of one of its parameters, the abovementioned method shall be adjusted according to the following steps:

(i) take the relevant available history of the performance fees of the fund/share class;

(ii) for any years for which data is not available, estimate the return of the fund/share class and, in case of a relative performance fee model, take into account the historical series of the benchmark/hurdle rate;
for new funds, their return shall be estimated using the return of a comparable fund or of a peer group. The estimated return shall be gross of all the costs charged to the new fund. Therefore peer groups' returns need to be adjusted by adding the average relevant costs charged according to the rules of the new fund. For instance, in case of a new class with a different fee structure, the returns of this new class shall be adjusted taking into account the costs of the existing class;

(iii) compute the fees from the beginning of the sample period, as required in point (a), until the date of availability of the actual performance fee data of the fund, applying the relevant algorithm to the abovementioned historical series;

(iv) concatenate both performance fee series to one series over the full sample period as required in point (a);

(v) compute the performance fees using the methodology referred to in point (a) (average of annual performance fees).

Carried Interests

25. To calculate carried interests, the following steps shall be taken:

(a) compute the fees on the basis of historical data covering the last 5 years. The average annual carried interests shall be computed in percentage terms;

(b) where a full carried interests history is unavailable because the fund/share class is new or the fund's terms have changed due to the introduction of carried interests or the change of one of its parameters, the abovementioned method shall be adjusted according to the following steps:

(i) take the relevant available history of the carried interests of the fund/share class;

— for any years for which data is not available, estimate the return of the fund/share class,
— for new funds, their return shall be estimated using the return of a comparable fund or of a peer group. The estimated return shall be gross of all the costs charged to the new fund. Therefore peer group's returns need to be adjusted by adding the average relevant costs charged according to the rules of the new fund. For instance, in case of a new class with a different fee structure, the returns of this new class shall be adjusted taking into account the costs of the existing class.

(ii) compute the carried interests from the beginning of the sample period, as required in point (a), until the date of availability of the actual carried interests data of the fund, applying the relevant algorithm to the abovementioned historical series;

(iii) concatenate both carried interests series to one series over the full sample period as required in point (a);

(iv) compute the carried interests using the methodology referred to in point (a) (average of annual carried interests).

26. If no carried interests are taken throughout the investment, a warning needs to accompany the indication of zero carried interests in the composition of costs table in order to clarify that a payment of x % of the final return shall take place subsequently to the exit of the investment.

II. LIST OF COSTS OF PRIPS OTHER THAN INVESTMENT FUNDS

Costs to be disclosed

One-off costs

27. A one-off cost is an entry and exit cost which include initial charges, commissions or any other amount paid directly by the Retail Client or deducted from a payment received by or due to the Retail Client.

28. One-off costs are borne by a PRIP other than an investment fund, whether they represent expenses necessarily incurred in its operation, or the remuneration of any party connected with it or providing services to it.

One-off entry costs and charges

29. One-off entry costs and charges include, but are not limited to, the following types that shall be taken into account in the cost amount to be disclosed for PRIPs other than investment funds:
(a) sales commissions;
(b) structuring costs, including market-making costs (spread) and settlement costs;
(c) hedging costs (to ensure that the PRIIP Manufacturer is able to replicate the performance of the derivative component of the structured product — these costs include transaction costs)
(d) legal fees;
(e) costs for capital guarantee;
(f) implicit premium paid to the issuer.

One-off exit costs and charges

30. One-off exit costs and charges include, but are not limited to, the following types that shall be taken into account in the amount to be disclosed for PRIPs other than investment funds:
(a) proportional fees;
(b) bid-mid spread to sell the product and any explicit costs or penalties for early exit applicable. The estimation of the bid-mid spread shall be done in relation to the availability of a secondary market, to the market conditions and the type of product. In the situation where the PRIIP Manufacturer (or a related third

party) is the only available counterparty to buy the product on the secondary market, it shall estimate the exit costs to be added to the fair value of the product according to its internal policies;

(c) contract-for-difference (CFD) related costs such as:
  (i) commissions charged by CFD providers — general commission or a commission on each trade — i.e. on opening and closing a contract;
  (ii) CFD trading such as bid-ask spreads, daily and overnight financing costs, account management fees and taxes which are not already included in the fair value.

Recurring Costs

31. Recurring costs are payments regularly deducted from all payments due to the Retail Client or from the amount invested.

32. Recurring costs include all types of cost borne by a PRIP other than an investment fund whether they represent expenses necessarily incurred in its operation, or the remuneration of any party connected with it or providing services to it.

33. The following list is indicative but not exhaustive of the types of recurring charge that, where they are deducted or charged separately, shall be taken into account in the amount to be disclosed:

(a) Costs related to coupon payments;
(b) Costs of the underlying, if any.

Costs of PRIPs referred to in point 17 of Appendix 5

34. One-off exit costs and charges are exchange fees, clearing fees and settlement fees where known.

35. Recurring costs are hedging costs borne under normal market conditions and stressed market conditions.

Calculation of implicit costs of PRIPs other than investment funds

36. For the purposes of the calculation of the implicit costs embedded in PRIPs, the PRIIP Manufacturer shall refer to the issue price and, after the subscription period, to the price available to purchase the product on a secondary market.

37. The difference between the price and the fair value of the product is considered as an estimation of the total entry costs included in the price. If the PRIIP Manufacturer is unable to distinguish the relevant implicit costs to be disclosed as referred to in point 29 of this Appendix using the difference between the price and the fair value, it shall liaise with the issuer of the different components of the product, or the relevant body, in order to gather the relevant information on those costs.

38. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions (i.e. an exit price) regardless of whether that price is directly observable or estimated using another valuation technique.

39. The fair value policy that governs the measurement of the fair value shall set a series of rules including in the following areas:
    (a) governance;
    (b) methodology for the calculation of the fair value.

40. The rules referred to in point 39 of this Appendix shall aim at outlining a valuation process that:
    (a) complies with the applicable accounting standards, in relation to fair value;
    (b) makes sure that internal pricing models for PRIPs are consistent with the methodologies, modelling and standards used by the PRIIP manufacturer to value its own portfolio under the hypothesis that the product is available for sale or held for trading;
    (c) is consistent with the level of complexity of the product and the type of underlying;
    (d) takes into account the issuer credit risk and the uncertainty about the underlying;
    (e) sets the parameters to identify an active market in order to avoid risk mispricing that could lead in extreme cases to significantly inaccurate estimates;
    (f) maximises the use of relevant observable market inputs and minimizes the use of unobservable inputs.

41. The fair value of a structured product shall be determined on the basis of:
    (a) market prices, where available or efficiently formed;
    (b) internal pricing models using as an input market values which are indirectly connected to the product, derived from products with similar characteristics (comparable approach);
    (c) internal pricing models based on inputs which are not derived directly from market data for which estimations and assumptions must be formulated (mark-to-model approach).

42. If the fair value cannot be derived from market prices, it shall be calculated using a valuation technique that is able to represent properly the different factors affecting the product payoff structure making maximum use of market data.

43. The valuation technique referred to in point 42 of this Appendix shall consider the following according to the complexity of the product:
    (a) the use of recent arm's length market transactions between knowledgeable, professional counterparties;
    (b) reference to the current market price of another instrument that is substantially the same;
    (c) the use of an appropriate discounted cash-flow model where the likelihood of each cash flow is determined using an appropriate model of asset price evolution.

44. In the case of subscription products, the fair value shall be calculated on the date when the product terms are determined. This valuation date shall be close to the beginning of the subscription period. Where long offering periods or high market volatility exists, a criterion to update cost information shall be defined.

45. Where preliminary terms are used, costs shall be calculated by using the minimum terms of the product.

46. Where variable subscription prices are used, a procedure on how to incorporate and disclose the cost effect of the varying subscription price shall be defined.

III. LIST OF COSTS OF INSURANCE-BASED INVESTMENT PRODUCTS

Costs to be disclosed

One-off costs

47. A one-off cost is an entry and exit cost which includes initial charges, commissions or any other amount paid directly by the retail investor or deducted from the first payment or from a limited number of payments due to the retail investor or from a payment upon redemption or termination of the product.

48. One-off costs are borne by an Insurance-based investment product, whether they represent expenses necessarily incurred in its operation, or the remuneration of any party connected with it or providing services to it.

49. One-off costs include, but are not limited to, the following types of entry costs and charges that shall be taken into account in the amount to be disclosed for Insurance-based investment products:

(a) structuring or marketing costs;
(b) acquisition, distribution, sales costs;
(c) processing/operating costs (including costs for the management of the insurance cover);
(d) cost part of biometric risk premiums referred to in point 59 of this Appendix;
(e) costs of holding required capital (up front part to be disclosed insofar as they are charged).

Recurring costs

50. Recurring costs are payments regularly deducted from all payments from the retail investor or from the amount invested or amounts that are not allocated to the Retail Client according to a profit sharing mechanism.

51. The recurring costs include all types of costs borne by an Insurance-based investment product whether they represent expenses necessarily incurred in its operation, or the remuneration of any party connected with it or providing services to it.

52. The following list is indicative but not exhaustive of the types of recurring charge that shall be taken into account in the amount of the 'Other ongoing costs' in table 2 of Appendix 8:

(a) structuring or marketing costs;
(b) acquisition, distribution, sales costs;

(c) processing/operating costs (including costs for the management of insurance cover);
(d) cost part of biometric risk premiums referred to in point 59 of this Appendix;
(e) other administrative costs;
(f) costs of holding capital (recurring part to be disclosed insofar as they are charged);
(g) any amount implicitly charged on the amount invested such as the costs incurred for the management of the investments of the insurance company (deposit fees, costs for new investments, etc.);
(h) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset owned by the insurance-based investment product (including transaction costs as referred to in points 7 to 23 of this Appendix).

53. Where an Insurance-based investment product invests a part of its assets in UCITS, in a PRIIP other than UCITS or in an investment product other than a PRIIP, points 5(l), 5(m) and 5(n) of this Appendix shall be applied respectively.

Cost disclosure of the biometric risk premium of insurance based investment products

Costs part of biometric risk premiums

54. Biometric risk premiums are those premiums paid directly by the Retail Client or deducted from the amounts credited to the mathematical provision or from the participation bonus of the insurance policy, that are intended to cover the statistical risk of benefit payments from insurance coverage.

55. The fair value of biometric risk premiums is the expected present value, according to the interest rates referred to in point 71(a) of this Appendix, of the future benefit payments from insurance coverage taking into account the following:

(a) best estimate assumptions on these benefit payments derived from the individual risk profile of the portfolio of the individual manufacturer;
(b) other payoffs related to insurance cover (rebates on biometric risk premiums paid back to the Retail Clients, increase of benefit payments, reduction of future premiums, etc.) resulting from profit sharing mechanisms (legal and/or contractual).

56. Best estimate assumptions on future benefit payments from insurance coverage shall be set in a realistic way.

57. The estimated future benefit payments shall not include prudency margins or costs for the management of the insurance cover.

58. For Manufacturers within the scope of Directive 2009/138/EC these best estimate assumptions shall be consistent with the respective assumptions used for the calculation of the technical provisions in the Solvency II balance sheet.

59. The cost part of biometric risk premiums is the difference between biometric risk premiums charged to the Retail Client referred to in point 54 of this Appendix and the fair value of the biometric risk premiums referred to in point 55 of this Appendix.

60. A PRIIP Manufacturer may include the full biometric risk premiums in the calculation of one-off costs or recurring costs in the place of the cost part of those premiums.

PART 2

Summary cost indicators and compound effect of the costs

I. SUMMARY COST INDICATORS

61. The summary cost indicator of the PRIIP is the reduction of the yield due to total costs calculated in accordance with points 70 to 72 of this Appendix.

62. For the calculation of the summary cost indicator the costs to be disclosed referred to in point 72 of this Appendix shall be the total costs. This shall equal for investment funds the sum of the costs as referred to in points 1 and 2 of this Appendix plus the sum of the costs as referred to in points 4 and 6 of this Appendix; for PRIPs other than investment funds, except PRIIPs referred in point 17 of Appendix 5, the sum of the costs as referred to in points 27 and 28 of this Appendix plus the sum of the costs as referred to in points 31 and 32 of this Appendix; for PRIIPs referred to in point 17 of Appendix 5, the sum of the costs as referred to in points 34 and 35 of this Appendix; and for Insurance-based investment products, the sum of the costs as referred to in points 47 and 48 plus the sum of the costs as referred to in points 50 and 51 of this Appendix. The total costs shall also include exit penalties, where relevant.

One-off costs and one-off costs ratios

63. The entry and exit costs ratio of the PRIIP shall be the reduction of the annual yield due to entry and exit costs calculated according to points 70 to 72 of this Appendix.

64. For the calculation of the entry and exit costs ratio the costs to be disclosed referred to in point 72 of this Appendix shall for investments funds be the entry and exit costs according to points 1 and 2 of this Appendix; points 27 and 28 of this Appendix for PRIPs other than investment funds, except PRIIPs referred in point 17 of Appendix 5; point 35 for PRIIPs referred in point 17 of Appendix 5; and points 47 and 48 of this Appendix for Insurance-based investment products. Exit costs shall also include exit penalties, where relevant.

Recurring costs, portfolio transaction costs and insurance costs/other recurring costs ratios

65. The portfolio transaction costs, insurance costs and other recurring costs ratio of the PRIIP shall be the reduction of the annual yield due to portfolio transaction costs and other recurring costs calculated according to points 70 to 72 of this Appendix.

66. For the calculation of the portfolio transaction costs ratio and the insurance costs ratio the following shall apply:

(a) for the calculation of the portfolio transaction, the costs to be disclosed referred to in point 72 shall be the portfolio transaction costs according to points 7 to 23 of this Appendix for investment funds, point 29(c) of this Appendix for PRIPs other than investment funds, except PRIIPs referred in point 17 of Appendix 5, and point 52(h) of this Appendix for Insurance based investment products;

(b) for the calculation of the insurance costs ratio, the costs to be disclosed referred to in point 72 of this Appendix shall be the insurance costs according to points 59 and 60 of this Appendix for Insurance based investment products.

67. The other recurring costs ratio shall be the reduction of the annual yield due to other recurring costs that is calculated as the difference between the summary cost indicator according to point 61 of this Appendix and the sum of the one-off costs ratio, according to point 63 of this Appendix, plus portfolio transaction costs ratio, according to point 66(a), plus insurance costs ratio, according to point 66(b) of this Appendix, plus the incidental costs ratios, according to point 68 of this Appendix.

Incidental costs and incidental costs ratios (performance fees and carried interests ratio)

68. For the calculation of the performance fees ratio, the cost to be disclosed referred to in point 72 shall be the portfolio incidental costs according to point 6(a) of this Appendix for investment funds. For the calculation of the carried interests ratio, the cost to be disclosed referred to in point 72 of this Appendix shall be the portfolio incidental costs according to point 6(b) of this Appendix for investment funds.

69. The 'ongoing costs', 'performance fees' and 'carried interests' as referred to in Appendix 8 are respectively the 'recurring costs', 'performance fees ratio' and 'carried interests ratio' as referred to in this Appendix and in Rules 1.6.37 to 1.6.40.

Calculation of summary cost indicator

70. The summary cost indicator shall be calculated as the difference between two percentages *i* and *r* where *r* is the annual internal rate of return in relation to gross payments by the Retail Client and estimated benefit payments to the Retail Client during the recommended holding period and *i* is the annual internal rate of return for the respective cost free scenario.

71. The estimation of future benefit payments under point 70 of this Appendix shall be based on the following assumptions:

(a) except for PRIIPs as referred to in point 17 of Appendix 5, the annual internal rate of return, i.e. the performance, of the PRIIP shall be calculated applying the methodology and the underlying hypothesis used for the estimation of the moderate scenario from the performance scenarios section of the Key Information Document;

(b) the benefit payments shall be estimated under the assumption that all costs included in the total costs according to point 62 of this Appendix are deducted;

(c) for PRIIPs as referred to in point 17 of Appendix 5 and for UCITS or non-UCITS funds for which PRIIP Manufacturers use the key investor information document in accordance with R.1.6.54, the performance shall be 3 %.

72. For the purpose of the calculation of the cost free scenario as referred to in point 70 of this Appendix the following shall apply:

(a) for the calculation of *i* either gross payments by the Retail Client from the calculation of *r* shall be reduced by the costs to be disclosed or the projected benefit payments to the Retail Client from the calculation of *r* shall be increased under the assumption that the amounts of the costs to be disclosed had additionally been invested. Then *i* is the annual internal rate of return in relation to these adjusted payments by and to the Retail Client;

(b) where costs to be disclosed can be expressed as a constant percentage of the value of the assets they may be disregarded in the calculation described in point 72(a) of this Appendix and instead be added to the percentage of the annual internal rate of return *i* for the respective cost free scenario afterwards.

Specific requirements for PRIPs other than investment funds

73. For the purpose of the calculation of the cost free scenario as referred to in point 70 of this Appendix for PRIPs other than investment funds, gross payments by the Retail Client from the calculation of r, as referred to in point 72 of this Appendix, shall be reduced by the costs to be disclosed.

Specific requirements for Insurance-based investment products

74. For the purpose of the calculations described in points 70 to 72 of this Appendix, it shall be assumed that, for Insurance-based investment products, no payments resulting from insurance coverage occur during the holding period. That is to say, the calculation of the summary cost indicator shall be solely based on estimated endowment benefit payments.

75. To the extent recurring and one-off costs are covered by explicit costs that are a fixed part of the premium calculation of the product the calculation of recurring and one-off costs shall be based on these explicit costs.

76. For profit participation for Insurance based investment products the following shall apply:

(a) when calculating recurring costs and one-off costs for Insurance-based investment products amounts retained from the investment return through profit sharing mechanisms shall be considered as costs;
(b) where a part of the costs is returned to Retail Clients by separate cost bonuses this shall be considered as a cost rebate that reduces cost deductions provided:

(i) that the cost bonuses are declared separately from other parts of the participation bonus and are intended for refunding parts of the costs by the contractual terms of the product.

(ii) that the PRIIP Manufacturer can substantiate on the basis of sound actuarial methods that expected future cost bonuses are covered by expected future profits that result from prudent assumptions on future costs.

Calculation of ratios

Anti-double counting principle

77. If one type of cost is covered by two or more types of costs as referred to in this Appendix, that type of cost shall only be accounted for once in the calculation of the indicators (ratios) which are based on it.

Other specifications

78. The ratios shall be expressed as a percentage to two decimal places.

79. The ratios shall be calculated at least once a year.

80. The ratios shall be based on the most recent cost calculations which the PRIIP Manufacturer has determined.

Without prejudice to point 77 of this Appendix, the costs are assessed on an 'all taxes included' basis.

As for investment funds the following shall apply:

(a) a separate calculation shall be performed for each share class, but if the units of two or more classes rank pari passu, a single calculation may be performed for them;

(b) in the case of a fund which is an umbrella, each constituent compartment or sub-fund shall be treated separately for the purpose of this Appendix, but any charges attributable to the fund as a whole shall be apportioned among all of the sub-funds on a basis that is fair to all investors.

81. Apart from the first calculation for a new PRIIP, and if not stated otherwise, the ratios shall be calculated at least once a year, on an *ex-post* basis. Where it is considered unsuitable to use the *ex-post* figure because of a material change, an estimate may be used instead until reliable *ex-post* figures reflecting the impact of the material change become available.

82. The *ex-post* figures shall be based on recent cost calculations which the PRIIP Manufacturer has determined on reasonable grounds to be appropriate for that purpose. The figures may be based on the costs set out in the PRIIP's statement of operations published in its latest annual or half-yearly report, if that statement is sufficiently recent. It is not sufficiently recent, a comparable calculation based on the costs charged during a more recent 12-month period shall be used instead.

83. Information about the ratios that were applicable during previous years/periods shall be published at the location which is specified in the Key Information Document as the general source of further information for investors who require it.

84. Where the costs attributable to an underlying UCITS are to be taken into account the following shall apply:

(a) the cost indicator of each underlying UCITS shall be pro-rated according to the proportion of the PRIIP's net asset value which that UCITS represents at the relevant date being the date at which the PRIIP's figures are taken;

(b) all the pro-rated figures shall be added to the total cost figure of the investing PRIIP itself, thus presenting a single total.

Calculation methodology for new PRIIPs

85. In place of *ex-post* data, estimates shall be used in the calculation of the different types of costs. Such estimates shall be carried out by adopting as proxies either a comparable PRIIP or a peer group.

86. For PRIIPs which charge a fixed all-inclusive fee, that fee shall be used provided it includes all costs to be presented under the PRIIPs cost disclosure requirements.

87. For PRIIPs which set a cap or maximum on the amount that can be charged, and provided it includes all costs to be presented under the PRIIPs cost disclosure requirements, that cap or maximum shall be used instead so long as the PRIIP Manufacturer gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

88. If, in the PRIIP Manufacturer's opinion, expressing a figure to two decimal places would be likely to suggest a spurious degree of accuracy to investors, it shall be sufficient to express that figure to one decimal place.

89. The PRIIP Manufacturer shall ensure that the accuracy of the estimated figure is kept under review. The PRIIP Manufacturer shall determine when it is appropriate to begin using *ex-post* figures rather than an estimate; but in any case it shall, no later than 12 months after the date on which the PRIIP was first offered for sale in any Member State, review the accuracy of the estimate by calculating a figure on an *ex-post* basis.

II. COMPOUND EFFECT OF THE COSTS

Common requirements to all types of PRIIPs

90. The table(s) referred to in R.1.6.37 to R.1.6.40 shall contain an indication of the total costs in monetary and percentage terms for the case that the Retail Client invests, respectively €10, 000 (for all PRIIPs except regular premium Insurance-based investment products), or €1, 000 yearly (for regular premium Insurance-based investment products) during different holding periods, including the recommended holding period. The holding periods to be shown are those referred to in points 14 to 16 of Appendix 5. Where a product is considered not to have an alternative liquidity facility promoted by the PRIIP Manufacturer or a third party, or where there is an absence of liquidity arrangements, or for those PRIIPs as referred to in point 17 of Appendix 5, that indication of costs may be shown only at maturity or at the end of the recommended holding period.

91. Where the currency of the PRIIP is not in Euros, an amount of a similar magnitude to those set out in point 90 of this Appendix and which is cleanly divisible by 1 000 shall be used.
92. The total costs shall include one-off, recurring and incidental costs, and, where relevant, exit penalties.
93. Exit penalties are to be distinguished from other exit costs which have to be paid in any case and therefore always need to be included in the one-off costs.

94. The relevance of exit penalties depends on the holding period of the investment and the exact moment when the product is cashed in. Exit penalties are not relevant if the investment is kept for the recommended holding period.

Appendix 8

PRESENTATION OF COSTS

The Reduction in Yield (RIY) shows what impact the total costs you pay will have on the investment return you might get. The total costs take into account one-off, ongoing and incidental costs.
The amounts shown here are the cumulative costs of the product itself, for three different holding periods. They include potential early exit penalties. The figures assume you invest [€10 000 (OR €1 000 each year for regular premium PRIIPs)]. The figures are estimates and may change in the future.

Table 1

Cost over time

The Regulated Person selling you or advising you about this product may charge you other costs. If so, this person will provide you with information about these costs, and show you the impact that all costs will have on your investment over time.

Investment [EUR 10 000] **Scenarios**	**If you cash in after [1] year**	**If you cash in after [recommend holding period/2]**	**If you cash in [at the end of the recommended holding period]**
Total costs	[...] %	[...] %	**[...] %**
Impact on return (RIY) per year	[...] %	[...] %	**[...] %**

Table 2

Composition of costs

The table below shows:
— the impact each year of the different types of costs on the investment return you might get at the end of the recommended holding period;
— the meaning of the different cost categories.

This table shows the impact on return per year			
One-off costs	**Entry costs**	[...] %	The impact of the costs you pay when entering your investment. [This is the most you will pay, and you could pay less]. *[AND/OR where the costs are embedded in the price, for instance in the case of PRIPs other than investment funds]* The impact of the costs already included in the price. [This is the most you will pay, and you could pay less]. [*Where distribution costs are included in entry costs*]This includes the costs of distribution of your product.
	Exit costs	[...] %	The impact of the costs of exiting your investment when it matures.
Ongoing costs	**Portfolio transaction costs**	[...] %	The impact of the costs of us buying and selling underlying investments for the product.
	Other ongoing costs	[...] %	The impact of the costs that we take each year for managing your investments and the costs presented in Section II.
Incidental costs	**Performance fees**	[...] %	The impact of the performance fee. We take these from your investment if the product outperforms its benchmark [y by x%].
	Carried interests	[...] %	The impact of carried interests. We take these when the investment has [performed better than x%]. [A payment of y% of the final return will take place subsequently to the exit of the investment.]

For PRIIPs offering a range of options for investment, PRIIP Manufacturers shall use the table 1 and table 2 of this Appendix for the presentation of the costs, showing for each of the figures in each table, as relevant, the range of the costs.

Appendix 9

Guidelines on marketing communications under Regulation (EU) 2019/1156

The requirements set out in this Appendix implement the ESMA Guidelines on marketing communications under Regulation (EU) 2019/1156 (the "Cross-border Distribution of Funds Regulation").

The purpose of the said requirements is to specify the application of the requirements for marketing communications set out in Article 4(1) of the Cross-border Distribution of Funds Regulation. In particular, these establish common principles on the identification as such of marketing communications, the description of risks and rewards of purchasing units of a UCITS in an equally prominent manner, and the fair, clear and not-misleading character of marketing communications, also taking into account on-line aspects of marketing communications.

Scope

1. This Appendix shall apply to all marketing communications addressed to investors or potential investors for UCITS.

   Examples of documents that may be considered as *"marketing communications"* include, *inter alia*:

   (a) all messages advertising for a UCITS, regardless of the medium, including paper printed documents or information made available in electronic format, press articles, press releases, interviews, advertisements, documents made available on the internet, as well as webpages, video presentations, live presentations, radio messages or factsheets;

   (b) messages broadcasted on any social media platform, when such messages refer to any characteristics of a UCITS, including the name of the UCITS.

   For the purpose of this Appendix, the term "*social media"* should be understood as any technologies which enable social interaction and the creation of collaborative content online, such as blogs and social networks (such as, X (formerly Twitter), BlueSky, LinkedIn, Facebook, Instagram, Tiktok, Youtube, Discord) or discussion forums, accessible by any means (in particular, electronic means, for instance through a computer or mobile applications);

   (c) marketing material addressed individually to investors or potential investors, as well as documents or presentations made available by a UCITS Management Company or the UCITS (where the UCITS has not designated a UCITS Management Company), to the public on its website or Mobile App in any other places (such as, the registered office and the distributor's office);

   (d) communications advertising a UCITS addressed to investors or potential investors located both in the home Member State or EEA State of the UCITS Management Company or in the host Member State or EEA State;

   (e) Communications by a third party and used for marketing purposes by a UCITS Management Company or the UCITS (where the UCITS has not designated a UCITS Management Company).

Examples of documents that shall not be considered as *"marketing communications"* include, *inter alia*:

(a) legal and regulatory documents or information of a UCITS, such as the prospectus, the Key Investor Information Document ("KIID"), the annual and half-yearly reports of a UCITS, the Memorandum & Articles of Association, by-Laws, Trust Deed or similar documents required to legally establish a UCITS, or notice to a General Meeting of unit-holders;

(b) corporate communications broadcasted by a UCITS Management Company describing its activities or some recent market developments (such as the disclosure of quarterly or half-yearly earnings, dividend announcements, organisational announcements or senior management changes), which do not refer to a specific UCITS or a group of UCITS, unless the activities of the UCITS Management Company are limited to one UCITS or a small number of UCITS which are implicitly identified in such corporate communication;

(c) short messages broadcast on-line, in particular on social media platforms (such as, X (formerly Twitter), BlueSky, LinkedIn, Facebook, Instagram, Tiktok, Youtube, Discord), which only include a link to a webpage where a marketing communication is available, but which do not contain any information on a specific UCITS or group of UCITS.

Identification as such of Marketing Communications

2. Any reference to a UCITS in a press article, advertisement or press release on the internet or on any other medium may only be published after the competent authority of the home Member State or EEA State of the promoted UCITS has granted its approval, where such approval is required for the marketing, and, if applicable, the UCITS Management Company or the UCITS (where the UCITS has not designated a UCITS Management Company), has received notification that it may market the promoted fund in the targeted host Member State or EEA State.

3. The requirement for marketing communications to be identifiable as such shall imply that all marketing communications include sufficient information to make it clear that the marketing communication:

(a) has a purely marketing purpose;

(b) is not a contractually binding document or an information document required by any legislative provision; and

(c) is not sufficient to take an investment decision.

In this context, a marketing communication shall be deemed to be identified as such when it includes a prominent disclosure of the terms "marketing communication" (even when preceded by the # symbol when the use of that symbol accentuates the text which it precedes in the case of on-line marketing communications), such that any person looking at it, or listening to it, can identify it as a marketing communication.

4. A marketing communication should not be considered identifiable as such when it contains excessive cross reference to legal or regulatory provisions unless this is appropriate.

5. In addition, marketing communications should include a disclaimer such as the following:

> **Warning: This is a marketing communication. Please refer to the prospectus of the UCITS and to the Key Investor Information Document before making any final investment decisions.**

However, when this disclaimer is not fit to the format and length of an on-line marketing communication, it may be replaced by a shorter identification of the marketing purpose of the communication, such as the words *"Marketing Communication"* in the case of a banner or short videos lasting only a few seconds on a website or Mobile App or the word *"#MarketingCommunication"* for social media platforms.

Moreover, this disclaimer should be clearly displayed in the marketing communication. Clarity shall be assessed in consideration of the type of communication (for instance, in case of a video presentation, the disclaimer shall be embedded in the video and displaying the disclaimer just at the end of the video shall not be considered appropriate).

The Description of Risks and Rewards in an equally prominent manner

6. When a marketing communication includes information on risks and rewards, the following requirements shall be met:

(a) marketing communications that reference any potential benefit of purchasing units of a UCITS shall be accurate and always give a fair and prominent indication of any relevant risks. This equally prominent disclosure of risks and rewards should be assessed in relation to both the presentation and the format of these descriptions;

(b) when disclosing risks and rewards information, the font and size used to describe the risks shall be at least equal to the predominant font size used throughout the information provided, and its position shall ensure such indication is prominent.

Information on risks shall not be disclosed in a footnote or in small characters within the main body of the communication. Presenting risks and rewards in the form of a two-column table or summarised in a list clearly differentiating the risks and the rewards on a single page is a good example of how risks and rewards can be presented in an equally prominent manner;

(c) marketing communications shall not refer to the rewards without referring to the risks. In particular, a marketing communication shall not describe only the rewards and refer to another document for the description of the risks; and

(d) both the risks and rewards shall be mentioned either at the same level or one immediately after the other.

The Fair, Clear and Non-Misleading Character of Marketing Communications

A. General Requirements

Suitability of the Marketing Communication to the Target Investors or Potential Investors

7. All marketing communications, regardless of the target investors, shall contain fair, clear and not misleading information.

   However, the level of information and the way that the information is presented may need to be adapted to where investments in the promoted UCITS is open to retail investors. In particular, marketing communications promoting UCITS open to retail investors shall:

   (a) refrain from using excessively technical wording;

   (b) provide an explanation of the terminology used;

   (c) be easy to read; and

   (d) where relevant, provide adequate explanation on the complexity of the UCITS and the risks arising from investment to assist investors' understanding of the characteristics of the promoted UCITS.

8. The marketing communication shall, where the UCITS is distributed:

   (a) in Malta, be written in the English and, or Maltese language;

   (b) in a Member State or EEA State, other than Malta, be written in one or more of the official languages used in that part of the Member State or EEA State, or in another language accepted by the competent authorities of that Member State or EEA State.

Consistency with other Documents

9. The information presented in the marketing communication shall be consistent with the legal and regulatory documents of the promoted UCITS, as applicable, in particular:

   (a) the prospectus and the KIID;

   (b) the legal documentation of the UCITS, in particular the Memorandum & Articles of Association, By-Laws, Trust Deed or similar documents required to legally establish a UCITS;

   (c) the information disclosed on the websites of UCITS Management Companies or the UCITS (where the UCITS has not designated a UCITS Management Company), under the SFDR (Regulation (EU) 2019/2088); and

   (d) the annual and half-yearly reports.

10. This requirement outlined in point 9 above is applicable to, *inter alia,* the disclosure of the: investment policy; recommended holding period; risks and rewards; costs, past and expected future performance; and sustainability-related aspects of the investment.

11. The consistency between the marketing communication and the legal and regulatory documents does not mean that all relevant information which is necessary to make an investment decision should be embedded in the marketing communication.

However, the wording or the presentation used in the marketing communication shall not be inconsistent with, add to, diminish or contradict any information mentioned in the legal or regulatory documents of the promoted UCITS.

12. Where indicators, simulations or figures relating to risks and rewards, costs, or past and expected future performance returns are mentioned or disclosed in marketing communications, these shall be consistent with the indicators, simulations or figures used in the legal and regulatory documents of the UCITS. This means that the methodology and the value for the computation of the indicators shall be the same as in the legal and regulatory documents although the presentation may be different.

Description of the Features of the Investment

13. When a marketing communication describes some features of the promoted investment, all of the requirements outlined in points 14 to 25 shall be met.

14. The information on the features of the investment shall be kept up to date.

15. The amount of information included in a marketing communication shall be proportionate to the size and format of the communication.

    For instance: when the marketing communication is a paper-printed or in electronic format, the font and font size shall be such that the information is easily readable; if audio or video is used, the speed of speaking and volume of sound shall make the information understandable and clearly audible.

16. When marketing communications describe some features of the investment, such communications shall contain sufficient information to understand the key elements of those features, and shall not make excessive cross-reference to the legal and regulatory documents of the promoted UCITS.

17. When providing details on the characteristics of the promoted UCITS, the communication shall describe in an accurate manner the features of the investment which is promoted. Accordingly, the communication shall:

    (a) when the promoted UCITS is open to retail investors, make it clear that the investment which is promoted concerns the acquisition of units in a UCITS, and not in a given underlying asset such as building or shares of a company, as these are only the underlying assets owned by the UCITS;

    (b) include at least a short description of the investment policy of the UCITS and an explanation on the types of assets into which the UCITS may invest.

18. When the communication relates to the use of leverage, regardless of how the leverage is gained, it shall include an explanation on the impact of this characteristic, concerning the risk of potential increased losses or returns.

19. When marketing communications describe the investment policy of the promoted UCITS, in order to assist the investors' understanding, the following is the recommended practice:

    (a) in the case of index-tracking funds, the words "passive" or "passively managed" shall be included in addition to the words "index-tracking";

    (b) when the promoted UCITS is actively managed, explicitly using the terms "active" or "actively managed";

(c) active UCITS which are managed in reference to an index shall provide additional disclosure on the use of the benchmark index and indicate the degree of freedom from the benchmark;

(d) active UCITS which are not managed in reference to any benchmark index shall also make this clear to investors

20. The information contained in marketing communications shall be presented in a way that is likely to be understood by the average member of the group of investors to whom it is directed, or by whom it is likely to be received. When the marketing communication promotes a UCITS open to retail investors, it shall be ensured that the meaning of all terms describing the investment are clear.

21. Marketing communications shall refrain from referring to the name of the Malta Financial Services Authority ("MFSA") or of the relevant competent authority of a Member State of EEA State other than Malta in a manner that would imply any endorsement or approval of the units which are promoted in the marketing communications, by the MFSA.

In particular, a marketing authorisation granted by the MFSA or the said competent authority may be referred to in a marketing communication, but it shall not be used as a sales argument.

22. In the case of short marketing communications (such as messages on social media) the marketing communication shall be as neutral as possible. Moreover, it shall also indicate where more detailed information is available, in particular by using a link to the relevant webpage where the information documents of the UCITS are available.

23. All statements embedded in the marketing communication shall be adequately justified based on objective and verifiable sources, which shall be quoted.

In addition, the marketing communication shall refrain from using:

(a) over-optimistic wording, such as "the best fund" or "the best manager";

(b) wording that would diminish the risks, such as "safe investment" or "effortless returns"; or

(c) wording that may imply high returns,

without clearly explaining that such high returns may not be reached and that there is a risk of losing all or part of the investment.

24. Comparison of the promoted UCITS with other funds should be limited to funds characterised by a similar investment policy and a similar risks and rewards profile, unless the marketing documents contain a pertinent explanation on the difference of the funds.

25. Any reference to external documents, such as an independent analysis published by a third-party, shall mention at least the source of the information and the period to which the information contained in the external document relates.

B. Information on Risks and Rewards

26. In addition to the requirements set out in point 6 above relating to the description of risks and rewards in an equally prominent manner, all of the requirements outlined in points 27 to 30 shall be met by marketing communications when these include information on such risks and rewards.

27. The disclosure of the risk profile of the promoted UCITS in a marketing communication shall refer to the same risk classification as that included in the KIID.

28. Marketing communications that mention the risks and rewards of purchasing the units of the promoted UCITS shall refer, at least, to the relevant risks mentioned in the KIID, and the prospectus. These marketing communications shall also mention where complete information on the risks can be found in a clear and prominent manner.

29. The representation of a ranking in a marketing communication may be based only on similar funds in term of investment policy and risk/rewards profile. The ranking's representation shall also include the reference to the relevant period (at least 12 months or its multiple) and the UCITS' risk classification.

30. For UCITS recently set up and for which no past performance records are available, the reward profile may be represented only by reference to the benchmark's past performance or to the objective return, when a benchmark or objective return are envisaged in the legal and regulatory documents of the promoted UCITS.

C. Information on Costs

Points 31 and 32 aim to provide guidance on the fair, clear and not misleading character of the information on costs contained in marketing communications.

31. When referring to the costs associated with purchasing, holding, converting or selling units of a UCITS, marketing communications shall include an explanation to allow investors to understand the overall impact of costs on the amount of their investment and on the expected returns.

    For the purposes of clarity, in this respect the relevant provisions on the disclosure of performance fees outlined in the *ESMA Guidelines on performance fees in UCITS and certain types of AIFs" (ESMA34-39-992)* shall also apply, including paragraph 46[5] thereof.

32. Where any part of the total costs is to be paid in, or represents an amount of, a currency other than that of the Member State in which the target investors are residents, the marketing communication shall clearly state the currency in question, together with a

[5] Paragraph 46 provides that: *""The prospectus and, if relevant, any ex-ante information documents as well as marketing material, should clearly set out all information necessary to enable investors to understand properly the performance fee model and the computation methodology. Such documents should include a description of the performance fee calculation method, with specific reference to parameters and the date when the performance fee is paid, without prejudice to other more specific requirements set out in specific legislation or regulation. The prospectus should include concrete examples of how the performance fee will be calculated to provide investors with a better understanding of the performance fee model especially where the performance fee model allows for performance fees to be charged even in case of negative performance."*

warning that the costs may increase or decrease as a result of currency and exchange rate fluctuations.

D. Information on Past Performance and Expected Future Performance

Information on Past Performance

33. In accordance with points 13 to 25 above, when a marketing communication refers to the past performance of the promoted UCITS, this information shall be consistent with the past performance included in the prospectus and in the KIID. In particular, when the performance is measured against a benchmark index in the prospectus or the KIID, the same benchmark index shall serve as a reference in the marketing communication.

34. Information on past performance, including simulated past performance, shall not be the main information of the marketing communication. It shall be based on historical data and shall mention the reference period chosen for measuring the performance and the source of the data.

    Past performance shall be disclosed for: the preceding 10 years for UCITS establishing a KIID; or for the preceding 5 years for other UCITS; or for the whole period for which the relevant funds have been offered - if less than 10 years for UCITS establishing a KIID or less than 5 years for other UCITS.

    In every case past performance information shall be based on complete 12-months periods, but the said information may be supplemented with performance for the current year updated at the end of the most recent quarter.

35. Any change that affected significantly the past performance of the promoted UCITS, such as a change of the UCITS Management Company, shall be prominently disclosed.

36. When displaying cumulative performance, the marketing communication shall also display the performance of the UCITS for each year of the considered period. In order to be displayed in a fair and not misleading manner the cumulative performance could be presented, for instance, in the form of a graph.

37. When information on past performance is presented, this information shall be preceded by the following statement:

    "Past performance does not predict future returns".

38. If the information on past performance relies on figures denominated in a currency other than that of the Member State or EEA State in which the target investors are residents, the currency shall be clearly stated, together with a ***warning*** indicating that returns may increase or decrease as a result of currency fluctuations.

39. When no information on the past performance of the promoted UCITS is available, in particular when it has been recently set up, marketing communications shall avoid disclosing a simulated past performance based on non-pertinent information. Therefore, disclosing simulated past performance shall be limited to marketing communications relating to:

    (a) a new share or unit class of an existing UCITS or investment compartments, where the performance can be simulated on the basis of the performance of

another share or unit class, provided the two share or unit classes have the same (or substantially the same) features; and

(b) a new feeder fund whose performance can be simulated by taking the performance of its master, provided that the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets, or that the feeder's characteristics do not differ materially from those of the master.

40. Information on simulated past performance shall satisfy, *mutatis mutandis*, the requirements set out in points 34 to 39 above.

Information on Expected Future Performance

41. When a marketing communication refers to the expected future performance and to the reward profile of the promoted UCITS, all the requirements set out in points 42 to 46 shall apply.

42. Expected future performance shall be:

(a) based on reasonable assumptions supported by objective data; and

(b) disclosed on a time horizon which is consistent with the recommended investment horizon of the UCITS.

43. Expected future performance may be disclosed only per UCITS and no aggregate figures shall be allowed.

44. When information on expected future performance based on past performance and/or current conditions is presented, this information shall be preceded by the following *statement*:

> "*The scenarios presented are an estimate of future performance based on evidence from the past on how the value of this investment varies, and/or current market conditions and are not an exact indicator. What you will get will vary depending on how the market performs and how long you keep the investment/product.*"

The information on expected future performance shall also include a *statement* according to which investment may lead to a financial loss if no guarantee on the capital is in place.

45. Marketing communications shall also include at least a *disclaimer* according to which future performance is subject to taxation which depends on the personal situation of each investor and which may change in the future.

46. If the information concerns an Exchange Traded Fund, marketing communications shall indicate the regulated markets where the UCITS is traded, and if any figures on expected future performance is mentioned in the marketing communication, these shall be based on the UCITS's Net Asset Value.

E. Information on Sustainability-Related Aspects

47. When a marketing communication refers to the sustainability-related aspects of the investment in the promoted UCITS, all the requirements set out in points 48 to 50 shall be met.

48. The information shall be consistent with the information included in the legal and regulatory documents of the promoted UCITS. A link to the website where information on sustainability-related aspects is provided pursuant to the SFDR (Regulation (EU) 2019/2088) in relation to the promoted UCITS shall be included in the marketing communication, where relevant given the nature of the marketing communication.

49. Information on the sustainability-related aspects of the promoted UCITS shall not outweigh the extent to which the investment strategy of the product integrates sustainability-related characteristics or objectives.

50. When marketing communications refer to the sustainability-related aspects of the promoted UCITS, these shall indicate that the decision to invest in the promoted UCITS shall take into account all the characteristics or objectives of the promoted UCITS as described in its prospectus.

CHAPTER 2 FINANCIAL PRODUCT GOVERNANCE

Introduction

Clients, in particular Retail Clients, may face difficulties in understanding the risks and returns of certain types of Products. Consumers of financial services may in fact be exposed to unexpected losses unless they are in a position to clearly understand the risk and reward profile of such Products by means of a proper assessment of such Products against their risk appetite. This may give rise to complaints, reputational risks for Product Manufacturers and Distributors and ultimately to loss of confidence in the regulatory framework, and more broadly, in financial markets. Accordingly, sound product governance arrangements by Regulated Persons manufacturing and/or distributing Products are fundamental for consumer protection purposes. Furthermore, such arrangements can reduce the need for Product intervention actions by the MFSA and where applicable, the European Supervisory Authorities.

This Chapter is therefore aimed at setting out regulatory requirements applicable to Regulated Persons which manufacture and/or distribute Products. In particular, these Rules establish, *inter alia*, the requirements relating to Product design, identification of the target market for such Products as well as Product oversight, namely the policies which Regulated Persons should have in place to ensure that their Products continue to be suitable for the target market identified by them. The applicability of these Rules depends on whether a Regulated Person is involved in the manufacturing or distribution of a specific Product, or both. Moreover, this Chapter also deals with the information which Product Manufacturers should provide to Product Distributors so that the latter would be in a better position to effectively explain the characteristics of the Products concerned, when distributing such Products to Clients. Furthermore, apart from being required to adhere to Rules applicable to both Product Manufacturers and Product Distributors, Regulated Persons solely concerned with Product distribution are also subject to specific Rules, taking into account various factors such as the type of Product being distributed and the origin of the Manufacturer on behalf of whom such Products are being distributed.

Application

R.2.1 The Rules and any relative guidance set out under the heading "*General Rules*" in Part A shall apply to all Regulated Persons when acting as Manufacturers and/or Distributors, unless otherwise indicated.

R.2.2 In addition to the requirements of Part A, the Rules and any relative guidance set out in Part B shall apply to Regulated Persons which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules when acting as Manufacturers and/or Distributors. Provided that the requirements of Rule 2.107 shall also apply to UCITS Management Companies.

R.2.3 In addition to the requirements of Parts A and B, Manufacturers and/or Distributors of Structured Products are also required to comply with the Rules set out in Part C entitled *"Rules applicable to Manufacturers and Distributors of Structured Products whose target market are Retail Clients."*

R.2.4 In addition to the requirements of Part A, the Rules and any relative guidance set out in Part D shall apply to Regulated Persons which fall under point (iii) and (iv) of the definition of 'Regulated Person' in the Glossary to these Rules when acting as Manufacturers and/or Distributors.

R. 2.5 The Rules and the relative guidance set out in this Chapter shall not apply:

(a) to Regulated Persons which fall under point (iii) and (iv) of the definition of 'Regulated Person' in the Glossary where such Regulated Person carries on the activity of Reinsurance or captive re/insurance Services or Products that are explicitly exempted from the scope of the IDD, such as certain activities on an ancillary basis as defined in Article 1(3) of the said Directive;
(b) to Products which consist of the insurance of Large risks;
(c) with respect to transactions concluded on a Regulated Market, between members and participants thereof, which are Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Rule with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market;
(d) the processes and arrangements referred to in R.2.9 and 2.16 shall be without prejudice to all other requirements relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest and inducements.

Part A: ***General Rules applying to all Regulated Persons when acting as Manufacturers and/or Distributors unless otherwise indicated***

R.2.6 Manufacturers shall ensure that:

(a) they design Products to meet the needs of an Identified target market of end Clients within the relevant category of Clients;
(b) the strategy of distribution of the Products is compatible with the Identified target market, and

(c) they take reasonable steps to ensure that the Product is distributed to the Identified target market.

R.2.7 A Manufacturer shall make available to any Distributor all appropriate information on the Product and the product approval process, including the Identified target market of the Product.

R.2.8 Manufacturers and Distributors shall ensure that they always act honestly, fairly and professionally in accordance with the best interests of their Client when designing, valuing and pricing a Product as well as offering a Product.

R.2.9 Manufacturers shall maintain, operate and review a product approval process for each newly developed Product and for significant adaptations of an existing Product before it is marketed or distributed to Clients.

The product approval process shall contain measures and procedures for designing, monitoring, reviewing and distributing Product, as well as for corrective action for Products that are detrimental to Clients.

The product approval process shall specify an identified target market of Clients within the relevant category of Clients for each Product and shall ensure that all relevant risks to such Identified target market are assessed and that the intended distribution strategy is consistent with the Identified target market, and take reasonable steps to ensure that the Product is distributed to the Identified target market.

G.2.1 *In addition, the product approval process of each Product shall consider sustainability factors. Whereas the other provisions ((i.e. other than the product approval process) of the Product Governance and Oversight Arrangements referred to below shall consider sustainability factors for each Product that is intended to be distributed to Clients seeking Products with a sustainability-related profile.*[6]

R.2.10 A Manufacturer shall set out the Product Governance and Oversight Arrangements in a written document, the Product governance and oversight policy and make it available to its relevant staff.

R.2.11 A Manufacturer shall ensure that the compliance function monitors the development and periodic review of Product Governance and Oversight Arrangements in order to detect any risk of failure by the Manufacturer to comply with the obligations set out in these Rules.

R.2.12 A Manufacturer shall ensure that the compliance function involved in the Product design process and is entitled to intervene and make appropriate changes at every stage.

R.2.13 Where Manufacturers collaborate to manufacture a Product, only one target market needs to be identified.

R.2.14 A Manufacturer shall ensure that staff involved in designing and manufacturing Products has the necessary skills, knowledge and expertise to properly

[6] This guideline is applicable as from 22 November 2022.

understand the Products sold and the interests, objectives, including any sustainability-related objectives, and characteristics of the Clients belonging to the target market.

G.2.2 *This does not necessarily mean that new or fully separate arrangements are drafted; it can be sufficient to refer to existing documents where these contain the relevant information and just record additional information if and insofar as this is necessary. The Manufacturer may combine written arrangements as it sees fit in line with its organisational structure and processes.*

G.2.3 *A proper implementation of Product Governance and Oversight Arrangements ensures that all relevant staff members have knowledge of and observe these arrangements for their respective area of activities. It also ensures that any changes to the arrangements are promptly communicated to them.*

R.2.15[7] A Manufacturer shall understand and regularly review the Products it offers or markets, taking into account any event that could materially affect the potential risk to the Identified target market. As a minimum, the Manufacturer is required to assess and consider whether the Product remains consistent with the needs, characteristics and objectives, including any sustainability related objectives, of the Identified target market and whether it is distributed to the target market (including whether the intended distribution strategy remains appropriate); and whether the Product is reaching Clients with whose needs, characteristics and objectives the Product it is not compatible.

R.2.16 Where a Distributor advises on, or proposes, Products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in R.2.7 and to understand the characteristics and Identified target market of each Product.

R.2.17 Distributors shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interests from adversely affecting the interests of its Clients. These arrangements must be proportionate to the activities performed, the Product sold and the type of the Distributor.

Provided that with regards to Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, the requirement of this Rule shall apply to such Regulated Persons insofar as they carry out distribution activities of Insurance-based investment products.

G.2.4 *Manufacturers and Distributors shall ensure that Product Governance and Oversight Arrangements do not rely excessively on the judgement and discretion of a limited number of persons but incorporates the effective input of all relevant staff and senior management.*

[7] Amendments to this Rule implementing Commission Delegated Directive (EU) 2021/1269 are applicable as from 22 November 2022.

Obligations for Distributors Distributing Products by Third Country Manufacturers

R.2.18 When Products are manufactured or issued by third-country Manufacturer based in a non-EEA Member State, the Distributor shall take all reasonable steps to ensure that the level of Product information obtained from the Third Country Manufacturer is of a reliable and adequate standard to ensure that Products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where all relevant and material information is not publicly or otherwise available, the reasonable steps required shall include an agreement with the Manufacturer or its agent that the Manufacturer or its agent will provide all relevant information. Publicly available information may only be accepted if it is clear, reliable and produced to meet the requirements of any relevant EU Directive.

Part B: Rules applying to Regulated Persons which fall under points (i) , (ii) and (v) of the definition of 'Regulated Person' in the Glossary when acting as Manufacturers and/or Distributors

Product Oversight and Governance Requirements

R.2.19 A Regulated Person shall act in the Clients' best interests during all stages of the life cycle of Products or Services. In this respect, the Regulated Person shall comply with all the applicable requirements contained in this Chapter 2, as well as with Appendix 1 to this Chapter which implements the ESMA Guidelines on MiFID II product governance requirements.

Identification of the Potential Target Market: Differentiation on the Basis of the Nature of the Product Manufactured

R.2.20[8] In all cases, the Manufacturer shall identify at a sufficiently granular level the potential target market for each Financial Instrument and shall ensure that it specifies the type or types of Client with whose needs, characteristics and objectives, including any sustainability related objectives, the Product is compatible (that is, the potential target market).

As part of this process, the Manufacturer shall identify any group or groups of Clients for whose needs, characteristics and objectives the Product or Service is not compatible, except where the Products consider sustainability factors.

G.2.5 The level of granularity of the target market and the criteria used to define the target market and determine the appropriate distribution strategy should be relevant for the Product and should make it possible to assess which Clients fall within the target market. For example, to assist the ongoing reviews after the Financial Instrument is launched. For simpler, more common products, the target market could be identified with less detail while for more complicated Products such as bail-inable instruments or less common Products, the target market should be identified with more detail.

[8] Amendments to this Rule implementing Commission Delegated Directive (EU) 2021/1269 are applicable as from 22 November 2022.

G.2.6[9] *Furthermore, given that in terms of point 2.2 of Appendix 1 to this Chapter, the target market shall be set at a sufficient granular level, a general statement that a Product has a sustainability-related profile shall not be considered sufficient. The Manufacturer shall specify to which group of Clients with specific sustainability-related objectives the Product is supposed to be distributed.*

In addition, pursuant to R.2.32, the Manufacturer shall ensure that the sustainability factors of a Product are presented in a transparent manner to enable Distributors to provide the relevant information to Clients.

Articulation between the Distribution Strategy of the Manufacturer and its Definition of the Target Market

R.2.21 In the case of Financial Instruments the appropriate measures and procedures referred to in R.2.7 above, shall be without prejudice to all requirements under these Rules and Regulation No 600/2014 (MIFIR), including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests and Inducements.

R.2.22 A Manufacturer manufacturing Financial Instruments shall comply, in an appropriate and proportionate manner, with the relevant Rules provided in this Chapter (which encompasses requirements relating to the creation, development, issuance and/or design of Financial Instruments), taking into account the nature of the Financial Instrument, the investment Service and the target market for the Product.

R.2.23 Manufacturers shall establish, implement and maintain procedures and measures to ensure the manufacturing of Financial Instruments complies with the requirements on proper management of conflicts of interest, including remuneration. The Manufacturer shall ensure that the design of the Financial Instrument, including its features, does not adversely affect end Clients or does not lead to problems with market integrity by enabling the Manufacturer to mitigate and/or dispose of its own risks or exposure to the underlying assets of the Financial Instrument, where the Manufacturer already holds the underlying assets on own account.

R.2.24 Manufacturers shall analyse potential conflicts of interests each time a Financial Instrument is manufactured. In particular, Manufacturers shall assess whether the Financial Instrument creates a situation where end Clients may be adversely affected if they take:

(a) an exposure opposite to the one previously held by the Manufacturer itself; or
(b) an exposure opposite to the one that the Manufacturer wants to hold after the sale of the Financial Instrument.

R.2.25 Manufacturers shall consider whether the Financial Instrument may represent a threat to the orderly functioning or to the stability of financial markets before deciding to proceed with the launch of the Financial Instrument.

[9] This guideline is applicable as from 22 November 2022.

R.2.26 Manufacturers shall , where they collaborate, including with entities which are not authorised and supervised in accordance with MIFID or third-country firms, create, develop, issue and/or design a Financial Instrument, to outline their mutual responsibilities in a written agreement.

R.2.27 A Manufacturer shall periodically gather appropriate information as to the performance of the Product so as to improve the design and manufacture of other Products in development.

R.2.28 Manufacturers of Financial Instruments that are distributed through other Manufacturers shall determine the needs and characteristics of Clients for whom the Financial Instrument is compatible based on their theoretical knowledge of and past experience with the Financial Instrument or similar Financial Instruments, the financial markets and the needs, characteristics and objectives of potential end Clients.

R.2.29 Manufacturers shall undertake a scenario analysis of their Financial Instruments which shall assess the risks of poor outcomes for end Clients posed by the Financial Instrument and in which circumstances these outcomes may occur. Manufacturers shall assess the Financial Instrument under negative conditions covering what would happen if, for example:

(a) the market environment deteriorated;
(b) the Manufacturer or a third party involved in manufacturing and/ or functioning of the Financial Instrument experiences financial difficulties or other counterparty risk materialises;
(c) the Financial Instrument fails to become commercially viable; or
(d) demand for the Financial Instrument is much higher than anticipated, putting a strain on the Regulated Person's resources and/or on the market of the underlying instrument.

R.2.30[10] Manufacturers shall determine whether a Financial Instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

(a) the Financial Instrument's risk/reward profile is consistent with the target market;
(b) the Financial Instrument’s sustainability factors, where relevant, are consistent with the target market; and
(c) the Financial Instrument design is driven by features that benefit the Client and not by a business model that relies on poor Client outcomes to be profitable.

R.2.31 Manufacturers shall consider the charging structure proposed for the Financial Instrument, including by examining the following:

(a) Financial Instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;

[10] Amendments to this Rule (specifically in paragraph (b) thereof) implementing Commission Delegated Directive (EU) 2021/1269 are applicable as from 22 November 2022.

(b) charges do not undermine the Financial Instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a Financial Instrument; and
(c) the charging structure of the Financial Instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

R.2.32[11] Manufacturers shall ensure that the provision of information about a Financial Instrument to Distributors includes information about the appropriate channels for distribution of the Financial Instrument, the product approval process and the target market assessment and is of an adequate standard to enable Distributors to understand and recommend or sell the Financial Instrument properly.

In addition, Manufacturers shall ensure that the sustainability factors of the Financial Instrument are presented in a transparent manner and provide Distributors with the relevant information to duly consider any sustainability related objectives of the Client.

R.2.33 Manufacturers shall review Financial Instruments prior to any further issue or re-launch, if they are aware of any event that could materially affect the potential risk to investors and at regular intervals to assess whether the Financial Instruments function as intended. Manufacturers shall determine how regularly they review their Financial Instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued. Manufacturers shall also identify crucial events that would affect the potential risk or return expectations of the Financial Instrument, such as:

(a) the crossing of a threshold that will affect the return profile of the Financial Instrument; or
(b) the solvency of certain Issuers whose securities or guarantees may impact the performance of the Financial Instrument.

Manufacturers shall, when such events occur, take appropriate action which may consist of:

(i) the provision of any relevant information on the event and its consequences on the Financial Instrument to the Clients or the Distributors of the Financial Instrument if the Manufacturer does not offer or sell the Financial Instrument directly to the Clients;
(ii) changing the product approval process;
(iii) stopping further issuance of the Financial Instrument;
(iv) changing the Financial Instrument to avoid unfair contract terms;
(v) considering whether the sales channels through which the Financial Instruments are sold are appropriate where Regulated Persons become aware that the Financial Instrument is not being sold as envisaged;

[11] Amendments to this Rule (specifically the second paragraph thereof) implementing Commission Delegated Directive (EU) 2021/1269 are applicable as from 22 November 2022.

(vi) contacting the Distributor to discuss a modification of the distribution process;
(vii) terminating the relationship with the Distributor; or
(viii) informing the MFSA.

R.2.34 Distributors shall, when deciding the range of Financial Instruments issued by themselves or otherwise and Services they intend to offer or recommend to Clients, to comply, in an appropriate and proportionate manner, with the relevant Rules provided in this Chapter, taking into account the nature of the Financial Instrument, the investment Service and the target market for the Product.

Distributors shall also comply with the requirements of these Rules when offering or recommending Financial Instruments manufactured by entities that are not subject to these Rules. As part of this process, such Distributors shall have effective arrangements to ensure that they obtain sufficient information about these Financial Instruments from these Manufacturers.

Distributors shall determine the target market for the respective Financial Instrument, even if the target market was not defined by the Manufacturer.

Compliance Function's Reporting Obligations

R.2.35 For the purposes of assessing whether the Regulated Person's product governance arrangements operate as intended, the compliance function shall ensure that, in so far as compliance reporting to the Management body is concerned, the section of compliance reports dealing with product governance arrangements shall address, at least, the following (whilst taking into account the Regulated Person's role as product Manufacturer and/or Distributor):

(a) the compliance function's role in participating to the elaboration, monitoring and review of the Regulated Person's product governance policies and procedures;

(b) the compliance function's monitoring and assessment, on a regular basis, of the adequacy, implementation and effectiveness of the Regulated Person's product governance policies and procedures and the actions taken or to be taken to address any breaches and, or deficiencies it identifies;

(c) systematically, information about the financial instruments manufactured and, or distributed by the Regulated Person, including information on the distribution strategy, which shall include, as a minimum:

(i) the number and nature of the products manufactured and, or distributed, as applicable, including their respective target markets and other information from the respective product approval process necessary to assess the product's compliance-risk, notably with the Regulated Person's product governance policy (for instance, complexity of the product, product related conflicts of interests,

particularly relevant data from the scenario analysis, the cost-return ratio), with a specific focus on new types of products manufactured and, or distributed during the reporting period, as well as the products whose features have been significantly amended during such period;

(ii) in cases where the Regulated Person acts as manufacturer, in addition to the information referred to in indent (i), to include also the respective distributors, with a specific focus on new distributors, as part of the information on the respective distribution strategy;

(iii) whether the products are distributed outside their (positive) target market and to which extent.

G.2.7 *When reporting the information on product governance arrangements as specified in R.2.35, the compliance function may:*

(a) take a critical look at any work, reports or methods from the Regulated Person's relevant function or employees;

(b) in accordance with the proportionality principle, provide less in-depth information with respect to simpler, more common products; provide more detailed information on products characterised by complexity, risk features or other relevant features (such as, for example, illiquidity and innovation).

Application of the Target Market Requirements to Manufacturers and Distributors dealing in Wholesale Markets (i.e. with Professional Clients and Eligible Counterparties)

Professional Clients and Eligible Counterparties as End-Clients

R.2.36 Manufacturers and Distributors are required to ensure that the Products they manufacture and/or distribute are designed to meet the needs of an Identified target market of end-clients within the relevant category of Clients. When assessing the appropriate target market for a particular Product, Regulated Persons should consider the appropriate Client category and whether it allows them to make any assumptions about the end clients' knowledge and experience.

For Eligible Counterparties as End-Clients

R.2.37 Manufacturers and Distributors are required to ensure that they act honestly, fairly and professionally and communicate in a way that is "fair, clear and not misleading" in their dealings with Eligible counterparties.

R.2.38 Where the target market of end-clients is composed solely of Eligible counterparties, the overall assessment is likely to be less comprehensive. Eligible counterparties will be likely to have a detailed understanding of the market environment, commercial viability and other key factors and risks associated with a particular investment decision.

Exemptions from Product Governance Requirements

R.2.39 Manufacturers and Distributors shall be exempted from the requirements set out in R.2.6, R.2.7, R.2.9, R.2.15, R.2.36 and R.4.4.15 where:

(a) the investment service provided relates to bonds with no other embedded derivative than a make-whole clause; or

(b) the Financial Instruments are marketed or distributed exclusively to Eligible Counterparties.

Product Governance Obligations for Distributors

R.2.40[12] Distributors shall have in place adequate Product governance arrangements to ensure that Products and Services they intend to offer or recommend are compatible with the needs, characteristics, and objectives, including any sustainability related objectives, of an identified target market and that the intended distribution strategy is consistent with the Identified target market. Regulated Persons shall appropriately identify and assess the circumstances and needs of the Clients they intend to focus on, so as to ensure that Clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, Distributors shall identify any group or groups of Clients for whose needs, characteristics and objectives the Product or Service is not compatible, except where the Products consider sustainability factors.

Distributors shall obtain from Manufacturers that are subject to these Rules information to gain the necessary understanding and knowledge of the Products they intend to recommend or sell in order to ensure that these Products will be distributed in accordance with the needs, characteristics and objectives of the Identified target market.

Distributors shall take all reasonable steps to ensure they also obtain adequate and reliable information from Manufacturers not subject to these Rules to ensure that Products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where relevant information is not publicly available, the Distributor shall take all reasonable steps to obtain such relevant information from the Manufacturer or its agent. Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under the Prospectus Regulation (EU) 2017/1129 or the Transparency Directive (2004/109/EC) This obligation is relevant for Products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the Product.

Distributors shall use the information obtained from Manufacturers and information on their own Clients to identify the target market and distribution strategy. When a Regulated Person acts both as a Manufacturer and a Distributor, only one target market assessment shall be required.

[12] Amendments to the first paragraph of this Rule implementing Commission Delegated Directive (EU) 2021/1269 are applicable as from 22 November 2022.

R.2.41 Distributors shall, when deciding the range of Financial Instrument and Services that they offer or recommend and the respective target markets, maintain procedures and measures to ensure compliance with all applicable requirements under these Rules including those relating to disclosure, assessment of suitability or appropriateness, Inducements and proper management of conflicts of interest. In this context, particular care shall be taken when Distributors intend to offer or recommend new Products or there are variations to the Services they provide.

R.2.42[13] Distributors shall review the Financial Instruments they offer or recommend and the Services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the Identified target market. Distributors shall assess at least whether the Product or Service remains consistent with the needs, characteristics and objectives, including any sustainability related objectives, of the Identified target market and whether the intended distribution strategy remains appropriate. Distributors shall reconsider the target market and/or update the Product governance arrangements if they become aware that they have wrongly Identified the target market for a specific Product or Service or that the Product or Service no longer meets the circumstances of the Identified target market, such as where the Product becomes illiquid or very volatile due to market changes.

R.2.43 Distributors shall ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the Products that they intend to offer or recommend and the Services provided as well as the needs, characteristics and objectives of the Identified target market.

R.2.44 Distributors shall ensure that the Management body has effective control over the Manufacturer and Distributor's Product governance process to determine the range of Financial Instruments that they offer or recommend and the Services provided to the respective target markets. Distributors shall ensure that the compliance reports to the Management body systematically include information about the Financial Instruments they offer or recommend and the Services provided. The compliance reports shall be made available to the MFSA on request.

R.2.45 Distributors shall ensure their compliance function oversee the development and periodic review of Product governance arrangements in order to detect any risk of failure to comply with the obligations set out in these Rules.

R.2.46 Distributors shall provide Manufacturers with information on sales and, where appropriate, information on the above reviews to support Product reviews carried out by Manufacturers.

R.2.47 Where different Manufacturers and Distributors work together in the distribution of a Product or Service, the Manufacturer and Distributor with direct Client relationship shall have ultimate responsibility to meet the Product

[13] Amendments to this Rule implementing Commission Delegated Directive (EU) 2021/1269 are applicable as from 22 November 2022.

governance obligations set out in these Rules. However, intermediary Regulated Persons shall:

(a) ensure that relevant Product information is passed from the Manufacturer to the final Distributor in the chain;
(b) if the Manufacturer requires information on Product sales in order to comply with their own Product governance obligations, enable them to obtain it; and
(c) apply the Product governance obligations for Manufacturers, as relevant, in relation to the Service they provide.

Provision of Adequate Training to Relevant Staff

R.2.48 Regulated Persons which distribute Tied or Bundled packages must provide adequate training, including cross-sectorial training when relevant, to staff in charge of distributing each of the products sold as part of a package. The purpose for providing this training is to ensure that staff are familiar with the risks, where relevant, of the Component products and the Bundled or Tied package and be able to communicate these to Clients in plain (non-technical) language.

Part C: Rules Applicable to Manufacturers and Distributors of Structured Products whose Target Market are Retail Clients

Product Testing Obligations in relation to Structured Products

R.2.49 A Manufacturer of Structured Products shall:

(a) consider the characteristics, especially the risk characteristics, of the Structured Product, such as illiquidity and riskiness of the underlying asset(s) and shall have an understanding of the model and input parameters as well as the assumptions built into the valuation of the Structured Product;

(b) back test Structured Products, such that the Manufacturer may understand how it would have performed in the past;

(c) undertake simulations of future performance scenarios to assess whether likely outcomes of the Structured Product would meet the investment objectives of the Identified target market;

(d) ensure that risk management methods used are consistent with the Manufacturer's internal risk management framework. Testing should consider extreme economic environments (stress testing) and to include quantitative assessments of external (primarily financial) risks;

(e) make available the results of tests and scenarios to Distributors.

R.2.50 A Distributor of Structured Products shall ensure that it is aware and understands the results of the tests as well as the simulations of performance scenarios undertaken by the Manufacturer. The Distributor, should at minimum, adopt adequate arrangements to examine critically those results and scenarios and if needed employ an independent third-party with the relevant expertise.

Modelling and Statistical Test Analysis to be used when designing Structured Products

R.2.51 Prior to the issue of a Structured Product, the Manufacturer shall conduct robust, unbiased and arbitrage-free testing as to allow for an external party to adequately challenge the Structured Product's pricing, valuation and risk/reward trade-off relative to the Identified target market.

Distribution Strategy in Relation to Structured Products

R.2.52 A Manufacturer of Structured Products shall adopt appropriate policies and procedures regarding its relationships with the Distributors it appoints. Such policies and procedures should also cover the provision to Distributors of sufficiently detailed information about the Structured Products' pay-off structure, the model, valuation methods and the Structured Product risk/ return scenarios.

R.2.53 When receiving information provided by a Manufacturer of Structured Products, the Distributor shall:

(a) consider, when providing the information provided by the Manufacturer to clients, whether they understand the information included;
(b) ask the Manufacturer to supply additional information or training where that seems necessary to understand the Structured Product adequately.

Part D: Rules Applying to Regulated Persons which fall under Points (iii) and (iv) of the Definition of 'Regulated Person' in the Glossary

R.2.54 A Regulated Person shall be considered a Manufacturer where an overall analysis of its activity shows that it has a decision-making role in designing and developing a Product for the market.

Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary shall be deemed to have a decision-making role when such Regulated Person autonomously determines the essential features and main elements of the Product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the Insurance undertaking providing coverage for the Product. Personalisation of and adaptation of existing Products in the context of distribution activities for individual Clients, as well as the design of tailor-made contracts at the request of a single Client, shall not be considered manufacturing.

Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, that are both manufacturers shall sign a written agreement which specifies their collaboration to comply with the requirements for Manufacturers provided in these Rules, the procedures through which they shall agree on the identification of the target market and their respective roles in the product approval process.

Establishment of the Product Governance and Oversight Arrangements by a Manufacturer

R.2.55 A Manufacturer should establish and implement Product Governance and Oversight Arrangements that set out appropriate measures and procedures aimed at designing, monitoring, reviewing and distributing Products for Clients,

as well as taking action in respect of Products that may lead to detriment to Clients.

R.2.56 The Product Governance and Oversight Arrangements shall be proportionate to the level of complexity and the risks related to the Products as well as the nature, scale and complexity of the relevant business of the Manufacturer.

Objectives of the Product Governance and Oversight Arrangements

R.2.57 The Product Governance and Oversight Arrangements shall:

(a) ensure that the design of Products meet the following criteria:
  i. it takes into account the objectives, interests and characteristics of clients, including any sustainability-related objectives;
  ii. it does not adversely affect clients;
  iii. it prevents or mitigates client detriment; and
(b) support a proper management of conflicts of interest.

G.2.8 The Product Governance and Oversight Arrangements which the Manufacturer develops, may vary depending on the Product or Service or line of business, as applicable, in accordance with the principle of proportionality taking into consideration the nature, scale and complexity of the relevant business of the Manufacturer and the complexity of the Product. The Product Governance and Oversight Arrangements needs to be appropriate to account for risks borne by Clients for a Product.

G.2.9 Product Governance and Oversight Arrangements are without prejudice to basic principles in insurance, in particular the principle of solidarity and mathematical methods. The interest of Clients that must need to be taken into account when designing Products following the Product Governance and Oversight Arrangements comprise individual and collective policyholder interests which need to be duly balanced.

Role of the Management Body

R.2.58 The Manufacturer's Management body responsible for the manufacturing of Products shall endorse and be ultimately responsible for the establishment, implementation, and subsequent reviews of the Product approval process. The Manufacturer's Management body shall continuously verify internal compliance with the Product approval process.

R.2.59 The Manufacturer's Management body shall ensure that it has effective control over the Manufacturer's governance process in order to ensure effective oversight and control over the Product design and manufacture process.

R.2.60 The Manufacturer shall ensure that the compliance reports to the Management body systematically include information about the Products manufactured by the Manufacturer, including information on the distribution strategy. The Manufacturer shall make the reports available to the MFSA upon request.

G.2.10 The Manufacturer's Management body ensures that the Product Governance and Oversight Arrangements is appropriately designed and implemented into the governmental structures of the Manufacturer. This Rule clarifies that the

ultimate responsibility for the procedures and measures lies with the top management of an entity.

G.2.11 *The Manufacturer's Management body can consider involving any relevant functions in the establishment and subsequent reviews of the Product Governance and Oversight Arrangements.*

G.2.12 *The Product Governance and Oversight Arrangements as well as any changes are subject to prior approval by the Manufacturer's Management body.*

Review of Product Governance and Oversight Arrangements

R.2.61 The Manufacturer shall regularly review the Product Governance and Oversight Arrangements to ensure that they are still valid and up to date and the Manufacturer shall amend it where necessary.

G.2.13 *A minimum frequency for regular review and updates is to be established. In addition, relevant factors are to be identified which – once they occur – could trigger an ad hoc review of the Product Governance and Oversight Arrangements. Such factors could be, for example, significant changes in the retail strategy, changes in the complexity of the Product lines and changes in the distribution channels.*

G.2.14 *Any review of the Product Governance and Oversight Arrangements has to be appropriately documented. The documentation needs to record who conducted the review and to include any suggested recommendations and the decisions subsequently taken by the Manufacturer's Management body in respect of those recommendations as well as the reasons for them.*

Target Market

R.2.62 A Manufacturer shall ensure that, in terms of its product approval process, for each Product the target market and the group of compatible Clients is identified. A Manufacturer shall ensure that the target market is identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product, as well as its sustainability factors.

G.2.15 *Given that in terms of R.2.62, the target market shall be set at a sufficient granular level, a general statement that a Product has a sustainability-related profile shall not be considered sufficient. The Manufacturer shall specify to which group or groups of Clients with specific sustainability-related objectives the Product is supposed to be distributed.*

In addition, the Manufacturer shall ensure that the sustainability factors of a Product are presented in a transparent manner to enable Distributors to provide the relevant information to Clients.

R.2.63 A Manufacturer may, in particular with regard to Insurance-based investment products, identify group of Clients for whose needs, characteristics and objectives the Product is generally not compatible, except where the Products consider sustainability factors as referred to in R.2.62.

R.2.64 A Manufacturer shall only design and market Products that are compatible with the needs, characteristics and objectives, including any sustainability-related objectives, of the Clients belonging to the target market. When assessing whether a Product is compatible with a target market, the Manufacturer shall take into account the level of information available to the Clients belonging to that target market and their financial literacy.

R.2.65 A Manufacturer may, in particular with regard to Insurance-based investment products, identify group(s) of Clients for whom the Product is considered likely not to be aligned with their needs, interests, objectives and characteristics.

G.2.16 To identify the target market, a Manufacturer should not solely rely on quantitative criteria but needs to sufficiently balance them with qualitative considerations

G.2.17 To identify the target market, a Manufacturer can consider the following:
(a) tax status implications for different Products;
(b) level of risks of the Product to be designed;
(c) insurance coverage and exclusions;
(d) liquidity accessibility;
(e) demographic factors;
(f) level of knowledge and understanding of the complexity of the Product;
(g) financial capability.

G.2.18 When identifying the target market, the Manufacturer needs to consider the charges and risks that Products may present and consider if they are compatible for the Identified target market.

G.2.19 Moreover, in certain cases it may be rather obvious for whom the Product would not be suitable (e.g. a life insurance policy running for 30 years for a 97-year-old woman). Therefore, identifying for whom the Product may not be suitable is helpful in order to get a clear picture of the boundaries of the target market.

G.2.20 The identification of the target market is crucial to enable Distributors to understand to whom the Product can be sold.

G.2.21 It is recommended that as necessary, the staff involved in designing Products receives, for instance, appropriate professional training to understand the characteristics and risks of the relevant Products and the interests, objectives and characteristics of the target market.

Product Testing

R.2.66 Before a Product is brought to the market, before significant changes to an existing Product are introduced, and/or or in case the target market of an existing Product has changed significantly, a Manufacturer shall conduct appropriate testing of the Product including, where relevant, scenario analyses.

R.2.67 The Product testing shall assess if the Product over its lifetime meets the identified needs, objectives, including any sustainability-related objectives, and characteristics of the Clients belonging to the target market.

R.2.68 A Manufacturer shall not bring a Product to the market if the results of the Product testing show that the Product does not meet the identified needs, objectives, including any sustainability-related objectives, and characteristics of the target market.

R.2.69 A Manufacturer shall carry out Product testing in a qualitative manner and, depending on the type and nature of the Product and the related risk of detriment to Clients, in a quantitative manner.

G.2.22 When testing a Product, Manufacturers need to consider all significant risks to which Clients subscribing to that Product would be exposed to in order to align the Product with the interest of the target market.

G.2.23 For instance, Manufacturers need to make appropriate Product changes before the launch, where the Product testing and/or scenario analysis gives rise to poor results for the target market.

G.2.24 The range of scenario analysis needs to be proportionate to the complexity of the Product, its risks and the relevance of external factors with respect to the Product performance.

G.2.25 Keeping in mind the objectives of the defined target market, the assessment may consider the following questions:

(a) what if assumptions change, for instance if market conditions deteriorate?
(b) is the price of the policy in balance with the worth of the underlying? For instance, is it possible to close an all-risk policy for an old car?
(c) what if certain circumstances during the lifetime of the Product change? For instance, what happens with the premium of unemployment insurance if a person gets unemployed, disabled or experiences other life events? What are the consequences for the coverage of a payment protection insurance Product when a married couple divorces?
(d) what happens to the (guaranteed) coverage (insured amounts) of my fire and theft insurance when my income changes?

G.2.26 In addition to the questions above, more specifically for Insurance-based investment products, the assessment may consider also the following questions:

(a) what would happen to the risk and reward profile of the Product following changes to the value and liquidity of underlying assets?
(b) how is the risk/reward profile of the Product balanced, taking into account the cost structure of the Product?
(c) when a Product benefits from a certain tax environment or other condition; what happens if these conditions change?
(d) what are the terms and conditions, and how do they affect the outcome of the Product?
(e) what will happen when the Manufacturer faces financial difficulties?
(f) what will happen if the customer terminates the contract early?

G.2.27 In addition to the questions above, more specifically for pure protection life insurance products, the assessment may consider also the following questions:

(a) what if the premises change, for instance mortality rate increases, or technical interest rate increases?
(b) does the benefit cover sufficiently future needs of beneficiary?

In the case of a non-life insurance, the assessment may consider the following questions:

(a) what is the expected claims ratio and the claims payment policy? What if it is higher or lower than expected? Do the expected claims ratio and claims payment policy suggest that the Product is of monetary benefit to customers?
(b) does the coverage of one product potentially overlap with the coverage of another Product?
(c) does the coverage meets sufficiently future needs of target market? How is the coverage updated in terms of reflecting future needs of target market?
(d) do customers understand the terms and limitations of the contract?
(e) would the Manufacturer be able to cope with a large amount of customers? Is the amount of staff sufficient enough to deal with a large amount of requests from customers?

Product Monitoring

R.2.70 A Manufacturer shall continuously monitor and regularly review Products which the Manufacturer has brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those Products. The Manufacturer shall assess whether the Products remain consistent with the needs, characteristics and objectives, including any sustainability-related objectives, of the Identified target market and whether those Products are distributed to the target market or are reaching Clients outside the target market.

R.2.71 A Manufacturer shall determine the appropriate intervals for the regular review of Products, thereby taking into account the size, scale, contractual duration and complexity of those Products, their respective distribution channels, and any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

R.2.72 A Manufacturer that identifies during the lifetime of a Product any circumstances related to the Product that may adversely affect the Client of that Product shall take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event. The Manufacturer shall promptly inform concerned Distributors and Clients about the remedial action taken.

G.2.28 As part of the Product monitoring process, a Manufacturer takes into account for example the level of the claims ratio for the Product as well as claims payment policy or causes of complaints in determining whether to revise the offering.

G.2.29 For instance, the claims ratio or cause of complaints could be used as a tool to assess whether certain Products are of good value to customers. These are two tools which indicate whether customers are getting a fair deal (value for money).

Remedial Action

R.2.73 Should the Manufacturer identify, during the lifetime of a Product, circumstances which are related to the Product and give rise to the risk of Client detriment, the Manufacturer shall take appropriate action to mitigate the situation and prevent the re-occurrence of detriment.

R.2.74 If relevant, the Manufacturer shall notify any relevant remedial action promptly to the Distributors involved and to the Client.

G.2.30 A Manufacturer needs to take appropriate action whenever he becomes aware that the Product might cause detriment to Clients. This might be the case during the regular Product monitoring exercise, but also when he is, for instance, informed by the Distributor or through a complaint.

G.2.31 The Product lifetime is understood as capturing the entire life cycle of a Product which begins at the moment when the Product is being designed and only finishes once there is no Product left on the market. It covers situations when the Product is no longer being sold but there are still Clients who own the Product. The end of the life cycle of the Product is reached only when the last Product has been withdrawn from the market.

G.2.32 For example, remedial action needs to be taken when the Product no longer meets the general needs of the target market or when the Product performance is significantly different (in terms of detriment to the Client) from what the Manufacturer originally expected.

G.2.33 As a general rule, the Manufacturer can only make changes to the Product that are consistent with the interests, objectives and characteristics of the already existing target market and these changes do not have an adverse impact on the Client to which the Product has been sold already.

G.2.34 In order to prevent Client detriment efficiently, it might also be necessary that the Manufacturer notifies the remedial action taken to the Distributors involved and to the Clients. This might be the case where the risk profile of a Product has changed due to market developments and the Product is no longer in line with the interests, objectives and characteristics of the target market.

Distribution Channels

R.2.75 A Manufacturer of Products shall adopt appropriate policies and procedures, which shall be in writing and reviewed periodically, regarding its relationships with the Distributors it appoints. Such policies and procedures should as a minimum cover the following:

(a) criteria and procedures governing the choice of those Distributors;
(b) roles and responsibilities of the different parties;
(c) provision of information to assist Distributors in identifying conditions when Products should not be distributed to a group of Clients as referred to in R.2.62 to R.2.65 or to the Identified target market;
(d) flagging of key risks and returns.

R.2.76 A Manufacturer shall carefully select distribution channels that are appropriate for the target market, thereby taking into account the particular characteristics of the relevant Product.

R.2.77 A Manufacturer shall provide to Distributors with all appropriate information on the Product, the Identified target market and the suggested distribution strategy, including information on the main features and characteristics of the Products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the Client. That information shall be clear, complete and up-to-date.

R.2.78 Manufacturers shall ensure that the information given to Distributors in terms of R.2.77 shall be sufficient to enable the Distributors to:

(a) understand the Products;
(b) comprehend the Identified target market for the Products;
(c) identify any Clients for whom the Product is not compatible with their needs, characteristics and objectives, including any sustainability-related objectives;
(d) Carry out distribution activities for the relevant Products in accordance with the best interests of their Clients.

R.2.79 The information which a Manufacturer supplies to the Distributor shall not substitute the suitability assessment and the specification of the demands and needs of a specific Client and the underlying reasons for any Advice given by the Distributor.

R.2.80 A Manufacturer shall take all reasonable steps to ensure that distribution channels act in compliance with the objectives of the Manufacturer's Product Governance and Oversight Arrangements.

R.2.81 A Manufacturer shall take appropriate steps to monitor that Distributors act in accordance with the objectives of the Manufacturer's Product approval process. They shall in particular verify on a regular basis whether the Product is distributed on the Identified target market. That monitoring obligation shall not extend to the general regulatory requirements with which Distributors have to comply when carrying out distribution activities for individual Clients. The monitoring activities shall be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

R.2.82 When the Manufacturer considers that the distribution channel does not meet the objectives of the Manufacturer's Product Governance and Oversight Arrangements, the Manufacturer shall take remedial actions towards the distribution channel.

G.2.35 A Manufacturer needs to select Distributors that have the necessary knowledge, expertise and competence to understand the Product features and the characteristics of the Identified target market, correctly place the Product in the market and give the appropriate information to Clients.

G.2.36 A Manufacturer's information to the Distributor does not seek to substitute the specification of the demands and needs of a specific Client and the underlying

reasons for any Advice given by the Distributor according to Article 12(3) of Directive 2002/92/EC.

G.2.37 *A Manufacturer informs the Distributor about who is the target market that the Product has been designed for.*

G.2.38 *Manufacturers may survey a number of Clients to find out if they understood the Product features and to see if they fit into the target market. If they do not, then the Manufacturer needs to consider what this means – is its information material adequate? Is it providing enough information to Distributors? Is it working right with the Distributors?*

G.2.39 *If the Manufacturer identifies problems with the selected distribution channels, (i.e. when the Distributor is offering the Product to Clients for whom it is not compatible) they need to take appropriate actions. In the case of independent Distributors, Manufacturers might, for instance, need to consider ceasing making available the relevant Products to the Distributor not meeting the Product governance and oversight objectives of the Manufacturer.*

Outsourcing of the Product Design

R.2.83 A Manufacturer shall retain full responsibility for compliance with Product Governance and Oversight Arrangements as described in these Rules when it designates a third party to design Products on their behalf.

Documentation of Product Governance and Oversight Arrangements

R.2.84 Relevant actions taken by the Manufacturer in relation to the Product Governance and Oversight Arrangements shall be duly documented, kept for audit purposes and made available to the MFSA upon request.

G.2.40 *Without prejudice to local legislation it is recommended that the records of the relevant documentation are kept in a Durable medium for a minimum period of five years. The period starts when the relevant action is taken. There might be situations where it is appropriate to keep the documentation for a longer period of time, e.g. due to the lifetime of a Product.*

Establishment of Product Distribution Arrangements

R.2.85 A Distributor shall establish and implement Product distribution arrangements that set out appropriate measures and procedures to obtain from the Manufacturer all appropriate information on the Products for considering the range of Products and Services the Distributor intends to offer to its Clients, to fully comprehend those Products, taking into account the level of complexity and the risks related to the Products as well as the nature, scale and complexity of the relevant business of the Distributor. For reviewing the Product distribution arrangements and for obtaining all necessary information on the Product(s) from the Manufacturer(s).

R.2.86 The Product distribution arrangements need to be proportionate to the level of complexity and the risks related to the Products as well as the nature, scale and complexity of the relevant business of the Regulated Person.

R.2.87 The Distributor shall set out the Product distribution arrangements in a written document and make it available to its relevant staff.

Objectives of the Product Distribution Arrangements

R.2.88 The Product distribution arrangements shall:

(a) aim to prevent and mitigate Client detriment;
(b) support a proper management of conflicts of interests; and
(c) ensure that the objectives, including any sustainability-related objectives, the interests and characteristics of Clients, are duly taken into account.

G.2.41 *R.2.85 to R.2.88 set out the general principle that Distributors need to establish appropriate measures and procedures with regard to the Products they intend to distribute. In contrast with the Rules applicable for Manufacturers, the focus of the Rules applicable to Distributors is not on the design and subsequent review of the Products, but on the necessary steps in preparation of the distribution of the Products to the Clients (such as obtaining all relevant information from the Manufacturer and defining a distribution strategy).*

G.2.42 *The Rules acknowledge the importance of establishing adequate processes before Products are distributed to Clients. Already at this stage Distributors need to consider to which extent the Product choice gives rise to the risk of conflicts of interest and if so, which measures should be taken in order to ensure that the distribution activities are carried out in accordance with the best interest of the Clients. This might also imply that Distributors abstain from distributing specific Products, for example in cases where Products do not offer any value to the Client, but only a high commission to the Distributor. The Rules are not intended to mean that the Distributor should make a previous selection of Products or that the Distributor should identify its own target market.*

G.2.43 *The Rules generally apply to all Distributors, including any natural or legal person pursing the activity of insurance distribution, independent from the question whether these activities are pursued as a principal professional activity or on an ancillary basis, by an independent broker or by a Tied Agent.*

G.2.44 *The Rules for Distributors provide a separate set of Rules with specific duties and responsibilities for Distributors to be distinguished from those applicable to Manufacturers. The Rules for Distributors do not aim to extend and transfer the responsibilities of Manufacturers vis-à-vis their Products, but to establish a distinct set of duties Distributors should comply with when selecting Products for distribution.*

Role of Management Body

R.2.89 The Distributor's Management body responsible for the distribution shall endorse and be ultimately responsible for establishing, implementing, reviewing the Product distribution arrangements and continuously verify internal compliance with those arrangements.

G.2.45 *R.2.89 is primarily aimed at entities where the tasks related to the Product distribution arrangements are delegated either internally or even externally (e.g. in cases of outsourcing) and clarifies that the ultimate responsibility for the*

organisational measures and procedures lies with the top management of the Distributor.

Obtaining All Necessary Information on the Target Market from the Manufacturer

R.2.90 The Product distribution arrangements shall aim to ensure that the Distributor obtains all necessary information from the Manufacturer to be communicated under R.2.77.

G.2.46 An important prerequisite to setting up a distribution strategy as required under R.2.92 is that the Distributor has detailed knowledge about the approval process of the Manufacturer, in particular the target market of the individual Product. This information helps the Distributor to select the Products the Distributor intends to distribute and to assess to which Clients the Distributor may advertise and promote the individual Products.

Obtaining All Other Necessary Information on the Product from the Manufacturer

R.2.91 The Product distribution arrangements shall aim to ensure that the Distributor obtains all other necessary information on the Product from the Manufacturer in order to fulfil its regulatory obligations towards the Clients. This includes information on the main characteristics of the Products, its risks and costs as well as circumstances which may cause a conflict of interests at the detriment of the Client.

G.2.47 This Rule complements R.2.90 and requires the Distributor to establish appropriate arrangements to obtain from the Manufacturer all relevant information on the Product which is necessary to carry out its distribution activities. The purpose of this Rule is to ensure that the Distributor receives all Product related information about which the Distributor is required to inform the Clients.

Distribution Strategy

R.2.92 Where the Distributor sets up or follows a distribution strategy it shall not contradict the distribution strategy and the target market identified by the Manufacturer of the Product.

G.2.48 The distribution strategy addresses the question on how Products are distributed to Clients. The distribution strategy needs to consider aspects such as whether the Product should only be sold with Advice, or if the Product should be made available only to particular groups in the Regulated Person's Client bank.

G.2.49 R. 2.92 emphasises that in cases where the Distributor sets up or follows an own distribution strategy, this strategy needs to be consistent with the target market identified by the Manufacturer of the respective Product. In particular, this means that the distribution strategy generally does not allow that the Products are distributed to Clients which are not part of the target market identified by the Manufacturer of the respective Product. The distribution strategy may also outline circumstances under which the distribution of Products to Clients outside of the target market is permitted exceptionally.

G.2.50 *If the Distributor can justify and demonstrate that the Product fits with the best interest of the relevant Client, the Distributor may exceptionally distribute Products to a Client, who is outside of the target market identified by the Manufacturer. In these exceptional cases, the Distributor has to duly document this in accordance with R.2.95.*

G.2.51 *This Rule applies without prejudice to any assessment of demands and needs, suitability or appropriateness to be subsequently carried out by the Distributor when providing services to the individual Client at the point of sale.*

Regular Review of Product Distribution Arrangements

R.2.93 The Distributor shall regularly review the Product distribution arrangements to ensure that those arrangements are still valid and up to date and shall amend them where appropriate. The Distributor that have set up or apply a specific distribution strategy shall, where appropriate, amend that strategy in view of the outcome of the review of the Product distribution arrangements. When reviewing the Product distribution arrangements, the Distributor shall verify that the Product is distributed to the Identified target market.

The Distributor shall determine the appropriate intervals for the regular review of their Product distribution arrangements, thereby taking into account the size, scale and complexity of the different Products involved.

To support Product reviews carried out by the Manufacturer, the Distributor shall upon request provide the Manufacturer with relevant sales information, including, where appropriate, information on the regular reviews of the Product distribution arrangements.

G.2.52 *As the Product distribution arrangements are an important element to prevent and mitigate detriment to the Clients, it seems appropriate that Distributors regularly review whether their arrangements are still valid and up to date. This applies in particular with regard to the distribution strategy for each Product taking into consideration that the target market (as initially identified by the Manufacturer) may be redefined in the course of time due to external factors (such as market developments).*

Provision of Sale Information to the Manufacturer

R.2.94 The Distributor shall inform the Manufacturer, promptly and without undue delay, when the Distributor becomes aware that a Product is not aligned with the interests, objectives, including any sustainability-related objectives, and characteristics of the Clients belonging to the Identified target market, and/or if the Distributor becomes aware of other Product-related circumstances that may adversely affect the Client. The Distributor shall also, where appropriate, amend the distribution strategy for that Product.

G.2.53 *R.2.94 pursues the objective to enhance the exchange of information between Manufacturer and Distributor to facilitate the market monitoring of the Manufacturer. This does not mean that the Distributors need to periodically report every sale to Manufacturers, or that the Manufacturer must confirm each transaction was distributed to the correct target market. Ad hoc information could include, for example, information about the amount of sales made outside*

the target market, summary information on the Clients or a summary of the complaints received with regard to a specific Product. The obligation to provide sales data shall aim to enable the Manufacturer to monitor the Product and to check that the Product remains consistent with the needs, characteristics and objectives of the target market as defined by the Manufacturer itself.

G.2.54 *R.2.94 is in line with R.2.70 to R.2.72 requiring the Manufacturer to monitor on an on-going basis that the Product continues to be aligned with the interests, objectives and characteristics of the target market.*

Documentation

R.2.95 Relevant actions taken by the Distributor in relation to the Product distribution arrangements should be duly documented, kept for audit purposes and made available to the MFSA on request.

G.2.55 *Without prejudice to national law, it is recommended that the records of the relevant documentation are kept in a Durable medium for a minimum period of five years. The period starts when the relevant action is taken. There might be situations where it is appropriate to keep the documentation for a longer period of time, e.g. due to the lifetime of a Product.*

G.2.56 *As part of the action required under R.2.94, the Distributor shall also document that he has received all necessary information from the Manufacturer according to R.2.90 and R.2.91.*

Appendix 1

(R.2.19 of Chapter 2 of the Rulebook)

Obligations and Guidelines on MiFID II Product Governance Requirements[14]

The requirements set out in this Appendix implement primarily the *ESMA Guidelines on MiFID II Product Governance Requirements.*

The purpose of the said requirements is primarily to ensure a common, uniform and consistent the implementation of the MIFID II MiFID II (Directive 2014/65/EU) requirements on product governance, including on the requirements on sustainability considerations, thereby leading to improved investor protection and good consumer outcomes.

Scope

The requirements and the relative guidance set out in this Appendix shall apply to persons falling under points (i) and (v) of the definition of *'Regulated Person'* in the Glossary (hereinafter referred to as *'Regulated Person'),* which act as Manufacturers and/or Distributors of investment Products and Structured Deposits.

The contents of this Appendix shall be read and construed together with other relevant requirements laid down in the various Chapters of this Rulebook, in particular Chapter 2 thereof.

General Requirements

A Regulated Person shall ensure that, in accordance with Rules R.2.22 and R.2.34, it applies the requirements laid down in Chapter 4 and in this Appendix in an appropriate and proportionate manner, taking into account the nature of the Product, the investment Service and the target market of the Product.

When a Regulated Person acts both as the Manufacturer and Distributor of Products, the requirements set out in Chapter 4 and in this Appendix shall apply as relevant, and the Regulated Peron shall ensure that it meets all the applicable requirements pertaining to both its Manufacturer and its Distributor obligations.

In general, a Regulated Person acting as a Manufacturer and/or Distributor shall substantiate and document the choices made in the context of its Product governance arrangements, including with regard to the target market identification and related distribution strategies.

A. Guidelines for Manufacturers

Identification of the potential Target Market by the Manufacturer: Categories to be considered

[14] With the Conduct of Business Rulebook changes of October 2023 there has been a reorganization and shift of certain Rules and guidance from the main body of the relevant Chapter to this Appendix. It is to be particularly noted that contents of this Appendix which are new or amended when compared with the immediately preceding ESMA Guidelines on the subject-matter are applicable as from *3 October 2023*.

1. To identify the potential target market, a Manufacturer should not solely rely on quantitative criteria but it shall ensure the said identification is adequately based on sufficient qualitative considerations as well, so as to sufficiently balance quantitative criteria with qualitative considerations. Services for the mass market in particular, may require automation of processes and this automation is usually based on formulas or algorithmic methodologies that process quantitative criteria for Products and Clients. Such numerical data is usually generated through scoring systems (for example, by using product features like volatility of Financial Instruments, rating of Issuers, amongst others, or else through *"conversion"* of factual data into numerical systems).

In identifying the target market for a Product, the Manufacturer shall also take into account the results of the scenario analysis (as required under Rule R.2.29) and the charging structure analysis (as required under Rule R.2.31) undertaken for the relevant Product. For example, the scenario analyses performed by the Regulated Person may reveal that a Product's value is particularly sensitive to negative market conditions, leading to the identification of a narrower target market in terms of Clients' risk tolerance. Another example is that the charging structure analysis performed by the Regulated Person may reveal that the charging structure of the Product is not compatible with the identified target market, leading the Regulated Person to modify the charging structure of the Product and/or reassess the target market.

1.1 Manufacturers should use the list of categories set out below in point 1.5 as a basis for identifying the target market for their investment Products. The list of the categories is cumulative, that is, when assessing the target market each Manufacturer should use each of those categories. In doing so, a Manufacturer should analyse the relevance of each category for a certain Product and then align the depth of the identification in proportion to the type, nature and other features of the Product (as described in points 1.5 to 1.8 below and paragraph 2 and its supporting provisions).

1.2 Manufacturers should detail/describe each one of these categories, without merging categories, while taking into account their relationship and ensuring the consistency between different categories since they all contribute to the definition of the target market for a given Product.

1.3 Manufacturers should not exclude any of the five below mentioned categories in point 1.5. If, in the Manufacturers' view, these five categories are too restrictive to identify a meaningful target market, additional categories may be added. In the decision, whether to use such additional categories or not, Manufacturers may take into account the characteristics of the information-channels with Distributors. For example, in order to facilitate the exchange of information with Distributors and to foster open architecture, Manufacturers may limit the use of additional categories to cases where these are essential to define a meaningful target market for the Product.

1.4 Manufacturers shall identify a potential target market in line with Rules R.2.13, R.2.20 and R.2.28. Given that usually the Manufacturers do not have direct Client contact, and in accordance with Rule R.2.28, this means that the Manufacturers' target market identification may be based *inter alia* on their theoretical knowledge and experience of the Product.

1.5 To identify the target market for their Products, Manufacturers should use and take into consideration the following list of five categories:

(a) **the type of Clients to whom the Product is targeted:** the Manufacturer should specify to which type of Client the Product is targeted. This specification should be made according to the MiFID II Directive 2014/65/EU Client categorisation of *"Retail Client", "Professional Client"* and/or *"Eligible Counterparty"*.

In order to avoid possible misuse of the exemption provided in R.2.39(b), the Manufacturer shall ensure that its decision to market or distribute a Product exclusively to Eligible Counterparties is clearly made *ex ante* (that is, either when performing the initial target market assessment or when performing periodic reviews), based on the Manufacturer's internal processes;

(b) **Knowledge and experience:** the Manufacturer should specify the knowledge that the target Clients should have about elements such as: the relevant Product type, Product features and/or knowledge in thematically related areas that help to understand the Product.

For example, for Structured Products with complicated return profiles, Manufacturers could specify that target Clients should have knowledge of how this type of Product works and the likely outcomes from the Product. Regarding experience, Manufacturers could describe how much practical experience target Clients should have with elements such as: relevant Product type, relevant Product features and/or experience in thematically related areas. The Manufacturers could specify, for example, a time period for which Clients should have been active in the financial markets. Knowledge and experience may be dependent on each other in some cases (that is, a Client with limited or no experience could be a valid target Client if he or she compensates missing experience with extensive knowledge);

(c) **Financial situation with a focus on the ability to bear losses:** the Manufacturers should specify the percentage of losses target Clients should be able and willing to afford (for example, from minor losses to total loss) and if there are any additional payment obligations that might exceed the amount invested (for example, margin calls). This could also be phrased as a maximum proportion of assets that should be invested;

(d) **Risk tolerance and compatibility of the risk/reward profile of the product with the target market:** the Manufacturers should specify the general attitude that target Clients should have in relation to the risks of investment. Basic risk-attitudes should be categorised (for example, *"risk oriented or speculative", "balanced", "conservative"*) and clearly described. Since different Regulated Persons in the chain may have different approaches to defining risk, the Manufacturers should be explicit about the criteria that must be met in order to categorise a client in this way. Regulated Persons should use the risk indicator stipulated by the PRIIPS Regulation (Regulation (EU) No1286/2014) or the UCITS Directive (Directive 2009/65/EC), where applicable, to fulfil this requirement. Where relevant, Manufacturers should also consider the risks included in the narrative below the PRIIPs summary risk indicator, such as currency and/or liquidity risk;

(e) **Clients' Objectives and Needs**: the Manufacturers should specify the investment objectives and needs of target Clients that a Product is compatible with, including the wider financial goals of target Clients or the overall strategy the target Clients follow when investing.

Those objectives can be *"fine-tuned"* by specifying particular aspects of the investment and expectations of targeted Clients. The particular Clients' objectives and needs a Product is intended to fulfil may vary from specific to more generic. For example, a Product may be designed to meet the needs of a specific age demographic, to achieve tax efficiency based on Clients' country of tax residence, or may be designed with special Product features to achieve specific investment objectives such as *"currency protection", "regular payments",* and other features, as relevant. In addition, Manufacturers should ensure that reference is made to the expected investment horizon or recommended holding period (for example, number of years the investment is to be held), whilst duly considering the potential impacts for Clients of an early exit (for example, in terms of costs).

1.6 Within the broad category of Clients' objectives and needs, the Manufacturer should also specify any sustainability-related objectives the Product is compatible with. To ensure a sufficient level of granularity of the target market, when identifying sustainability-related objectives, the Manufacturer may specify, where relevant, the following aspects (in line with the definition of *"Sustainability Preferences"* in the Glossary to this Rulebook; and as further detailed in Appendix 7 to Chapter 4 of this Rulebook relating to Appendix 7 to this Chapter which implements the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements):

(a) the minimum proportion of the Product that is invested in environmentally sustainable investments as defined in Article 2, point (1), of the Taxonomy Regulation (Regulation (EU) 2020/852);

(b) the minimum proportion of the Product that is invested in sustainable investments as defined in Article 2, point (17), of the SFDR (Regulation (EU) 2019/2088);

(c) which Principal Adverse Impacts ("PAI") on Sustainability Factors are considered by the Product, including quantitative or qualitative criteria demonstrating that consideration. The Manufacturer could use the categories presented in the SFDR RTS (Commission Delegated Regulation (EU) 2022/1288), (instead of an approach based on each PAI indicator), such as *"emissions", "energy performance", "water & waste",* amongst others;

(d) whether, where relevant, the Product has a focus on either Environmental, Social or Governance criteria or a combination of them, as referred to in point 2.8(b) of Appendix 7 to Chapter 4 of this Rulebook relating to the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements:

Provided that, the Product's minimum proportion referred in indents (a) and (b) above is the proportion published in the Product's binding contractual documentation (such as the one referred to in Article 6 of the SFDR (Regulation (EU) 2019/2088)), or any other relevant legal document.

1.7 Depending on the characteristics of the specific Product manufactured, the description of one or more of the above categories may result in the identification of a broad group of target Clients that could also encompass a more restricted group. For example, if a Product is considered compatible with target Clients possessing general relevant knowledge and experience, it will be inevitably compatible with a sophisticated level of knowledge and experience.

1.8 In order to avoid the risk of misinterpretations and misunderstandings, Manufacturers should clearly define the concepts and terminology used when defining the target market across the five categories listed in point 1.5 above.

Identification of the Potential Target Market: Differentiation on the basis of the nature of the Product Manufactured

2. The identification of the potential target market by the Manufacturer should be done for all Products in an appropriate and proportionate manner, considering the nature of the Product. This means that in the target market identification the Manufacturer should consider the characteristics of the Product including its complexity (including costs and charges structure), risk-reward profile or liquidity, or its innovative character.

2.1 In this context, the Manufacturer should define and adequately graduate the level of complexity to be attributed to manufactured Products to determine the necessary level of detail with which the target market should be identified. Although complexity is a relative term, which depends on several factors, the Manufacturer should also take into account, the criteria and principles identified in Rule R.4.4.45 implementing Article 25(4) of MiFID II Directive 2014/65/EU.

2.2 Consequently, for more complicated Products, such as Structured Products with complicated return profiles, the target market should be identified with more detail. For simpler, more common Products it is likely that the target market will be identified with less detail. Depending on the Product, the description of one or more of the above-mentioned categories within point 1.5 may be more generic; that is, the simpler the product is, the less detailed the description of a category may be.

The level of granularity of the target market and the criteria used by the Manufacturer to define the target market and determine the appropriate distribution strategy should be relevant for the Product and should make it possible to assess which Clients fall within the target market (for example to assist the ongoing reviews after the Financial Instrument is launched). For simpler, more common products, the target market could be identified by the Manufacturer with less detail, while for more complicated products (such as bail-inable instruments or less common products) the target market should be identified by the Manufacturer with more detail.

2.3 For certain particularly complex and risky Products, such as contracts for difference ("CFD") and other Products with similar features, Manufacturers should perform a very careful target market assessment, resulting in a significantly reduced target market or no compatible target market at all. If a Manufacturer considers that a CFD or Product with similar characteristics does not have a compatible target market, it should not make the Product available for distribution. If a Manufacturer considers that there is a target market whose needs, characteristics and objectives a CFD, or a product with similar features, is compatible with, such a target market should in any case be confined to high-risk seeking Clients understanding the risks involved and who are able and prepared to lose money, on average, with their investment and who are seeking speculative investments with only a small chance of earning positive returns.

2.4 Manufacturers may also decide to define the target market by adopting a common approach for some Products if they have sufficiently comparable product features

(this is coined as the *"clustering approach"*). When adopting a clustering approach, Manufacturers should use a sufficient level of granularity to ensure that only Products with sufficiently comparable characteristics and risk features are grouped together (that is, clusters should be homogeneous in themselves and heterogeneous towards other clusters).

In ensuring that homogenous clusters are identified, Manufacturers should pay particular attention to the level of complexity of Products, meaning that the more complex the underlying Products of a cluster become, the more granular the clustering should be. This means that for certain more complex products, it is expected that a clustering approach will not be appropriate and that in such context Manufacturers should define the target market at the level of the individual Product.

2.5 Manufacturers should consider multiple key factors when clustering Products, such as: risk factors (for instance, market, credit and liquidity risk); charging structure (level and type of costs); optionality elements (in case of derivatives, or Products with embedded derivatives); financial leverage; eligibility to bail-in; subordination clauses; observability of the underlying (for instance, use of unfamiliar or opaque indices); guarantees of principal repayment or capital protection clauses; liquidity of the Product (that is, tradability on trading venues, bid-ask spread, selling restrictions, exit charges); and the currency denomination of the Product).

2.6 When using a clustering approach, the Manufacturer should always check and document, for each specific Product, whether the Product belongs to a certain cluster and therefore, whether the target market identified for this cluster can be assigned to this Product. For this purpose, clear criteria should be specified by the Manufacturer under each cluster. In any case, when using a clustering approach, the Manufacturer should consider the outcomes of the charging structure and scenario analyses of each Product.

2.7 However, in all cases, including when using a clustering approach, the Manufacturer shall ensure that the potential target market is identified at a sufficiently granular level for each Product to avoid the inclusion of any groups of Clients for whose needs, characteristics and objectives the Product is not compatible.

2.8 For bespoke or tailor-made Products, the target market of the Product will usually be the Client who ordered the Product unless the distribution of the Product to other Clients is also foreseen.

Articulation between the Distribution Strategy of the Manufacturer and its definition of the Target Market

3. According to R.2.7, R.2.9 and R.2.15 implementing Article 16(3) of MiFID II Directive 2014/65/EU, the Manufacturer shall ensure that its intended distribution strategy is consistent with the identified target and, according to R.2.6, R.2.36 and R.4.4.15 implementing Article 24(2) of MiFID II Directive 2014/65/EU, the Manufacturer needs to take reasonable steps to ensure that the financial Product is distributed to the identified target market. The Manufacturer should define its distribution strategy so that this strategy favours the sale of each Product to the target market of this Product. This includes that, when the Manufacturer can choose the Distributors of its Products, the Manufacturer makes its best efforts to select Distributors whose type of Clients and Services offered are compatible with the target market of the Product.

3.1 In defining the distribution strategy, a Manufacturer should determine the extent of Clients' information necessary to the Distributor to properly assess the target market for its Product. Hence, the Manufacturer should propose the type of investment Service through which the targeted Clients should or could acquire the Financial Instrument. If the Product is deemed appropriate for a sale without Advice, the Regulated Person could also specify the preferred acquisition channel.

B. Guidelines for Distributors

Timing and Relationship of Target Market assessment of the Distributor with other Product Governance Processes

4. The Distributor's target market identification (that is, the identification of the *'actual'* target market for that Product) should be conducted as part of the general decision-making process about the range of Services and Products that the Distributor is going to distribute. Therefore, the actual target market identification should occur at an early stage, on an *ex-ante* basis (that is, before going into daily business and/or before deciding whether the Product should be included in the Distributor's offer), based on the Distributor's business policies and distribution strategies as defined by the Management body.

In particular, in the context of the identification of the target market of Products intended for distribution, the Distributor should ensure that the decisions undertaken to define the Distributor's product assortment are based on the consideration of the characteristics, objectives and needs of the Distributor's Client base.

4.1 The Distributor should take responsibility to ensure, from the very beginning, the general consistency of the Products that are going to be offered and the related Services and to choose which Products are to be offered under the different Services, to ensure compatibility with the needs, characteristics and objectives of target Clients. The Distributor should ensure that the aspects related to this general consistency of Products, Services and distribution strategies with target Clients should be addressed and formalised in the Distributor's policy as to the Services, activities, Products and operations offered or provided, in line with the relevant provisions implementing Article 9(3)(b) of MiFID II Directive 2014/65/EU.

4.2 The decision-making process about the Service and Product universe in combination with the target market identification process should directly influence the way in which the Regulated Person's daily business is conducted, as the Management body's choices are implemented along the Distributor's decision chain and hierarchy. Those processes will jointly have a direct impact on the compatibility of Products and Services offered and will influence all other relevant processes connected with the Services provided, especially the definition of budgeting objectives and staff remuneration policies.

4.3 The Distributor should especially focus on the investment Services through which the Products will be offered to their respective target markets. In this context, the Distributor should ensure that the nature of the Products is duly taken into account, paying particular attention to those Products characterised by complexity/risk features or by other relevant features (such as, for example, illiquidity and innovation).

This is in line with the fact that in the interest of investor protection, Product governance provisions should apply to all Products sold on primary and secondary markets, irrespective of the type of Product or Service provided and of the requirements applicable at point of sale. However, those provisions may be applied in a proportionate manner, depending on the complexity of the Product and the degree to which publicly available information can be obtained, taking into account the nature of the Product, the investment Service and the target market. In this context, proportionality means that these provisions could be relatively simple for certain simple Products distributed on an execution-only basis where such Products would be compatible with the needs and characteristics of the mass retail market.

For example, if a Distributor has detailed information on some Clients (for instance, through an existing relationship with such Clients for the provision of investment Advice), the Distributor could decide that, considering the particular risk-reward profile of a Product, the interest of this group of clients would be best served if execution services are excluded for them. Similarly, the Distributor could decide that some non-complex Products which could potentially be offered under the execution-only regime will only be offered in accordance with appropriateness or suitability requirements, so as to grant a higher degree of protection to Clients.

4.4 Specifically, the Distributor should decide which Products are going to be recommended (also through the provision of Portfolio Management) or offered or actively marketed to certain groups of Clients (characterised by common features in terms of knowledge, experience, financial situation, amongst other matters). The Distributor should also decide which Products will be made available to Clients at their own initiative through execution services without active marketing, considering that in such situations the level of Client information available may be very limited.

4.5 Simultaneously with general decision-making stages, the Distributor should consider what distribution strategies should be used for the different Client groups, including the way in which products will be marketed. In particular, where the Distributor intends to use nudging and digital engagement practices (such as gamification techniques[15] for the distribution of certain Products), the Distributor should carefully assess whether the use of such techniques would be in the best interests of the client group for which such strategies would be used.

Therefore, the Distributor should determine to which groups of Clients such Services will be made available, based on the characteristics of the Clients. However, the Distributor needs to be aware that certain gamification techniques (such as those used in trading apps designed to nudge the client towards harmful behaviour (for example, to maximise the number of trades) will never be in the interest of the Client; and that, additionally, nudging and digital engagement practices can contribute to the distribution of Products outside of its target market. When determining the target market for its Services, Distributors should also pay particular attention to situations in which a bundle of services will be provided to Clients such as both execution

[15] Gamification techniques add games or game-like competitive elements to non-game contexts such as financial services (examples of game-like elements are earning of points or badges; keeping score or leader boards; showing performance graphs; by using meaningful stories or avatars to engage users; or introducing teammates to either induce conflict, cooperation, or competition). Gamification is a type of digital engagement practice that can be used; in turn, digital engagement practices refer to how actively users interact with a software application or platform.

services and the ancillary service of granting loans allowing the Client to carry out the transaction.

4.6 In any case, where on the basis of all information and data that may be at the Distributors' disposal and gathered through investment Services or Ancillary services or through other sources, including the information obtained from the Manufacturers, the Distributor assesses that a certain Product will never be compatible with the needs and characteristics of its existing or prospective Clients, it should refrain from including the Product in its product assortment (that is, the Products that will be offered, to whom, and through the provision of which investment Services).

Relation between the Product Governance Requirements and the Assessment of Suitability or Appropriateness

5. The Distributor shall identify the actual target market and shall ensure that a Product is distributed in accordance with the actual target market. This obligation of the Distributor is not substitutable by an assessment of suitability or appropriateness and has to be conducted by the Distributor in addition to, and before such an assessment. In particular, the identification by the Distributor, for a given Product, of its target market and related distribution strategy should ensure that the Product ends up with the type of Clients for whose needs, characteristics and objectives it had been designed, instead of with another group of Clients with whom the Product may not be compatible.

Identification of the Target Market by the Distributor: Categories to be considered

6. The Distributor should use the same list of categories used by Manufacturers pursuant to points 1.5 and 1.6 above as a basis for defining the target market for their Products; and should also avoid merging two or more categories as outlined in point 1.2. However, the Distributor should define the target market on a more concrete level and should take into account the type of Clients the Distributor provides investment Services to, the nature of the investment Products and the type of Services the Distributor provides and the level of detail of information gathered from Clients.

In this context, the Distributors should ensure that the concepts used for the definition of the actual target markets for Products are aligned with the concepts used in the context of the suitability and appropriateness arrangements. For example, regarding the Manufacturer's target market category of knowledge and experience (which may broadly refer to *"basic", "average"* or *"advanced"* Clients), the Distributor should adopt a more granular classification consistent with its suitability or appropriateness arrangements, where appropriate given the features of the Products. Another example would be a Distributor, in relation to the category of Clients' risk tolerance, could opt to specify the Clients' willingness to take the risk of a decline in the Product's value by a certain percentage.

Importantly, when defining the actual target market for Products, the Distributor should use consistent terms and definitions and should ensure consistency between the actual target markets defined for Products with homogeneous Product features.

6.1 The Distributor needs to acknowledge that, given that the Manufacturer has to specify the potential target market based on its theoretical knowledge and experience with a similar Product, the Manufacturer would determine the Product's target market

without specific knowledge of individual Clients. Therefore, the Manufacturer's assessment would be conducted with a more general view of how the features/nature of a Product would be compatible for certain types of Clients, based on its knowledge of the financial markets and its past experience with similar Products. In this manner, a set of boundaries is introduced by the Manufacturer on a more abstract level.

6.2 On the other hand, the Distributor shall specify the actual target market whilst considering the boundaries of the potential target market set by the Manufacturer. The Distributor should base its target market on its information and knowledge of its own Client base and the information received from the Manufacturer (if any) or information that has been obtained by the Distributor itself via desk research (especially in cases where the Distributor is a new Regulated Person that does not as yet have enough-actual information about its own Clients). The Distributor should use the Manufacturer's more general target market assessment, together with existing information on its Clients to identify its own target market for a Product, that is, the group of Clients to whom the Distributor is effectively going to offer the Product through the provision of its Services.

6.3 To this end, the Distributor should conduct a thorough analysis of the characteristics of its Client base, that is, existing Clients as well as prospective Clients (for example, a Distributor may have Clients with bank deposits to whom it intends to offer investment Services). The Distributor should use any information and data deemed reasonably useful and available for this purpose that may be at the Distributors' disposal and gathered through investment Services or Ancillary services. In addition, the Distributor could use any information and data deemed reasonably useful and available that may be at the Distributors' disposal and gathered through sources other than the provision of investment Services or Ancillary Services.

6.4 When refining the Manufacturer's target market, the Distributor should not deviate from the fundamental decisions made therein. However, the Distributor cannot just rely on the Manufacturer's target market without considering how the target market defined by the Manufacturer would fit to its Client base. For that purpose, the Distributor should implement and maintain a dedicated process, which needs to be run in all cases.

Provided that the Distributor should ensure that such process is subject to proportionality, that is, the scrutiny and, if necessary, the refinement of the Manufacturers target market by the Distributor should be more intensive for more complex Products and could be less intensive in case of simpler, more common Products. This means that in order to ensure a proper scrutiny of such more complex products, the Distributor should also determine whether, next to the Manufacturers' target market description, the Distributor needs access to underlying assessments, such as, the outcomes of the Manufacturer's scenario and charging structure analyses.

If, as a result of the process, the Distributor comes to the conclusion that the target market of the Manufacturer does not need to be refined, the Distributor may use the Manufacturer's target market as it is.

6.5 The Distributor may also decide to define the target market by adopting a clustering approach for some Products, in line with the principles of ensuring a sufficient level of granularity as indicated in points 2.4 to 2.7 above. For example, in ensuring that only

UCITS with sufficiently comparable characteristics are clustered for the purposes of the target market identification, differentiating factors would be the types of asset classes the UCITS invests in, its investment strategy, risks, charging structure (for instance, level and types of costs) and any leverage used, amongst other matters. Such factors should be used in a cumulative manner.

6.6 Generally, the Distributor's target market assessment occurs after the Manufacturer has communicated the Manufacturer's target market to the Distributor. However, it is acknowledged that it is possible in certain instances that the Manufacturer and the Distributor could define both the Manufacturer's target market and the Distributor's target market (including any review and refinement process), respectively, at the same time. This could, for example, occur where the Manufacturer and the Distributor jointly develop a common target market standard for the Products they usually exchange.

Both the Manufacturer and the Distributor retain their respective responsibility for their obligations to identify a target market as described in Chapter 2 of this Rulebook and as further specified in the provisions of this Appendix to identify a target market. This means that the Manufacturer still has to take reasonable steps to ensure that Products are distributed to the identified target market and the Distributor has to ensure that Products are offered or recommended only when this is in the interest of Clients.

6.7 When the Distributor defines its Product assortment, it should pay particular attention to situations where the Distributor might not be able to make a thorough target market assessment by virtue of the type of Services the Distributor provides (in particular, execution Services under the appropriateness test or the execution-only regime). This is especially important for Products characterised by complexity or risk features (or other relevant features such as, for example, illiquidity or innovation), as well as for situations where there might be significant conflicts of interest (such as in relation to Products issued by the Distributor itself or by other entities within the group). In such circumstances, it is most important that the Distributor should take into due consideration all relevant information provided by the Product Manufacturer, both in terms of target market and distribution strategy.

Identification of the Target Market: differentiation on the basis of the nature of the Product Distributed

7. The identification of the target market assessment by the Distributor should also be done in an appropriate and proportionate manner, considering the nature of the investment Product, in line with what is described in point 2 and its supplementing provisions.

Where the Manufacturer has identified a target market for simpler, more common products the Distributor's target market identification does not necessarily have to result in a refinement of the Manufacturer's target market.

Identification and Assessment of the Target Market by the Distributor: Interaction with Investment Services

8. As noted in the above provisions, the Distributor is required to identify and assess the circumstances and needs of the group of Clients to whom the Distributor is effectively going to offer or recommend a Product, so as to ensure the compatibility between that Product and the respective target Clients. This obligation should apply in a

proportionate manner depending, not only on the nature of the Product in terms of point 7 above, but also on the type of investment Services that the Distributor provides.

8.1 In this regard, it should be noted that, on one hand, the *ex-ante* assessment of the actual target market is influenced by the Services provided by the Distributor, since it can be conducted more or less thoroughly depending on the level of Client information available, which in turn depends on the type of Services provided and the conduct of rules attached to the provision of Services (in particular, investment Advice and Portfolio Management allow for the acquisition of a wider set of information on Clients compared to the other Services).

On the other hand, the target market assessment influences the decision of the Distributor on the type of Services that are going to be provided in relation to the nature of the Product and the circumstances and needs of the identified target Clients, considering that the level of investor protection varies for different investment Services, depending on the rules that apply at the point of sale. In particular, investment Advice and Portfolio Management Services allow for a higher degree of investor protection, compared to other Services provided under the appropriateness regime or under execution-only.

8.2 When defining their Product assortment, the Distributor shall in particular take into consideration any situations where the Distributor might not be able to conduct a thorough target market assessment by virtue of the type of Services it provides.

In particular, where Distributors carry out only execution services with the assessment of appropriateness (for example, through a brokerage platform), the Distributor should consider that it will usually be able to conduct an assessment of the actual target market which is limited to the sole categories of Clients' knowledge and experience (in this respect reference should be made to point 1.5(b)); where the Distributor only conducts execution services under the execution-only regime, not even the assessment of Clients' knowledge and experience will usually be possible. As explained above and with reference to point 6.3, the Distributor could, for the definition of the target market, in addition to information gathered through Services or Ancillary services, use any further information and data deemed reasonably useful that may be at the Distributor's disposal and gathered through other sources. Therefore, even the Distributors only providing Services under appropriateness or execution-only regime, could be in the position to conduct a more thorough assessment of the target market.

In this respect, the Distributor should pay particular attention to the distribution strategy suggested by the Manufacturer; and reference should be made to point 3.1 and points 9.1 to 9.3 of this Appendix.

8.3 The requirements of point 8.2 above are especially relevant for Products characterised by complexity or risk features (or other relevant features such as, for example, innovation), as well as for situations where there might be significant conflicts of interest (such as, in relation to Products issued by entities within the Distributor's group or when the Distributor receives inducements from third parties), being also mindful of the limited level of protection afforded to Clients at the point of sale by the appropriateness test (or no protection at all, in the case of execution-only).

In such circumstances, it is most important that the Distributor takes into due consideration all relevant information provided by the Product Manufacturer, both in terms of potential target market and distribution strategy. For example, where the Manufacturer's target market describes a Product with particular features which requires, not only detailed Client's knowledge and experience, but also a specific financial situation as well as unique objectives or needs, the Distributor may decide to adopt a prudent approach by not including it in its Product assortment (even though the Distributor would be in the position to assess *ex-ante* the compatibility of that Product with its Client base in terms of knowledge and experience).

8.4 Moreover, taking into account the fact that the Client's protection decreases when information available is not sufficient to ensure a full target market assessment, the Distributor may also decide to let Clients operate on a non-advised basis after warning the said Clients that the Distributor is not in the position to assess their full compatibility with such Products.

In any case, as mentioned in point 9.2 below, this decision of the Distributor should always be based on the consideration of the Product's features (for example, in terms of costs or complexity), as well as on other relevant situations (such as, the occurrence of conflicts of interest in case of self-placement or inducements). Therefore, the Distributor needs to ensure that Products should not be distributed under non-advised sales if the Distributor cannot reasonably expect (that is, *ex-ante*) that the distribution strategy for the Product (including its marketing and information strategy) will generally enable the Product to reach the identified target market. Likewise, providing a warning provided by the Distributor to the Clients as to the fact that the Distributor is not in the position to assess a Client's full compatibility with a Product does not exempt the Distributor from the obligation to review Products, also taking into consideration any sales outside of the target market; and in this respect reference should be made to point 11.5 below.

8.5 On the other hand, if the Distributor intends to, or approaches its Clients in any way to recommend or actively market a Product or consider that Product for the provision of Portfolio Management, then a thorough assessment of the target market should always be conducted by the Distributor.

Distribution Strategy of the Distributor

9. The Distributor should take into account the distribution strategy identified by the Manufacturer and shall review it with a critical look.

However, ultimately, the Distributor should define its own distribution strategy in light of information on its Client base and type of Services provided by the Distributor. In addition, for the avoidance of doubt, when the Manufacturer is an entity not subject to the requirements of Chapter 2 and of this Appendix (and thus, the said Manufacturer is not obliged to identify a distribution strategy), the Distributor should also be obliged to define its own distribution strategy in light of information on its Client base and type of Services provided.

9.1 Considering the nature of the Product and the investment Service, the Distributor should refine the distribution strategy as identified by the Manufacturer taking into account the characteristics of the Distributor's Client base. In particular, in making

such a refinement, where the Distributor considers that a more complex Product with a relatively narrow target market can also be distributed under non-advised services, it should identify additional measures to ensure that its distribution strategy is compatible with the Product's target market. In such cases, the Distributor should consider aspects such as:

(a) what marketing strategy should be followed for the Product (for example, active marketing, the use of nudging and/or gamification techniques and *"Finfluencers",*[16] amongst others). For instance, a Distributor could decide to make a more complex Product only available when requested by the Client and not to actively market it or use any gamification techniques or *finfluencers* in the distribution of such a Product to its clients; and

(b) whether and how the Product should be displayed in the Client's choice environment. For example, a Distributor could decide not to show a more complex Product on a prominent place on the website or at the top of a Client's search results, or could decide to show such a Product only if the Client specifically requests it.

9.2 In particular, while taking into due consideration the suggested distribution strategy of the Manufacturer, the Distributor could decide to follow a more prudent approach by providing investment Services that afford a higher level of protection to Clients, such as investment Advice. For instance, if the Manufacturer considers that the features of a given Product are compatible with a distribution strategy through non-advised services, the Distributor may still decide that the characteristics of its Clients (for example, very limited knowledge and no experience with investments in that type of Product, unstable financial situation and very short-term objectives) are such that investment Advice would be the most appropriate choice to ensure the Clients' best interests.

9.3 On the contrary, the Distributor could decide, in certain circumstances, to take a less prudent approach in relation to the distribution strategy defined by the Manufacturer. For example, if the manufacturer deems that a given Product, due to its specific features, should be offered through investment Advice, the Distributor could still make that product available through execution services to a specific segment of Clients. In these situations, the Distributor would have to do so only after a thorough analysis of the features of the Products and the target Clients. Moreover, this decision of the Distributor should be reported to the Manufacturer as part of the Distributor's obligation to provide the Manufacturer with sales information in a way that the Manufacturer can take the Distributor's decision into account in the Manufacturer's Product governance process and when selecting suitable Distributors, as described in paragraph 3 and its supporting provision.

Portfolio Management, Portfolio Approach, Hedging and Diversification

[16] A '***finfluencer' (or financial influencer),*** is an influencer which generates content on financial topics such as investments; an influencer being usually someone who is active on social media and has:
(a) the power to affect the purchasing decisions of others because of his or her authority, knowledge, position, or relationship with his or her audience; and
(b) a following in a distinct niche, with whom he or she actively engages. The size of the following depends on the size of his/her topic of the niche.

10. When providing investment Advice, adopting a portfolio approach and portfolio Management to the Client, the Distributor can use Products for diversification and hedging purposes. In this context, Products can be sold by the Distributor outside of the Product target market, if the portfolio as a whole or the combination of a Financial Instrument with its hedge is suitable for the Client.

Sales by the Distributor outside of the positive product target market can also occur in relation to the sustainability-related objectives of the Product, provided that the approach is consistent with the approach outlined in Appendix 7 to Chapter 4 of this Rulebook relating to Appendix 7 to this Chapter which implements the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements, particularly paragraph 8.12 thereof.

10.1 The identification of a target market by the Distributor is without prejudice to the assessment of suitability. This means that, in certain cases, permissible deviations between the target market identification and the individual eligibility of the Client may occur if the recommendation or sale of the Product fulfils the suitability requirements conducted with a portfolio view as well as all other applicable legal requirements (including those relating to disclosure, identification and management of conflicts of interest, remuneration and inducements).

10.2 Providing investment advice, adopting a portfolio approach, or portfolio management services does not exempt the firm from defining a target market for each product to be distributed and from monitoring deviations from the target market to ensure that products are only distributed outside the target market when this can be justified for diversification or hedging purposes. For this purpose, deviations from the product's target market categories "client type" and "clients' knowledge and experience" cannot be justified for diversification or hedging purposes. However, in the case of portfolio management, given the specific nature of the service, the level of "clients' knowledge and experience" of the target market may take into account the approach set out in Appendix 7 to Chapter 4 of this Rulebook relating to Appendix 7 to this Chapter which implements the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements, particularly as outlined in the second bullet point of paragraph 3.5 thereof.

10.3 The Distributor is not required to report sales outside of the positive target market to the Manufacturer if these sales are for diversification and hedging purposes and if these sales are still suitable given the Client's total portfolio or the risk being hedged.

10.4 The Distributor shall ensure that the sales of Products into the negative target market should always be reported to the Manufacturer and disclosed to the Client, even if those sales are for diversification or for hedging purposes. Moreover, the Distributor shall ensure that, even if done for diversification purposes, sales into the negative target market should be a rare occurrence. In this respect, reference should be made also to point 14 and its supplementing provisions.

Regular Review by the Manufacturer and the Distributor to respectively Assess whether Products and Services are Reaching the Target Market

11. Pursuant to R.2.7, R.2.9 and R.2.15 implementing Article 16(3) MiFID II and to the relevant Rules implementing Articles 9 and 10 of the https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=ENMiFID II Delegated Directive 2017/593, Manufacturers and Distributors shall review Products on a regular basis to assess whether the Product remains consistent with the needs, characteristics and objectives, including any sustainability-related objectives, of the identified target market and whether the intended distribution strategy remains appropriate.

11.1 Manufacturers and Distributors should use both quantitative and qualitative criteria to review Products, relating to the product's characteristics (for instance, changes in the Product's risk factors, investment strategy, cost structure [such as, level and types of costs], market conditions [such as, adverse market conditions and regulatory developments] and product's distribution (such as, Client complaints, sales outside the target market, results from Client surveys and online Client trading behaviour).

Manufacturers and Distributors should determine the frequency and depth of Product reviews while taking into account the nature of the Product and, where appropriate, the Service. For example, for certain simpler products distributed under the execution-only exemption, product reviews can be less frequent and require less depth, and *ad-hoc* reviews can in such cases to a large extent be driven by Client complaints and/or market events that significantly affect the Product's risk-return profile. A Manufacturer that has advised a corporate Issuer on the launch of a new Product, may also apply the review obligation for that Product in a proportionate manner, irrespective of whether it concerns a simpler or more complex Product.

11.2 The Manufacturer should consider, on a proportionate basis, what information it needs in order to complete its review and how to gather that information. In line with recital 20[17] of the MiFID II Delegated Directive 2017/593, relevant information could include, for example, information on which distribution channels have been employed, the proportion of sales made outside the target market, summary information of the types of Client, a summary of any complaints received and questions suggested by the Manufacturer to a sample of Clients for feedback. Such information may be in an aggregated form and does not need to be on an instrument-by-instrument or on sales-by-sales basis.

11.3 To support reviews by the Manufacturer, the Distributor must provide the Manufacturer with information on sales and, where appropriate, any other relevant information that may be the outcome of the Distributor's own periodic review. Whenever the Distributor has relevant information to support reviews by the Manufacturer, the Distributor should

[17] For the efficient functioning of product governance obligations, distributors should periodically inform the manufacturers about their experience with the products. While distributors should not be required to report every sale to manufacturers, they should provide the data that is necessary for the manufacturer to review the product and check that it remains consistent with the needs, characteristics and objectives of the target market defined by the manufacturer. Relevant information could include data about the amount of sales outside the manufacturer's target market, summary information of the types of clients, a summary of complaints received or by posing questions suggested by the manufacturer to a sample of clients for feedback.

proactively provide the said information to the Manufacturer (and therefore, the Distributor shall not provide such information only at the Manufacturer's request).

Furthermore, the Distributor should consider data and information that may give an indication that they have wrongly identified the target market for a specific Product or Service or that the Product or Service no longer meets the circumstances of the identified target market (such as, where the Product becomes illiquid or very volatile due to market changes). Any such information is subject to the proportionality principle and may generally be in an aggregated form; and does not generally need to be on an instrument-by-instrument or on sale-by-sale basis. However, instrument-specific information should be provided in cases with particular relevance for certain individual Financial instruments (for example, if the Distributor comes to the conclusion that a target market for a specific Product was wrongly determined).

11.4 In relation to the reporting of information on sales outside the Manufacturer's target market, the Distributor should be able to report any decisions the Distributor has taken to sell outside the target market or to broaden the distribution strategy recommended by the Manufacturer and information on sales made outside the target market (including sales within the negative target market), taking into account the exceptions as noted in point 10.3 above.

11.5 For the purposes of its own review, the Distributor should determine what information it needs in order to be able to draw reliable conclusions on whether Products have been distributed to the identified target market. To be able to draw such reliable conclusions, the Distributor may need to gather further information about its Clients. Furthermore, the Distributor should re-consider its distribution strategy for more complex products distributed through non-advised sales, if, for example, the review shows that such Products are too often distributed outside the positive target market (or even in the negative target market).

11.6 Distributors are required to review Products as long as the Products are offered, sold or recommended. For example, where a Distributor no longer offers (with the term *"offers"* to be interpreted in a broad manner), sells or recommends a Product (with the term *"recommends"* being understood as recommends a Client to either buy, hold or sell a Product) , the Distributor is no longer obliged to review the target market of that Product, despite the fact that a Client may still have investments in that Product.

Where a Distributor recommends to its Clients to hold a Product it no longer offers or sells, the Distributor should still undertake a review of the target market of that Product prior to making that recommendation.

Distribution of Products manufactured by Entities not subject to MiFID II Product Governance Requirements

12. Distributors of Products that have not been manufactured by entities subject to the MiFID II product governance requirements set out in Chapter 2 of these Rules and of this Appendix shall perform the necessary due diligence so as to provide an appropriate level of Service and security to its Clients compared to a situation where the Product had been designed in accordance with the said product governance requirements.

12.1 Where a Product has not been designed in accordance with the MiFID II product governance requirements of Chapter 2 of these Rules and of this Appendix (for example, in the case of investment Products issued by entities that are not subject to the said product governance requirements), this may affect the information gathering process or the target market identification:

(a) **Target market definition:** the Distributor shall determine the target market also when the target market is not defined by the Manufacturer, in line with the Rules implementing Article 10(1) of the MiFID II Delegated Directive 2017/593 and paragraph 1 above. Therefore, even where the Distributor does not receive a description of the target market from the Manufacturer and/or does not receive information on the Product approval process from the Manufacturer, the Distributor shall define its *"own"* target market. This should be done by the Distributor in an appropriate and proportionate manner in line with point 2 above;

(b) **Information gathering process:** the Distributor shall take all reasonable steps to ensure that the level of Product information obtained from the Manufacturer is of a reliable and adequate standard, to ensure that Products will be distributed in accordance with the characteristics, objectives and needs of the target market.

Where all relevant information is not publicly available (for example, through the PRIIPS Regulation (Regulation (EU) No1286/2014) Key Information Document or a Prospectus), the reasonable steps should include entering into an agreement with the Manufacturer or its agent in order to obtain all relevant information enabling the Distributor to carry out its target market assessment. Publicly available information may only be accepted if it is clear, reliable and produced to meet regulatory requirements. For example, information disclosed in compliance with requirements in the Prospectus Regulation (EU) 2017/1129, the Transparency Directive (2004/109/EC), the UCITS Directive (Directive 2009/65/EC), the AIFMD Directive (Directive 2011/61/EU) or third-country equivalent requirements are acceptable.

12.2 The obligation referred to in point 12.1 above is relevant for Products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is available and the complexity of the Product, in terms of R.2.40 implementing subparagraph 3 of Article 10(2) of the MiFID II Delegated Directive 2017/593). Therefore, information about simpler, more common Products, such as ordinary shares, will usually not require an agreement with the Manufacturer but can be derived from the manifold information sources published for regulatory purposes for such Products.

12.3 Where the Distributor is not in a position to obtain in any way sufficient information on Products manufactured by entities not subject to the MiFID II product governance requirements of Chapter 2 of these Rules and of this Appendix, the Distributor would be unable to meet its obligations under the said requirements and, consequently, the Distributor should refrain from including the said Products in the Distributor's Product assortment.

Application of Product Governance Requirements to the Distribution of Products that were Manufactured before the date of Application of MiFID II

13. Products which were manufactured before 3 January 2018 and continue to be distributed to Clients should fall within the scope of the product governance requirements of Chapter 2 of these Rules and of this Appendix applicable to Distributors, in particular, the requirement to identify a target market for any Product.

13.1 In this situation, the Distributor should act as if the Manufacturer was an entity not subject to the MiFID II product governance requirements of Chapter 2 of these Rules and of this Appendix. When the target market has been identified by the Manufacturer (on a voluntary basis or on the basis of commercial agreements with Distributors) in line with the said requirements, the Distributor could, after reviewing it with a critical look, rely on the said target market identification.

13.2 However, a target market should be assigned by the Manufacturer to such Products, at the latest, following the next Product review process cycle conducted according to R.2.7, R.2.9 and R.2.15 implementing Article 16(3) of MiFID II after 3 January 2018. The Distributor should then consider this target market in its own review process.

C. Guidelines on matters applicable to Both Manufacturers and Distributors

Identification of the 'Negative' Target Market and Sales Outside the Positive Target Market

14. The Manufacturer and the Distributor shall consider whether the Product would be incompatible with certain target Clients (that is, the "negative" target market). When doing so, the Manufacturer and the Distributor should apply the same categories and principles as stated above in paragraphs 1 and its supporting provisions and paragraph 4 and its supporting provisions, respectively.

In line with the approach followed for the identification of the *'positive'* target market:

(a) the Manufacturer, who does not have a direct relationship with end-Clients, should be able to identify the negative target market on a theoretical basis (that is, with a more general view on how the specificities of a given Product would not be compatible with certain groups of Clients);

(b) the Distributor, taking into account the Manufacturer's more general negative target market as well as information on its own Client base, should be in the position to identify more concretely the group of Clients to whom it should not distribute that specific Product. In addition, the Distributor should also be required to identify any group(s) of Clients for whose needs, characteristics and objectives, a Service related to the distribution of a certain Product would not be compatible.

14.1 For products which consider Sustainability Factors, the Manufacturer and the Distributor are not required to identify a negative target market with respect to such Products' sustainability-related objectives; this is to ensure that Products with Sustainability Factors remain easily available also for Clients that do not have Sustainability Preferences. This means that the sustainability-related objectives of Products only contribute to identify a *"positive"* target market in terms of Clients (groups of Clients) with compatible sustainability-related objectives. The same Products could still be distributed to Clients falling outside that *"positive"*

sustainability-related target market objective, provided that such Products are compatible with the features of the other target markets categories defined by Chapter 2 of these Rules and by this Appendix.

Therefore, for Products which consider Sustainability Factors, the Manufacturer and the Distributor should always perform a negative target market assessment with respect to the five target market categories listed in point 1.5 above (client type, knowledge and experience, financial situation, risk tolerance and objectives and needs). However, the Manufacturer and the Distributor should not consider the sustainability-related objectives of the Products. This is to assess whether these other target market aspects might be incompatible with certain Clients. For example, if the Product that considers Sustainability Factors concerns a risky Product intended for Clients with a long-term investment horizon and willing and able to lose their investment amount, in such case the Product would not be compatible with Clients that would have a low risk tolerance, irrespective of whether or not their sustainability preferences are compatible with the sustainability-related objectives of the Product).

14.2 The Manufacturer and the Distributor could define the negative target market by stating that the Product or Service is incompatible for any Client outside the positive target market in cases where some of the target market characteristics used in the positive target market assessment by the Manufacturer and the Distributor, respectively, automatically lead to opposing characteristics for Clients for whom the Product is not compatible (for example, if a Product is made for the investment objective *"speculation"* it will at the same time not be suitable for *"low risk"* objectives).

14.3 The Manufacturer and the Distributor shall take into consideration that, when assessing a potential negative target market, the number and detail of factors and criteria will depend on the nature, especially the complexity or the risk-reward profile, of the Product (that is, a plain vanilla product is likely to have a smaller group of possible Clients for whom it is incompatible, while the group of Clients for whom the Financial Instrument is not compatible might be large for a more complex Product). Thus, it is important that the Manufacturer and the Distributor take account of the principle of proportionality.

14.4 There might be situations where Products could, under certain circumstances and where all other legal requirements are met (including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest), be sold by the Distributor outside the positive target market. However, the Distributor should ensure that: these instances should be justified by the individual facts of the case; the reason for the deviation should be clearly documented; and, where provided, included in the suitability report.

14.5 As the negative target market is an explicit indication of those Clients for whose needs, characteristics and objectives the Product is not compatible and to whom the Product should not be distributed, the Distributor should ensure that the sale to Clients within this group should be a rare occurrence. Therefore, the Distributor should ensure that the justification for the deviation should be accordingly significant and is generally more substantiated by the Distributor than a justification for a sale outside the positive target market.

For example, the sale of Products outside the target market could occur as a result of non-advised sales (that is, where Clients approach the Distributor to purchase a certain

Product without any active marketing by the Distributor; or without having been influenced in any way by that Distributor), where the Distributor does not have all the necessary information to conduct a thorough assessment of whether the Client falls within the target market, which might be the case, for instance, for execution platforms that only operate under the appropriateness regime.

14.6 It is expected that, in the context of product governance arrangements, that the Distributor should: analyse *ex-ante* situations (such as the example described in point 14.4 above), and make a responsible decision on how it is going to address such situations should these occur; and inform Client-facing employees of the approach defined at Management body level, so that they can comply with it.

The Distributor should also take into consideration the nature of the Products included in the range of those Product the Distributor intends to offer to Clients (for example, in terms of complexity or risk) and the existence of any conflicts of interest with Clients (such as in the case of self-placement), as well as its business model. A Distributor could, for example, consider the possibility of not allowing Clients to operate if they fall within the negative target market, while letting other Clients transact on a financial Product which is in the *'grey'* area (that is, between the positive and negative target markets).

14.7 It is important that if the Distributor becomes aware (for example, through the analysis of Clients' complaints or other sources and data) that the sale of a certain Product outside the target market identified *ex-ante* has become a significant phenomenon (for instance, in terms of number of Clients involved), such input shall be taken into due consideration by the Distributor in the course of its periodic review of the Products and related Services offered. In such cases, the Distributor may, for example, come to the conclusion that the target market originally identified was not correct and that it needs to be reviewed; or that the related distribution strategy was not appropriate for the Product and has to be re-considered.

14.8 The Distributor shall ensure that deviations from the target market (outside the positive target market or within the negative target market) which may be relevant for the Product governance process of the Manufacturer (especially those deviations that are recurrent) should be reported to the Manufacturer taking into account the exceptions as noted in point 10.3 above.

14.9 In order to strengthen the protection of Clients, Manufacturers and Distributors are expected to refer to the relevant good practices in Annex VI and the illustrative examples and case studies related to the application of certain aspects as laid down in Annex VII, to the Final Report of the ESMA Guidelines on MiFID II product governance requirements. These examples, as relevant, aim to assist both Manufacturers and Distributors to understand how the requirements of the Guidelines should apply.

Application of the Target Market Requirements to Regulated Persons dealing in Wholesale Markets (that is, with Professional Clients and Eligible Counterparties)

Professional Clients and Eligible Counterparties as part of the Intermediation Chain

15. The requirements set out in R.2.7, R.2.9 and R.2.15 implementing Article 16(3) and in R.2.6, R.2.36 and R.4.4.15 implementing Article 24(2) of MiFID II apply to Services and

Products manufactured and/distributed to Retail Clients and Professional Clients. At the same time the said provisions specify that the Clients to be targeted shall be the *"end-clients"*. This means that a Manufacturer does not need to specify a target market for other entities (Professional Clients and Eligible Counterparties) within the intermediation chain, but rather it needs to design the target market with the end-Client in mind (that is, the final Client in the intermediation chain). The specific type of end-Client targeted is to be stated in the Client-type category referred to in point 1.5(a).

15.1 Where a Professional Client or an Eligible Counterparty buys a Product with the intention to sell it on to other Clients (therefore acting as a link in the intermediation chain) such Professional Client or Eligible Counterparty should not be considered as *"end-Clients"*.

15.2 In such a case, the Professional Client or Eligible Counterparty would be acting as a Distributor and therefore, should comply with the MiFID II product governance requirements of Chapter 2 of these Rules and of this Appendix applicable to Distributors.

15.3 For example, if a Distributor sells a product to an Eligible Counterparty that buys the Product with the intention of distributing it more widely to Professional Clients or Retail Clients, the Eligible Counterparty should reassess the relevant target market in line with its obligations as a Distributor. If the Eligible Counterparty then makes changes to the Product before onward distribution, this is likely to mean that it must comply with both the MiFID II product governance requirements of Chapter 2 of these Rules and of this Appendix applicable for Manufacturers, as well as those applicable for Distributors.

For Professional Clients as End-Clients

15.4 The Client categorisation framework calibrates conduct of business protections to the needs of each client category (that is, Retail Clients, Professional Clients and Eligible counterparties). Manufacturers and Distributors are entitled to assume that Professional Clients have the required knowledge and experience to understand the risks attached to the particular Products or Services for which they have been classified as a Professional Client. Nonetheless, in terms of this Rulebook a distinction is made between Per se Professional Clients and Elective Professional Clients, thereby providing that Clients in the latter category should not be presumed to possess the knowledge and experience comparable to Per se Professional Clients.

15.5 Therefore, Manufacturers and Distributors should, when carrying out their target market identification, should consider the differences in assumed knowledge between Retail Clients and Professional Clients and, within the Professional Client category, Elective Professional Clients and per se Professional Clients. For example, the contrast in approach should take account of the differences in the knowledge and experience profiles of these different Client categories.

15.6 It is possible that some Products (for example, those that are suitable for distribution in mass retail markets) will have a widely defined target market that might include both Retail Clients and Professional Clients. Such Products (for example, units or shares in an ordinary UCITS fund) could, by default, be regarded as having a target market that includes Professional Clients. However, some other Products, in particular Products that have complex risk profiles, will have a more narrowly defined target market (for

instance, the target market for a contingent convertible bond might be only composed of per se Professional Clients or Elective Professional Clients who are likely to understand the complexities associated with these Products).

CHAPTER 3 CONFLICTS OF INTEREST

Introduction

Regulated Persons should be guided by the general principle that they are required to act honestly, fairly, and professionally in accordance with the best interests of their Clients. This requirement entails that Regulated Persons should seek to avoid situations of conflict of interest in so far as this is possible. In general, conflicts of interest would occur when a Regulated Person has an interest of its own that conflict with the interest or interests of other Clients or entities for whom the Regulated Person may be acting in some capacity.

This Chapter is aimed at setting out requirements for Regulated Persons to have in place organisational and administrative arrangements aimed at identifying, preventing and managing conflicts of interest, including the drawing up of appropriate policies and procedures for the implementation of such arrangements. In this respect, proportionality is given the necessary emphasis as the Regulated Person is allowed to take into consideration the nature and size of its business in adhering to the Rules set out in this Chapter.

The issue of remuneration is also tackled in this Chapter in so far as it may give rise to conflicts between the Regulated Person's commercial interests and its duties to act in the best interest of its Clients. These Rules also tackle the issue of Inducements such as commissions and other third-party payments since in certain cases such payments may give rise to situations of conflicts of interests which may damage the interests of Clients.

Application

The Rules and relative Guidance set out under Part A shall apply to all Regulated Persons, except as otherwise indicated, and in relation to the provision of a Service, the requirements set out therein shall apply to a Regulated Person who provides Services to its Clients regardless of the classification of the Client to who the Service is provided. Provided that Regulated Persons which fall under point (iii) and (iv) of the definition of Regulated Person in the Glossary, shall only be required to adhere to requirements set out in this chapter in so far as they carry out the distribution of Insurance-based investment products.

In addition to the requirements under Part A:

(a) the Rules and any relative Guidance set out under Part B shall apply to Regulated Persons which fall under points (i) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules, including UCITS Management Companies, except as otherwise indicated;

(b) the Rules and any relative Guidance set out under Part C shall apply to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules, excluding UCITS Management Companies, except otherwise indicated;

(c) the Rules and any relative Guidance set out under Part D shall apply to Regulated Persons which fall under point (i) of the definition of 'Regulated Persons' in the Glossary which are licenced to provide the Services of underwriting of Financial Instruments and/or placing of Financial Instruments with or without a firm commitment basis;

(d) the Rules and any relative Guidance set out under Part E shall apply to Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, in so far as they carry out the distribution of Insurance-based investment products.

PART A
General Rules

R.3.1 For the purposes of this Section the term "Regulated Person" shall refer to all Regulated Persons except as otherwise indicated, provided that Regulated Persons which fall under point (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, shall only be required to adhere to requirements set out in this chapter in so far as they carry out the distribution of Insurance-based investment products.

In relation to the provision of a Service, the requirements set out in this Chapter shall apply to a Regulated Person who provides Services to its Clients regardless of the classification of the Client to whom the Service is provided as either Retail, Professional or Eligible counterparty.

R.3.2 A Regulated Person shall act honestly, fairly, professionally in accordance with the best interests of its Clients. It is recommended that the Regulated Person should refer to the non-exhaustive list of scenarios provided in Appendix 1 when cross-selling practices are deemed to be non-compliant with the requirements of this Rule.

R.3.3 A Regulated Person shall adopt appropriate and transparent reporting lines within its organisation or group, where applicable, to ensure that issues involving risks of non-compliance with conflicts of interest rules and wider conduct of business rules are given the necessary priority. The Management body of the Regulated Person shall be promptly informed of such risks in order for them to take any necessary decision to ensure that in any case the Regulated Person acts in the best interest of its Clients, or in the case of a UCITS Management Company, in the best interest of the UCITS schemes it manages and of their unit-holders.

R.3.4 A Regulated Person shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organization of the Regulated Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients or, in the case of a UCITS Management Company, of UCITS schemes it manages.

R.3.5 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the Regulated Person or certain persons connected to the Regulated Person or the group of which the Regulated Person forms part, or from the performance of Services and activities, and the duty the Regulated Person owes to a Client; or between the differing interests of two or more of its Clients, (or in the case of a UCITS Management Company of two or more UCITS schemes which it manages) to whom the Regulated Person owes in each case a duty.

G.3.1 *It is not enough that the Regulated Person may gain a benefit if there is not also a possible disadvantage to a Client, or that one Client to whom the Regulated Person owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such Client.*

R.3.6 A Regulated Person shall establish, implement and maintain an effective conflicts of interest policy set out in writing and which is appropriate to the size and organisation of the Regulated Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients or, in the case of a UCITS Management Company, of UCITS schemes it manages.

Where the Regulated Person is a member of a group, the policy shall also take into account any circumstances of which the Regulated Person is or should be aware, which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

R.3.7 A Regulated Person shall keep and regularly update a record of the situations, Service, Ancillary service or activity carried out by or on behalf of the Regulated Person in which a conflict of interest entailing a risk of damage to the interests of one or more Clients has arisen or, in the case of an ongoing service or activity, may arise. Senior management shall receive on a frequent basis, and at least annually, written reports on situations referred to in this Rule.

R.3.8 A Regulated Person shall establish specific arrangements and internal procedures enabling the Regulated Person to identify, classify and evaluate all types of fees, commissions and non-monetary benefits prior to the provision of any Service provided to its Clients.

G.3.2 *The policies and procedures referred to in R.3.8 above should be followed when assessing the legitimacy of the payments and non-monetary benefits, and the basis for the decision/evaluation process should also be indicated.*

R.3.9 A Regulated Person shall hold the following as evidence that any fees, commissions or non-monetary benefits paid or received by the Regulated Person are designed to enhance the quality of the relevant Service to the Client:

(a) by keeping an internal list of all fees, commissions and non-monetary benefits received by the Regulated Person from a third party in relation to the provision of Services ; and
(b) by recording how the fees, commissions and non-monetary benefits paid or received by the Regulated Person, or that it intends to use, enhance the quality of the Services provided to the relevant Clients and the steps taken in order not to impair the Regulated Person's duty to act honestly, fair and professionally in accordance with the best interests of the Client.

Operational Independence Rules

R.3.10 A Regulated Person shall ensure that its Tied Agents or Tied insurance intermediaries or Ancillary insurance intermediaries, as applicable, are not involved in any activities which may give rise to a conflict of interest which could be detrimental to the Regulated Person's Clients.

Conflicts of Interest Policy Rules

R.3.11 The conflicts of interest policy established in accordance with R.3.6 shall be set out in writing and shall include the following:

(a) the identification of, with reference to the specific distribution activities, specific Services, activities and Ancillary services carried out by or on behalf of the Regulated Person, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more Clients;
(b) procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of Clients.

R.3.12 Regulated Persons shall ensure that the procedures and measures provided for in R.3.11 (b) are designed to ensure that Relevant Persons engaged in different business activities involving a conflict of interest of the kind specified in R.3.11 (a) carry on those activities at a level of independence appropriate to the size and activities of the Regulated Person and of the group to which it belongs, and to the risk of damage to the interests of Clients.

R.3.13 For the purposes of R.3.11 (b), the procedures to be followed and measures to be adopted shall include at least such of the following as are necessary for the Regulated Person to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between Relevant Persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more Clients;
(b) the separate supervision of Relevant Persons whose principal functions involve carrying out activities on behalf of, or providing services to, Clients (or to investors in the case of UCITS Management Companies) whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the Regulated Person;
(c) the removal of any direct link between payments, including the remuneration of Relevant Persons principally engaged in one activity and the remuneration of, or revenues generated by, different Relevant Persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a Relevant Person carries out a Service or Ancillary services or distribution activities;
(e) measures to prevent or control the simultaneous or sequential involvement of a Relevant Person in separate Service or Ancillary services or distribution activities where such involvement may impair the proper management of conflicts of interest.

R.3.14 If the adoption or the practice of one or more of the measures and procedures referred to in R.3.20 and R.3.81does not ensure the requisite degree of independence, a Regulated Person shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

R.3.15 The Regulated Person shall assess and periodically review, at least annually, the conflicts of interest policy established in accordance with R.3.6, R.3.11, and

R.3.12, R.1.5.6 and R.1.5.7 and shall take all appropriate measures to address any deficiencies. Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the Regulated Person's conflicts of interest policy.

R.3.16 Relevant Persons shall not be remunerated or do not remunerate or have their performance assessed in a way that conflicts with the Regulated Person's duty to act in the best interests of its Clients as set out in R.3.2, in particular, through remuneration, sales targets or otherwise which provide an incentive to itself or its employees for recommending or selling a particular Product to a Retail Client when another Product may be better suited to meet the Client's needs.

Provided that this Rule shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons falling under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Rule with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

Inducement Rules

R.3.17 Where a Manufacturer distributes its Products to Clients through a Distributor and pays a commission to a Distributor based on levels of business introduced, the Manufacturer must be able to demonstrate that these arrangements:

(a) do not impair the Distributor's duty to act in the best interests of Clients;
(b) do not give rise to a conflict of interest between the Distributor and the Client.

R.3.18 The Management body shall adopt and at least annually review the general principles of the Inducements policy referred to in R.3.39, and shall be responsible for and oversee its implementation. The Management body shall also ensure that the Compliance Officer is involved in the establishment and the subsequent reviews of the Inducements policy.

Part B: Rules Applicable to Regulated Persons which fall under Points (i) and (v) of the Definition of 'Regulated Person' in the Glossary to these Rules, including UCITS Management Companies

R.3.19 For the purposes of this Section the term "Regulated Person" shall refer to a person which falls under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules, and includes a UCITS Management Company.

The requirements of R.3.8 and R.3.25 shall also apply to Regulated Persons which fall under point (v) of the definition of 'Regulated Person' in the Glossary.

General Requirements

R.3.20 Regulated Persons shall take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and Tied Agents, or any person directly or indirectly linked to them by control and their Clients or between the interests of one Client and another,

including those caused by the receipt of Inducements from third parties or by a Regulated Person's own remuneration and other incentive structures.

Provided that, in the case of UCITS Management Companies, the steps required by this Rule to identify and to prevent or manage conflicts of interest shall also apply to conflicts of interest between the UCITS Management Company and its Clients, between one of its Clients and a UCITS scheme, or between two UCITS schemes, that arise in the course of providing any Services.

R.3.21 For the purposes of identifying types of conflicts of interest that may adversely affect the interests of a Client, including his or her sustainability preferences, a Regulated Person shall take into account, by way of minimum criteria, whether the Regulated Person or a Relevant Person, or a person directly or indirectly linked by way of control to the Regulated Person, is in any of the following situations, whether as a result of providing Services or activities or otherwise:

(a) the Regulated Person or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the Client; or
(b) the Regulated Person or that person has an interest in the outcome of a Service provided to the Client (or in the case of a UCITS Management Company) or of a transaction carried out on behalf of the Client), which is distinct from the Client's interest in that outcome; or
(c) the Regulated Person or that person has a financial or other incentive to favour the interest of another Client or group of Clients over the interests of the Client or of the UCITS scheme; or
(d) the Regulated Person or that person carries on the same business as the Client, or in the case of a UCITS Management Company, whether it carries on the same activities for the UCITS scheme and for another Client or Clients which are not the UCITS scheme; or
(e) the Regulated Person or that person receives or will receive from a person other than the Client an Inducement in relation to a Service provided to the Client, in the form of monetary or non-monetary benefits or Services.

R.3.22 A Regulated Person shall not be regarded as fulfilling its obligations under R.3.2, or under R.3.4 where it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit in connection with the provision of a Service, to or by any party except the Client or a person on behalf of the Client, other than where the fee, commission, payment or benefit:

(a) is designed to enhance the quality of the relevant Service to the Client; and
(b) does not impair compliance with the Regulated Person's duty to act in the best interests of the Client;

Provided that if a fee, commission, payment or benefit as referred to in this Rule subsists, a Regulated Person shall also be required to disclose to Clients the information set out in R.1.5.12 to R.1.5.15 of this Rulebook.

The payment or benefit which enables or is necessary for the provision of the Service, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the Regulated Person's duties to act honestly, fairly and professionally in

accordance with the best interests of its Clients, is not subject to the requirements set out in the first subparagraph.

Provided that this Rule shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons which fall under point (i) of the definition of Regulated Person in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Rule with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

Provided further that, in the case of UCITS Management Companies, the provisions of this Rule, R.3.17 and R.3.18 shall only apply when such UCITS Management Company offers the following services:

(a) management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more Financial Instruments;
(b) as non-core services:
    i. investment advice concerning one or more Financial Instruments;
    ii. safekeeping and administration in relation to units of collective investment undertakings.

R.3.23 The provision of research by third parties to a Regulated Person providing portfolio management or other investment or ancillary services to clients shall be regarded as fulfilling the obligations under R.3.2. if:

(a) an agreement has been entered into between the Regulated Person and the third-party provider of execution services and research establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services;

(b) the Regulated Person informs its clients of its choice to pay either jointly or separately for execution services and research and makes available to them its policy on payments for execution services and research, including the type of information that can be provided depending on the Regulated Person's choice of payment method and, where relevant, how the investment firm prevents or manages conflicts of interest pursuant to R.3.20 and R.1.5.5 when applying a joint payment method for execution services and research;

(c) the Regulated Person assesses on an annual basis the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions;

(d) where the Regulated Person chooses to pay separately for execution services and third-party research, the provision of research by third parties to the Regulated Person is received in return for either of the following:

(i) direct payments by the investment firm out of its own resources;
(ii) payments from a separate research payment account controlled by the investment firm.';

R.3.23A For the purposes of R.3.23, trading commentary and other bespoke trade advisory services intrinsically linked to the execution of a transaction in financial instruments shall not be considered to be research.

R.3.23B Where a Regulated Person receives research from a research provider who is not engaged in execution services and is not part of a financial services group that includes a regulated Person that offers execution or brokerage services, the provision of such research to the Regulated Person is regarded as fulfilling the obligations under R.3.2. In such cases, the Regulated Person shall comply with the requirement under R.3.23 (c)

R.3.23C Where known to them, Regulated Person shall keep a record of the total costs attributable to third-party research provided to them. Upon request, such information shall be made available on an annual basis to the Regulated Persons's clients.

R.3.24 For the purposes of R.3.23, research shall:

(a) be understood as:

i. covering research material or services concerning one or several Financial Instruments or other assets, or the Issuers or potential Issuers of Financial Instruments; or
ii. covering research material or services closely related to a specific industry or market such that it informs views on Financial Instruments, assets or Issuers within that industry or market;

(b) also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of Financial Instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the Regulated Persons' decisions on behalf of clients being charged for that research.

Inducements Rules

R.3.25 A Regulated Person providing its Clients with Advice on an independent basis or Portfolio Management shall not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the Services to Clients. All fees, commissions or monetary benefits received from third parties in relation to the provision of Advice on an independent basis and Portfolio Management shall be transferred in full to the Client.

Provided that minor non-monetary benefits that are capable of enhancing the quality of Service provided to a Client and are of a scale and nature such that they could not be deemed to impair compliance with the Regulated Person's duty to act in the best interest of the Client shall be clearly disclosed and would be excluded from the application of this Rule.

A Regulated Person providing Advice on an independent basis or Portfolio Management shall not accept the non-monetary benefits that do not qualify as acceptable minor non-monetary benefits. The following benefits shall qualify as acceptable minor non-monetary benefits only if they are:

(a) information or documentation relating to a Financial Instrument or a Service, is generic in nature or personalised to reflect the circumstances of an individual Client;
(b) written material from a third party that is commissioned and paid for by a corporate Issuer or potential Issuer to promote new issuance by the company, or where the third party is contractually engaged and paid by the Issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any Regulated Person wishing to received it or to the general public;
(c) participation in conferences, seminars and other training events on the benefits and features of a specific Financial Instrument or a Service;
(d) hospitality of a reasonable *de minimis* value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under point (c); and
(e) other minor non-monetary benefits which a EEA State deems capable of enhancing the quality of Service provided to a Client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with the Regulated Person's duty to act in the best interest of the Client.

Acceptable minor non-monetary benefits must be of such a scale, reasonable and proportionate that they are unlikely to influence the Regulated Person's behaviour in any way that is detrimental to the interests of the relevant Client.

Provided that this Rule shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons which fall under point (i) of the definition of Regulated Person in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Rule with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

R.3.26 A Regulated Person shall set up and implement a policy to ensure that any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of Advice on an independent basis and Portfolio Management are allocated and transferred to each individual Client.

A Regulated Person shall inform Clients about the fees, commissions or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the Client.

Personal Transactions Rules

R.3.27 A Regulated Person shall establish, implement and maintain adequate arrangements which prevent any Relevant Person who is involved in activities that may give rise to a conflict of interest, or who has access to Inside Information within the meaning of article 2(1) of the Prevention of Financial Markets Abuse Act (Cap. 476) or to other confidential information relating to Clients or transactions with or for Clients by virtue of an activity carried out by him on behalf of the Regulated Person.

Regulated Persons shall ensure that Relevant Persons do not enter into a personal transaction which meets at least one of the following criteria:

(a) that the person is prohibited from entering into it in terms of the Prevention of Financial Markets Abuse Act (Cap. 476);
(b) it involves the misuse or improper disclosure of confidential information; or
(c) it conflicts or is likely to conflict with an obligation of the Regulated Person under Directive 2014/65/EU (MiFID II) or Directive 2014/91/EC (UCITS V Directive), the Investment Services Act and any rules issued thereunder, as applicable.

R.3.28 A Regulated Person must ensure that Relevant Persons do not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in Financial Instruments which, if it were a personal transaction of the Relevant Person, would be covered by R.3.29(a) or (b) or R.5.15.

R.3.29 Without prejudice to Article 6A(3) of the Prevention of Financial Markets Abuse Act (Cap. 476), a Regulated Person shall ensure that Relevant Persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the Relevant Person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(a) to enter into a transaction in Financial Instruments which, if it were a personal transaction of the Relevant Person, would be covered by R.3.27 or R.3.28 or R.3.46 (a) or (b) or R.5.15;
(b) to advise or procure another person to enter into such a transaction.

R.3.30 The arrangements required under R.3.27 must in particular be designed to ensure that:

(a) each Relevant Person covered by R.3.27 to R.3.29, is aware of the restrictions on personal transactions, and of the measures established by the Regulated Person in connection with personal transactions and disclosure, in accordance with R.3.28 to R.3.30;

(b) the Regulated Person is informed promptly of any personal transaction entered into by a Relevant Person, either by notification of that transaction or by other procedures enabling the Regulated Person to identify such transactions;

(c) a record is kept of the personal transaction notified to the Regulated Person or identified by it, including any authorization or prohibition in connection with such a transaction.

In the case of outsourcing arrangements, the Regulated Person shall ensure that the entity to which the activity is outsourced maintains a record of personal transactions entered into by any Relevant Person and provides that information to the Regulated Person promptly on request.

R.3.31 R.3.27 to R.3.30 shall not apply to the following kinds of personal transaction:

(a) personal transactions effected under a discretionary Portfolio Management service where there is no prior communication in connection with the transaction between the portfolio manager and the Relevant Person or other person for whose account the transaction is executed;

(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the Relevant Person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

Remuneration Rules

R.3.32 A Regulated Person shall define, establish, implement and maintain remuneration policies and practices under appropriate internal procedures taking into account the interests of all the Clients, such that Regulated Persons are required to ensure that Clients are treated fairly and that the Clients' interests are not impaired by their remuneration practices. The Regulated Person shall also ensure that the remuneration policies are periodically reviewed.

In this respect, the Regulated Person shall in particular ensure that such remuneration policies and practices adopted by the Regulated Person:

(a) do not give rise to conflicts of interest which could, in the short, medium or long-term adversely affect the interests of its Clients or, in the case of a UCITS Management Company, of UCITS schemes it manages;

(b) do not create a conflict of interest or incentive that may lead Relevant Persons to favor their own interests or the Regulated Person's interest to the potential detriment of Clients.

R.3.33 With respect to the MiFID II remuneration requirements as well as the MiFID II conflicts of interest and conduct of business requirements in the area of remuneration, the Regulated Person shall comply with all the applicable

requirements contained in this Rulebook, in particular this Chapter 3, as well as with Appendix 2 thereto which implements the ESMA Guidelines on certain aspects of the MIFID II remuneration requirements.

Regulated Persons shall apply the relevant requirements referred above to all Relevant Persons within a Regulated Person who can have a material impact, directly or indirectly, on Services and Ancillary Services provided by the Regulated Person or on its corporate behaviour regardless of the type of Clients, to the extent that the remuneration of such persons and related non-financial incentives may create a conflict of interest that encourages such persons to act against the interests of the Clients.

G.3.3 *The reference to non-financial incentives in R.3.33 above shall include but is not limited to, in-kind benefits and career progression.*

R.3.34 Without prejudice to the requirements established in R.3-1.3.1.1 of Part BI of the Investment Services Rules for Investment Services Providers (Rules applicable to Investment Services Licence Holders which qualify as MIFID Firms) the arrangements referred to in R.3.37 shall also ensure that the Management body defines, approves and oversees a remuneration policy of persons involved in the provision of Services to Clients aiming to encourage responsible business conduct, fair treatment of Clients as well as avoiding conflict of interest in the relationships with Clients. UCITS Management Companies shall also be subject to the provisions emanating from the UCITS Directive in addition to the requirements provided for hereunder.

R.3.35 The Management body of the Regulated Person shall approve the remuneration policies and practices, after taking Advice from the compliance function. The senior management of the Regulated Person shall be responsible for the day-to-day implementation of the remuneration policy and for the monitoring of compliance risks related to the said policy.

G.3.4 *The Management body of the Regulated Person should assume clear responsibilities across the business cycle of the Regulated Person, in the areas of the identification and definition of the strategic objectives, including the remuneration of sales staff and the approval of new Products for distribution to Clients.*

R.3.36 Where remuneration is, in whole or in part, variable, a Regulated Person's remuneration policies and practices shall define appropriate criteria to be used to align the interests of the Relevant Persons or the Regulated Person and that of the Clients.

In this respect, when designing remuneration policies and practices, a Regulated Person shall ensure that the ratio between the fixed and variable components of the remuneration is appropriate in order to take into account the best interests of their Clients.

Conflicts of Interest in the Remuneration Structures of Sales Staff

R.3.37 In addition to the requirement of R.3.16, Regulated Persons which distribute Tied or Bundled packages must ensure that suitable remuneration models and

sales incentives encouraging responsible business conduct, fair treatment of Clients and avoidance of conflicts of interest for staff selling the Tied or Bundled package are in place and are monitored by senior management.

G.3.5 *A Regulated Person should refrain from operating remuneration policies, practices and performance-based competitions that encourage sales staff who may be remunerated on a commission basis to 'push', the sale of the Bundled package and which may therefore encourage the unnecessary/unsuitable sales of either a component of the package or the package itself. For instance if sales staff were incentivised to cross-sell a loan with a brokerage account , then as a result of this remuneration structure, there would be the risk of incentivising a potential mis-selling of the loan and therefore also of the package.*

G.3.6 *A Regulated Person should avoid remuneration policies and practices which reduce sales' staff basic salary substantially if a specific sales target in relation to the Bundled/Tied package is not met; thereby reducing the risk that the sales person will make inappropriate sales of the bundled package to avoid this outcome.*

G.3.7 *A Regulated Person should avoid reducing bonus or incentive payments earned by sales staff because a sales target or threshold for the Bundled package has not been met.*

PART C: ***Rules Applicable to Regulated Persons which fall under Point (i) of the Definition of 'Regulated Person' in the Glossary to these Rules, excluding UCITS Management Companies.***

R.3.38 For the purposes of this Section the term "Regulated Person" shall refer to a person which falls under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules, excluding UCITS Management Companies.

Operational Independence Rules

R.3.39 The Management body of a Regulated Person shall define, oversee and be accountable for the implementation of governance arrangements that ensure effective and prudent management of the Regulated Person including the segregation of duties within that Regulated Person and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of Clients.

G.3.8 *A Regulated Person should specify concrete organisational requirements and procedures especially with respect to compliance, risk management, complaints handling, personal transactions, outsourcing and the identification, management and disclosure of conflicts of interest.*

G.3.9 *The Management body should be responsible and accountable for the overall strategy of the Regulated Person, taking into account the Regulated Person's business and risk profile. This provides the Management body with effective oversight and control over the activities of the Regulated Person and data reporting services providers.*

Inducements Rules

R.3.40 A Regulated Person shall not receive any remuneration, discount or non-monetary benefit for routing Client orders to a particular Trading Venue or Execution venue which would infringe the requirements on conflicts of interest or Inducements set out in R.3.6, R.3.40, R.3.21 and R.3.22.

R.3.41 A Regulated Person paying or being paid any fee or commission or providing or being provided with any non-monetary benefit in connection with the provision of a Service or Ancillary service to the Client should ensure that the conditions provided in R.3.22 and requirements set out in the following rules are met at all times.

R.3.42 A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant Service to the Client, in terms of R.3.22, if all of the following conditions are met:

(a) it is justified by the provision of an additional or higher-level Service to the relevant Client, proportional to the level of Inducements received, such as:

i. The provision of non-independent investment advice on and access to a wide range of suitable Financial Instruments including an appropriate number of instruments from third party Product providers having no close links with the Regulated Person;
ii. The provision of non-independent investment advice combined with either: an offer to the Client, at least on an annual basis, to assess the continuing suitability of the Financial Instruments in which the Client has invested; or with another on-going service that is likely to be of value to the Client such as Advice about the suggested optimal asset allocation of the Client; or
iii. The provision of access, at a competitive price, to a wide range of Financial Instruments that are likely to meet the needs of the Client, including an appropriate number of instruments from third party Product providers having no close links with the Regulated Person, together with either the provision of added-value tools, such as objective information tools helping the relevant Client to take investment decisions or enabling the Client to monitor, model and adjust the range of Financial Instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the Financial Instruments.

(b) it does not directly benefit the recipient Regulated Person, its shareholders or employees without tangible benefit to the relevant Client;
(c) it is justified by the provision of an on-going benefit to the relevant Client in relation to an on-going Inducement.

A fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant Services to the Client is biased or distorted as a result of the fee, commission or non-monetary benefit.

R.3.43 A Regulated Person shall fulfil the requirements provided in R.3.20 and R.3.81 on an ongoing basis as long as they continue to pay or receive the fee, commission or non-monetary benefit.

R.3.44 A Regulated Person shall hold the following as evidence that any fees, commissions or non-monetary benefits paid or received by the Regulated Person are designed to enhance the quality of the relevant Service to the Client:

(a) by keeping an internal list of all fees, commissions and non-monetary benefits received by the Regulated Person from a third party in relation to the provision of Services; and

(b) by recording how the fees, commissions and non-monetary benefits paid or received by the Regulated Person, or that it intends to use, enhance the quality of the Services provided to the relevant Clients and the steps taken in order not to impair the Regulated Person's duty to act honestly, fair and professionally in accordance with the best interests of the Client.

Rules Relating to the Production and Dissemination of Investment Research

R.3.45 A Regulated Person which produces, or arranges for the production of, Investment research that is intended or likely to be subsequently disseminated to Clients of the Regulated Person or to the public, under their own responsibility or that of a member of their group, shall ensure the implementation of all the measures set out in R.3.12 and R.3.13 in relation to the financial analysts involved in the production of the Investment research and other Relevant Persons whose responsibilities or business interests may conflict with the interests of the persons to whom the Investment research is disseminated. This rule shall also apply in relation to recommendations referred to in R.3.45 and R.3.46.

R.3.46 A recommendation of the type covered by Article 3(1)(35) of Regulation (EU) 596/2014 (Market Abuse Regulation), but relating to Financial Instruments, that does not qualify as 'Investment research' as defined in the Glossary to these Rules shall be treated as an Advertisement for the purposes of these Rules, and any Regulated Person which produces or disseminates the recommendation shall ensure that it is clearly identified as such.

R.3.47 The Regulated Person shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, a clear statement should be made to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of Investment research and that it is not subject to any prohibition on dealing ahead of the dissemination of Investment research.

R.3.48 A Regulated Person falling under the description of R.3.44 shall have in place arrangements designed to ensure that the following conditions are satisfied:

(a) financial analysts and other Relevant Persons must not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited Client order, on behalf of any other person, including the

Regulated Person, in Financial Instruments to which Investment research relates, or in any related Financial Instruments, with knowledge of the likely timing or content of that Investment research which is not publicly available or available to Clients and cannot readily be inferred from information that is so available, until the recipients of the Investment research have had a reasonable opportunity to act on it;

(b) in circumstances not covered by point (a), financial analysts and any other Relevant Persons involved in the production of Investment research must not undertake personal transactions in Financial Instruments to which the Investment research relates, or in any related Financial Instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the Regulated person's legal or compliance function;

(c) a physical separation exists between the financial analysts involved in the production of Investment research and other Relevant Persons whose responsibilities or business interests may conflict with the interests of the persons to whom the Investment research is disseminated or, when considered not appropriate to the size and organization of the Regulated Person as well as the nature, scale and complexity of its business, the establishment and implementation of appropriate alternative information barriers;

(d) the Regulated Person itself, financial analysts, and other Relevant Persons involved in the production of the Investment research must not accept Inducements from those with a material interest in the subject-matter of the Investment research;

(e) the Regulated Person itself, financial analysts, and other Relevant Persons involved in the production of the Investment research must not promise Issuers favorable research coverage;

(f) issuers, Relevant Persons other than financial analysts, and any other persons must not before the dissemination of Investment research be permitted to review a draft of the Investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the Regulated Person's legal obligations, if the draft includes a recommendation or a target price.

For the purposes of this paragraph, 'related Financial Instrument' means a Financial Instrument the price of which is closely affected by price movements in another Financial Instrument which is the subject of Investment research, and includes a derivative on that other Financial Instrument.

G.3.10 *The measures and arrangements adopted by a Regulated Person to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as Investment research should be appropriate to protect the objectivity and independence of financial analysts and of the Investment research they produce.*

Such measures and arrangements should ensure that financial analysts enjoy an adequate degree of independence from the interests of persons whose responsibilities or business interests may reasonably be considered to conflict

with the interests of the persons to whom the Investment research is disseminated.

R.3.49 A Regulated Person which disseminates Investment research produced by another person to the public or to Clients shall be exempt from complying with R.3.45 if the following criteria are met:

(a) the person that produces the Investment research is not a member of the group to which the Regulated Person belongs;
(b) the Regulated Person does not substantially alter the recommendations within the Investment research;
(c) the Regulated Person does not present the Investment research as having been produced by it;
(d) the Regulated Person verifies that the producer of the research is subject to requirements equivalent to the requirements under these rules in relation to the production of that research, or has established a policy setting such requirements.

G.3.11 *In drawing up a conflict of interest policy which identifies circumstances which constitute or may give rise to a conflict of interest, the Regulated Person should pay special attention to the activities of Investment research and Advice, proprietary trading, Portfolio Management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the Regulated Person or a person directly or indirectly linked by control to the Regulated Person performs a combination of two or more of those activities.*

R.3.50 Research provided by third parties to a Regulated Person shall not be regarded as an Inducement if it is received in return for any of the following:

(a) direct payments made by the Regulated Person out of its own resources;
(b) payments made from a separate research payment account controlled by the Regulated Person, provided the following conditions relating to the operation of the account are met:

    i. the research payment account is funded by a specific research charge to the Client;
    ii. as part of establishing a research payment account and agreeing the research charge with their Clients, the Regulated Person sets and regularly assesses a research budget as an internal administrative measure;
    iii. the Regulated Person is held responsible for the research payment account;
    iv. the Regulated Person regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

(c) where the Regulated Person uses the research payment account, it shall provide the following information to Clients:

i. information about the budgeted amount for research and the amount of the estimated research charge for each of them. Such information must be provided before the Service is provided to Clients;
ii. annual information on the total costs that each of them has incurred for third party research.

R.3.51 Where a Regulated Person operates a research payment account, the Regulated Person is also required, upon request by their Clients or by the MFSA, to provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and Services received by the Regulated Person , and how the total amount spent from the account compares to the budget set by the Regulated Person for that period, noting any rebate or carry-over if residual funds remain the account. For the purposes of point (b)(i) of R.3.50 above, the specific research charge shall:

(a) only be based on a research budget set by the Regulated Person for the purpose of establishing the need for third party research in respect of Services rendered to its Clients; and
(b) not be linked to the volume and/or value of transactions executed on behalf of the Clients.

R.3.52 Where the Client research charge is not collected separately but alongside a transaction commission, every operational arrangement for the collection of the Client research charge must indicate a separate identifiable research charge and must fully comply with the conditions provided in points (b) and (c) of R.3.50.

R.3.53 A Regulated Person shall agree with Clients, in its investment management agreement or general terms of business, the research charge as budgeted by the Regulated Person and the frequency with which the specific research charge will be deducted from the Client's resources over the year. The total amount of the research charges may not exceed the research budget. Increases in the research budget shall only take place after the Regulated Person clearly informs Clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the Regulated Person should have a process to rebate those funds to the Client or to offset it against the research budget and charge calculated for the following period.

R.3.54 For the purposes of point (b)(ii) of R.3.50, the research budget must be managed solely by the Regulated Person and is based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research must be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the Regulated Person's Clients. These controls include a clear audit trail of payments made to research providers and how the amounts paid were determined in accordance to the quality criteria provided in R.3.50 (b)(iv). A Regulated Person shall not use the research budget and research payment account to fund internal research.

R.3.55 A Regulated Person may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third party research and payments to research providers in the name of the Regulated Person without any undue delay in accordance with the Regulated Person's instruction.

R.3.56 A Regulated Person shall establish all necessary elements in a written policy which shall be provided to its Clients. The policy shall also address the extent to which research purchased through the research payment account may benefit Clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the Regulated Person will take to allocate such costs fairly to the various Clients' portfolios.

R.3.57 A Regulated Person providing execution services shall identify separate charges for these services that only reflect the cost for execution services. The provision of each other benefit or service by the same Regulated Person to other Regulated Persons established in European Union shall be subject to a separately identifiable charge. The supply and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

Remuneration Rules

R.3.58 Remuneration and similar incentives shall not be predominantly based on quantitative commercial criteria, and shall take fully into account appropriate qualitative criteria reflecting compliance with any applicable laws and regulations, the fair treatment of Clients and the quality of Services provided to Clients. A balance between fixed and variable components of remuneration must be maintained at all times, so that the remuneration structure does not favour the interests of the Regulated Person or its Relevant Persons against the interests of any Client.

Part D: Rules for Regulated Persons which fall under Point (i) of the Definition of 'Regulated Person' in the Glossary which are licensed to provide the Services of Underwriting of Financial Instruments and/or Placing of Financial Instruments with or without a Firm Commitment basis.

R.3.59 For the purposes of this Part the term "Regulated Person" shall refer to a person which falls under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules, which are licensed to provide the Services of underwriting of Financial Instruments and/or placing of Financial Instruments with or without a firm commitment basis.

Advising to Undertake an Offering

R.3.60 The Regulated Person, shall, before it accepts a mandate to manage the offering, have arrangements in place to ensure that it explains the following to the Client who is the Issuer:

(a) the various financing alternatives available, and an indication of the amount of transaction fees associated with each alternative;
(b) the timing and the process the Regulated Person will take in respect to how it will reach its corporate finance advice in respect to pricing the offer;
(c) the timing and the process the Regulated Person will take in respect to how it will reach its corporate finance advice in respect to placing of the offering;
(d) details of the type of investors, to whom it is planned to offer the securities;
(e) the job titles and departments of the relevant individuals involved in the production of corporate finance advice on the price and allotment; and
(f) how it intends to prevent or manage conflicts of interest that may arise in circumstances where it places the relevant securities with investment Clients of the Regulated Person or with its own proprietary book.

R.3.61 A Regulated Person shall have in place a centralised process to identify all its underwriting and placing operations and record such information, including the date when it was informed of potential underwriting and placing operations. The Regulated Person shall identify all potential conflicts of interest arising from its or the group's other activities, and implement appropriate management procedures. In the case the Regulated Person cannot manage a conflict of interest by way of implementing appropriate procedures, it shall not engage in the operation.

R.3.62 A Regulated Person providing execution and research services and carrying out underwriting and placing activities shall ensure that adequate controls are in place to manage any potential conflicts of interest between these activities and between their different Clients receiving those services.

Pricing

R.3.63 The Regulated Person should have in place systems, controls and procedures to identify and manage the conflicts that arise in relation to possible under-pricing and over-pricing of issues or involvement of Relevant Persons in this process including 'book building'. Specifically:

(a) the Regulated Person should have in place internal arrangements that ensure that the pricing of the offer does not promote the interests of other Clients or the Regulated Persons' interests, in a way that may conflict with the Issuer Clients' interests; and

(b) the Regulated Person should have in place internal arrangements that manage or prevent a situation where individuals ordinarily responsible for providing Services to the Clients of the Regulated Person are involved directly in decisions about corporate finance advice to the Issuer on pricing.

R.3.64 The Regulated Person shall provide Clients with information about how it determines the price of the offering and the timings involved. Specifically:

(a) the Regulated Person shall inform and discuss with the Issuer Client any hedging or stabilisation strategies it plans to undertake with respect to

the offer, including how these strategies may impact the Issuer Client's interests; and

(b) the Regulated Person shall take reasonable steps to keep the Issuer Client informed on developments relevant to the pricing during the offering process.

Placing

R.3.65 The Regulated Person shall establish, implement and maintain internal arrangements that prevent recommendations relating to the Services of placing, from being inappropriately influenced by any existing or future relationships.

R.3.66 The Regulated Person shall establish, implement and maintain internal arrangements that manage or prevent conflicts of interests that arise where persons responsible for providing Services to its Clients are involved directly in decisions about recommendations on allocation made to the Issuer.

R.3.67 The Regulated Person shall only receive third party payments that comply with the requirements of R.3.22.

The following practices shall not be considered to be in the best interest of the Clients, and therefore shall be considered not acceptable:

(a) an allocation made to incentivise of disproportionately high fees for unrelated services provided by the Regulated Person ('laddering'), such as disproportionately high fees or commissions paid by a Client, or disproportionately high volumes of business at normal levels of commission provided by the Client as a compensation for receiving an allocation of the issue;
(b) an allocation made to a senior executive or a corporate officer of an existing or potential Issuer Client, in consideration for the future or past award of corporate finance business ("spinning");
(c) an allocation that is expressly or implicitly conditional on the receipt of future orders or the purchase of any other Service from the Regulated Person by a Client, or any entity of which the Client is a corporate officer.

R.3.68 The Regulated Person should have in place an allocation policy that sets out the process for developing allocation recommendations. This allocation policy should be provided to the Issuer before agreeing to undertake a placing. The policy should set out relevant information to the extent it is known at that stage about the proposed allocation methodology for the issue.

R.3.69 The Regulated Person shall involve the Issuer in discussions about the placing process so that the Regulated Person can take into account the Client's interests and objectives into account. The Regulated Person shall obtain the Issuer Client's agreement to its proposed allocation per type of Client for the transaction in accordance with the allocation policy.

Retail Advice/Distribution

R.3.70 The Regulated Person shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise where it provides Services to a Client to participate in a new issue, where the Regulated Person receives commissions/fees or any monetary or non-monetary benefits in relation to arranging the issue. Any commissions, fees or monetary or non-monetary benefits received in such circumstances must comply with the requirements of R.3.42 and R.3.9. This should be documented in the Regulated Person's conflicts of interest policies, and reflected in the Regulated Person's Inducement arrangements.

R.3.71 Regulated Persons that engage in the placement of Financial Instruments issued by themselves (or other group entities) to their own Clients, including their existing depositor Clients in the case of credit institutions, or investment funds managed by entities of their group, collective investment schemes managed by entities within Regulated Person's group, shall have in place clear and effective procedures for the identification, prevention or management of the potential conflicts of interest that arise in relation to this type of activity. Such procedures shall include consideration of refraining from engaging in the activity, where conflicts of interest cannot be appropriately managed so as to prevent any adverse effects on Clients.

R.3.72 When disclosure of conflicts of interest is required, Regulated Persons should explain the nature and source of the conflicts of interest inherent to this type of activity, providing details about the specific risks related to such practices so as to enable Clients to make an informed investment decision.

Lending/Provision of Credit

R.3.73 If the Regulated Person acted as arranger and the steps it took to manage the conflicts of interest were not sufficient to ensure that the risk of damage to the Client would be prevented, the Regulated Person shall disclose to the Client the specific conflicts of interest that have arisen in relation to the activities of the Regulated Person (or group entity) acting in its capacity as a credit provider, and the activity of the Regulated Person acting as arranger for the securities offering.

R.3.74 Where one entity within a group is acting as a credit provider, and another is acting as arranger for a securities offering, the Regulated Person's conflict of interest policy should require that full information should be shared between the different entities, in relation to the Issuer's financial situation.

R.3.75 Where any previous lending or credit to the Issuer Client by a Regulated Person (or a group entity), may be repaid with the proceeds of an issue, the Regulated Person shall have arrangements in place to identify and prevent or manage conflicts of interest that may arise as a result.

R.3.76 Where the arrangements taken to manage conflicts of interest prove insufficient to ensure that the risk of damage to the Issuer Client would be prevented, the Regulated Person shall disclose to the Issuer Client the specific conflicts of interest that have arisen in relation to their, or group entities',

activities in a capacity of credit provider, and their activities related to the securities offering.

R.3.77 A Regulated Person's conflict of interest policy should require the sharing of information about the Issuer's financial situation with group entities acting as credit providers, provided this would not breach information barriers set up by it to protect the Client's interests.

G.3.12 *In circumstances where any previous lending or credit to the Issuer Client by the Regulated Person (or a group entity) may be repaid with the proceeds of the issue, Regulated Persons should consider whether in such circumstances it would be appropriate to refrain from acting as arranger for the securities offering.*

Record Keeping

R.3.78 The Regulated Person should keep records of the content and timing of instructions received from its Clients. A record of the allocation decisions taken for each operation should be kept to provide for a complete audit trail between the movements registered in Clients' accounts and the instructions received by the Regulated Person. In particular, the final allocation made for each Client should be clearly justified and recorded. The complete audit trail of the material steps in the underwriting and placing process should be made available on request to the MFSA.

Oversight

R.3.*79* The Regulated Person should have in place a centralised process to identify all its potential underwriting and placing operations and keep a record of this information, specifying the date on which the Regulated Person was informed of potential underwriting and placing operations.

R.3.80 The Regulated Person should identify all potential conflicts of interests arising from other activities of the Regulated Person itself or of other members in its group, and implement appropriate management procedures. In some cases, if the conflict of interest cannot be managed by procedures or arrangements, the only way to manage the conflict would be for the Regulated Person not to engage in the operation.

Part E: ***Rules Applicable to Regulated Persons which fall under Points (iii) and (iv) of the Definition of 'Regulated Person' in the Glossary, in so far as they carry out the Distribution of Insurance-based investment products***

R.3.81 Regulated Persons shall take all appropriate steps to identify and avoid conflicts of interest between themselves, including their managers, employees, Tied insurance intermediaries, Ancillary insurance intermediaries, or any person directly or indirectly linked to them by control and their Clients or between the interests of one Client and another, including those caused by the receipt of Inducements from third parties or by a Regulated Person's own remuneration and other incentive structures.

R.3.82 Without prejudice to R.1.5.17 (a) and (b), R.1.5.18 and R.3.25, Regulated Persons are regarded as fulfilling their obligations under R.1.5.5, R.2.17, R.3.2 and R.3.10 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an Insurance-based investment product or an Ancillary service, to or by any party except the Client or a person on behalf of the Client only where the payment or benefit:

(a) does not have a detrimental impact on the quality of the relevant Service to the Client; and
(b) does not impair compliance with the Regulated Person's duty to act honestly, fairly and professionally in accordance with the best interests of its Clients.

R.3.83 In the case of Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, the types of conflicts of interest that arise in the course of carrying out any distribution activities related to Insurance-based investment products and which may adversely affect the interests of a Client, including his or her sustainability preferences, such Regulated Persons shall assess whether they, a Relevant Person or any person directly or indirectly linked to them by control, have an interest in the outcome of the distribution activities, which meets the following criteria:

(a) it is distinct from the Client's or potential Client's interest in the outcome of the distribution activities;
(b) it has the potential to influence the outcome of the distribution activities to the detriment of the Client.

Such Regulated Persons shall proceed in the same way for the purposes of identifying conflicts of interest between one Client and another.

For the purposes of carrying out the above assessment, in addition to the criteria referred to in R.3.71, such Regulated Persons must also take into account, by way of minimum criteria, the following situations:

(a) whether the same Regulated Person or a Relevant Person, or a person directly or indirectly linked by way of control to the Regulated Person is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the Client;
(b) the Regulated Person, a Relevant Person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another Client or group of Clients over the interest of the Client;
(c) the Regulated Person, a Relevant Person or any person directly or indirectly linked by control to a Regulated Person is substantially involved in the management or development of Insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

R.3.84 Where a Regulated Person can demonstrate that the measures and procedures referred to in R.3.83 above are not appropriate to ensure that activities referred

to therein are carried out in accordance with the best interest of the Client and are not biased due to conflicting interests of the Regulated Person, such Regulated Person shall adopt adequate alternative measures and procedures for that purpose.

R.3.85 For the purposes of R.3.11 (b), the procedures to be followed and measures to be adopted shall also relate to any gifts and benefits policy which should determine clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

R.3.86 The Regulated Person shall avoid over-reliance on disclosure to ensure that disclosure to Clients, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the Regulated Person to prevent or manage conflicts of interests are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of Clients will be prevented.

R.3.87 For the purposes of a disclosure of conflicts of interest, the Regulated Person shall do all the following:

(a) provide a specific description of the conflict of interest in question;
(b) explain the general nature and sources of the conflict of interest;
(c) explain the risks to the Client that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
(d) clearly state that the organisational and administrative arrangements established by the Regulated Person to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the Client will be prevented.

R.3.88 An Inducement or inducement scheme shall be considered to have a detrimental impact on the quality of the relevant Service to the Client where it is of such a nature and scale that it provides an incentive to carry out distribution activities in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the Client.

R.3.89 For the purposes of assessing whether an Inducement or inducement scheme has a detrimental impact on the quality of the relevant Service to the Client, the Regulated Person shall perform an overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant Service to the Client, and any organisational measures taken by the Regulated Person carrying out distribution activities to prevent the risk of detrimental impact.

The Regulated Person shall, in particular, consider the following criteria:

(a) whether the Inducement or inducement scheme could provide an incentive to the Regulated Person undertaking to offer or recommend a particular Product or a particular Service to the Client despite the fact that

the Regulated Person would be able to offer a different Product or Service which would better meet the Client's needs;

(b) whether the Inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable regulations, the quality of Services provided to Clients and Client satisfaction;

(c) the value of the Inducement paid or received in relation to the value of the Product and the Services provided;

(d) whether the Inducement is entirely or mainly paid at the moment of the conclusion of the Insurance contract or extends over the whole term of that contract;

(e) the existence of an appropriate mechanism for reclaiming the Inducement in case the Product lapses or is surrendered at an early stage or in case the interests of the Client have been harmed;

(f) the existence of any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales.

Appendix 1

Examples of detrimental cross-selling practices

The non-exhaustive examples below provide guidance on situations in which cross-selling practices may be deemed non-compliant with the obligations laid down in Rule 3.2.

Examples with a monetary detriment

Example 1

Offering two products together in a package where the price of the offer is higher than the price of each component separately offered by the same Regulated Person (as long as products have the exact same features in both cases).

Example 2

Inducing a Client to buy a cross-selling offer by advertising/promoting the fact that, as of the day of sale, the overall amount of costs and charges payable by the Client is below the cumulated price of each component as sold separately, where in reality this amount of costs and charges are already scheduled to be raised to a higher amount overtime due, for instance, to the accumulation of running costs/fees.

Example 3

Not returning a portion of the proportional part of the pre-paid premium of an insurance component of the package further to the termination of an investment service that was sold together with it when the insurance product does not remain in force.

Example with reduced mobility detriment

Example 4

Imposing disproportionate early termination charges for an ancillary insurance product if a customer wants to substitute the coverage offered by an alternative provider or threatening with the termination of the contractual relationship regarding another product included in the package.

Example of purchase of unwanted or unnecessary products

Example 5

Offering a product bundled with another product that has not been requested by the Client when the Regulated Person is aware or should be aware that the product unnecessarily duplicates another product that the Client already has and cannot benefit from (including because the Client is not eligible).

Appendix 2

(R.3.33 of Chapter 3 of the Rulebook)

Obligations and Guidelines on certain aspects of the MiFID II Remuneration Requirements[18]

The requirements set out in this Appendix primarily implement the *ESMA Guidelines on certain aspects of the MIFID II Remuneration Requirements.*

The purpose of the said requirements is primarily to enhance clarity and foster convergence in the implementation of:

(a) certain aspects of the application of MiFID II (Directive 2014/65/EU) remuneration requirements set out in the relevant Rules implementing Article 27 of the MiFID II Delegated Regulation 2017/565;

(b) the conflicts of interest requirements set out in R.2.7, R.2.9 and R.2.15 implementing Articles 16(3) of MiFID II Directive 2014/65/EU and R.1.5.5 and R.3.20 implementing Article 23 of MiFID II Directive 2014/65/EU and the relevant Rules implementing Article 34 of the MiFID II Delegated Regulation 2017/565 in the area of remuneration; and

(c) the conduct of business rules set out in the relevant Rules implementing Article 24(1) and (10) of MiFID II Directive 2014/65/EU.

Scope

The requirements and the relative guidance set out in this Appendix shall apply to persons falling under points (i) and (v) of the definition of 'Regulated Person' in the Glossary (hereinafter referred to as *'Regulated Person')*.

The contents of this Appendix shall be read and construed together with other relevant requirements laid down in the various Chapters of this Rulebook, in particular Chapter 3 thereof.

Definitions

In this Annex, the following definitions shall apply. Other terms used shall be construed in terms of the Glossary to these Rules:

"quantitative criteria" means primarily numeric or financial data that is used to determine the remuneration of a Relevant Person (for instance, value of instruments sold, sales volumes, establishment of targets for sales or new clients);

"***qualitative criteria"*** means primarily criteria other than quantitative criteria. It can also refer to numeric or financial data used to assess the quality of the Relevant Person's performance and/or service to the Client (for instance, return on the client's investment, very low number of complaints over a large timescale);

[18] With the Conduct of Business Rulebook changes of October 2023 there has been a reorganization and shift of certain Rules and guidance from the main body of the relevant Chapter to this Appendix. It is to be particularly noted that contents of this Appendix which are new or amended when compared with the immediately preceding ESMA Guidelines on the subject-matter are applicable as from *3 October 2023*.

"remuneration" means, pursuant to Article 2(5) of the MiFID II Delegated Regulation 2017/565, all forms of payments or financial or non-financial benefits provided directly or indirectly by Regulated Person to Relevant Persons in the provision of investment or ancillary services to Clients.

A. Design of Remuneration Policies and Practices

[Relevant EU legislation: Articles 16(3), 23 and 24(10) of MiFID II, as well as Articles 27 and 34 of the MiFID II Delegated Regulation]

1. When designing remuneration policies and practices in accordance with the requirements under the relevant Rules in Chapter 3 of the Rulebook implementing Article 27 of the MiFID II Delegated Regulation 2017/565 and, especially, where remuneration comprises variable components, the Regulated Person should define appropriate criteria to align the interests of the Relevant Persons and of the Regulated Person with that of the Client. Such criteria aligning the interests of the Relevant Persons and of the Regulated Person with that of the Clients should allow the Regulated Person to assess the performance of Relevant Persons.

1.1 In order to carry out what is specified in paragraph 1 above and comply in accordance with R.3.7.1 of Chapter 3 of the Rulebook (implementing Article 27(4) of the MiFID II Delegated Regulation 2017/565), the Regulated Person shall consider Qualitative Criteria that encourage the Relevant Persons to act in the best interests of the Client. The Regulated Person shall take into account the fact that examples of appropriate Qualitative Criteria include compliance with regulatory requirements such as conduct of business rules (in particular, the review of the suitability of instruments sold by Relevant Persons to Clients, if relevant) and internal procedures, fair treatment of Clients and Client satisfaction.

1.2 The Regulated Person shall ensure that the Qualitative Criteria used by the Regulated Person in its remuneration policies and practices is to be sufficiently and clearly defined and documented to ensure that these Qualitative Criteria are not being used to indirectly reintroduce quantitative commercial criteria that may create conflicts of interests or incentives that may lead Relevant Persons to favour their own interests or their Regulated Person's interests to the potential detriment of any Client. For instance, if a Regulated Person uses Client satisfaction as a qualitative criterion in the determination of the variable remuneration of Relevant Persons, the Regulated Person shall ensure that it is clear from its remuneration policy how the Regulated Person will be measuring staff performance in this respect (with the remuneration policy indicating, amongst other matters, what data will be used and any thresholds applicable); this so as to avoid creating a vague criterion that may be used by the Regulated Person to, instead, reward sales or pressure sales staff to sell certain products (even though the remuneration policy would not be indicating such quantitative commercial criteria as performance indicators).

1.3 Regarding Quantitative Criteria, the Regulated Person should ensure to take into account criteria that do not create conflicts of interests or incentives that may lead Relevant Persons to favour their own interests or their Regulated Person's interests to the potential detriment of any Client. For example, the Regulated Person may assign sales objectives to staff, provided that such commercial objectives do not create an

incentive for sales staff to recommend only certain products to the detriment of the Clients' best interest (for instance, group products or those that are more lucrative to the Regulated Person or its group); and also provided that any remaining conflicts of interests are properly mitigated through the use of other equally weighted criteria such as staff's performance regarding suitability requirements or Clients' satisfaction.

1.4 The Regulated Person shall ensure that the weights attributed to the criteria used to determine the Remuneration should not be such that these weights render some of the criteria (especially qualitative ones) insignificant and/or that they give other criteria (especially quantitative commercial ones) too much significance.

1.5 When designing remuneration policies and practices in accordance with the requirements under the relevant Rules of Chapter 3 implementing Article 27 of the MiFID II Delegated Regulation 2017/565), the Regulated Person should consider all relevant factors such as, but not limited to, the role performed by Relevant Persons, the type of products offered and the methods of distribution (for instance, advised or non-advised, face-to-face or through telecommunications or electronic communications), in order to prevent potential conduct of business and conflict of interest risks from adversely affecting the interests of its clients and to ensure that the Regulated Person adequately manages any related residual risk.

1.6 Without prejudice to the requirement in the second sentence of R.3.58of Chapter 3 of the Rulebook implementing the second subparagraph of Article 27(4) of the MiFID II Delegated Regulation 2017/565), the Regulated Person should ensure that the remuneration policies and practices in place allow the operation of a flexible policy on variable remuneration, including, where relevant, the possibility to pay no variable remuneration at all. When determining the remuneration for Tied Agents, the Regulated Person may take the Tied Agents' special status and any other relevant requirements into consideration.

1.7 Regarding variable remuneration, the Regulated Person should avoid setting performance targets that may incentivise the Relevant Persons to adopt behaviours focused on short-term gains to meet the relevant thresholds such as *"all or nothing targets"* when those might create a conflict of interest or impair Clients' interests. The Regulated Person should favour remuneration policies and practices in which the variable part of the remuneration paid out is calculated and awarded on a linear basis or where the variable part depends on several performance targets set at different levels and giving rights to different amounts or, preferably, different rates of variable remuneration.

1.8 When designing and implementing their remuneration policies, the Regulated Person should take into account possible conflicts of interests or risks of impairing Clients' interests stemming from cross-selling objectives imposed on Relevant Persons. In this respect, the Regulated Person should, for instance, give specific attention to situations where Relevant Persons would be encouraged to make the grant of better conditions under a mortgage loan to a Client dependent on the condition that this Client buys a specific Financial Instrument which is part of the Relevant Persons' sales objectives.

1.9 In the context of the broad definition of Remuneration (as specified above in this Appendix), the Regulated Person should also ensure that in its remuneration policies and practices the criteria used to assess wage increases and promotions comply with

the MiFID II remuneration requirements. In this respect, the Regulated Person should ensure that, for instance, the Regulated Person's career progression management systems are not used to reintroduce quantitative commercial criteria upon which may depend the Relevant Persons' career advancement and have an impact on their (fixed and/or variable) remuneration if this may create conflicts of interests that may encourage such Relevant Persons to act against the interests of their Regulated Persons' Clients.

1.10 Without prejudice to the general principles of contract law or employment law under Maltese legislation, the Regulated Person should consider including ex-post adjustment criteria of the variable remuneration in their remuneration policies and practices in order to further discourage Relevant Persons to disregard Client's interests or favour their own interests (for instance, by investing in products with higher short-term returns but presenting more risks in the long term or not suitable to the Client's investment horizon) in order to attain short-term performance objectives.

In this respect, ex-post adjustment criteria should allow the Regulated Person to further align the interests of the Regulated Person and of Relevant Persons with that of Clients by adjusting variable remuneration if a case of misconduct appears after the Remuneration has been awarded or paid-out. For such criteria to be effective, the Regulated Person should consider, depending on the nature, scale and complexity of their activities, including in their remuneration policies and practices appropriate ex-post adjustment mechanisms such as the application of malus (that is, the reduction of value of all or part of deferred variable remuneration based on ex-post risk adjustments before it has vested) and clawbacks (that is, the return of ownership of an amount of variable remuneration paid in the past or which has already vested to the institution under certain conditions).

1.11 Ex-post adjustment mechanisms referred to in point 1.10 above should be triggered by relevant events impacting the Regulated Person's compliance, and Relevant Persons' compliance, with the applicable provisions under the MiFID II (Directive 2014/65/EU) legislative framework and under this Rulebook aiming at the fair treatment of Clients and the quality of services provided to Clients. Relevant events impacting the Regulated Person's compliance, and Relevant Persons' compliance, with applicable regulations and provisions should not be limited to those giving rise to supervisory action, fines or sanctions but should also take into account confirmed failings or breaches. It is to be noted that Ex-post adjustment mechanisms should be applied to the Relevant Persons who engaged directly in misconduct, however, Regulated Persons should also consider whether it would be appropriate to also apply ex-post adjustment mechanisms to a larger group, such as to the Relevant Persons whose responsibilities include the areas where the relevant events crystallised.

1.12 The Regulated Person should ensure that the application of ex-post adjustment mechanisms takes into account the seriousness of any failings or misconduct impairing Clients' interests.

1.13 In order for ex-post adjustment mechanisms to be meaningful, the Regulated Person should consider paying the variable remuneration partly upfront and partly deferred, in an appropriate balance between the part paid upfront and the one deferred, and according to an appropriate deferral schedule allowing for the interests of the Relevant Persons and of the Regulated Person to be aligned with the interests of Clients.

1.14 Furthermore, the Regulated Person should adopt and maintain measures enabling the Regulated Person to effectively identify where the Relevant Person fails to act in the best interests of the Client and to take remedial action.

1.15 Relevant Persons should be clearly informed, at the outset, of the criteria that will be used to determine the amount of their remuneration, the weight attributed to each, the consequences of not meeting one or the other and the steps and timing of their performance reviews. The criteria used by Regulated Person to assess the performance of Relevant Persons should be accessible, understandable and recorded.

1.16 The Regulated Person should avoid creating unnecessarily complex policies and practices (such as combinations of different policies and practices, or multi-faceted or multi-layered schemes, which increase the risk that Relevant Persons' behaviour will not be driven to act in the best interests of Clients, and that any controls in place will not be as effective to identify the risk of detriment to the Client). Since, this may potentially lead to inconsistent approaches and hamper proper knowledge or control of the policies by the compliance function. Point 4 below and its supporting provisions in Part D of this Appendix set out illustrative examples of remuneration policies and practices that create risks that may be difficult to manage due to their complexity, and that give strong incentives to sell specific products.

1.17 The Regulated Person should ensure that the organisational measures it adopts regarding the launch of new products or services appropriately take into account the Regulated Person's remuneration policies and practices and the risks that these products or services may pose. In particular, before launching a new product, the Regulated Person should assess whether the remuneration features related to the distribution of that product comply with the Regulated Person's remuneration policies and practices and therefore, do not pose conduct of business and conflicts of interest risks. The Regulated Person should ensure that this process is appropriately documented.

1.18 In order to avoid conflicts of interests with respect to the role of the control functions, the Management body and senior management in the design and/or oversight of the remuneration policies and practices of the Regulated Person, the design of the remuneration policies and practices applicable to the control functions (risk management and internal audit functions, where established), the Management body and senior management of the Regulated Person should not compromise their objectivity and independence.

1.19 As such, the Regulated Person should ensure that the remuneration of control functions' staff is based on function-specific objectives. In addition, the Regulated Person should ensure that the variable part of the remuneration of staff in control functions, if any, should not be linked to quantitative commercial performance of Relevant Persons whose remuneration they are in charge of designing and/or controlling. Where the remuneration of the control functions' staff includes a component based on the Regulated Person's commercial performance (for instance, sales volume), the risk of conflicts of interest may increase and the Regulated Person should ensure that the said risk is properly addressed through the use of appropriate qualitative performance or adjustment criteria.

1.20 Where the Regulated Person is permitted to combine internal control functions with operational functions, the Regulated Person remains nonetheless subject to its MiFID II conflicts of interests and conduct of business obligations. As such, the remuneration policies and practices applicable to the Regulated Person should nonetheless permit such internal control functions to remain effective.

1.21 The Regulated Person should also ensure that the structure of the remuneration of members of the Management body and of the senior management of the Regulated Person, as well as the criteria used to assess performance, should not create conflicts of interest or incentives that may lead members of the Management body, member of the senior management, or Relevant Persons in the Regulated Person to favour their own interests, or the Regulated Person's interests, to the potential detriment of any Client.

1.22 The remuneration policies and practices applicable to Relevant Persons (including copy-traders, where applicable) who are not employees of the Regulated Person but nonetheless fall within the scope of the MiFID II remuneration requirements because they are:

(a) a natural person whose services are placed at the disposal and under the control of the Regulated Person or a Tied Agent of the Regulated Person and who is involved in the provision by the Regulated Person of investment services and activities (in terms of point (c) of the definition of *'relevant person'* referred above in this Appendix); or;
(b) a natural person who is directly involved in the provision of services to the Regulated Person or to its Tied Agent under an outsourcing arrangement for the purpose of the provision by the Regulated Person of investment services and activities (in terms of point (d) of the definition of *'relevant person'* referred above in this Appendix),

should also comply with the MiFID II remuneration requirements as well as with the relevant requirements laid down in this Rulebook, in particular Chapter 3 thereof and this Appendix.

1.23 The Regulated Person is to note that examples of good practice include the following:

(a) references used in the calculation of variable remuneration of Relevant Persons are common across products sold;
(b) in the case of an open-ended investment with no investment term, the remuneration is deferred for a set number of years or until the encashment of the product.

1.24 The Regulated Person is to note that examples of poor practice include the following:

(a) a Regulated Person has started offering advisers specific additional remuneration to encourage Clients to apply for new fund products in which the Regulated Person has a specific interest. This often involves the Relevant Persons having to suggest that their Clients sell products that they would otherwise recommend they retain so they can invest in these new products;
(b) Managers and employees receive a large bonus linked to a specific product. As a result, the Regulated Person's advisors recommend this specific product,

irrespective of the suitability of this product for the Clients addressed (in which case, the Regulated Person would also breach applicable suitability assessment requirements). Warnings from the risk manager are ignored because the investment products generate high returns for the Regulated Person. When the risks that had been identified occur, the products have already been sold and the bonuses have already been paid out;

(c) the variable component of the total remuneration is based only on volumes sold, and increases the Relevant Person's focus on short-term gains rather than the Client's best interest;

(d) Relevant Persons engage in frequent buying and selling of Financial Instruments in a Client's portfolio in order to earn additional remuneration without considering the suitability of this activity for the Client. Likewise, rather than considering the suitability of a product for a Client, Relevant Persons focus on the sale of products that have a short investment term in order to earn remuneration from re-investing the product after the short term;

(e) regulatory breaches under the MiFID II Directive 2014/65/EU legislative framework and under the Rulebook that impair Clients' interests are identified by the competent authority supervising the Regulated Person, but no financial sanctions are imposed on the Regulated Person as non-compliance has since been remedied. The Regulated Person decides to allocate the maximum fixed and variable remuneration for the year to its members of the Management body or Board of Directors on the basis that the other criteria were met, thereby not drawing the consequences of the Regulated Person's non-compliance with its regulatory obligations and the role of the members of the Regulated Persons' Management body or Board of Directors in it.

B. Governance

[Relevant EU legislation: Article 9(3) of MiFID II and Article 27(3) of the MiFID II Delegated Regulation]

2. In addition to the periodic review of their written remuneration policy in accordance with R.3.34 and R3-1.3.1.14 of Part BI of the Investment Services Rules for Investment Services Providers issued under the Investment Services Act (Cap. 370), (which provisions implement Article 9(3) of MiFID II Directive 2014/65/EU), and with R.3.35 of this Rulebook implementing Article 27(3) of the MiFID II Delegated Regulation 2017/565), the Regulated Person should also review the said remuneration policy upon any relevant and significant amendment to the Regulated Person's business activities or structure. Where the review reveals that the remuneration policy does not operate as intended or that there is a residual risk of detriment to the Regulated Person's clients stemming from it (crystallised or not), the Regulated Person should ensure that the remuneration policy is amended in a timely and efficient manner.

2.1 The Regulated Person should ensure that proper documentation on the remuneration policy as well as the decision-making process and procedures that lead to its approval or amendment are maintained in a clear and transparent manner and made available to the Management body and senior management as well as other control functions involved in the design, monitoring and/or review of the remuneration policy and procedures.

2.2 The compliance function shall verify that the Regulated Person's remuneration policies and practices comply with conduct of business and conflicts of interest requirements in terms of this Rulebook. The Regulated Person should ensure that the compliance function has access to all relevant documents and information enabling it to discharge its responsibilities in accordance with R1-1.5.3.2 of Part BI of the Investment Services Rules for Investment Services Providers issued under the Investment Services Act (Cap. 370), (implementing Article 22(3) of the MiFID II Delegated Regulation 2017/565), regarding the remuneration policies and practices relating to Relevant Persons, including members of the Management body and senior management, in a proper and independent manner.

2.3 The Regulated Person should also ensure that its Management body, after taking advice from the compliance function, approves any significant amendment made to the remuneration policy of the Regulated Person.

2.4 Depending on the size of the Regulated Person and the complexity of its business model and of the investment services and activities provided, the review of the remuneration policy may also require the involvement of other control functions (such as the risk management and/or internal audit functions) to ensure that appropriate performance and risk adjustment criteria are used.

2.5 Senior management of the Regulated Person is responsible and should retain the ultimate responsibility for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the said policy.

2.6 The Regulated Person should ensure that it has appropriate and transparent reporting lines in place across the Regulated Person as well as across its group, where applicable, to assist in escalating issues involving risks of non-compliance with the MiFID II remuneration, conflicts of interest and conduct of business requirements.

C. Controlling Risks related to Remuneration Policies and Practices

[Relevant EU legislation: Articles 9(3) of MiFID II and Article 27(3) of the MiFID II Delegated Regulation]

3. The Regulated Person should set up adequate controls to assess compliance with its remuneration policies and practices and to ensure that these deliver the intended outcomes. The Regulated Person should ensure that the controls are implemented throughout the Regulated Person and are subject to periodic review. The Regulated Person should also ensure that such controls include assessing the quality of the service provided to the Client (for example, monitoring calls for telephone sales, sampling of advice and client portfolios provided to check suitability or going through other client documentation on a periodic basis).

3.1 To carry out such controls in an effective and risk-based manner, the Regulated Person should use a wide range of information on business quality monitoring and sales patterns, including trend and root-cause analysis, to identify areas of increased risk and to support a risk-based approach to sales monitoring, with particular focus on high performing Relevant Persons (for instance, regarding sales).

3.2 The Regulated Person should ensure that the results of such analyses and controls are clearly documented and reported to senior management together with proposals for corrective action, if necessary. The compliance function of the Regulated Person should also assist senior management in monitoring effectively the compliance risks related to the remuneration policy of the Regulated Person (based also on the ex-post controls conducted in line with this point 3 and its supporting provisions in Section C of this Appendix). Where potential or actual Client detriment might arise as a result of specific features in remuneration policies and practices, the Regulated Person should take appropriate steps to manage potential conduct of business and conflict of interest risks by reviewing and/or amending these specific features, and set up appropriate controls and reporting mechanisms for taking appropriate action to mitigate potential conduct of business and conflict of interest risks.

3.3 When outsourcing the provision of investment services, the Regulated Person should have in mind the best interests of the Client. Where a Regulated Person is seeking to use another entity for the provision of services, the Regulated Person should check that the other entity's remuneration policies and practices follow an approach consistent with the requirements of this Rulebook, in particular Chapter 3 and this Appendix. In addition, the Regulated Person should avoid setting overly complicated outsourcing or distribution structures (including through the use of Tied Agents) where the remuneration policies or practices applicable to such structures make it difficult for the Regulated Person to monitor the compliance risks with this Appendix and with the conflicts of interest and conduct of business policies and procedures in the area of remuneration (in particular Chapter 3 of the Rulebook) or increase the risk of detriment to Clients' interests.

3.4 The Regulated Person should make sure to assess, on a regular basis, whether the information management tools the Regulated Person uses adequately capture the qualitative data required to determine the variable remuneration the Regulated Person pays to Relevant Persons.

3.5 The Regulated Person is to note that examples of good practice include the following:

(a) in order to assess whether its incentive schemes are appropriate, a Regulated Person undertakes a programme of contacting a sample of clients shortly after the completion of a sale involving a face-to-face sales process where it is not able to monitor recorded telephone sales conversations, so as to test if the salesperson has acted honestly, fairly and professionally in accordance with the best interests of the Client;

(b) top earners and performers are recognised as being potentially higher risk and, as a result, additional scrutiny is given to them; and information such as previous compliance results, complaints or cancellation data is used to direct compliance checking. The outputs have an impact on the design/review of the remuneration policy and practices.

3.6 The Regulated Person is to note that examples of poor practice include the following:

(a) a Regulated Person mainly relies on quantitative commercial data as the criteria for assessing variable remuneration;

(b) senior management has set various strategic goals for the Regulated Person to be reached in a certain year. All goals seem to focus solely on financial or commercial aspects without taking into account the potential detriment to the Regulated Person's Clients. The remuneration policy of the Regulated Person will be in line with these strategic goals and therefore, will have a strong short-term financial and commercial focus;

(c) despite the care taken in designing and assessing remuneration policies and practices, some policies and practices still lead to Client detriment, creating risks that need to be identified and mitigated;

(d) to distribute its products, a Regulated Person relies on a multi-level sales network consisting solely of personnel or third-party distributors which are remunerated according to the volume of transactions of the Clients captured directly by themselves, and their ranking in the sales structure of the Regulated Person, with a leverage effect depending on the number of distribution levels below and the number of distributors in each level. In such sales structures, multi-level groups of individuals are coordinated by another individual ("supervisor"/"manager") who is in charge of the support, training, coordination and supervision of the structure. These supervisors or managers are also tasked with the recruiting of other individuals.

Such sales structures, combined with the remuneration policies and practices described in the foregoing, may make it difficult for the Regulated Person to monitor the compliance risks with the provisions of the Rulebook (in particular Chapter 3 thereof and this Appendix) for each level (especially the most remote) and the whole structure.

D. Illustrative examples of remuneration policies and practices that create conflicts that may be difficult to manage

4. The below supplementary provisions include illustrative examples of remuneration policies and practices that would create strong incentives to sell specific products and for which Regulated Person would therefore have difficulties demonstrating compliance with the MiFID requirements. The conduct of business risks and conflict of interest risks related to such examples should be taken into account by Regulated Person when designing and implementing its remuneration policies and practices.

The Regulated Person is to take into account that certain remuneration features (for example, the basis of pay, running performance-based competitions for Relevant Persons) involve higher risk of potential damage to clients than others (specifically those that include features which may have been designed to affect the behaviour of Relevant Persons, especially the sales force). In this respect, examples of high-risk remuneration policies and practices that will generally be difficult to manage, and where it would be difficult for a Regulated Person to demonstrate compliance with MiFID II Directive 2014/65/EU, include the following:

4.1 *Incentives that might influence Relevant Persons to sell, or 'push', one Product or category of Product rather than another or to make unnecessary/unsuitable acquisitions or sales for the Client*: especially situations where a Regulated Person launches a new Product or pushes a specific Product (that is, the Product of the month or *"in-house products")* and incentivises Relevant Persons to sell that specific Product. Where the incentive is different for different types of Products, there is a high risk that Relevant Persons will favour selling the Product that results in higher remuneration instead of

another Product without appropriate regard to what is in the Client's best interests. For instance:

(a) *Example:* A Regulated Person has remuneration policies and practices linked to individual product sales where the Relevant Person receives different levels of incentives depending on the specific product or category of products they sell;
(b) *Example:* A Regulated Person has remuneration policies and practices linked to individual product sales, where the Relevant Person receives the same level of incentive across a range of Products. However, at certain limited times, to coincide with promotional or marketing activity, the Regulated Person increases the incentive paid on the sales of certain Products;
(c) *Example:* Incentives that might influence Relevant Persons (who may be remunerated solely by commission, for example) to sell unit trusts rather than investment trusts (where both Products may be equally suitable for Clients), because sales of unit trusts pay substantially higher commissions.

4.2 *Inappropriate requirements that affect whether incentives are paid*: certain remuneration policies and practices which include, for instance, a requirement to achieve a quota of minimum sales levels across a range of products in order to earn any bonus at all is likely to be incompatible with the duty to act in the best interests of the Client. Conditions which must be met before an incentive will be paid may influence Relevant Persons to sell inappropriately. For example, where no bonus can be earned on sales unless a minimum target is met for each of several different product types, this may impact on whether suitable products are recommended. Another example is where a reduction is made to a bonus or incentive payments earned because a secondary target or threshold has not been met. For instance:

(a) *Example:* A Regulated Person has Relevant Persons who sell a range of products that meet different Client needs, and the product range is split into three *'buckets'* based on the type of Client need. Relevant persons can accrue incentive payments for each product sold, however, at the end of each monthly period no incentive payment is made if they have not reached at least 50% of the sales target set for each *'bucket'*.
(b) *Example:* A Regulated Person sells products with a range of optional *'add-on'* features. The Relevant Person receives incentive payments for all sales, with an additional payment if the Client purchases an add-on feature. However, at the end of each monthly period no incentive payment is made if they have not achieved a penetration rate of at least 50% of products sold with an add-on feature.

4.3 *Variable salaries where the arrangements vary base pay (up or down) for Relevant Persons based on performance against sales targets*: in such cases, the Relevant Person's entire salary can become, in effect, variable remuneration. For instance:

Example: A Regulated Person will reduce a Relevant Person's basic salary substantially if he or she does not meet specific sales targets. Therefore, there is a risk that he or she will make inappropriate sales to avoid this outcome. Equally, Relevant Persons may be strongly motivated to sell by the prospect of increasing basic salary and associated benefits.

4.4 *Remuneration policies and practices which create a disproportionate return for marginal sales:* where Relevant Persons need to achieve a minimum level of sales before

incentive payments can be earned, or incentives are increased, the risk is increased. Another example would be schemes that include *'accelerators'* where crossing a threshold increases the proportion of bonus earned. In some cases, incentives are payable retrospectively based on all sales rather than just those above a threshold, potentially creating significant incentives for Relevant Persons to sell particular products in particular circumstances. For instance:

(a) *Example:* A Regulated Person makes accelerated incentive payments to Relevant Persons for each product sold during a quarterly period as follows:

(i) 0-80% of target - no payments

(ii) 80-90% of target - 50€ per sale

(iii) 91-100% of target - 75€ per sale

(iv) 101-120% of target - 100€ per sale

(v) >120% of target - 125€ per sale

This example can also apply where the Relevant Person receives an increasing share of commission or income generated;

(b) *Example:* A Regulated Person has the same accelerated scale as the Regulated Person in the foregoing example, but the increase in payments per sale is applied retrospectively to all sales in the quarter, for instance, on passing 91% of target the incentive payments accrued to date at the rate of €50 per sale are increased to €75 per sale. This creates a series of *'cliff edge'* points, where one additional sale required to reach a higher target band causes a disproportionate increase in the incentive payment.

CHAPTER 4 SALES PROCESS AND SELLING PRACTICES

Introduction

When selling their Products and Services to Clients, Regulated Persons have an obligation to act honestly, fairly and in accordance with the best interest of such Clients. They must also behave with utmost good faith, integrity, due skill, care and diligence vis-à-vis their Clients. Accordingly, Regulated Persons are required to do everything which is possible to satisfy the needs and requirements of their Clients and shall place the interests of the latter before all other considerations.

In particular, Regulated Persons which fall under points (i) or (ii) of the definition of "Regulated Person" in the Glossary to these Rules are obliged to classify their clients as Eligible counterparties, Professional Clients or Retail Clients. This classification is important because it reflects the level of protection given to such clients. Accordingly, Eligible counterparties are afforded the least level of protection because they are deemed to be very knowledgeable about and experienced in the Products and Services which the Regulated Person is offering. On the other hand, Retail Clients are afforded the greatest amount of protection because they are deemed to possess little, if any, knowledge and experience in the Services and Products concerned.

Furthermore, when providing Advice or Portfolio Management Services with respect to Financial Instruments and/or Insurance-based investment products, Regulated Persons are required to carry out a suitability assessment. This is done to establish whether a particular Financial Instrument or Insurance-based investment product meets the objectives of the Client, whether the client can withstand the proposed investment in the light of his/her financial circumstance, and whether the latter has sufficient knowledge and experience in such Financial Instruments or Insurance-based investment products. When the Regulated Person is offering Services other than Portfolio Management and Advice in relation to Financial Instruments and Insurance-based investment products, it is required to carry out an assessment to ensure that the Client has sufficient knowledge and experience in the said Instruments or Insurance-based investment products. **The 'promote and sell' regime which featured in Investment Services Rules for Investment Services Providers is hereby being abolished and all Services must be offered either on an advisory basis or on a non-advisory basis.**

Closely related, but separate, to the overall information and disclosure requirements are the rules relating to client agreements. The requirement of having a written (or equivalent) agreement between Regulated Persons and Clients is considered to be important in providing a high level of legal certainty. In fact, although until now Regulated Persons were not required to enter into a written (or equivalent) agreement with Professional Clients, this was nevertheless a common practice adopted on the market.

This Chapter also deals with the requirement for Regulated Persons to keep a record including the document or documents agreed between the Regulated Person and the Client setting out the rights and obligations of the parties, as well as any other terms on which the Regulated Person will provide services to the client. These Rules also set out a requirement for Regulated Persons who provide an investment service or certain specific Ancillary services to both Retail and Professional Clients, to enter in a written basic agreement, in paper or another Durable medium, which agreement should set out the essential rights and obligations of the Regulated Person and the Client to whom such service is being provided. This requirement

has also been extended to Regulated Persons offering Advice, however only when such Regulated Person provides a periodic assessment of the suitability of the Financial instrument or Service being recommended to the Client. Moreover, this Chapter also provides a clearer indication as to what constitutes the 'essential rights and obligations' which should be covered by the written agreement.

Finally, this Chapter also contains a Section regulating the manner in which Regulated Persons should handle complaints by their clients.

Section 1: General Principles

Application

R.4.1.1 The Rules and the relative Guidance set out under Part A are applicable to all Regulated Persons except as otherwise indicated.

R.4.1.2 The Rules set out under Part B are applicable to persons which fall under point (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.1.3 The Rules set out under Part C are applicable to Regulated Persons which fall under points (i) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.1.4 The Rules set out under Part D are applicable to persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

Part A: Rules Applicable to All Regulated Persons

General Rules

R.4.1.5 When providing Products, Services and/or, where appropriate, Ancillary Services to Clients, a Regulated Person shall:

(a) act honestly, fairly and professionally in accordance with the best interests of its Clients;
(b) at all times carry out the regulated activities with utmost good faith, integrity, due skill, care and diligence;
(c) do everything which is reasonably possible to satisfy the needs and requirements of its Clients and shall place the interests of those Clients before all other considerations. Subject to these requirements and interests, a Regulated Person shall have proper regard for others.

R.4.1.6 Regulated Persons must ensure that they abide by the following requirements:

(a) they review their business model and strategy on a regular basis so as to ensure that the conduct of their business and the manner in which they treat their clients place them at the centre of their operations;
(b) identify conduct risks and set up processes to ensure that such risks are measured, mitigated and monitored;
(c) conduct risks are known to key personnel within the Regulated Person, including members of the Board of Directors. Members of the Board of Directors may be required to address any concern/s the MFSA may have with respect to the Regulated Persons operation;
(d) there are clear level of responsibilities, clear establishment of target markets, appropriate distribution channels, and clear communication with Clients;
(e) they monitor the performance management, employee development and reward programmes incentivising staff members to ensure that the way a Regulated Person remunerates or assesses performance of its staff does not conflict with its duty to act in the best interests of its Clients.

R.4.1.7 The Management body of the Regulated Person shall ensure that it, in all the decisions it takes with respect to the operation of the Regulated Person, gives paramount importance to the conduct of its business vis –a –vis the clients of the Regulated Person.

R.4.1.8 In order to comply with the requirements of R.4.1.5 above, a Regulated Person shall, *inter alia*:

(a) seek from its Clients information relevant to the Product or Service requested;
(b) in the completion of any document, make it clear that all the answers or statements regarding the Client's personal details and circumstances are the Client's own responsibility. The Client should always be required to assume responsibility for the completed document and advised that, incomplete and/or inaccurate information may prejudice the Client's rights and, in the case of an Insurance contract, may result in a claim being repudiated;
(c) not withhold from the Client any written evidence or documentation relating to the Product or Service or Ancillary Service without adequate and justifiable reasons being disclosed in writing and without delay to the Client;
(d) not recklessly, negligently or deliberately mislead a Clients to the real or perceived advantages or disadvantages of any Product, Service or Ancillary Service;
(e) ensure that all instructions from or on behalf of a Client are processed properly and promptly;
(f) have proper regard for the wishes of a Client who seeks to terminate any agreement with it to carry out business;
(g) seek to avoid conflicts of interest;
(h) not exert undue pressure or undue influence on a Client;
(i) give Advice only on those Products, Services or Ancillary Services in which the Regulated Person is knowledgeable and seek or recommend other specialist Advice when necessary;
(j) treat all information supplied by the Client with complete confidentiality;
(k) not request Clients to sign declarations to the effect that s/he has understood and accepts certain features of the Product or that s/he is relying on his/her own skill, judgement and expertise in order to purchase Products when it is the obligation of the Regulated Person to assess the suitability or the appropriateness of such Products vis-à-vis the Client. In this respect, the Regulated Person should avoid stating, or giving the impression, that it is the Client who decides on the suitability and/or the appropriateness of the Product, or that it is the Client who establishes which Products fit his own risk profile.

R.4.1.9 Any information acquired by a Regulated Person from a Client shall not be used or disclosed except in the normal course of negotiating, maintaining or renewing a Product or Service for that Client or in accordance with the provisions of specific legislation or unless the consent of the Client has been obtained.

R.4.1.10 Where a Regulated Person deals with a person who is acting for a Client under a power of attorney, the Regulated Person shall:

(a) obtain a certified copy of the power of attorney;
(b) ensure that the power of attorney allows the person to act on the Client's behalf; and
(c) operate within the limitations set out in the power of attorney.

R.4.1.11 When providing Products ,Services or Ancillary Services from a place of business or from any other place accessible to the public, the Regulated Person shall display the licensing, authorisation, enrolment or registration certificate or an official copy thereof issued by the MFSA , in a prominent position in that place and in a part thereof to which the public has access.

R.4.1.12 A Regulated Person shall not: –

(a) make inaccurate or unfair criticism of any other Regulated Person or any Product offered by such other Regulated Persons;
(b) make comparisons with other types of Products or Services unless the differing characteristics of each Product or Service are made clear.

R.4.1.13 A Regulated Person shall not:-

(a) persuade or attempt to persuade a Client to surrender or cancel any Product or Service which such Client may have already purchased, if such surrender or cancellation is not in the best interest of the Client;
(b) in general, entice Clients to purchase Products or Services it offers by giving or promising to give gifts to such Clients. Any gifts which the Regulated Person may offer its Clients must be related to the Product or Service being offered and/or enhance the value thereof. Such gifts should not be of a substantial value.

G.4.1.1 In offering gifts to Clients, Regulated Persons should have regard to the following:

- *the value of such gifts,*
- *the timing of when such gifts are given (e.g. gifts should not be given at appointment stage, prior to the provision of the Product or Service).*
- *The relation between the nature of the gift and the Services/Products being sold by the Regulated Person and the possibility of such gift to enhance the Product or Service being provided.*

Any gifts offered by Regulated Persons to their Clients should:

- *Not be of a high value (e.g. cruises, holidays, jewellery, electronic gadgets);*
- *Not be given at the stage where the client merely makes an appointment with the Regulated Person with a view to discuss a Product or Service offered by the latter;*
- *be related to the nature of the service being provided or enhance the nature of the Product or Service (for example roadside membership assistance with motor insurance would be acceptable).*

R.4.1.14 A Regulated Person shall explain to the Client words and expressions of a technical nature which are used in a document in either the Maltese or the English language depending on which language the Client understands better.

Personal Visits and Contact with Clients

R.4.1.15 Regulated Person shall as much as possible avoid making unsolicited or unarranged calls to Clients unless otherwise requested by a Client. When such calls are made the Regulated Person shall identify himself/herself by showing identification documents. The Regulated Person shall make known his regulated status (and disclose the name and any other relevant particulars of the Regulated Person, licence number (where applicable) and show the Regulated Person's business card). In the case of a Tied insurance intermediary, Ancillary insurance intermediary or a Tied Agent, the Regulated Person shall disclose the fact that that he/she is a Tied insurance intermediary, and Ancillary insurance intermediary or Tied Agent of another Regulated Person.

R.4.1.16 The Regulated Person shall ensure that staff who deal with Clients only engage in unsolicited calls ("cold calls") on condition that they:

(a) are civil and considerate;
(b) do not use undue pressure, deception or artificiality;
(c) make plain their purpose;
(d) avoid contacts during unsocial hours observe the Conduct of Business Rules in this section and ensure that no deals are finalised on the sole basis of a telephone conversation unless previously agreed otherwise in writing with the Client, and
(e) do not promote any complex Products by means of cold calling.

R.4.1.17 The Regulated Person shall ensure that staff engaged in the sale of Products do not harass or cajole Clients or force them to purchase a Product or Service. The sales person shall not continue with the sales dialogue if requested by the Client to desist.

R.4.1.18 The Regulated Person shall not provide Services and Products in the home of the Client without having obtaining the client's explicit consent therefor. The Regulated Person shall keep record of such consent accordingly.

Provided that the requirements of this Rule shall not extend to visits carried out by Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary to this Rulebook, for the purposes of carrying out surveys for insurance purposes.

R.4.1.19 Where the Regulated Person engages in more than one Regulated Activity, it shall not make use of Client information held by it or any other entity within its group, with respect to the provision of a particular Regulated Activity, for the purposes of marketing another Regulated Activity to such Clients unless it obtains the explicit consent of the Client in question.

The Regulated Person shall accompany the request for such consent with a warning that the nature and risks of the Products and Services which are going

to be offered to the Client differ from those of the Products and Services which have been offered to the Client to date. The Regulated Person should also warn Clients that they should seek to ensure that they clearly understand all the relevant risks before purchasing any new Products and/or Services.

Telephone Contact with Clients

R.4.1.20 A Regulated Person may make telephone contact with a Client who is an existing Client, only if:

(a) the Regulated Person has, within the previous twelve months, provided that Client with a Product or Service similar to the purpose of the telephone contact; or
(b) the Client holds a Product, which requires the Regulated Person to maintain contact with the Client in relation to that Product; and
(c) the Client has given his or her consent to being contacted in this way by the Regulated Person. For the purposes of this requirement, the Regulated Person may proceed by requesting the Client to give his or her verbal consent at the beginning of the telephone conversation. The Regulated Person must retain a record of the Client's verbal consent.

R.4.1.21 A Regulated Person shall ensure that, where it makes a telephone contact on the basis of a referral, it retains a record of the referral.

Personal Visits and Telephone Contact

R.4.1.22 When making a personal visit or telephone contact in accordance with this Rulebook, the representative of a Regulated Person shall immediately and in the following order:

(a) identify himself or herself by name, and the name of the Regulated Person on whose behalf he or she is being contacted and the commercial purpose of the contact;
(b) inform the Client that the meeting is being recorded, if this is the case;
(c) where relevant, disclose to the Client, the source of the business lead or referral supporting the telephone contact;
(d) explain the purpose(s) for which a personal visit is to be/being made, including the types of Products and Services to be discussed during the personal visit;

R.4.1.23 A Regulated Person shall abide by a request from a Client not to make a personal visit or telephone contact to him or her again and this request shall be recorded by the Regulated Person.

Record Keeping Requirements

R.4.1.24 In addition to any record keeping requirements resulting from this Rulebook the Regulated Persons shall record in a Durable medium all relevant information related to relevant face-to face, online and virtual meetings, and telephone conversations with Clients. The information recorded is at the discretion of the Regulated Person but shall include at least the following:

(a) date of the meeting whether held in person, online/virtually, or by telephone;
(b) location of meeting in case of face-to-face meeting;
(c) identity of the attendees;
(d) initiator of the meeting;
(e) the reason as to why the meeting was held, whether in person, online/virtually or by telephone; and
(f) other relevant information about the order or the Insurance contract entered into.

G.4.1.2 *For the purposes of this Rule, an email communication which satisfies the above requirements with respect to content would be considered sufficient.*

Reporting to the MFSA

R.4.1.25 Regulated Persons which fall under Point (i) of the Definition of 'Regulated Person' in the Glossary to these Rules who provide MiFID services to retail, professional and/or eligible counterparties are required to submit to the MFSA:

(a) on a quarterly basis, that is, within 42 days after quarter end, all the information in Part A (Conduct-Related Data) of the MiFID Firms Quarterly Reporting. This information is to be submitted pursuant to pursuant to the Circular on MIFID Firms Quarterly Reporting of 30 September 2021 and the Guidelines on the compilation and submission of the MiFID Firms Quarterly Reporting:

Provided that, a Regulated Person with a different financial year end from 31 December, shall submit the MiFID Firms Quarterly Reporting 42 days following the end of the reporting quarter, according to its financial year end;

(b) on an annual basis, that is, within 42 days after the end of the reporting year, the Financial Instruments Survey pursuant to the Circular on Financial Instruments Survey of 4 December 2024 and the Guidelines on the Compilation and Submission of the Financial Instruments Survey:

Provided that, the requirements set out in paragraphs (a) and (b) do not apply to: (i) a firm authorised to act as custodians/depositories; and (ii) a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets.

R.4.1.26 Regulated Persons which fall under Point (iii) of the 'Regulated Person' in the Glossary in the Glossary to these Rules are required to submit to the MFSA, on an annual basis, within 42 days after year end, the Conduct Related Data Return pursuant to the Circular on the Submission of the Conduct-Related Data Return for Insurance Undertakings of 26 May 2020.

Part B: ***Rules Applicable to Persons which fall under Point (iv) of the Definition of 'Regulated Person' in the Glossary to these Rules***

R.4.1.27 For the purposes of this Part, the term Regulated Person shall mean a person which falls under point (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.1.28 If the Client advises the Regulated Person enrolled as a Tied insurance intermediary or as an Ancillary insurance intermediary , of an incident which might give rise to a substantial claim, such Regulated Person shall, without delay, inform the Insurance undertaking of that incident and give prompt advice to the Client to pursue the matter further with the Insurance undertaking concerned.

G.4.1.2A *For the purposes of this Rule, the Tied Insurance Intermediary or the Ancillary Insurance Intermediary is expected to report without delay to the Insurance Undertaking, in cases of a substantial claims, such as for example, but not limited to: claims relating to flooding, claims relating to fatality and claims related to total loss of value.*

R.4.1.29 Where a Regulated Person enrolled as a Tied insurance intermediary is a credit institution, and, in the course of its transactions:

(a) the Regulated Person is in the process of granting credit or loan facilities to a Client against security of a policy of life assurance, or
(b) carries out Tied insurance intermediaries activities in general business classes 1, 2 and 16 restricted to payment protection Insurance contracts issued in relation to loan repayments and class 14 restricted to export credit Insurance contracts,

that Regulated Person shall refrain from exerting any undue or improper pressure on its Clients but shall allow them the greatest possible freedom of choice with regard to such Insurance contracts and shall, in this context, abide by the requirements of Part E of Section 4 in Chapter 1 (Disclosures) of this Rulebook.

Without prejudice to the requirements of the Rules provided in this Chapter, every credit institution registered as a Tied insurance intermediary in the Tied Insurance Intermediaries Company Register of any Insurance undertaking and carrying out Tied insurance intermediaries activities for that Insurance undertaking shall exhibit in a conspicuous position in its head office and in each of its offices and branches where the credit institution carries out selling of life assurance policies a Long Term Business Notice in the form set out in Appendix 3 to this Chapter. The long term business notice shall be made out in the Maltese and English language and shall be easily legible from a reasonable distance.

Part C: ***Rules Applicable to Persons which fall under Points (i) and (v) of the Definition of 'Regulated Person' in the Glossary to these Rules.***

R.4.1.30 For the purposes of this Part, the term Regulated Person shall mean a person which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules.

The requirement of R.4.1.41 shall also apply to Regulated Persons which fall under point (v) of the definition of 'Regulated Person' as provided in the Glossary.

Provided that the requirements of R.4.1.42 and R.4.1.43 shall only apply to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' as provided in the Glossary.

Provided further that the requirements of R.4.1.44 and R.4.1.47 shall only apply to Regulated Persons which fall under point (i) of the definition of 'Regulated Person' as provided in the Glossary.

R.4.1.31 A Regulated Person may appoint a Tied Agent which is:

(a) established in Malta , provided that such Tied Agent is registered by the MFSA, or

(b) established in a Member State or EEA State provided that such Tied Agent is either:

i. registered as a Tied Agent in such Member State or EEA State, or

ii. registered in Malta if the Member State or EEA State in which such Tied Agent is established does not provide for the registration of Tied Agents within its jurisdiction.

R.4.1.32 The responsibility for the control and monitoring of the activities of Tied Agents rests with the senior management of the Regulated Person. In this regard, the Regulated Person shall ensure that the Tied Agents it appoints:

(a) report to it on a regular basis with respect to the activities carried out by the Tied Agent;

(b) pass on to the Regulated Person all the necessary documentation for processing and/or record keeping purposes, promptly;

(c) continue to satisfy the registration requirements and the eligibility criteria referred in Part A of the Investment Services Rules for Investment Services Providers on an on-going basis;

(d) do not hold or control clients' money or assets;

(e) comply with the requirements of the Conduct of Business Rules and Investment Services Rules for Investment Services Providers which are relevant to the activities they carry out on behalf of the Regulated Person. Particular attention should be given by the Regulated Person to ensuring compliance, by the Tied Agent, with the relevant requirements in this Section and in Chapter 1 (Disclosures).

R.4.1.33 The Regulated Person shall ensure that the Tied Agents it appoints, shall, where appropriate make a prior appointment to call Clients.

R.4.1.34 The Regulated Person shall look into any concerns that may arise at any time regarding its Tied Agents' fit and proper status and take the necessary action. The necessary action may include, for example, increased monitoring or, if appropriate, suspension or termination of the appointment. In all cases, the Regulated Person should report any concerns it may have in this regard, to the MFSA, without delay.

R.4.1.35 The Regulated Person shall take reasonable steps to ensure that each of its Tied Agents:

(a) carry on only those activities which are permissible in terms of the definition of Tied Agent in the Glossary to these Rules and provided such activities are in line with the terms of the terms of the Tied Agent's appointment by the Regulated Person;

(b) carries on the activity for which the Regulated Person has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the Tied Agent's other business, irrespective of whether such other business is regulated or not.

R.4.1.36 The Regulated Person will be held responsible for any breaches of the applicable Rules committed by any of the Tied Agents it appoints.

R.4.1.37 When carrying out Tied Agent activities from a place of business or from any other place accessible to the public, the Regulated Person shall require the Tied Agent to display in a prominent position in that place, or in a part thereof to which the public has access, the certificate of registration or an official copy thereof issued by the MFSA.

R.4.1.38 The Regulated Person shall maintain all records, including those relating to customer due diligence" procedures and evidence that the Tied Agent has carried out the necessary suitability and/or appropriateness tests in terms of this Rulebook as necessary pertaining to the activities performed by the Tied Agents on the Regulated Person's behalf, as are necessary to demonstrate compliance by the Tied Agent with the relevant provision of these Rules. Such records shall be made available to MFSA officials during Compliance Visits.

R.4.1.39 The Regulated Person shall ensure that its Tied Agents:

(a) do not act as such for other Regulated Persons; and

(b) are not involved in any activities which may give rise to a conflict of interest which could be detrimental to the Regulated Person's clients.

(c)

R.4.1.40 The Regulated Person is to inform the MFSA of any decision to terminate a Tied Agent's appointment and shall confirm whether such a decision was taken due to any issues of a regulatory nature or concern.

R.4.1.41 If a credit agreement relating to residential immovable property, which is subject to the provisions concerning creditworthiness assessment of Clients laid down in the Credit Agreements for Consumers Relating to Residential Immovable Property Regulations (S.L.378.10) has as a prerequisite the provision to that same Client of a Service in relation to mortgage bonds specifically issued to secure the financing of and having identical terms as the credit agreement relating to residential immovable property, in order for the

loan to be payable, refinanced or redeemed, that Service shall not be subject to the obligations set out in R.1.4.20, R.4.4.4, R.4.4.30, R.4.4.32, R.4.4.39, R.4.4.40, R.4.4.42, R.4.4.43, R.4.4.45, R.4.4.90 and R.4.5.7.

R.4.1.42 Regulated Persons shall not market, distribute or sell Binary Options to Retail Clients in or from Malta. Provided that this prohibition does not apply to:

a) a Binary Option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a Retail Client for the Binary Option, including any commission, transaction fees and other related costs;
b) a Binary Option that meets the following conditions:
   i. the term from issuance to maturity is at least 90 calendar days;
   ii. a prospectus drawn up and approved in accordance with Directive 2003/71/EC (the Prospectus Directive) is available to the public; and
   iii. the Binary Option does not expose the provider to market risk throughout the term of the Binary Option and the provider or any of its group entities do not make a profit or loss from the Binary Option, other than previously disclosed commission transaction fees or other related charges.

R.4.1.43 The Regulated Persons shall not participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements of R.4.1.42 and of this Part of this Chapter, including by acting as a substitute for a Regulated Person to which the Rules in this Part apply.

Restriction on CFDs in respect of Retail Clients

R.4.1.44 The marketing, distribution or sale of CFDs to Retail Clients is restricted to circumstances where all of the following conditions are met:

(a) The Regulated Person requires the Retail Client to pay the initial margin protection as follows:
   i. 3.33% of the notional value of the CFD when the underlying currency pair is composed of any two of the following currencies: US Dollar, Euro Japanese yen, Pound Sterling, Canadian dollar or Swiss franc;
   ii. 5% of the notional value of the CFD when the underlying index, currency pair or commodity is:
      a. Any of the following equity indices: Financial Times Stock Exchange 100 (FTSE 100); Cotation Asistee en Continu 40 (CACC$)); Deutsche Bourse AG German Stock Index 30 (DAX30); Dow Jones Industrial Average (DJIA); Standard & Poors 500 (S & P 500); NASDAQ Composite Index (NASDAQ), NASDAQ 100 Index (NASDAQ 100); Nikkei Index (Nikkei225); Standard & Poors/ Australian Securities Exchange 200 (ASX 200); EURO STOXX 50 Index (EURO STOXX 50);

      b. A currency pair composed of at least one currency that is not listed in point (a) above; or

c. Gold;

iii. 10% of the notional value of the CFD when the underlying commodity or equity index is a commodity or any equity index other than those listed in point (ii) above;

iv. 50% of the notional value of the CFD when the underlying is a cryptocurrency; or

v. 20% of the notional value of the CFD when the underlying is :
a. A share;
b. Not otherwise listed in this Rule.

(b) The Regulated Person provides the Retail Client with the Margin Close Out Protection;
(c) The Regulated Person provides the Retail Client with Negative Balance Protection;
(d) The Regulated Person does not directly or indirectly provide the Retail Client with a payment, monetary or Excluded Non-Monetary Benefit in relation to the marketing, distribution or sale of a CFD, other than the realised profits on any CFD provided; and
(e) The Regulated Person does not send directly or indirectly a communication to publish information accessible by a Retail Client relating to the marketing, distribution or sale of a CFD, unless it complies with the requirements of Part C, Section 2 of Chapter 1.

Slippage Settings

R.4.1.45 Regulated Persons are prohibited from engaging in any manipulative acts or practices regarding the price of any underlying Financial Instrument. For this purpose, Regulated Persons shall implement procedures which would prohibit them from cheating, defrauding, or deceiving or attempting to cheat, defraud or deceive any other person. Such procedures shall include the establishment of slippage parameters in order to ensure that orders are filled in a symmetrical manner.

Expert Advisors

R.4.1.46 Regulated Persons shall have a clear policy on the use by its Clients of expert advisors as part of their trading strategy. This policy should be clearly communicated by the Regulated Person to its Clients at the outset.

Record Keeping Requirements

R.4.1.47 Whatever the medium used to carry out transactions with Clients, counterparties and other third parties, Regulated Persons shall:
a) Have real time access to and control over all transactional data; and
b) Preserve its records on an ongoing basis at its head office in Malta and shall have in place an appropriate offsite backup system for risk management and business continuity purposes; and

c) Provide such access to the MFSA as and when it requires, including during onsite inspections.

In addition, the Regulated Person shall ensure that all other information, data and records held at its offices in Malta are consistent with the provisions the Investment Services Act and the MFSA Act, and any regulations or rules issued thereunder.

Part D: ***Rules Applicable to Persons which fall under Points (iii) and (iv) of the Definition of 'Regulated Person' in the Glossary to these Rules.***

R.4.1.48 The Regulated Person shall:

(a) acknowledge receipt to the Client of all money received in connection with a Product, Service or Ancillary Service and that any charge or fee imposed in addition to the premium shall be disclosed separately.

Provided in the case of an Insurance contract, the Regulated Person shall distinguish the premium, document duty and motor vehicle licence fee, where applicable, and amount due by the Client and the disclosures required in this Rule may be shown either on the invoice or on the receipt which would then refer to the invoice;

(b) have printed on the receipt or contract note, the full name, business address, licence number (where applicable) of the Regulated Person;

(c) show the full name and address and official means of identification of the Client in the receipt, invoice or contract note;

(d) make reference in the receipt, invoice or contract note to the type of Product or Service in respect of which the money was paid including, where applicable, the policy number or other reference number;

(e) show, on the receipt, invoice or contract note, the name and address of the Product Manufacturer offering or issuing the Product;

(f) sign and date the receipt or contract note and give the original to the Client whilst retaining sufficient copies.

R.4.1.48A Personal data concerning client's diagnosis of oncological diseases shall not be used during the following timeframes and for the following age groups, for the purpose of underwriting an insurance policy related to credit agreement:

(a) Ten (10) years for clients who were twenty-one (21) years of age and or over at the time of their last oncology treatment

(b) Five (5) years for those clients who were below twenty-one (21) years of age at the time of their last oncology treatment[19]

R.4.1.48B In order for clients to have additional time to compare insurance offers related to consumer credit agreements before purchasing an insurance policy, Regulated Persons shall ensure that clients are given at least three (3) days to compare insurance offers related to credit agreements without such offers being changed, and clients shall be informed thereof. Clients may conclude an

[19] R.4.1.48A will come into force on 20 November 2026

insurance policy prior to the expiry of that three-day period if they explicitly so request.[20]

R.4.1.48C For the purposes of Rules R.4.1.48A and R.4.1.48B credit agreement shall have the same meaning as defined in Article 2 (2) and Article 3 (3) of Directive EU/2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC (Consumer Credit Directive II)[21]

Part E: Rules Applicable to Persons which fall under Points (i) and (ii) of the Definition of 'Regulated Person' in the Glossary to these Rules

Selling of Subordinated Eligible Liabilities to Retail Clients

R.4.1.49 Without prejudice to R.4.1.50, the Regulated Person shall ensure that Eligible Liabilities, which meet all the conditions referred to in Article 72a of Regulation (EU) No 575/2013 ("CRR") except for point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of the said Regulation, are sold to Retail Clients only when all of the following conditions are met:

(a) the Regulated Person has performed a suitability test in line with MiFID II Directive 2014/65/EU. In addition, the Regulated Person is required to carry out such suitability test irrespective of the type of investment service being provided, i.e. both for advisory and non-advisory investment services;

(b) the Regulated Person is satisfied, on the basis of the suitability test as referred to in point (a) above, that such eligible liabilities are suitable for the Retail Client concerned;

(c) the Regulated Person documents the suitability in accordance with MiFID II Directive 2014/65/EU requirements.

Provided that, where the Regulated Person considers:

(i) on the basis of the suitability test referred to in point (a) above, that such Eligible Liabilities are not suitable for the Retail Client;

(ii) that the information provided by the Retail Client is not reliable, accurate or sufficient to perform the suitability test as referred to in point (a) above and, or the verifications required in terms of R.4.1.51 and R.4.1.52 below,

the Regulated Person shall ensure that such liabilities are not sold to the Retail Client by that Regulated Person.

Provided further that the provisions of this Part shall apply to such Liabilities referred to in above issued on or after the 28 December 2020.

[20] R.4.1.48B will come into force on 20 November 2026

[21] R.4.1.48C will come into force on 20 November 2026

R.4.1.50 The provisions laid down in this Part E shall, notwithstanding the provision of any other law, also apply to such instances where the sale of eligible liabilities to a Retail Client refers to the sale of Additional Tier 1 instruments and Tier 2 instruments.

R.4.1.51 Where the conditions set out in R.4.1.49 are fulfilled and the financial instrument portfolio of that retail Client does not, at the time of the purchase, exceed five hundred thousand euro (EUR 500,000), the Regulated Person shall ensure, on the basis of the information provided by the Retail Client in accordance with R.4.1.52, that at the time of the purchase, the initial investment amount invested in one or more liabilities referred to in R.4.1.49, is at least ten thousand euro (EUR 10,000).

R.4.1.52 Regulated Persons shall ensure that the Retail Client provides the Regulated Person with accurate information on the Retail Client's financial instrument portfolio, including any investments in liabilities referred to in R.4.1.49 held also with any other Regulated Person/s.

R.4.1.53 For the purposes of R.4.1.51 and R.4.1.52, the Retail Client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral to the Retail Client.

Section 2: Client Categorisation

Application

R.4.2.1 For the purposes of this Section, the term "Regulated Person" shall refer to persons which fall under points (i) , (ii) or (v) of the definition of 'Regulated Person' in the Glossary.

General Rules

R.4.2.2 A Regulated Person shall, before providing a Service within the meaning of points (i), (ii) and (v) of the definition of Service in the Glossary to these Rules, classify a Client to whom the Service is to be offered as a Professional Client, as a Retail Client or as an Eligible Counterparty.

G.4.2.1 *A Regulated Person should allow a Client to request re-categorisation as a Client that benefits from a higher degree of protection. In such cases, a Regulated Person should notify a Cient that is categorised as a Professional Client or an Eligible counterparty of its right to request a different categorisation whether or not the Regulated Person will agree to such requests.*

R.4.2.3 A Regulated Person shall:

(a) notify a new Client of its categorisation as a Retail Client, Professional Client or Eligible counterparty in accordance with this Chapter; and
(b) prior to the provision of Services, inform a Client in a Durable medium about:

i. any right which that Client has to request a different categorisation; and

ii. any limitations to the level of Client protection that such a different categorisation would entail.

Professional Clients

R.4.2.4 A Professional Client may be either a *per se* Professional Client or an Elective Professional Client.

R.4.2.5 The Regulated Person shall inform Professional Clients that they are responsible for keeping the Regulated Person informed about any change, which could affect their current categorisation. Should the Regulated Person become aware however that the Client no longer fulfils the initial conditions, which made him/her eligible for professional treatment, the Regulated Person shall take appropriate action.

It is the responsibility of the Client, considered to be a Professional Client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

Per Se Professional Clients

R.4.2.6 The Regulated Person shall deem a person which falls under the definition of Professional Client in terms of the Glossary to these Rules as a *per se Professional Client* unless and to the extent that it may be considered to be an Eligible counterparty or is given a different categorisation under this Section.

Elective Professional Clients

R.4.2.7 A Regulated Person may treat a Client as an Elective Professional Client if it complies with points (a), (b) and (c) below:

(a) the Regulated Person undertakes an adequate assessment of the expertise, experience and knowledge of the Client, undertaken by the Regulated Person, gives reasonable assurance, in the light of the nature of the transactions or Services envisaged, that the Client is capable of making his own investment decisions and of understanding the risks involved ("the qualitative test");

(b) in the course of the assessment referred to (a) above, as a minimum, two of the following criteria shall be satisfied:

i. the Client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter of the previous four quarters;
ii. the size of the Client's Instrument portfolio, defined as including cash deposits and Instruments exceeds EUR 500 000;
iii. the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged; ("the quantitative test"); and;

(c) the following procedure is followed:

i. they shall state in writing to the Regulated Person that they wish to be treated as a Professional Client, either generally or in respect of a particular Service or transaction or type of transaction or Product;
ii. the Regulated Person shall give such Clients a clear written warning of the protections and investor compensation rights they may lose;
iii. Clients shall state in writing in a separate document from the contract, that they are aware of the consequences of losing such protections.

R.4.2.8 If the Client is not a natural person, the qualitative test should be performed in relation to the person authorised to carry out transactions on its behalf.

G.4.2.2 The fit and proper assessment applied to senior officials and directors of Regulated Persons is an example of the assessment of expertise and knowledge involved in the qualitative test.

R.4.2.9 Before deciding to accept any request for re-categorisation as an elective Professional Client, a Regulated Person must take all reasonable steps to ensure that the Client requesting to be treated as an elective Professional Client satisfies the qualitative test and the quantitative test referred to above.

However, if Clients have already been categorised as Professional Clients under parameters and procedures similar to those referred to this Rule, their relationships with Regulated Persons shall not be affected by rules contained in this Section.

G.4.2.3 Professional Clients are responsible for keeping the Regulated Person informed about any change that could affect their current categorisation.

R.4.2.10 If a Regulated Person becomes aware that a Client no longer fulfils the initial conditions that made it eligible for categorisation as an elective Professional Client, the Regulated Person must take the appropriate action. Where such appropriate action involves re-categorising that Client as a Retail Client, the Regulated Person must notify that Client of its new categorisation.

Eligible Counterparties

R.4.2.11 An Eligible counterparty is a Client that is either a per se Eligible counterparty or an elective Eligible counterparty.

A Client can only be an Eligible Counterparty in relation to Eligible counterparty business.

Per Se Eligible Counterparties

R.4.2.12 Regulated Persons authorised to execute orders on behalf of Clients and/or to deal on own account and/or to receive and transmit orders, have the possibility of bringing about or entering into transactions with Eligible counterparties without being obliged to comply with the following rules in respect of those transactions or in respect of any Ancillary service directly relating to those

transactions: R.1.2.6, R.1.3.12, R.1.4.10, R.1.4.11, R.1.4.17(j), R.1.4.19, R.1.4.20, R.1.4.27, R.2.7, R.3.2, R.3.9, R.3.22, R.3.40, R.4.3.6, R.4.4.4, R.4.4.15, R.4.4.19, R.4.4.20, R.4.4.30, R.4.4.39, R.4.4.43, R.4.4.58, R.4.4.60, R.5.3, R.5.6, R.5.11, R.5.15, R.5.17, R.5.23, R.5.26, R.5.30, R.5.32, R.5.33, R.5.36, R.5.50.

R.4.2.13 Each of the following is a per se Eligible counterparty (including an entity that is not from an Member State or an EEA State that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this Chapter:

(a) an investment firm
(b) a credit institution
(c) an insurance company;
(d) a UCITS or a UCITS Management Company;
(e) a pension fund or a pension fund management company;
(f) another financial institution authorised or regulated under EU Law or the national law of an EU Member State;
(g) undertakings which are exempt from the requirements of the MIFID in terms of Article 2 (1) (k) and (l) thereof;
(h) a national government and its corresponding offices including public bodies that deal with public debt;
(i) central bank and supranational organization.

R.4.2.14 Classification as an Eligible counterparty by a Regulated Person shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as Professional Clients or Retail Clients.

Elective Eligible Counterparty

R.4.2.15 In addition to the categories which are explicitly set out in R.4.2.13 above, an undertaking falling within a cateogry of Clients who are to be considered Professional Clients as defined in the Glossary to this Rulebook may be recognsied as Eligible counterparties.

R.4.2.16 Regulated Persons may recognise and treat as Eligible counterparties, other undertakings meeting pre-determined proportionate requirement, including quantitative thresholds. In the event of a transaction where the proposed counterparties are located in different jurisdictions, the Regulated Person shall defer to the status of the Client undertaking as determined by the law or measures of the Member State in which that undertaking is established.

When it enters into a transaction in with a Client undertaking in accordance with this Rule, the Regulated Person shall obtain the express confirmation from the Client that it agrees to be treated as an Eligible counterparty. The Regulated Person may obtain such confirmation either in the form of a general agreement or in respect of each individual case.

R.4.2.17 Where a Client requests to be treated as an Eligible counterparty, in accordance with Rule 4.2.16 above, the following procedure shall be followed:

(a) the Regulated Person shall provide the Client with a clear written warning of the consequences for the Client of such a request, including the protections they may lose;
(b) the Client shall confirm in writing the request to be treated as an Eligible counterparty either generally or in respect of one or more Services or a transaction or type of transaction or Financial Instrument and that they are aware of the consequences of the protection they may lose as a result of the request,

Provided that, a Regulated Person shall request the Client to confirm, in writing, that it wishes to be treated as an elective Eligible counterparty either generally or in respect of a particular Service or transaction or type of transaction or Financial Instrument and that it is aware of the consequences in terms of the protections it may lose.

Transactions Executed with Eligible Counterparties

R.4.2.18 The Regulated Person may treat as Eligible counterparties third country entities equivalent to those categories of entities as referred to in the definition of "Eligible counterparty" in the Glossary.

R.4.2.19 A Regulated Person may also recognise as Eligible counterparties third country undertakings such as those referred to in R.4.2.16 on the same conditions and subject to the same requirements as those laid down in R.4.2.16 and R.4.2.17.

R.4.2.20 In its relationship with Eligible counterparties Regulated Person shall act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the Eligible counterparty and of its business.

Retail Clients

R.4.2.21 The Regulated Person shall treat as a Retail Client any Client which does not satisfy the requirements of either the classification of an Eligible counterparty or of the Professional Investor, or any Client who has requested to be treated as a Retail Client

Higher Level of Protection

R.4.2.22 Where pursuant to R.4.2.14 a per se Eligible Counterparty requests treatment as a Client whose business with a Regulated Person is subject to Rules of Section 4 of this Chapter, R.1.2.6, R.1.3.12, R.1.3.13, R.1.4.10, R.1.4.11, R.1.4.19, R.1.4.20, R.1.4.27, R.1.4.36, R.2.6, R.3.9, R.3.28, R.3.42, R.3.54, R.5.3, R.5.6, R.5.10, R.5.13, R.5.14, R.5.20, R.5.30 to R.5.32, R.5.37 and R.5.54, the request should be made in writing, and shall indicate whether the treatment as Retail Client or Professional Client refers to one or more investment services or transactions, or one or more types of transaction or Product.

R.4.2.23 In the cases referred to in R.4.2.22 above, the Regulated Person shall inform the Eligible counterparty that as a result of such request it would be benefiting from certain protections.

R.4.2.24 Where an Eligible counterparty requests treatment as a Client whose business with a Regulated Person in the Glossary to these Rules is subject to Rules of Section 4 of this Chapter, R.1.2.6, R.1.3.12, R.1.3.13, R.1.4.10, R.1.4.11, R.1.4.19, R.1.4.20, R.1.4.27, R.1.4.36, R.2.6, R.3.20, R.3.29, R.3.35, R.3.54, R.5.3, R.5.6, R.5.10, R.5.13, R.5.14, R.5.20, R.5.30 to R.5.32, R.5.37 and R.5.54 but does not expressly request treatment as a Retail Client, the said Regulated Person shall treat that Eligible counterparty as a Professional Client.

R.4.2.25 Where a per se Eligible counterparty expressly requested treatment as a Retail Client, the Regulated Person shall treat the Eligible counterparty as a Retail Client, applying the provisions in respect of non-professional treatment specified in the second, third and fourth sub-paragraphs of the definition of "Professional Client" in the Glossary to this Rulebook.

R.4.2.26 If a per se Professional Client or a per se Eligible counterparty requests treatment as a Retail Client, the Client will be classified as a Retail Client if it enters into a written agreement with the Regulated Person to the effect that it will not be treated as a Professional Client or Eligible Counterparty for the purposes of the applicable conduct of business regime.

This agreement shall specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of Financial Instrument or transactions.

Policies and Procedures to Categorise Clients

R.4.2.27 The Regulated Person shall implement appropriate written internal policies and procedures to categorise Clients.

G.4.2.4 *The Regulated Person should have proper organisational requirements enabling it to classify Clients in a quick and easy manner. This notwithstanding, it should be ensured that the classification given by the Regulated Person is appropriate and any Services offered to the Client are to be provided on the basis of that classification.*

G.4.2.5 *A Regulated Person's Client classification policy should cater for the procedure which the Regulated Person's employees shall adopt in order to classify Clients under one of the following sub-headings (a), (b) or (c) below. Such procedures maybe structured as follows:*

(a) First Tier Classification: - Eligible counterparties

*Does the **Client** have any one of the following statuses?*

i. an investment firm;
ii. a credit institution;
iii. an insurance company;
iv. a UCITS or a UCITS Management Company;
v. a pension fund or a pension fund management company;
vi. another financial institution authorized or regulated under EU Law or the national law of an EU Member State;

vii. *undertakings which are exempt from the requirements of the MIFID in terms of Article 2 (1) (k) and (l) thereof;*
viii. *a national government and its corresponding offices including public bodies that deal with public debt;*
ix. *central bank and supranational organization.*

If so, the Client may be classified as an 'eligible counterparty'.

(b) Second Tier Classification: - Professional Clients

Professional Client Test – No 1:

*Does the **Client** fall in any one of the following categories?*

***[1]** An entity which is required to be authorised or regulated to operate in financial markets. The list below should be understood as including: **[i]** all authorised entities carrying out the characteristic activities of the entities mentioned: **[ii]** entities authorised by a Member State under a Directive, **[iii]** entities authorised or regulated by a Member State without reference to a Directive, and **[iv]** entities authorised or regulated by a non- Member State:*

(a) credit institutions;
(b) investment firms;
(c) other authorised or regulated financial institutions;
(d) insurance companies;
(e) collective investment schemes and management companies of such schemes;
(f) pension funds and management companies of such funds;
(g) commodity and commodity derivatives dealers;
(h) locals;
(i) other institutional investors.

***[2]** Is the Client an entity which meets two of the following requirements?*

i.	*Balance sheet total:*	*EUR 20,000,000*
ii.	*Net turnover:*	*EUR 40,000,000*
iii.	*Own funds:*	*EUR 2,000,000*

***[3]** National and regional governments, public bodies that manage public debt, Central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.*

***[4]** Other institutional investors whose main activity is to invest in Financial Instruments, including entities dedicated to the securitisation of assets or other financing transactions.*

If the Client falls under anyone of [1] – [4] above, it may be classified as a 'Professional Client'.

Professional Client Test – No 2:

A Client who does not fall under any of the above categories may also be treated as a Professional Client upon request if further to an assessment, such Client is found to possess sufficient experience, knowledge and expertise to enable him/her to make his/her own investment decisions and properly assess the risks that such investment incurs.

In the course of this assessment, two of the following criteria should be satisfied:

(a) the Client invests at an average frequency of ten transactions per quarter during the previous four quarters, subject to the transactions being of a significant size;
(b) the Client's Financial Instrument portfolio exceeds EUR 500,000;
(c) the Client has worked in the financial sector for at least one year in a professional position.

In addition to satisfying two of the above-mentioned criteria, Clients which have requested to be treated as Professional Clients shall:

(a) state in writing that they wish to be treated as a Professional Client, either generally or in respect of a particular investment Service or transaction or type of transaction or Financial Instrument;
(b) be given a clear written warning of the protections and invest or compensation rights they may lose; and
(c) state in writing in a separate document from the contract, that they are aware of the consequences of losing such protections.

(c) Third Tier Classification:- Retail Clients:

Clients who are not categorised as Eligible counterparties or Professional Clients shall be classified as Retail Clients.

Record Keeping Requirements

R.4.2.28 Without prejudice to other relevant record keeping requirements, records which set out the respective rights and obligations of the Regulated Person and the Client under an agreement to provide Services, or the terms on which the Regulated Person provides Services to the Client, shall be retained for at least the duration of the relationship with the Client.

G.*4.2.6* *A Regulated Person shall make a record in relation to each Client:*

(a) of the categorisation established for the Client under this section, including sufficient information to support that categorisation;
(b) who elects to be treated as a Professional Client. Such record should include documentation evidencing satisfaction of the relevant requirements indicated in this Section;
(c) of evidence of despatch to the Client of any notice/warning required under this section and a copy of the actual notice provided; and
(d) of any agreement entered into with the Client under this section.

G.4.2.7 *If a Regulated Person provides the same form of notice to more than one Client, it need not maintain a separate copy of it for each Client, provided it keeps evidence of dispatch.*

Vulnerable Clients

G.4.2.8 *A vulnerable Client is a natural person who is a Retail Client and who:*

(a) *has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*

(b) *has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).*

G.4.2.9 *A Regulated Person should recognise that vulnerability is not restricted to the Client's situation but might actually be aggravated by the actions or processes of the Regulated Person itself. Examples could include complex telephone menu systems and automated services, with limited or no possibility for human interaction; or the provision of complex and lengthy information, making it hard for Clients to differentiate between promotional material and important messages / warnings about Products. Such occurrences could give rise to added pressures on vulnerable Clients, thus resulting in consequential detriment.*

G.4.2.10 *In relation to vulnerable Clients Regulated Persons should adopt more cautious practices in their operations The following is an indicative list of what may constitute good practices to be adopted by a Regulated Person in this regard:*

(a) *offering of clear and straightforward Financial Instruments which do not include any hidden surprises which might only surface in adverse situations;*

(b) *employing a marketing strategies which in no way exploit vulnerabilities;*

(c) *having a number of available options for communication in relation to the method of communication and delivery of service. Such means should be designed in an inclusive manner to meet the needs of different Clients with varying circumstances;*

(d) *providing Clients with tailored treatment in the event of a change in circumstances which would require a flexible approach;*

(e) *having procedures in place to escalate vulnerability issues to someone who has the authority and discretion to adapt terms and conditions to a particular situation;*

(f) *ensuring that vulnerable Clients are given sufficient time in order to be able to assess and reflect upon the Financial Instrument or Service that they are being sold, including any related terms and conditions.*

Section 3 Advice and Non-Advice

Application

R.4.3.1 The Rules and the relative Guidance set out under Part A shall apply to all Regulated Persons.

R.4.3.2 The Rules and the relative Guidance set out under Part B shall apply to persons which fall under points (i), (ii), (iv) or (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.3.3 The Rules and relative Guidance set out Part C are applicable to Regulated Persons which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

Part A: Rules applicable to All Regulated Persons

General Principles

R.4.3.4 A Regulated Person shall be deemed to provide Advice for the purposes of these Rules if it provides a Personal Recommendation to a Client, either at the request of the Client in question or on its own initiative, with respect to Products.

G.4.3.1 There are three main elements to a Personal Recommendation:

(a) there shall be a recommendation;

(b) the recommendation shall be presented as suitable or purported to be suitable for the person to whom it is made or based on the person's circumstances; and

(c) the recommendation shall relate to taking certain steps in respect of a particular Product or Financial Instrument, for example "I recommend that you buy XYZ Company shares".

Whether or not a Personal Recommendation is given depends in part on whether the Client is led to think that one is being given. Therefore it is important for the Regulated Person to clearly indicate whether it is providing Advice or not.

G.4.3.2 To establish whether an activity constitutes Advice, Regulated Persons should consider whether the process is limited to, and likely to be perceived by the Client as assisting them to make their own choice of Product that has the particular features that the Client regards as important. Reference should also be made to Appendix 2 of this Chapter for further guidance as to what constitutes Advice.

G.4.3.3 A Product might be presented as suitable to a Client either explicitly or implicitly. A Product would be explicitly presented as suitable if a Regulated Person were to say to a Client 'this Product would be the best option for you'.

G.4.3.4 Where a Regulated Person provides only selective information to a Client, for example, when comparing one Product against another, or when a Client has indicated the benefits he seeks in a Product, such selective information, depending on the circumstances may amount to an implied recommendation and hence Advice.

G.4.3.5 If a Product was presented to a Client in some other way that would influence the Client to take a course of action in relation to a specific Product over others, this is likely to be an implicit recommendation.

G.4.3.6 A clear, prominent and understandable disclaimer stating that no Advice is being provided or that no recommendation is being made is unlikely to be sufficient to avoid having presented a recommendation for the purposes of determining whether Advice has actually been given. Accordingly, the fact that a Regulated Person states that its Product would suit a particular Client's need and includes

a disclaimer saying that this was not Advice, would not necessarily change the basic nature of the communication and it may still constitute a Personal Recommendation and hence the provision of Advice.

G.4.3.7 *In clarifying the circumstances when a Personal Recommendation is being given, a Regulated Person is expected to take into account the ESMA Supervisory Briefing on Understanding the Definition of Advice under MiFID II.*

G.4.3.8 *The difference between 'Information' and 'Advice' is the element of opinion or judgement on the part of the Regulated Person.In making a Personal Recommendation, and hence providing Advice, the Regulated Person would need to make a judgement or assessment that would result in one or more Products being identified as suitable a Client, whether as a result of information that Client provides or otherwise.*

G.4.3.9 *Merely providing information to Clients should not itself normally amount to Advice, provided that the Client is left to exercise their own opinion on the action to take.*

Part B: ***Rules Applicable to Persons which fall under Points (i), (ii), (iv) or (v) of the Definition of 'Regulated Person' in the Glossary to these Rules***

R.4.3.5 For the purposes of this Part, the term Regulated Person shall refer to a person which fall under point (i), (ii), (iv) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

Regulated Persons Providing Independent Advice

R.4.3.6 Where a Regulated Person informs the Client that Advice is provided on an independent basis, that Regulated Person shall conduct a fair and comprehensive analysis of the market by assessing a sufficient range of Products available on the market which shall be sufficiently diverse with regard to their type and Issuers or Product providers to ensure that the Client's needs and objectives can be suitably met and shall not be limited to Products issued or provided by:

(a) the Regulated Person itself or by entities having close links with the Regulated Person; or
(b) other entities with which the Regulated Person has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the Advice provided.

Provided that this Rule shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Rule with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

Part C: ***Rules Applicable to Persons which fall under Points (i), (ii) or (v) of the Definition of 'Regulated Person' in the Glossary to these Rules***

R.4.3.7 For the purposes of this Part, the term Regulated Person shall refer to a person which fall under points (i), (ii) or (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.3.8 A Regulated Person informing a Client that Advice is provided on an independent basis shall define and implement a selection process to assess and compare a sufficient range of Products available on the market. The selection process should include all of the following elements:

(a) the number and variety of Products considered is proprotionate to the scope of investment advice services offered by the Regulated Person;
(b) the number and variety of Products considered is adequately representative of Financial Instruments available on the market;
(c) the quantity of Products issued by the Regulated Person itself or by entities closely linked to the Regulated Person itself is proportionate to the total amount of Products considered; and
(d) the criteria for comparing the various Products should include all relevant aspects such as risks, costs and complexity as well as the characteristics of the Regulated Person's Clients, and shall ensure that the selection of the Products that may be recommended is not biased.

R.4.3.9 If such a comparison would not be possible because of the business model or the specific scope of the Service provided, the Regulated Person providing Advice should not be allowed to claim itself as "independent".

R.4.3.10 A Regulated Person that provides Advice on an independent basis and that focuses on certain categories or a specified range of Products should comply with the following requirements:

(a) the Regulated Person market itself in a way that it is intended only to attract Clients with a preference for certain categories or a range of Products;
(b) the Regulated person shall require Clients to indicate that they are only interested in investing in the specified category or range of Products;

prior to the provision of the service, the Regulated Person shall ensure that its service is appropriate for each new Client on the basis that its business model matches the Client's needs and objectives, and the range of Products that are suitable for the Client. Where this is not the case, the Regulated Person shall not provide such a service to the Client.

Regulated Persons Providing both Independent and Non-Independent

R.4.3.11 Non-Independent Advice is any advice which does not qualify as independent advice within the meaning of R.4.3.6.

R.4.3.12 A Regulated Person shall explain in a clear and concise way whether and why Advice qualifies as independent or non-independent and the type and nature of

the restrictions that apply, including, when providing Advice on an independent basis, the prohibition to receive and retain Inducements.

R.4.3.13 Where Advice is offered or provided to the same Client on both an independent and non-independent basis, Regulated Persons shall explain the scope of both services to allow investors to understand the differences between them and not present itself as an independent investment advisor for the overall activity. Regulated Persons shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with Clients.

R.4.3.14 A Regulated Person providing investment advice, on an independent or non-independent basis, shall explain to the Client the range of Financial Instruments that may be recommended, including its relationship with the Issuers or providers of the instruments.

R.4.3.15 A Regulated Person shall provide a description of:

(a) the types of Financial Instruments considered;
(b) the range of Financial Instruments and providers analysed per each type of instrument according to the scope of the service;
(c) where relevant, the sustainability factors taken into consideration in the selection process of financial instruments;
(d) when providing independent investment advice, how the Service provided satisfies the conditions for the provision of investment advice on an independent basis, and the factors taken into consideration in the selection process used by the Regulated Person to recommend Financial Instruments, such as risks, costs and the complexity of the Financial Instruments.

R.4.3.16 When the range of Financial Instruments assessed by the Regulated Person providing investment advice on an independent basis includes the Regulated Person's own Financial Instruments or those issued or provided by entities having close links or any other close legal or economic relationship with the Regulated Person as well as other Issuers or providers which are not linked or related, the Regulated Person shall distinguish, for each type of Financial Instrument, the range of the Financial Instruments issued or provided by entities not having any links with the Regulated Person.

R.4.3.17 A Regulated Person offering Advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

(a) in good time before the provision of its Services, the Regulated Person should inform Retail Clients, in a Durable medium, whether the Advice will be independent or non-independent and make the relevant disclosures as required in the Chapter entitled Disclosures;
(b) the Regulated Person should not hold itself out as "independent" for its business as a whole. However a Regulated Person may hold itself out as acting independently in respect of the Services for which it provides independent Advice; and
(c) the Regulated Person has adequate organisational requirements and controls in place to ensure that both types of Advice, Services and

Advisers are clearly separated from each other and that Clients are likely to be confused about the type of Advice they are receiving and are giving the type of Advice that is appropriate to them. The Regulated Person shall not allow a natural person to provide both independent and non-independent advice.

Section 4: Assessment of Client's Suitability and Appropriateness

Application

R.4.4.1 The Rules and the relative Guidance set out in Part A shall apply to Regulated persons which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules, except as otherwise indicated.

Provided that the Rules and any relative Guidance set out in this Section shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Chapter with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

R.4.4.2 The Rules and the relative Guidance set out in the Part B shall apply to Regulated Persons which fall under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

Part A: Rules Applicable to Regulated Persons which fall under Points (i), (ii) and (v) of the Definition of 'Regulated Person' in the Glossary to these Rules

R.4.4.3 For the purposes of this Part the term 'Regulated Person' shall refer to persons which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

'Investment products' means financial instruments and structured deposits as defined in MiFID II (Directive 2014/65/EU).

R.4.4.4 Regulated Persons shall ensure and demonstrate to the MFSA, that staff members providing Advice or Information about Financial Instruments, Services or Ancillary services to Clients on behalf of the Regulated Person possess the necessary skills, knowledge and competence to fulfil their obligations under these Rules.

R.4.4.5 The level and intensity of knowledge and competence expected for those providing investment advice shall be of a higher standard than those that only give information on investment products and services.

R.4.4.6 Regulated Persons shall ensure that staff providing relevant services possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards.

R.4.4.7 Regulated Persons shall ensure that staff know, understand and apply the Regulated Person's internal policies and procedures designed to ensure compliance with MiFID II (Directive 2014/65/EU). In order to ensure a proportionate application of knowledge and competence requirements, Regulated Persons shall ensure that staff have the necessary levels of knowledge and competence to fulfil their obligations, reflecting the scope and degree of the relevant services provided.

G.4.4.1 The Regulated Person's staff should have the skills necessary to be able to assess the needs and circumstances of the Client. They are also recommended to have sufficient expertise to understand the Products to be recommended (or purchased on the Client's behalf), and to determine that the features of the Product match the needs and circumstances of the Client.

G.4.4.2 The following examples set out instances where a staff member would not fall within the scope of this section:

(a) employees only pointing out where Clients can find information;
(b) employees distributing brochures and leaflets to Clients without giving additional information with regards to its content or providing any follow up investment services to those Clients;
(c) employees who only hand over information such as KIID at the Client's request without giving any additional information with regards to its content or providing any follow up Services to those Clients; and
(d) employees who perform back-office functions and do not have direct contact with the Clients.

G.4.4.3 The Regulated Person should provide regular mandatory training to staff in the area of MiFID conduct of business, and organisational requirements.

G.4.4.4 The Regulated Person should adopt a code of ethics to set forth the standards of business conduct and behaviour necessary for the proper provision of relevant Services and obtain written acknowledgements from staff that they have read, understood and complied with it.

Criteria for knowledge and competence for staff giving information about investment products, investment services or ancillary services

R.4.4.8 The Regulated Person shall ensure that staff giving information about or ancillary services that are available through the Regulated Person have the necessary knowledge and competence to:

(a) understand the key characteristics, risk and features of those available through the Regulated Person, including any general tax implications and costs to be incurred by the Client in the context of transactions. Particular care should be taken when giving information with respect to products characterised by higher levels of complexity;
(b) understand the total amount of costs and charges to be incurred by the Client in the context of transactions in an investment product, or investment services or ancillary services;
(c) understand the characteristics and scope of the investment services or ancillary services;

(d) understand how financial markets function and how they affect the value and pricing of investment products on which they provide information to Clients;
(e) understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information;
(f) understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
(g) understand issues relating to market abuse and anti-money laundering;
(h) assess data relevant to the investment products on which they provide information to Clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;
(i) understand specific market structures for the investment products on which they provide information to Clients and, where relevant, their trading venues or the existence of any secondary markets;
(j) have a basic knowledge of valuation principles for the type of investment products in relation to which the information is provided.

Criteria for knowledge and competence for staff giving investment advice

R.4.4.9 Regulated Persons shall ensure that staff giving investment advice have the necessary knowledge and competence to:
(a) understand the key characteristics, risk and features of the investment products being offered or recommended, including any general tax implications to be incurred by the Client in the context of transactions. Particular care should be taken when providing advice with respect to products characterised by higher levels of complexity;
(b) understand the total costs and charges to be incurred by the Client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
(c) fulfil the obligations required by Regulated Persons in relation to the suitability requirements including the obligations as set out in Appendix 7 to this Chapter which implements the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements;
(d) understand how the type of investment product provided by the Regulated Person may not be suitable for the Client, having assessed the relevant information provided by the Client against potential changes that may have occurred since the relevant information was gathered;
(e) understand how financial markets function and how they affect the value and pricing investment products offered or recommended to Clients;
(f) understand the impact of economic figures, national/regional/global events on markets and on the value of investment products being offered or recommended to Clients;
(g) understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
(h) understand issues relating to market abuse and anti-money laundering;
(i) assess data relevant to the type of investment products offered or recommended to Clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;

(j) understand specific market structures for the type of investment products offered or recommended to Clients and where relevant their trading venues or the existence of any secondary markets;
(k) have a basic knowledge of valuation principles for the type of investment products offered or recommended to Clients;
(l) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives.

G.4.4.5 *A Regulated Person should provide regular mandatory training to staff in the features and characteristics, including potential risks, of the products offered by the Regulated Person. This includes training about products newly offered by the Regulated Person.*

G.4.4.6 *A Regulated Person should ensure that staff are familiar with the situations in which conflicts of interest arise and how to apply the rules regarding the management of conflicts of interest.*

G.4.4.7 *A Regulated Person should ensure that staff are familiar with the situations as to when a firm may pay or receive an inducement and the relevant legal requirements regulating inducements.*

Advisory and Assistance Obligations of the Compliance Function

R.4.4.10 The compliance function shall fulfil its advisory and assistance responsibilities, including the following:

(a) provision of support for the training of employees and management;

(b) provision of day-to-day assistance for employees and management. This includes supporting employees from the Regulated Person's operative units in their day-to-day business and be available with respect to issues arising out of daily business activities;

(c) participation and involvement in the establishment and development of the relevant policies and procedures within the Regulated Person in the area of investment services, activities and ancillary services (for instance, the remuneration policy and product governance policies and procedures).

R.4.4.11 In relation to R.4.4.10(a), the compliance function shall support the Regulated Person in ensuring that employees are adequately trained. This includes *inter alia* supporting the Regulated Person's business units in performing any relevant and adequate training, particularly to employees involved directly or indirectly in the provision of investment services and activities. Such training and support shall:

(a) be performed on a regular basis and needs-based training is to be performed as necessary;
(b) be delivered as appropriate (for instance, to all employees as a whole, to specific business units or to particular individuals);

(c) be developed on an ongoing basis to take into account all relevant changes (for instance, new legislation and guidelines; and changes to the Regulated Person's business model);
(d) focus particularly, but not exclusively, on:

(i) the internal policies and procedures of the Regulated Person and organizational structure in the area of investment services and activities; and
(ii) Directive 2014/65/EU (MIFIDII) and its delegated and implementing acts; national implementing laws; applicable standards, guidelines and other guidance set out by ESMA and the MFSA; any other relevant supervisory and regulatory requirements; and any changes thereto;

R.4.4.12 The compliance function shall monitor (in cooperation with the Regulated Person's management body holding ultimate responsibility) whether the relevant employees hold the necessary level of awareness and correctly apply the Regulated Person's policies and procedures.

R. 4.4.13 In relation to R.4.4.10(c), a Regulated Person shall ensure that its compliance function is involved in all significant modifications of the organisation of the Regulated Person in the area of investment services, activities and ancillary services.

In this respect, the Regulated Person shall, as a minimum, ensure that senior management requests business units, where relevant, to consult with the compliance function in due time regarding their operations. This includes ensuring that the compliance function is involved in:

(a) the Regulated Person's decision-making processes when new business lines or new financial products are being approved.

In this context, the Regulated Person shall give its compliance function the right to participate in the product approval process for manufacturers and, or distributors as applicable; and
(b) defining employees' remuneration policies.

Automated Advice

R.4.4.14 The Regulated Person's responsibility to perform the suitability assessment in accordance with relevant provisions in Appendix 7 to this Chapter and R.4.4.67 as applicable shall not be reduced due to the fact that Advice on Products is provided in whole or in part through an automated or semi-automated system.

Suitability

R.4.4.15 A Regulated Person shall understand the Financial Instrument it offers or recommends, assess the compatibility of the Financial Instruments with the needs of the Clients to whom it provides Services, also taking account of the Identified target market of end Clients, and ensure that Financial Instruments are offered or recommended only when this is in the interest of the Client.

R.4.4.16 Regulated Persons shall implement policies and procedures to enable them to collect and assess all information necessary to conduct a suitability assessment for each Client.

In carrying out this suitability assessment, the Regulated Person shall comply with all the applicable requirements contained in this Chapter 4, as well as with Appendix 7 to this Chapter which implements the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements.

R.4.4.17 Regulated Persons shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of Financial Instruments or Services in accordance with R.4.4.19. When undertaking the suitability assessment, the Regulated Person shall inform Clients, clearly and simply, that the reason for assessing suitability is to enable the Regulated Person to act in the Client's best interest.

The Regulated Person shall have, and be able to demonstrate that it has, appropriate procedures to maintain adequate and up-to date information about the Client to the extent necessary to fulfil the above requirements.

Assessment of Suitability

R.4.4.18 Information on Advice and Portfolio Management Services, shall include information about the suitability assessment. 'Suitability assessment' should be understood as meaning the whole process of collecting information about a Client, and the subsequent assessment of the suitability of a given Financial Instrument for that Client.

R.4.4.19 When providing Advice or Portfolio Management Services to a Client, the Regulated Person must first obtain the necessary information regarding the Client's:

(a) knowledge and experience in the investment field relative to the specific type of the Product or Service;
(b) financial situation including his ability to bear losses; and
(c) investment objectives including risk tolerance,

so as to enable the Regulated Person to recommend to the Client, Products which are suitable for him and, in particular, are in accordance with his or her risk tolerance and ability to bear losses.

When providing Advice or Portfolio Management Services that involves the Switching of Financial Instruments, the Regulated Person shall first obtain the necessary information on the Client's investment and shall analyse the costs and benefits of the Switching of Financial Instruments. In addition, when providing Advice, the Regulated Person shall also inform the Client whether or not the benefits of the Switching of Financial Instruments are greater than the costs involved in such switching.

Provided that, the paragraph above relating to the Switching of Financial Instruments shall not apply to services provided by the Regulated Person to

Professional Clients, unless the Professional Client informs the Regulated Person, either in electronic format or on paper, that he or she wishes to benefit from the rights provided for above. The Regulated Person shall ensure that records of the client communications in respect of this opt-in by the Professional Client are kept.

G.4.4.8 *In the case of existing Clients for whom a suitability assessment has already been undertaken, the Regulated Person shall have the possibility to identify the Client's individual sustainability preferences at the next regular update of the existing suitability assessment.*

G.4.4.9 *Regulated Persons should consider the knowledge and experience of a Client and properly discuss with the Client the nature of the assessment of the risk they are willing and able to take. This should enable the Regulated Persons to secure the Client's engagement and check understanding. Where a Regulated Person does not adequately communicate and check understanding of the level of risk a Client is agreeing to take, this can lead to unsuitable recommendations.*

G.4.4.10 *Information necessary to conduct a suitability assessment includes different elements which may impact, for example, the Client's financial situation (including the Client's ability to bear losses) or investment objectives (including the Client's risk tolerance). When determining what information is necessary, Regulated Persons should keep in mind the impact that any change regarding that information could have concerning the suitability assessment.*

G.4.4.11 *The level of information gathered by a Regulated Person should be appropriate to the nature and complexity of the Product or Service being sought by the Client, but shall be to a level that allows the Regulated Person to provide a professional Service and include details (where applicable) of the Client's:*

(a) needs and objectives including, where relevant:

i. the length of time for which the Client wishes to hold a Product or Financial Instrument or wishes to receive a Service;
ii. need for access to funds (including emergency funds);
iii. need for accumulation of funds.

(b) personal circumstances including, where relevant:

i. age (is mostly important to ensure a correct assessment of the investment objectives, and in particular the level of financial risk that the Client is willing to take, as well as the holding period/investment horizon, which indicates the willingness to hold an investment for a certain period of time);
ii. level of education, including literacy level;
iii. health;
iv. marital status (especially the Client's legal capacity to commit assets that may belong also to his partner);
v. family situation (changes in the family situation of a Client may impact his financial situation e.g. a new child or a child of age to start university);

vi. *dependents;*
vii. *employment status, including profession or relevant former profession (the fact for a Client to lose his job or to be close to retirement may impact his financial situation or his investment objectives);*
viii. *known future changes to his/her circumstances.*

(c) *financial situation including, where relevant:*

i. *income;*
ii. *savings;*
iii. *financial Products and other assets;*
iv. *debts and financial commitments;*
v. *need for liquidity in certain relevant investments.*

(d) *attitude to risk, in particular, the importance of capital security to the Client.*

G.4.4.12 *It is considered good practice for Regulated Persons to consider non-financial elements when gathering information on the Client's investment objectives, and in addition to the elements listed in G.4.4.11 above collect information on the Client's suitability preferences on environmental, social and governance factors.*

R.4.4.20 The Regulated Person shall ensure that where it provides Advice recommending a package of Services or Financial Instruments bundled together, the overall bundled package is suitable.

G.4.4.13 *If a Regulated Person provides Advice to a Client about a type of Finanical Instrument which it presents as suitable for, or based on a consideration of the circumstances of, that Client, and that Advice is not in fact suitable for the Client, or is not based on a consideration of his circumstances, the Regulated Person may, depending on the circumstances of the particular case, be acting in contravention of the requirements to:*

(a) *act honestly, fairly and professionally in accordance with the best interests of the Client; and*
(b) *provide information to the Client that is fair, clear and not misleading.*

G.4.4.14 *Where the Client does not have capacity to sustain the potential loss of a higher-risk strategy, the Regulated Person should explain that the Client's need for a higher return cannot realistically be met.*

G.4.4.15 *If the Client is able to sustain greater capital losses and is willing, following discussion, to tolerate a higher level of risk to potentially generate the desired level of return, the Regulated Person should document that this is the risk that the Client is willing and able to take, along with the reasons for this.*

G.4.4.16 *Poor outcomes in assessing the risk a Client is willing and able to take can occur if Regulated Persons, in particular:*

(a) fails to collect and account for all the information relevant to assessing the risk a Client is willing and able to take as part of suitability considerations, for example because they:

i. fail to assess a Client's capacity for loss;
ii. do not have a robust process to identify Clients that are best suited to placing their money in cash deposits because they are unwilling or unable to accept the risk of loss of capital;
iii. use poor questions and answers to establish the risk a Client is willing and able to take;
iv. inappropriately interpret the Client's responses to questions (particularly where Regulated Persons rely on tools with sensitive scoring or attribute inappropriate weighting to answers); or

(b) use vague, unclear or misleading descriptions or illustrations to check the risk that a Client is willing and able to take.

R.4.4.21 The information regarding the financial situation of the Client shall include, where relevant, information on:

(a) the source and extent of his regular income;
(b) his assets, including liquid assets investments and real property; and
(c) his regular financial commitments.

R.4.4.22 The information regarding the investment objectives of the Client shall include, where relevant, information about:

(a) the length of time for which the Client wishes to hold the Financial Instrument;
(b) his or her preferences regarding risk taking;
(c) his or her risk tolerance;
(d) the purposes for buying the Financial Instrument; and
(e) in addition, his or her sustainability preferences.

R.4.4.23 Regulated Persons shall have in place, and be able to demonstrate that they have in place, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of Services and Financial Instruments selected for their Clients, including any sustainability factors, and that they assess, while taking into account cost and complexity, whether equivalent Services or Products could meet their Client's profile.

G.4.4.17 Regulated Persons should adopt robust and objective procedures, methodologies and tools that allow them to appropriately consider the different characteristics and relevant risk factors (such as credit risk, market risk, liquidity risk) of each Financial Instrument they may recommend or invest in on behalf of Clients. When taking into consideration liquidity risk, it is important that this risk is not balanced out with other risk indicators (such as, for example, those adopted for the assessment of credit/counterparty risk and market risk). Liquidity features of Financial Instruments should be compared with information on the Client's willingness to hold the investment for a certain length of time.

The procedures, methodologies and tools should include the taking into consideration the Regulated Person's analysis conducted for the purposes of product governance obligations. In this context, Regulated Persons should carefully assess how certain Financial Instruments could behave under certain circumstances (for example convertible bonds or other debt instruments subject to the Bank Recovery and Resolution Directive which may, for example, change their nature into shares).

G.4.4.18 *It is important for Regulated Persons to consider the level of complexity of Financial Instruments. The level of complexity of the Financial Instrument should be matched with a Client's information (in particular regarding their knowledge and experience). Although complexity is a relative term, which depends on several factors, Regulated Persons should also take into account the criteria and principles identified in MiFID II (Directive 2014/65/EU), when defining and appropriately graduating the level of complexity to be attributed to Products for the purposes of the assessment of suitability.*

R.4.4.24 Where a Regulated Person offers or has access to a limited range of Financial Instruments, or investment choices associated with Financial Instruments, it should take reasonable care to establish and maintain appropriate systems and controls to ensure that if there is no Financial Instrument in the Regulated Person's range of Financial Instruments which meets the needs and objectives of the Client, no Personal Recommendation is made and no decision to trade on behalf of the Client is taken.

R.4.4.25 When providing Advice or Portfolio Management Services that involve switching investments, either by selling a Financial Instrument and buying another, or by exercising a right to make a change in regard to an existing instrument), a Regulated Person shall collect the necessary information on the Client's existing investments and the recommended new investments to undertake an analysis of the costs and benefits of the switch, such that the Regulated Person is reasonably able to demonstrate that the benefits of switching are greater than the costs.

R.4.4.26 Regulated Persons shall determine the extent of the information to be collected from Clients in the light of all the features of the Advice or Portfolio Management Services to be provided to those Clients. Regulated Persons shall obtain from Clients such information as is necessary for the Regulated Person to understand the essential facts about the Client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the Service provided, that the specific transaction to be recommended, or entered into in the course of providing a Portfolio Management Service, satisfies the following criteria:

(a) it meets the investment objectives of the Client in question, including the Client's risk tolerance and any sustainability preferences;
(b) it is such that the Client is able financially to bear any related investment risks consistent with his investment objectives;
(c) is such that the Client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

G.4.4.19 *Regulated Persons should be able to recommend suitable Financial Instruments to their Clients and should therefore be able to ask questions to identify a Client's individual sustainability preferences.*

In addition, Regulated Persons shall ensure, in accordance with the obligation to provide Products and Services in accordance with the best interest of Clients, that recommendations to the Client reflect both the financial objectives and any sustainability preferences expressed by that Client.

Therefore, the Regulated Person shall ensure that the inclusion of sustainability factors in the advisory process must not lead to mis-selling practices or to the misrepresentation of Financial Instruments or strategies as fulfilling sustainability preferences where in fact they do not. In order to avoid such practices or misrepresentations, the Regulated Person shall first assess the Client's other investment objectives, time horizon and individual circumstances, before asking for his or her potential sustainability preferences.

R.4.4.27 Where a Regulated Person provides a Service to a Professional Client, it shall be entitled to assume that, in relation to the Financial Instruments, transactions and Services for which it is so classified, the Client has the necessary level of experience and knowledge for the purposes of R. 4.4.39(c) above.

Where that Service consists in the provision of Advice to a Professional Client, the Regulated Person shall be entitled to assume for the purposes of point (b) of the above Rule that the Cient is able financially to bear any related investment risks consistent with the investment objectives of that Client.

R.4.4.28 When providing Advice or Portfolio Management, if a Regulated Person does not obtain the information required under R.4.4.19, the Regulated Person shall not recommend Services or Financial Instruments to the Client.

R.4.4.29 When providing the Services of Advice or Portfolio Management, a Regulated Person shall not recommend or decide to trade where none of the Services or Financial Instruments are suitable for the Client.

In order to prevent mis-selling and greenwashing:

(a) a Regulated Person shall not recommend Financial Instruments or decide to trade such Financial Instruments as meeting a Client's sustainability preferences when those Financial instruments do not meet those preferences. The Regulated Person shall explain to the Client the reasons for not doing so and keep records of those reasons.

(b) where no Financial Instrument meets the sustainability preferences of the Client, and the Client decides to adapt his or her sustainability preferences, the Regulated Person shall keep records of the decision of the Client, including the reasons for that decision.

G.4.4.20 *For the avoidance of doubt, with respect to R.4.4.29, it is to be noted that:*

(a) Financial Instruments that are not eligible for individual sustainability preferences can still be recommended by the Regulated Person, but not as Products meeting individual sustainability preferences;

(b) in order to allow for further recommendations to Clients, where Financial Instruments do not meet a Client's sustainability preferences, the Client is to have the possibility to decide whether to adapt information on his or her sustainability preferences, or not. However, in order to prevent mis-selling and greenwashing, the Regulated Person shall keep records of the Client's decision along with the Client's explanation supporting the said adaptation.

G.4.4.21 To enable Clients to understand the different degrees of sustainability and take informed investment decisions in terms of sustainability, the Regulated Person shall explain the distinction between:

(a) on the one hand, Financial Instruments that pursue (fully or in part): sustainable investments in economic activities that qualify as environmentally sustainable under the Taxonomy Regulation (Regulation (EU) 2020/852); sustainable investments as defined in Article 2, point (17), of the SFDR (Regulation (EU) 2019/2088) and/or Financial Instruments that consider principal adverse impacts on sustainability factors that might be eligible for recommendation as meeting individual sustainability preferences of Clients; and

(b) on the other hand, other Financial Instruments without those specific features (as referred to in paragraph (a) above) that should not be eligible for recommendation to Clients that have individual sustainability preferences.

Suitability Statement

R.4.4.30 A Regulated Person when providing Advice to a Retail Client shall, before the transaction is made, provide the Client with a suitability statement.

Provided that in the case of Regulated Persons which fall under point (i) and (ii) of the definition of 'Regulated Person' in the Glossary to these Rules, such Regulated Persons shall draw Retail Clients' attention to and shall include in the suitability report information on whether the recommended Services or Products are likely to require the Retail Client to seek a periodic review of their arrangements.

Contents of the Suitability Statement

R.4.4.31 The suitability statement shall, as a minimum:

(a) specify the Client's financial demands and needs;
(b) provide an outline of the Advice given; and
(c) explain why the Regulated Person has concluded that the recommended transaction is suitable for the Client, including how it meets: the Client's investment objectives; the Client's personal circumstances with

reference to the investment term required; the Client's knowledge and experience; the Client's attitude to risk and his or her capacity to sustain losses; and his or her sustainability preferences.

R.4.4.32 In the case of suitability statements relating to Financial Instruments, the Regulated Person should establish appropriate safeguards in order to ensure that the Client does not incur a loss as a result of the statements presenting an inaccurate or unfair presentation of the Personal Recommendation in the report presenting such Personal Recommendation. Such unfair or inaccurate presentation may relate, inter alia, to the manner in which the Personal Recommendation is indicated as suitable for the Client or to the disadvantages of the recommended course of action.

R.4.4.33 Where a Regulated Person provides a Service that involves periodic suitabilty assessements and reports, the subsequent reports after the initial Service is established may only cover changes in the Services or Financial Instruments invovled and/or the circmstnaces of the Client and may not need to repeat all the details of the first report.

R.4.4.34 A Regulated Person providing a periodic assessment of the suitability of the recommendations provided pursuant to R.4.4.30, R.4.4.31 and R.4.4.33 shall disclose all of the following:

(a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
(b) the extent to which the information preiviosusly collected will be subject to reassessment;
(c) the way in which an updated recommendation will be communicated to the Client.

R.4.4.35 Regulated Persons providing a periodic suitability assessment shall review, in order to enhance the Service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the Client and the type of Financial Instrument recommended. The requirements to meet the sustainability preferences of Clients, where relevant, shall not alter the conditions laid down above in this Rule.

Record Keeping Obligations for Suitability Assessments

R.4.4.36 A Regulated Person shall retain any records relating to suitability for a minimum period of, five years, unless requested by the MFSA to retain such records for longer periods.

R.4.4.37 The Regulated Person should retain copies of:

(a) all fact finds and any other documentation which has been used to arrive at the Personal Recommendation made to the Client;
(b) all suitability statements provided to Clients in terms of these Rules.
(c) any written Advice given to Clients; and
(d) Clients' Agreements.

R.4.4.38 Therefore a Regulated Person is required to record all relevant information about the suitability assessment, such as information about the Client (including how that information is used and interpreted to define the Client's risk profile), and information about Financial Instruments recommended to the Client or purchased on the Client's behalf, as well as the suitability report provided to Clients. Those records should include:

(a) any changes made by the Regulated Person regarding the suitability assessment, in particular any change to the Client's investment risk profile;
(b) the types of Financial Instruments that fit that profile and the rationale for such an assessment, as well as any changes and the reasons for them.

Appropriateness

R.4.4.39 When providing the Service other than Advice or Portfolio Management, a Regulated Person shall ask the Client to provide information regarding his knowledge and experience in the field relevant to the specific type of Financial Instrument or Service offered or demanded so as to enable the Regulated Person to assess whether the Service or Product envisaged is appropriate for the Client.

In carrying out this appropriateness assessment, the Regulated Person shall, when providing non-advised services, comply with all the applicable requirements contained in this Chapter 4, as well as with Appendix 6 to this Chapter which implements the ESMA Guidelines on certain aspects of the MIFID II appropriateness and execution requirements. The provisions of the said Appendix 6 shall apply as from 12 October 2022.

R.4.4.40 The Regulated Person shall ensure that where a bundle of Services or Financial Instruments is envisaged for the Client, the assessment shall consider whether the overall bundled package is appropriate.

Assessment of Appropriateness

R.4.4.41 Regulated Persons, shall determine whether that Client has the necessary experience and knowledge in order to understand the risks involved in relation to the Financial Instrument or Service offered or demanded when assessing whether a Service, other than Advice or Portfolio Management, is appropriate for a Client.

R.4.4.42 In case the Regulated Person considers, on the basis of the information received under R.4.4.39, that the Financial Instrument or Service is not appropriate to the Client, the Regulated Person shall warn the Client. This warning may be provided in a standardised format.

R.4.4.43 In cases where the Client elects not to provide the information referred to under R.4.4.39, or where he provides insufficient information, the Regulated Person shall warn the Client that such a decision will not allow the Regulated Person to determine whether the Service or Financial Instrument envisaged is appropriate for him. This warning may be provided in a standardised format.

G.4.4.22 *Although the warnings may be given in standardised format, they should not form an integral part of the document which the Regulated Person uses to test the Financial Instrument's appropriateness vis a vis the Client. They should be in separate documents which should only be provided to the Client in the circumstances envisaged by the above Rules.*

R.4.4.44 A Regulated Person shall be entitled to assume that a Professional Client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular Services or transactions, or types of transaction or Financial Instrument, for which the Client is classified as a Professional Client.

Exemption from the Appropriateness Assessment

R.4.4.45 Regulated Persons, providing Services consisting of execution or reception and transmission of Client orders with or without Ancillary services, excluding the granting of credits or loans that do not comprise of existing credit limits of loans, current accounts and overdraft facilities of Clients; may provide those Services to their Clients without the need to obtain the information or make the determination provided for in R.4.4.39 above where all the following conditions are met:

(a) the Services or activities provided relate to any of the following:

i. shares admitted to trading on a Regulated Market or on an equivalent third-country market or on a Multilateral trading facility, where those are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;
ii. bonds or other forms of securitised debt admitted to trading on a Regulated Market or on an equivalent third country market or on a Multilateral trading facility, excluding those that embed a derivative or incorporate a structure which makes it difficult for the Client to understand the risk involved;
iii. money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the Client to understand the risk involved;
iv. shares or units in UCITS, excluding structured UCITS as referred to in the second subparagraph of Article 36(1) or Commission Regulation (EU) 583/2010;
v. Structured Deposits, excluding those that incorporate a structure which makes it difficult for the Client to understand the risk of return or the cost of exiting the Product before term
vi. other non-complex Financial Instruments for the purposes of this Rule.

For the purpose of this Rule, if the requirements provided in Article 89 paragraphs (d) and (h) of the Companies Act are satisfied, a third-country market shall be considered to be equivalent to a Regulated Market:

(a) the Service is provided at the initiative of the Client;
(b) the Client has been clearly informed that in the provision of that Service, the Regulated Person is not required to assess the appropriateness of the Financial Instrument or Service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format;
(c) the Regulated Person complies with its obligations concerning conflicts of interest.

Debt Instruments Embedding a Derivative

R.4.4.46 For the purpose of points (ii) and (iii) of R.4.4.45(a), an embedded derivative should be interpreted as meaning a component of a debt instrument that causes some or all of the cash flows that otherwise would result from the instrument to be modified according to one or more defined variables.

Debt Instruments Incorporating a Structure Making it Difficult for the Client to Understand the Risk

R.4.4.47 For the purpose of points (ii) and (iii) of R.4.4.45(a), debt instruments incorporating a structure making it difficult to understand the risk should include inter alia any of the following:

(a) Debt instruments, the return of which is dependent on the performance of a defined asset pool. This category includes debt instruments the return or performance of which depends on the receivables either fixed or revolving generated by the assets in the underlying pool;
(b) Debt instruments, the return of which is subordinated to the reimbursement of debt held by others. This category includes debt instruments structured in such a way that in the event of default by the issuer, the senior debt holders have priority access to the assets of the issuer over the subordinated holders;
(c) Debt instruments where the issuer enjoys discretion to modify the cash flows of the instrument. This category includes debt instruments structured in such a way that the anticipated revenue stream or repayment of principal is dependent on variables set by the issuer at its discretion;
(d) Debt instruments lacking a specified redemption or maturity date. This category includes debt instruments structured in such a way that there is no specified maturity date and typically therefore no re-payment of the principal amount invested;
(e) Debt instruments having an unusual or unfamiliar underlying. This category includes debt instruments structured in such a way that the anticipated revenue stream or repayment of principal is dependent on variables which are unusual or unfamiliar for the average Retail Client;
(f) Debt instruments with complex mechanisms to determine or calculate the return. This category includes debt instruments structured in such a way that the anticipated revenue stream may vary frequently and/or

markedly at different points of time over the duration of the instrument either because certain pre-determined threshold conditions are met or because certain time-points are reached;

(g) Debt instruments structured in a way that may not provide for a full repayment of the principal amount. This category includes debt instruments presenting a structure or subject to a mechanism which, in certain circumstances, trigger a partial repayment (or no repayment) of the principal;

(h) Debt instruments issued by a special purpose vehicle (SPV) in circumstances in which the name of the debt instrument or the legal name of the SPV may mislead the investors as to the identity of the issuer or guarantor;

(i) Debt instruments with complex guarantee mechanisms. This category includes debt instruments guaranteed by a third party and structured in a way that makes it complex for the investor to assess accurately how the guarantee mechanism affects the risk exposure of the investment;

(j) Debt instruments with leverage features. This category includes debt instruments structured in such a way that the return or losses to the investor may occur at multiples to the initial investment.

Structured Deposits Incorporating A Structure Making It Difficult For The Client To Understand The Risk of Return

R.4.4.48 For the purpose of point (v) of R.4.4.45, a structure making it difficult for the Client to understand the risk of return exists where:

(a) more than one variable affects the return received; or

(b) the relationship between the return and relevant variable or the mechanism to determine or calculate the return is complex; or

(c) the variable involved in the calculation of the return is unusual or unfamiliar to the average Retail Client; or

(d) the contract gives the credit institution the unilateral right to terminate the agreement before maturity.

Structured Deposits Incorporating A Structure Making It Difficult For The Client To Understand The Cost Of Exiting Before Term

R.4.4.49 For the purpose of point (v) of R.4.4.45, a structure making it difficult for the Client to understand the cost of exiting the Product before term exists where the exit cost is:

(a) neither a fixed sum;

(b) nor a fixed sum for each month (or part thereof) remaining until the end of the agreed term;

(c) nor a fixed percentage of the amount deposited.

The table provided in Appendix 5 to this Chapter includes a non-exhaustive list of examples of debt instruments that embed a derivative or incorporate a structure which makes it difficult for the Client to understand the risk involved and complex structured deposits for the purposes of R.4.4.45 (a) (ii), (iii) and (iv).

Complex Products

R.4.4.50 Financial Instruments not referred to in R.4.4.45 above and which do not meet the specific requirements of any of the criteria in R.4.4.53 should be considered to be complex.

R.4.4.51 Financial Instruments referred to in R.4.4.45(a) points (i) to (v) which do not satisfy the criteria indicated therein shall be considered complex and therefore cannot be assessed against the criteria for the assessment of other non-complex Financial Instruments in accordance with R.4.4.53.

R.4.4.52 Before providing a Service to a Client with respect to a complex Financial Instrument, the Regulated Person shall consider whether that complex Financial Instrument is to be provided to such Client on an advisory or on a non-advisory basis (subject to an appropriateness test), and shall only provide Services to Clients on the basis of this consideration.

In effecting the above consideration, the Regulated Person shall, *inter alia*:

(a) ensure that its categorisation of these Clients is robust and regularly monitored and that it correctly reflects the status of each Client such that Retail Clients are not incorrectly categorised as Professional Clients;
(b) consider the possibility of conflicts of interest especially where the Regulated Person is the Issuer of the Financial Instrument or acts as a counterparty in the transaction, or is otherwise involved in the issue of the Financial Instrument. In this context the Regulated Person shall specifically assess whether incentives (i.e. Inducements/remuneration) are more lucrative for complex Financial Instruments than for those of more standard Financial Instruments.

G.4.4.23 *For the purposes of the above Rule, in considering whether a complex Financial Instrument should be provided to a Client on an advisory or on a non-advisory basis, the Regulated Person is also expected to take the following factors into account:*

(a) the level of complexity of the Financial Instrument in question;
(b) the categorisation of the Client as retail or professional;
(c) the level of sophistication of retail investors and any aspects of vulnerability which they may have.

Non-Complex Instruments

R.4.4.53 A Financial Instrument which is not specified in points (i) to (v) of R.4.4.45(a), shall be considered as non-complex if it satisfies the following criteria:

(a) it is not a derivative or other security giving the right to acquire or sell a transferable security or giving rise to a cash settlement determined by reference to transferable securities currencies, interest rates or yields, commodities or other indices or measures;
(b) there are frequent opportunities to dispose of, redeem, or otherwise realize that instrument at prices that are publicly available to market

participants and that are either market prices or prices made available, or validated, by valuation systems independent of the Issuer;

(c) it does not involve any actual or potential liability for the Client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile. This would include, investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit charges that have the effect of making the investment illiquid even though technically frequent opportunities to dispose or redeem it would be possible.

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average Retail Client to make an informed judgment as to whether to enter into a transaction in that instrument.

Provision of Services 'At the Initiative of the Client'

G.4.4.24 *A Service should be considered to be provided at the initiative of a Client unless the Client demands it in response to a personalised communication from or on behalf of the Regulated Person to that particular Client, which contains an invitation or is intended to influence the Client in respect of a specific Financial Instrument or transaction. A Service can be considered to be provided at the initiative of the Client notwithstanding that the Client demands it on the basis of any communication containing a promotion or offer of Financial Instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of Clients.*

G.4.4.25 *There are two tests as to when a transaction may be considered to be at the initiative of the Client. At least one of these tests needs to be satisfied for the Regulated Person to consider a Client to be requesting a Service on his/her own initiative.*

The two Tests:

Test A*: A Service may be considered to be provided at the initiative of the Client if it is demanded by the Client on the basis of any communication containing a promotion or offer of Insurance-based investment products, Financial Instruments made by any means that by its very nature is general and addressed to the public or larger group or category of Clients.*

Thus, this test depends on an evaluation of the MEDIUM of communication.

*What is a means of communication that by **ITS VERY NATURE** is general and addressed to the public or larger group or category of Clients?*

The test, here, is whether the medium of communication allows a wide audience. The following are examples of such means of communications which allow a wide audience:

(a) billboards

(b) newspaper adverts
(c) general website (i.e. websites not requiring a Client password for access).

*The following means of communications are excluded: letters, emails, test messages and telephone calls. These means of communications should only be subject to **Test B** below since **OF THEIR VERY NATURE**, they are not general and addressed to the public or larger group or category of Clients.*

***Test B**: A Service is **NOT** provided at the initiative of the Client (and therefore an appropriateness test is required) if the Client demands it in response to a communication **WHICH IS** a personalized communication **AND WHICH** contains an invitation or is intended to influence the Client in respect of a specific insurance-based investment Product, Financial Instrument or specific transaction.*

***NB:** This test has two limbs which shall **BOTH** be satisfied for a transaction **NOT** to be considered to be requested at the initiative of the Client.*

*Thus, in order to consider a Service to be provided "at the initiative of the Client", the Regulated Person shall show **EITHER** that:*

*(a) the communication was **NOT** personalized **OR THAT**;*

(b) such communication neither did contain an invitation, nor was it intended to influence the Client in respect of a specific Insurance-based investment product or Financial Instrument.

*G.4.4.26 The key determinant as to what constitutes a "personalized communication " should be the **likely perception of the Client upon receiving the communication** rather than the process that the Regulated Person has followed in deciding to make the communication to the Client. This means that:*

*(a) the evaluation should depend on the **CONTENT** of the communication. (a mass communication could still give the impression that it is a personalized communication).*
(b) the fact alone that the communication has been addressed to the recipient for the purposes of transmission does not make it a personalized communication.
*(c) if the **CONTENT** of the communication **GIVES THE IMPRESSION THAT IT IS NOT PERSONALIZED**, it should not matter that the firm has only sent it to a particular group of Clients (rather than to all its Clients base).*

G.4.4.27 The following guiding questions may be considered in this context:

(a) does the communication refer to the Client's personal circumstances (e.g. the Product is indicated as suitable for the Client to whom it is being addressed given his/ her capital growth objective)? This would personalize the communication.
(b) does the communication include details of the Client's existing holdings? This would personalize the communication.
(c) does the communication refer to characteristics of a target market/Client base in general (e,g, a letter with the heading "are you approaching the age

of retirement"?) This is less likely to make the communication personalized.

(d) is the content of the communication changed for each potential Client? If so, this is likely to make the communication personalized.

(e) if it is a personalized communication, does it contain an invitation or is it intended to influence a Client with reference to a specific Insurance-based investment product, Financial Instrument or transaction? A communication which is personalized but does not contain an invitation or is not intended to try and influence a Client about a specific Product, transaction or instrument, could still render any subsequent requests from the Client to be deemed to have been made 'at the initiative of the Client'.

G.4.4.28 When does a communication deemed to contain an "invitation" or to be intended to "influence the Client with reference to a specific Insurance-based investment product, Financial Instrument or transaction"?

An invitation may be defined as a "spoken or written request for someone's presence or participation".

(a) application Forms

An application form for the purchase of an instrument may be considered by the person receiving it as an invitation to actually purchase such instrument.

(b) buy/Sell Recommendations.

The inclusion of buy/sell recommendations with mailshots / emails, irrespective of whether such recommendations are of a general nature or not should be considered as intended to influence the Client with respect to a particular Product, instrument or transaction.

G.4.4.29 Regulated Persons should be guided by the following:

(a) mailshots, emails, text messages and telephone calls should only be subject to Test B since they fall out of the scope of Test A.

(b) the nature of a communication could be affected by how its contents are phrased.

(c) "Generic" marketing material (e.g. a flyer) may still be deemed to be part of a personalized communication if accompanied by a covering letter which clearly refers to the recipient's circumstances.

(d) the filtering of a mailing list (such that a communication is only sent to a portion of the Regulated Person's Clients), does not automatically make the communication personalized if this is not apparent to the recipient from the content of the communication.

(e) the inclusion of an application form and/or a general buy/sell recommendation with a mailshot or a flyer may be considered as an invitation to the Client to carry out a particular transaction with respect to a particular Financial Instrument. Moreover, the sending of such an application form with a mailshot may also be considered as influencing the Client's decision with respect to a particular transaction. However, whether a transaction on the basis of such communication would be considered to

be at the initiative of the Client would depend on whether it is obvious from the content of the mailshot that this has been personalized.

(f) a Client's use of an e-brokerage facility to conclude a transaction would normally fulfil the condition that there should be no personal communication.

(g) where there is a clear personal contact between the Client and a representative of the Regulated Person, it would be difficult to argue that the Service is provided at the initiative of the Client, especially when there is a previous approach (albeit for other Products) by the representative. However, this does not mean that in every case the representative will be providing a non-execution only Service. There may well be cases where there is a continuous Regulated Person-Client relationship, but the Service would still be at the initiative of the Client. If the representative can prove that although the Client was personally approached for another Financial Instrument , the Client finally bought another Financial Instrument without any intervention on the part of the representative, the Service could be considered as provided 'at the initiative of the Client'.

(h) the matrix in Appendix 1 to this Chapter aims to apply the above two tests to certain practices resorted to by Regulated Persons when communicating with Clients, with a view to providing guidance as to when such communications result in the provision of Services "at the initiative of the Client."

Record Keeping Obligations for Appropriateness Assessments

R.4.4.54 A Regulated Person shall maintain records of appropriateness assessments undertaken which shall include:

(a) the result of the appropriateness assessment;
(b) any warning given to the Client where the Services or Financial Instrument purchased was assessment as potentially inappropriate for the Client, whether the Client asked to proceed with the transaction despite the warning and, if applicable, whether the Regulated Person accepted the Client's request to proceed with the transaction;
(c) any warning given to the Client where the latter did not provide sufficient information to enable the Regulated Person to undertake an appropriateness assessment, whether the Client asked to proceed with the transaction despite this warning and where applicable, whether the Regulated Person accepted the Client's decision to proceed with the transaction.

Provisions Common to the Assessment of Suitability and Appropriateness

R.4.4.55 Regulated Persons shall ensure that the information regarding the Client's knowledge and experience in the investment field includes, the following, to the extent appropriate to the natureof the Client, the nature and extent of the Service to be provided and to the type of Financial Instrument or transaction envisaged, includng thiercomplexity and risks involved:

(a) the type of Service, or Financial Instrument with which the Client is familiar;

(b) the nature, volume, frequency of the Client's transactions in the relevant Financial Instrument and the period over which they have been carried out; and
(c) the level of education, profession or relevant former profession of the Client.

R.4.4.56 A Regulated Person shall not discourage a Client from providing information required for the purposes of R.4.4.19 or R.4.4.39.

R.4.4.57 A Regulated Person shall be entitled to rely on the information provided by its Clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

R.4.4.58 In cases where a Regulated Person is offering a Service as part of a Financial Instrument which is already subject to other provisions of Community legislation or common European standards related to credit institutions and consumer credits with respect to risk assessment of Clients and/or information requirements, this Service shall not be additionally subject to the obligations set out in this Chapter.

Suitability and Appropriateness Assessment Tools/Questionnaires

R.4.4.59 A Regulated Person assessing a Client's knowledge and experience with respect to a Financial Instrument, shall ensure that:

(a) the Client understands the particular features of the Financial Instrument, especially in the case of complex Financial Instruments. This should entail clear answers from specific questions presented to the Client about the Financial Instrument features in order to confirm that the Client is effectively aware of the features and risks of the Financial Instrument in question.
(b) the paperwork used for the testing of knowledge and experience should clearly indicate the Service being provided to the Client and in the context of which the test is being carried out. Where an assessment of a Client's knowledge and experience is carried out in the context of a Service other than Advice and/or Portfolio Management, the Regulated Person shall undertake and declare that in providing these Services it has not provided Personal Recommendations to the Client vis-à-vis the Financial Instrument under consideration. This document should be signed by both the Client and the Licence Holder.
(c) in the case of Retail Clients, Regulated Persons shall provide the documentation used to assess the appropriateness or suitability of a Financial Instrument also in the language agreed between the Client and the Regulated Person.

G.4.4.30 A 'tick-box' approach should not be used either to collect Client information or to assess suitability or appropriateness. Suitability and Appropriateness is not about collecting irrelevant information but such information as is necessary to achieve the intended outcome, which, in the case of the provision of Advice, is a suitable recommendation.

G.4.4.31 *An appropriateness test should be particularly rigorous if a Regulated Person is offering more complex Financial Instruments to less experienced Clients who may be less likely to understand the risks.*

G.4.4.32 *When using questionnaires to obtain information from Clients, the Regulated Person should not use questions that are not clearly worded, or where the content is unlikely to be understood, since these can result in a Client not giving answers that accurately reflect the risk they are willing and able to take.*

G.4.4.33 *The possibility of Clients misunderstanding the questions they are being asked could be exacerbated if the questions:*

(a) *are vague, use double negatives or complex language that the Client may not understand;*
(b) *are not suitable for use with the Regulated Person's Client base, for example because they assume the Client has particular knowledge or experience such as a good level of financial knowledge or mathematical ability, and that the Client is comfortable in applying it; or*
(c) *are structured in a way that could invite different answers - for example, because they ask two questions in one and the Client might want to record a different answer to each sub-question.*

G.4.4.34 *The number of questions Regulated Persons ask their Clients can vary significantly. The fewer the questions – coupled with a possibility of misinterpreting an answer – the greater the probability is of making an inaccurate assessment.*

G.4.4.35 *The resulting risk category may be effectively determined by the answer to one question. Where such sensitivity is built into a Regulated Person's approach, the Regulated Person needs to be aware of the reliance being placed on each answer and the risks associated with doing so. The Regulated Person should take particular care to ensure that a Client understands each question and that the answers they give are an accurate reflection of their views.*

G.4.4.36 *Some questionnaires may invite a Client to select the option with which they most agree with. Options that are vague could be interpreted by Clients and Regulated Persons in different ways leading to poor outcomes.*

G.4.4.37 *A Regulated Person should not use a set of questions where a number of the questions asked have the option to answer 'neither yes or no' because a middle weighting may be attributed to these answers, and a Client that chooses this answer for all or some of these questions, could be assessed as having a risk profile in the middle of the scale of risk categories. This could result in an inaccurate assessment of the risk the Client is willing to take where the Client's answer reflects a 'non-answer' rather than a willingness to take the level of risk attributed.*

G.4.4.38 *Part of the skill of an adviser or discretionary manager is considering and evaluating different pieces of information to form a recommendation for the Client. It involves weighing up the advantages and disadvantages of alternative*

solutions by making trade-off decisions that best meet a Client's investment objectives and reflect their financial situation.

G.4.4.39 *By bundling information on different factors together, the value of each distinct piece of information is potentially lost because arbitrary weightings are applied to different factors which may negate a preference or need. This can result in output that does not accurately reflect the trade-off decisions that a Client is willing or able to take. If such an approach is used, the tool, or wider suitability assessment process, needs to be capable of accounting adequately for each of the different pieces of information.*

G.4.4.40 *In other words, a Regulated Person needs to be able to demonstrate how any recommendation or transaction is suitable for a particular Client given each of the constituent parts of the suitability assessment.*

G.4.4.41 *Establishing risk categories with relatively broad definitions supported by brief sub-sections within each definition that in combination aided understanding. This may include:*

(a) a short summary description that is fair and balanced;
(b) bullet points that provide more detail of the risk of capital loss and the nature of typical investments in each category; and
(c) a simple chart showing the 'shape' and variability of annual returns over a period that helps the Client to understand that they need to be comfortable to accept the gains and losses associated with a particular level of risk.

The above is considered as a good practice because it attempts to explain the risk in a number of different ways. It may include text and a visual representation, different elements of which might engage different Clients. The chart may include hypothetical returns illustrative of the level of risk described.

Provision of Investment Services through the Medium of another Regulated Person which fall under point (i) of the Definition of 'Regulated Person' in the Glossary to these Rules or of Another European Investment firm

R.4.4.60 A Regulated Person receiving an instruction to perform Ancillary services on behalf of a Client through the medium of another Regulated Person or European Investment Firm to rely on Client information transmitted by the latter Regulated Person or European Investment Firm. The Regulated Person or the European Investment Firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

G.4.4.42 *Conditions which apply for the reliance on others provisions to apply:*

(a) the third party shall provide the Regulated Person with an instruction to perform investment or Ancillary Services;
(b) the third party shall be a Regulated Person or a European Investment Firm;
(c) the third party who provides the instructions shall be some-body other than the Regulated Person's Client.

R.4.4.61 A Regulated Person which receives an instruction to undertake Services on behalf of a Client through the medium of another Regulated Person or European Investment Firm, shall also be able to rely on any recommendations in respect of the Service or transaction that have been provided to the Client by such other Regulated Person or European Investment Firms. Where the Regulated Person mediates the instructions, it will remain responsible for the appropriateness for the Client of the recommendations or Advice provided.

R.4.4.62 A Regulated Person which receives Client instructions or orders through the medium of another Regulated Person or European Investment Firm shall remain responsible for concluding the Service or transaction, based on any such information or recommendations.

Part B: Rules Applicable Regulated Persons which fall under Points (iii) and (iv) of the Definition of 'Regulated Person' in the Glossary to these Rules

R.4.4.63 For the purposes of this Part, the term Regulated Person shall mean a person which under points (iii) and (iv) of the definition of 'Regulated Person' in the Glossary to these Rules.

Provided that the information referred to in R.4.4.64 and R.4.4.66 need not be provided when the Regulated Person provides distribution activities in relation to the insurance of Large risks.

Assessment of Demands and Needs

R.4.4.64 Prior to the conclusion of an Insurance contract, the Regulated Person shall specify, on the basis of information obtained from the Client, the demands and the needs of that Client and shall provide the Client with objective information about the Product in a comprehensible form to allow that Client to make an informed decision. Any Product proposed shall be consistent with the Client's demands and needs.

R.4.4.65 Where Advice is provided prior to the conclusion of any specific contract, the Regulated Person shall provide the Client with a Personalised Recommendation explaining why a particular Product would best meet the Client's demands and needs.

R.4.4.66 The details referred to in R.4.4.64 and R.4.4.65 shall be modulated according to the complexity of the insurance Product being proposed and the type of Client.

Assessment of Suitability

R.4.4.67 Without prejudice to R.4.4.64 and R.4.4.65 when providing Advice on an Insurance-based investment product, the Regulated Person shall also obtain the necessary information regarding:

(a) the Client's knowledge and experience in the investment field relevant to the specific type of Product or Service;
(b) that Client's financial situation including that Client's ability to bear losses; and

(c) that Client's investment objectives, including that Client's risk tolerance,

so as to enable the Regulated Person to recommend to the Client the Insurance-based investment products that are suitable for that Client and that, in particular, are in accordance with that Client's risk tolerance and ability to bear losses.

The Regulated Person may refer to the decision tree provided in Section 1 of Appendix 4 which relates to an advised sale of Insurance-based investment product with a suitability statement.

G.4.4.43 *In the case of existing Clients for whom a suitability assessment has already been undertaken, the Regulated Person shall have the possibility to identify the Client's individual sustainability preferences at the next regular update of the existing suitability assessment.*

R.4.4.68 Where a Regulated Person provides investment advice recommending a package of bundled Services or Products, the overall bundled package suitable.

R.4.4.69 For the purposes of providing Advice on an Insurance-based investment product in accordance with R.4.4.68, Regulated Persons shall determine the extent of the information to be collected from the Client in the light of all the features of the Advice to be provided to the Client.

R.4.4.70 Without prejudice to the fact, that, in accordance with R.4.4.64 and R.4.4.65 any contract proposed shall be consistent with the Client's demands and needs, Regulated Persons shall obtain from Clients such information as is necessary for them to understand the essential facts about the Client and to have a reasonable basis for determining that their Personal Recommendation to the Client satisfies all of the following criteria:

(a) it meets the investment objectives of the Client in question, including that Client's risk tolerance and any sustainability preferences;
(b) it meets the Client's financial situation, including that Client's ability to bear losses;
(c) it is such that the Client has the necessary knowledge and experience in the investment field relevant to the specific type of Product or Service.

G.4.4.44 *Regulated Persons should be able to recommend suitable insurance-based investment products to their Clients and should therefore be able to ask questions to identify a Client's individual sustainability preferences.*

In addition, Regulated Persons shall ensure, in accordance with the obligation to carry out distribution activities in accordance with the best interest of Clients, that recommendations to the Client reflect both the financial objectives and any sustainability preferences expressed by that Client.

Therefore, the Regulated Person shall ensure that the inclusion of sustainability factors in the advisory process must not lead to mis-selling practices or to the misrepresentation of Insurance-based investment products as fulfilling sustainability preferences where in fact they do not. In order to avoid such

practices or misrepresentations, the Regulated Person shall first assess the Client's other investment objectives and individual circumstances, before asking for his or her potential sustainability preferences.

R.4.4.71 The information regarding the financial situation of the Client, including that Client's ability to bear loses, shall include, where relevant, information on the source and extent of the Client's regular income, assets, including liquid assets, investments and real property and the regular financial commitments. The level of information gathered shall be appropriate to the specific type of Product or Service being considered.

R.4.4.72 The information regarding the investment objectives of the Client, including that Client's risk tolerance, shall include, where relevant, information on the length of time of which the Client wishes to hold the investment, his or her preferences regarding risk taking, the risk profile, and the purposes of the investment, and in addition, his or her sustainability preferences. The level of information gathered shall be appropriate to the specific type of Product or Service being considered.

R.4.4.73 Where the Regulated Person does not obtain the information required under R.4.4.67 the Regulated Person shall not provide Advice on Insurance-based investment products to the Client.

R.4.4.74 When providing Advice on an Insurance-based investment product in accordance with R.4.4.67, a Regulated Person shall not make a recommendation where none of the Products are suitable for the Client.

In order to prevent mis-selling and greenwashing:

(a) a Regulated Person shall not recommend Insurance-based investment products as meeting a Client's sustainability preferences where those insurance-based investment products do not meet those preferences. The Regulated Person shall explain to the Client the reasons for not doing so and keep records of those reasons.

(b) where no Insurance-based investment product meets the sustainability preferences of the Client, and the Client decides to adapt his or her sustainability preferences, the Regulated Person shall keep records of the decision of the Clients, including the reasons for that decision.

G.4.4.45 For the avoidance of doubt, with respect to R.4.4.74, it is to be noted that:

(a) Insurance-based investment products that are not eligible for individual sustainability preferences can still be recommended by the Regulated Person, but not as Products meeting individual sustainability preferences;

(b) in order to allow for further recommendations to Clients, where Insurance-based investment products do not meet a Client's sustainability preferences, the Client is to have the possibility to

decide whether to adapt information on his or her sustainability preferences, or not. However, in order to prevent mis-selling and greenwashing, the Regulated Person shall keep records of the Client's decision along with the Client's explanation supporting the said adaptation.

G.4.4.46 *To enable Clients to understand the different degrees of sustainability and take informed investment decisions in terms of sustainability, the Regulated Person shall, when distributing Insurance-based investment products, explain the distinction between:*

(a) *on the one hand, Insurance-based investment products that pursue (fully or in part): sustainable investments in economic activities that qualify as environmentally sustainable under the Taxonomy Regulation (Regulation (EU) 2020/852); sustainable investments as defined in Article 2(17) of the SFDR (Regulation (EU) 2019/2088) and/or Insurance-based investment products that consider principal adverse impacts on sustainability factors that might be eligible for recommendation as meeting individual sustainability preferences of Clients; and*

(b) *on the other hand, other Insurance-based investment products without those specific features (as referred to in paragraph (a) above) that should not be eligible for recommendation to Clients that have individual sustainability preferences.*

R.4.4.75 When providing Advice that involves switching between underlying investment assets, Regulated Persons shall also collect the necessary information on the Client's existing underlying investment assets and the recommended new investment assets and shall undertake an analysis of the expected costs and benefits of the switch, such that they are reasonably ale to demonstrate that the benefits of switching are expected to be greater than the costs.

Reliability of Information

R.4.4.76 Regulated Persons shall take reasonable steps to ensure that the information collected about Clients for the purposes of the assessment of suitability is reliable. Such steps shall include, but shall not be limited to, the following:

(a) ensuring that Clients are aware of the importance of providing accurate and up to date information;
(b) ensuring that all tools, such as risk assessment profiling tools or tools to assess a Client's knowledge and experience, employed in the suitability assessment process are fit for purpose and are appropriately designed for use with their Clients, with any limitations identified and actively mitigated through the suitability assessment process;
(c) ensuring that questions used in the process are likely to be understood by the Clients and to capture an accurate reflection of the Client's objectives and needs and the information necessary to undertake the suitability assessment;
(d) taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the Client.

Communication with Clients regarding Assessment of Suitability

R.4.4.77 Regulated Persons shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of Insurance- based investment products in accordance with R.4.4.67. Regulated Persons shall inform Clients, clearly and simply, that the reason for assessing suitability is to enable them to act in the Client's best interest.

Group Insurance

R.4.4.78 With regard to group insurance the Regulated Person shall establish and implement a policy as to who shall be subject to the suitability assessment in case an Insurance contract is concluded on behalf of a group of members and each individual member cannot take an individual decision to join. Such a policy shall also contain rules on how that assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives shall be collected.

Suitability Statement

R.4.4.79 When providing Advice on an Insurance-based investment product, the Regulated Person shall, prior to the conclusion of the contract, provide the Client with a suitability statement on a Durable Medium specifying the Advice given and how that Advice meets the preferences, objectives and other characteristics of the Client. The conditions set out in R.1.1.2 to R.1.1.6 apply.

R.4.4.80 Where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the Regulated person may provide the suitability statement on a Durable medium immediately after the Client is bound by any contract, provided that both of the following conditions are met:

(a) the Client has consented to receiving the suitability statement without undue delay after the conclusion of the contract; and
(b) the Regulated Person has given the Client the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

R.4.4.81 When providing Advice on the suitability of an Insurance-based investment product in accordance with R.4.4.67, the Regulated Person shall provide a statement to the Client (suitability statement) that includes the following:

(a) an outline of the Advice given;
(b) information on how the recommendation provided is suitable for the Client, in particular how it meets:

i. the Client's investment objectives, including that Client's risk tolerance, and whether the Client's investment objectives are achieved by taking into account his or her sustainability preferences;
ii. the Client's financial situation, including that Client's ability to bear losses;
iii. the Client's knowledge and experience.

R.4.4.82 Regulated Persons shall draw Clients' attention to, and shall include in the suitability statement, information on whether the recommended Insurance-based investment products are likely to require the Client to seek a periodic review of their arrangements.

R.4.4.83 Where the Regulated Person has informed the Client that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the Insurance-based investment product meets the Client's preferences, objectives and other characteristics of the Client.

R.4.4.84 Where a Regulated Person has informed the Client that it will carry out a periodic assessment of suitability the subsequent statements after the initial Service is established may be limited to changes in the Services or underlying investment asserts, and/or the circumstances of the Client without repeating all the details contained in the first statement.

R.4.4.85 Regulated Persons providing a periodic assessment of suitability shall review, in accordance with the best interest of their customers, the suitability of the recommended Insurance-based investment products at least annually. The frequency of this assessment shall be increased depending on the characteristics of the Client, such as the risk tolerance, and the nature of the recommended Insurance-based investment product. The requirements to meet the sustainability preferences of Clients, where relevant, shall not alter the conditions outlined above in this Rule.

Assessment of Appropriateness

R.4.4.86 Without prejudice to R.4.4.64 a Regulated Person, when providing Services other than those referred to in R.4.4.67, in relation to sales where no Advice is given, asks the Client to provide information regarding that Client's knowledge and experience in the investment field relevant to the specific type of Product or Service offered or demanded so as to enable the Regulated Person to assess whether the Insurance-based investment product envisaged is appropriate for the Client. Where a bundle of Services or Products is envisaged, the assessment shall consider whether the overall bundled package is appropriate.

For the purposes of carrying out an appropriateness assessment, the Regulated Person may refer to the decision tree provided in Section 2 of Appendix 4 which relates to non-advised sale of Insurance-based investment product with an appropriateness assessment.

R.4.4.87 Without prejudice to the fact that in accordance with R.4.4.64 any contract proposed shall be consistent with the Client's demands and needs, Regulated Persons shall determine whether the Client has the necessary knowledge and experience in order to understand the risks involved in relation to the Service or Product proposed or demanded when assessing whether a Service or Product distributed in accordance with R.4.4.86 is appropriate for the Client.

R.4.4.88 Where the Regulated Person considers, on the basis of the information received under R.4.4.87, that the Product is not appropriate for the Client, the Regulated Person shall warn the Client to that effect. That warning may be provided in a standardised format.

R.4.4.89 Where Clients do not provide the information referred to in R.4.4.86, or where they provide insufficient information regarding their knowledge and experience, the Regulated Person shall warn them that it is not in a position to determine whether the Product envisaged is appropriate for them. This warning may be provided in a standardised format.

R.4.4.90 Without prejudice to R.4.4.64, a Regulated Person may provide Services in relation to an Insurance-based investment product without the need to obtain the information or make the determination provided for in R.4.4.86 where all the following conditions are met:

(a) the Services of the Regulated Person relate to either of the following Insurance-based investment products;
   i. Contracts which only provide investment exposure to the Financial Instruments deemed non-complex under R.4.4.53 and do not incorporate a structure which makes it difficult for the Client to understand;
   ii. Other non-complex Insurance Based Investments for the purpose of this paragraph;
(b) the Service is carried out at the initiative of the Client;
(c) the Client has been clearly informed that, in the provision the Services, the Regulated Person is not required to assess the appropriateness of the Insurance-based investment product or the Service provided or offered and that the Client does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format.
(d) the Regulated Person complies with its obligations under R.3.6 and R.3.14.

All Regulated Persons operating under the freedom to provide services or the freedom of establishment, when concluding Insurance contracts with Clients having their habitual residence or establishment in a Member State or EEA State which does not allow a derogation from the assessment of appropriateness in terms of this Rule, shall comply with all the applicable provisions in that Member State or EEA State.

Rules Applicable to Contracts which only provide Investment Exposure to Financial Instruments Deemed Non-Complex

R.4.4.91 For the purposes of R.4.4.90(a)(i), R.4.4.92 to R.4.4.98 shall apply to contracts which only provide Investment exposure to Financial Instruments deemed non-complex under R.4.4.53 and do not incorporate a structure which makes it difficult for the Client to understand.

Investment Exposure

R.4.4.92 The Regulated Person shall ensure that the Insurance-based investment product only provides investment exposure to the Financial Instruments deemed non-complex in terms of R.4.4.105. Such non-complex Financial Instruments include only the following instruments:
(a) those identified in R.4.4.45(a);
(b) those satisfying the criteria in R.4.4.53;

(c) those deemed to be complex in accordance with the requirements of R.4.4.46 to R.4.4.49.

Contractual Features concerning Changes to the Nature of the Contract and the Ability to Surrender the Insurance-Based Investment Product

R.4.4.93 Where the contract contains any of the following features, the Regulated Person shall deem it as incorporating a structure which makes it difficult to understand the risks involved:

(a) it incorporates a clause, condition or trigger that allows the Regulated Person to materially alter the nature, risk or pay out profile of the Insurance-based investment product;
(b) there are no options to surrender or otherwise realise the Insurance-based investment product at a value that is available to the Client;
(c) there are explicit or implicit charges which have the effect that, even though there are, technically, options to surrender the Insurance-based investment product, doing so may cause unreasonable detriment to the Client, because the charges are disproportionate to the cost to the Insurance undertaking of the surrender.

Contractual Features Concerning the Determination of the Maturity or Surrender Value or Pay Out Upon Death

R.4.4.94 The Regulated Person shall assess the effects of the mechanisms that determine the maturity or surrender value or pay out upon death and whether these make it difficult for the Client to understand the risks involved, unless these mechanisms are based directly on local laws aimed specifically at safeguarding the interests of Clients.

R.4.4.95 As part of the assessment, where the contract contains any of the following features, the Regulated Person shall deem it as incorporating a structure which makes it difficult for the Client to understand the risks involved:

(a) the maturity or surrender value or pay out upon death is dependent on variables set by the Regulated Person, the effects of which are difficult for the Client to understand;
(c) the maturity or surrender value or pay out upon death is based on different types of investment exposures or strategies the combined effect of which are difficult for the Client to understand;
(d) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached. This does not include changes in the maturity or surrender value or pay out upon death due to the payment of discretionary bonuses;
(e) there is guaranteed maturity or surrender value or pay out upon death that is subject to conditions or time limitations the effects of which are difficult for the Client to understand. This does not include changes in the guaranteed maturity or surrender value or pay out upon death due to the payment of discretionary bonuses.

Contractual Features Concerning the Costs

R.4.4.96 As part of the assessment of whether the contract incorporates a structure which makes it difficult for the Client to understand the risks involved, the Regulated Person shall assess whether the costs are not likely to be readily understood by the Client, in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.

R.4.4.97 Where the costs are based directly on national laws aimed specifically at safeguarding the interests of Clients, they shall not be deemed as incorporating a structure which makes it difficult for the Client to understand the risks involved.

Contractual Features Concerning the Beneficiary of the Insurance Contract

R.4.4.98 Where there are contractual provisions allowing the Client to use a non-standard wording to define the person receiving the benefits at the end of the contractual relationship (beneficiary clause) which can lead to difficulties to identify the beneficiary and may result in difficulties for the beneficiary to effectively receive the pay out when the policyholder dies, the Regulated Person shall deem it as incorporating a structure which makes it difficult for the Client to understand the risks involved.

Rules Applicable to 'Other Non-Complex Insurance-Based Investment Products'

R.4.4.99 For the purposes of R.4.4.90(a)(ii), R.4.4.100 to R.4.4.104 shall apply to other non-complex Insurance-based investment products.

Contractual Features Concerning the Determination of the Maturity or Surrender Value or Pay Out Upon Death

R.4.4.100 The Regulated Person shall assess the effects of the mechanisms that determine the maturity or surrender value or pay out upon death and whether these make it difficult for the Client to understand the risks involved, unless these mechanisms are based directly on local laws aimed specifically at safeguarding the interests of Clients.

R.4.4.101 As part of the assessment, where the contract contains any of the following features, the Regulated Person shall deem it as incorporating a structure which makes it difficult for the Client to understand the risks involved:

(a) the maturity or surrender value or pay out upon death is dependent on variables set by the Regulated Person, the effects of which are difficult for the Client to understand;
(b) the maturity or surrender value or pay out upon death is based on different types of investment exposures or strategies the combined effect of which are difficult for the Client to understand;
(c) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached. This does not include changes in the maturity or surrender value or pay out upon death due to the payment of discretionary bonuses;

(d) there is guaranteed maturity or surrender value or pay out upon death that is subject to conditions or time limitations the effects of which are difficult for the Client to understand. This does not include changes in the guaranteed maturity or surrender value or pay out upon death due to the payment of discretionary bonuses.

Contractual Features Concerning the Costs

R.4.4.102 As part of the assessment of whether the contract incorporates a structure which makes it difficult for the Client to understand the risks involved, the Regulated Person shall assess whether the costs are not likely to be readily understood by the Client, in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.

R.4.4.103 Where the costs are based directly on national laws aimed specifically at safeguarding the interests of Clients, they shall not be deemed as incorporating a structure which makes it difficult for the Client to understand the risks involved.

Contractual Features Concerning the Beneficiary of the Insurance Contract

R.4.4.104 Where there are contractual provisions allowing the Client to use a non-standard wording to define the person receiving the benefits at the end of the contractual relationship (beneficiary clause) which can lead to difficulties to identify the beneficiary and may result in difficulties for the beneficiary to effectively receive the pay out when the policyholder dies, the Regulated Person shall deem it as incorporating a structure which makes it difficult for the Client to understand the risks involved.

Non-Complex Insurance- Based Investment Products

R.4.4.105 An Insurance-based investment product shall be considered as non-complex for the purposes of R.4.4.90(a)(ii) where it satisfies all of the following criteria:

(a) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the Client after deduction of legitimate costs;
(b) it does not incorporate a clause, condition or trigger that allows the Regulated Person to materially alter the nature, risk, or pay-out profile of the Insurance-based investment product;
(c) it provides options to surrender or otherwise realise the Insurance-based investment product at a value that is available to the Client;
(d) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender o otherwise realise the Insurance-based investment product, doing so may cause unreasonable detriment to the Client because the charges are disproportionate to the cost to the Regulated Person;
(e) it does not in any other way incorporate a structure which makes it difficult for the Client to understand the risks involved.

Rules Common to the Assessment of Suitability and Appropriateness

R.4.4.106 For the purposes R.4.4.67 and R.4.4.86, the necessary information to be obtained by Regulated Persons with regard to the Client's knowledge and

experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the Client, and the nature and type of Product or Service offered or demanded, including their complexity and the risks involved:

(a) the types of Service, transaction, Insurance-based investment product or Financial Instrument with which the Client is familiar;
(b) the nature, number, value and frequency of the Client's transactions in Insurance-based investment products or Financial Instruments and the period over which they have been carried out;
(c) the level of education, and profession or relevant former profession of the Client.

R.4.4.107 The Regulated Person shall not discourage a Client from providing information required for the purposes of R.4.4.86.

R.4.4.108 Where the information required for the purposes of R.4.4.64 and R.4.4.86 has already been obtained pursuant to R.4.4.64, the Regulated Person shall not request it anew from the Client.

R.4.4.109 The Regulated Person shall be entitled to rely on the information provided by its Clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Reporting Requirements

R.4.4.110 The Regulated Person shall provide the Client with adequate reports on the Service provided in a Durable Medium. Those reports shall include periodic communication to Clients, taking into account the type and the complexity of the Insurance-based investment products involved and the nature of the Service Provided to the Client and shall include, where applicable, the costs associated with the transactions and Services undertaken on behalf of the Client. This report shall be provided at least annually.

R.4.4.111 Without prejudice Article 185 of Directive 2009/138/EC (the Solvency II Directive) the Regulated Person shall provide the Client with a periodic report, on a Durable Medium, of the Services provided to and transactions undertaken on behalf of the Client.

R.4.4.112 The periodic report referred to in R.4.4.111_shall provide a fair and balanced review of the Services provided to and transactions undertaken on behalf of that Client during the reporting period and shall include, where relevant the total costs associated with these Services and transactions and the value of each underlying investment asset.

Retention of Records

R.4.4.113 Without prejudice to the application or Regulation (EU) 2016/679 and of the council, Regulated Persons shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with R.4.4.67 and R.4.4.86. The records shall include the information obtained from the Client and any documents agreed with the Client, including documents that set out the rights of the parties and the other terms on which the Regulated Person will

provide Services to the Client. Such records shall be retained for at least the duration of the relationship between the Regulated Person and the Client.

R.4.4.114 In the case of an assessment of suitability undertaken in accordance with R.4.4.67 above, the record shall further include the following:

(a) the result of the suitability assessment;
(b) the recommendation made to the Client and the statement provided in accordance with R.4.4.64;
(c) any changes made by the Regulated Person with regard to the suitability assessment in particular any change to the Client's risk tolerance;
(d) any changes to the underlying investment assets.

R.4.4.115 In the case of an assessment of appropriateness undertaken in accordance with R.4.4.86, the record shall further include the following:

(a) the result of the appropriateness test;
(b) any warning given to the Client where the Insurance- based investment product was assessed as potentially inappropriate for the Client, whether the Client asked to proceed with concluding the contract despite the warning and, where applicable, whether the Regulated Person accepted the Client's request to proceed with concluding the contract;
(c) any warning given to the Client where the Client did not provide sufficient information to enable the Regulated Person to assess the appropriateness of the Insurance- based investment product, whether the Client sked to proceed with concluding the contract despite the warning and, where applicable, whether the Regulated Person accepted the Client's request to proceed with concluding the contract.

R.4.4.116 The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA. The MFSA shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

Section 5: Contractual Arrangements with Clients

Application

R.4.5.1 The Rules and the relative Guidance set out under Part A are applicable to all Regulated Persons.

R.4.5.2 The Rules and the relative Guidance set out under Part B are applicable to persons which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.5.3 The Rules and the relative Guidance set out under Part C are applicable to persons which fall under point (iii) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.5.4 The Rules set out under Part D are applicable to persons which fall under points (i), (ii),(v) of the definition of 'Regulated Person' in the Glossary to these Rules and to UCITS Management Companies.

R. 4.5.4 The provisions of this Section are without prejudice to any rights which may be available to professional and Retail Clients under the Consumer Affairs Act (Cap. 378).

Part A: ***General Rules***

R.4.5.6 For the purposes of this Part the term "Regulated Person" shall refer to all Regulated Persons as defined in the Glossary to these Rules, except as otherwise indicated.

R.4.5.7 A Regulated Person shall ensure that the terms of any contract or agreement entered into with a Client for the provision of a Service or Product, are fair, clear and not misleading.

R.4.5.8 A Regulated Person shall establish a record that includes the document or documents agreed between the Regulated Person and the Client that set out the essential rights and obligations of the parties, and the other terms on which the Regulated Person will provide Services to the Client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

R.4.5.9 The Regulated Person shall not, in any communication or agreement with a Client (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:

(a) any legal liability or duty of care to a Client which it has under applicable law or under these Rules;
(b) any other duty to act with skill, care and diligence which is owed to a Client in connection with the provision to that Client of a Product or Service; or
(c) any liability owed to a Client for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a Product or Service.

Part B: ***Rules Applicable to Persons which fall under Points (i), (ii) and (v) of the Definition of 'Regulated Person' in the Glossary to these Rules***

R.4.5.10 For the purposes of this Part, the term Regulated Person shall mean a person which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.5.11 Regulated Persons providing any investment Service or the service relating to safekeeping and administration of Financial instruments for the account of Clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier to a Client after the date of the coming into force of this Rulebook shall enter into a written basic agreement with the Client, in paper or another Durable medium setting out the essential rights and obligations of the Regulated Person and the Client. Regulated Persons providing Advice shall comply with this

obligation only where a periodic assessment of the suitability of the Financial Instruments or Services recommended is performed.

The written agreement shall set out the essential rights and obligations of the parties, and shall include the following:

(a) a description of the Services, and where relevant the nature and extent of any Advice services to be provided;
(b) in case of Portfolio Management services, the types of Products that may be purchased and sold and the types of transactions that may be undertaken on behalf of the Client, as well as any Products or transactions prohibited; and
(c) a description of the main features of any of the Services to be provided relating to safekeeping and administration of Financial instruments for the account of Clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier, including where applicable the role of the Regulated Person with respect to corporate actions relating to Client Financial instruments and the terms on which securities financing transactions involving Client securities will generate a return for the Client.

The provisions of this Rule shall apply to Regulated Persons who offer the services referred to in this Rule to Professional Clients.

Part C: ***Rules Applicable to Persons which fall under Point (iii) of the Definition of 'Regulated Person' in the Glossary to these Rules***

R.4.5.12 For the purposes of this Part, the term "Regulated Person" shall mean a person which falls under point (iii) of the definition of 'Regulated Person' in the Glossary to these Rules.

R.4.5.13 A Regulated Person entering into an Insurance contract shall ensure that such contract is made in a Durable medium.

R.4.5.14 A Regulated Person entering into a Life insurance contract shall ensure that it complies with the requirements set out in Title XI A of the Civil Code (Cap. 16) in relation to Life insurance contracts, in addition to any other applicable legislation and rules and regulations issued thereunder.

Part D: ***Rules Applicable to Regulated Persons which fall under Points (i), (ii), (v) and UCITs Management Companies when providing cross-selling services***

R.4.5.15 Regulated Persons which distribute Tied or Bundled packages must ensure that where 'cooling-off periods' or post-sale cancellation rights apply to one or more components of a package (if the components were sold on a stand-alone basis), these rights should continue to apply to those components within the package.

R.4.5.16 Regulated Persons which distribute Tied or Bundled packages must ensure that Clients are subsequently allowed to split the products grouped in a cross-selling offer without disproportionate penalties – unless there are justified reasons why this is not possible.

Section 6: Complaint Handling by Regulated Persons

Application

R.4.6.1 The Rules and relative Guidance set out under Part A are applicable to Regulated Persons which fall under points (i), (iii) and (iv) of the definition of 'Regulated Person' in the Glossary, excluding Tied Insurance Intermediaries, a European Investment Firm or European Insurance Undertaking which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Investment Firms Regulations (Legal Notice 325 of 2007) and the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015), respectively.

R.4.6.2 The Rules and relative Guidance set out in Part B are applicable to Regulated Persons which fall under point (iii) of the definition of 'Regulated Person' in the Glossary, excluding European Insurance Undertaking which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015).

R.4.6.3 The Rules and relative Guidance set out in Part C are applicable to Regulated Persons which fall under Point (iv) of the Definition of 'Regulated Person' in the Glossary

Part A: ***Rules and Relative Guidance Set Out under Part A Applicable to Regulated Persons which fall under Points (i), (iii) and (iv) of the Definition of 'Regulated Person' in the Glossary, excluding Tied Insurance Intermediaries, a European investment Firm or European Insurance Undertaking which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Investment Firms Regulations (Legal Notice 325 of 2007) and the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015), respectively***

Complaints Management Policy

R.4.6.4 Regulated Persons shall ensure that a complaints management policy is put in place and set out in a written document. This policy shall be defined and endorsed by the Regulated Person's senior management, who shall also be responsible for its implementation and for monitoring compliance with it.
The complaints management policy shall be made available to all relevant staff of the Licence Holder through an adequate internal channel.

G.4.6 1 *A Regulated Person's complaint management policy should include processes for:*

(a) *lodging a complaint with the Regulated Person by any reasonable means (including complaints submitted by an authorised representative such as a family member or a lawyer) and confirmation that this is free of charge;*
(b) *handling complaints received, including deadlines etc;*
(c) *the fair treatment of complainants;*
(d) *the proper treatment of a complainant's information and personal data, according to the applicable legal framework;*
(e) *preventing, identifying and managing possible situations of conflicts of interest in complaints management;*
(f) *the prompt, equal, fair and efficient management of complaints;*
(g) *the adequate training of staff participating in complaints handling within the Regulated Person ;*
(h) *internal reporting, follow up and monitoring of compliance with the complaints management policy.*

G.4.6.2 *With respect to the requirement in R.4.6.4 above that the complaints management policy should be defined and endorsed by the senior management of the Regulated Person which falls under point (iv) of the definition of 'Regulated Person' in the Glossary. Where such Regulated Person is a sole trader, such individual may not have the same formal governance processes as larger Regulated Persons and therefore a formal endorsement process may not be necessary. In any case, it is important that the complaints policy forms part of the formal processes followed by a sole trader.*

Complaints Management Function

R.4.6.5 Regulated Persons shall have in place a complaints management function which enables them to investigate complaints fairly and to identify or mitigate any possible conflicts of interest.

Provided that, in the case of Regulated Persons which fall under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary to these Rules, subject to the proportionality principle, the Regulated Person shall favour an organisation where the compliance function and the complaints management function are properly separated.

However, in those cases where the compliance function also acts as the Regulated Persons' complaints management function, the compliance report shall address any issues arising out of the implementation of the relevant arrangements the Regulated Person has in place to assess, minimise and manage any conflicts of interest between the said two functions (including, in particular, any failure identified as regards the Regulated Person's compliance with its complaints handling obligations).

Provided that in the case of Regulated Persons which fall under point (iii) and point (iv) of the definition of 'Regulated Person' in the Glossary to these Rules, which have been vested with delegation of authority with respect to claims handling and / or processing, the complaints management function shall not be entrusted to a person involved in the handling of the claim on which a complaint has been lodged.

Provided that the requirement of R.4.6.5 shall not apply in the case of Regulated Persons which fall under point (iv) of the definition of 'Regulated Person' and which are sole traders.

R.4.6.6 Regulated Persons shall inform the MFSA of the identity and contact details of the individual/s involved in the complaints management function as referred to above and any changes thereto.

G.4.6.3 Irrespective of the specific model that a Regulated Person may have adopted for complaints handling, it is considered best practice for a Regulated Person to:

(a) appoint one or more senior manager(s) with overall regulatory responsibility for the complaints management function or process, as appropriate;
(b) ensure the necessary internal flows of information and reporting lines for complaints management, as appropriate;
(c) control the effective and efficient treatment of complaints.

G.4.6.4 Where the Regulated Person is considered as small, (especially in the case of sole traders) it might not be possible for the Regulated Person to structure its internal organisation in such a way that it has a separate complaints management unit. However, the Regulated Person should still ensure that it operates in a manner that ensures that complaints are handled fairly and impartially and (with the exception of sole traders) they identify and mitigate conflicts of interest.

Registration of Complaints

R.4.6.7 Regulated Persons shall register any complaints it receives in an appropriate manner, (for example through a secure electronic register) as soon as these are received together with any action taken with respect to such complaints. The MFSA may at any time require the register to be produced for its review

G.4.6.5 The register referred to in R.4.6.7 above may be maintained in the form of a secure electronic register.

G.4.6.6 Regulated Persons are recommended to include in such register, for each complaint, the date on which it was received and the date on which it was resolved.

G.4.6.7 Without prejudice to the provisions of the Data Protection Act (Cap. 560) and any applicable provisions of Maltese law relating to record keeping, it is considered best practice for:

(a) the register of complaints held by a Regulated Person to contain all the necessary information on the complaints, including;
(i) the subject of the complaint;
(ii) data on the complainant;
(iii) date of receiving and answering the complaint;
(iv) result/outcome of the complaints handling procedure;
(v) class of business or Financial Instrument, as applicable to which the complaint relates

(b) documentation relating to the complaint to be kept and archived in a secure manner for a reasonable period of time based on the nature of the complaint;

(c) a Regulated Person to provide information to complainants regarding their complaint, where reasonably requested by complainants.

Internal Follow-up of Complaints

R.4.6.8 Regulated Persons shall analyse on an on-going basis, complaints handling data to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks.

In this respect, the Regulated Person shall grant to the compliance function access to all the Client complaints it receives and shall also ensure that its compliance function:

(e) has a role in monitoring the operation of the complaints process; and

(f) considers complaints as a source of relevant information in the context of the said function's general monitoring responsibilities. For the avoidance of doubt, this does not require the compliance function to have a role in determining the outcome of complaints.

G.4.6.8 Regulated Persons may carry out the above analysis by, inter alia:

(a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;
(b) considering whether such root causes may also affect other processes or Products, including those not directly complained of; and
(c) correcting, where reasonable to do so, such root causes.

G.4.6.9 A Regulated Person should have in place the following processes in order to comply with the proper internal follow-up of complaints:
(a) the collection of management information on the causes of complaints and the Products and Services complaints relate to;
(b) a process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints;
(c) a process to consider whether the root causes identified may affect other processes or Products;
(d) a process for deciding whether root causes discovered should be corrected and how this should be done; and
(e) regular reporting or information on recurring problems to senior management.

Provision of Information

R.4.6.9 Regulated Persons shall:

(a) on request or when acknowledging receipt of a complaint, provide written information regarding their complaints handling process;
(b) publish details of their complaints handling process in an easily accessible manner;

(c) provide clear, accurate and up-to-date information about the complaints-handling process including:

i. details of how to make a complaint and
ii. the process that will be followed when handling a complaint

(d) keep the complainant informed about further handling of the complaint.

G.4.6.10 *For the purposes of paragraph (b) in the above Rule, Regulated Persons should publish details of their complaints handling process in the pre-contractual documentation and via the Regulated Person's website or Mobile App.*

For the purposes of paragraph (c)(i),in the above Rule, Regulated Persons should include the type of information to be provided by the complainant and the identity and contact details of the person or department to whom this complaint should be directed.

For the purposes of paragraph (c) (ii), in the above Rule, Regulated Persons should provide information on when the complaint will be acknowledged, an indication of handling timelines, and the availability of the Office of the Arbiter for Financial Services as established by the Arbiter for Financial Services Act and of alternative dispute resolution mechanisms in the case that a dispute remains unresolved.

Procedure for Responding to Complaints

R.4.6.10 Regulated Persons shall:

(a) in writing, acknowledge receipt of any complaint upon receipt;
(b) where a complaint is made orally, the Regulated Person shall make a summary of the complaint and request the complainant to confirm in writing the said summary;

Provided that the requirements of R.4.6.10(a) and (b) shall not apply to Regulated Persons falling under point (iv) of the definition of 'Regulated Person' in the Glossary to the Rules unless such Regulated Person have been vested with the relevant delegation of authority with respect to complaints handling and/or processing.

(c) seek to gather and investigate all relevant evidence and information regarding the complaint;
(d) communicate in plain language, which is clearly understood;
(e) provide a response without unnecessary delay, or at least, by not later than fifteen working days from when the complaint was registered. Where the investigation of a complaint is not completed within fifteen days from receipt of the complaint, the Regulated Person shall:
    (i) inform the complainant about the causes of the delay;
    (ii) provide an indication as to when the investigation is likely to be completed.

(f) when providing a final decision in terms of (e) above that does not fully satisfy the complainant's demand, shall provide a thorough explanation of the Regulated Person's position on the complaint and that if the complainant is not satisfied with the way the complaint was resolved by the Regulated Person, the complainant may refer the complaint to the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act (Cap.555). Such decision shall be provided in writing.

Reporting to the MFSA

R.4.6.11 Regulated Persons shall provide information on complaints and complaints handling to the MFSA as and when required in any format as required by the MFSA. This data shall, as a minimum, cover the number of complaints received, differentiated as appropriate by Product or Service, as applicable and the cause of the complaint.

R.4.6.12 This Rule has been deleted.

Part B- Rules Applicable to Regulated Persons which fall under Point (iii) of the Definition of 'Regulated Person' in the Glossary excluding European Insurance Undertaking which has established a branch in Malta in exercise of a European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (Legal Notice 399 of 2015)

Unrelated Complaints

R.4.6.13 Where a Regulated Person receives a complaint about:

(a) activities other than those regulated by the MFSA ; or
(b) the activities of another financial services provider for which the Regulated Person has no legal or regulatory responsibility (and where those activities form the substance of the complaint), the provisions of this section shall not apply to such Regulated Person

R.4.6.14 Notwithstanding the provisions of R.4.6.13 above, the Regulated Person should where possible, explain its position on the complaint and/or, where appropriate, direct the complainant to the Regulated Person or other financial services provider responsible for handling the complaint or to any other appropriate body which may deal with the complaint and/or seek independent professional advice.

Part C- Rules Applicable to Regulated Persons which fall under Point (iv) of the Definition of 'Regulated Person' in the Glossary

Ensuring the right institution deals with the complaint

R.4.6.15 Where a Regulated Person receives a complaint for which another financial institution is responsible, and that Regulated Person does not handle the complaint on behalf of that financial institution, the Regulated Person shall inform the complainant and direct the complaint to the relevant financial institution, where identifiable.

R.4.6.16 Where a Regulated person complies with the requirement of R.4.6.14, it shall not be required to handle the complaint under R.4.6.4, R.4.6.5 and R.4.6.7-R.4.6.11.

Appendix 1

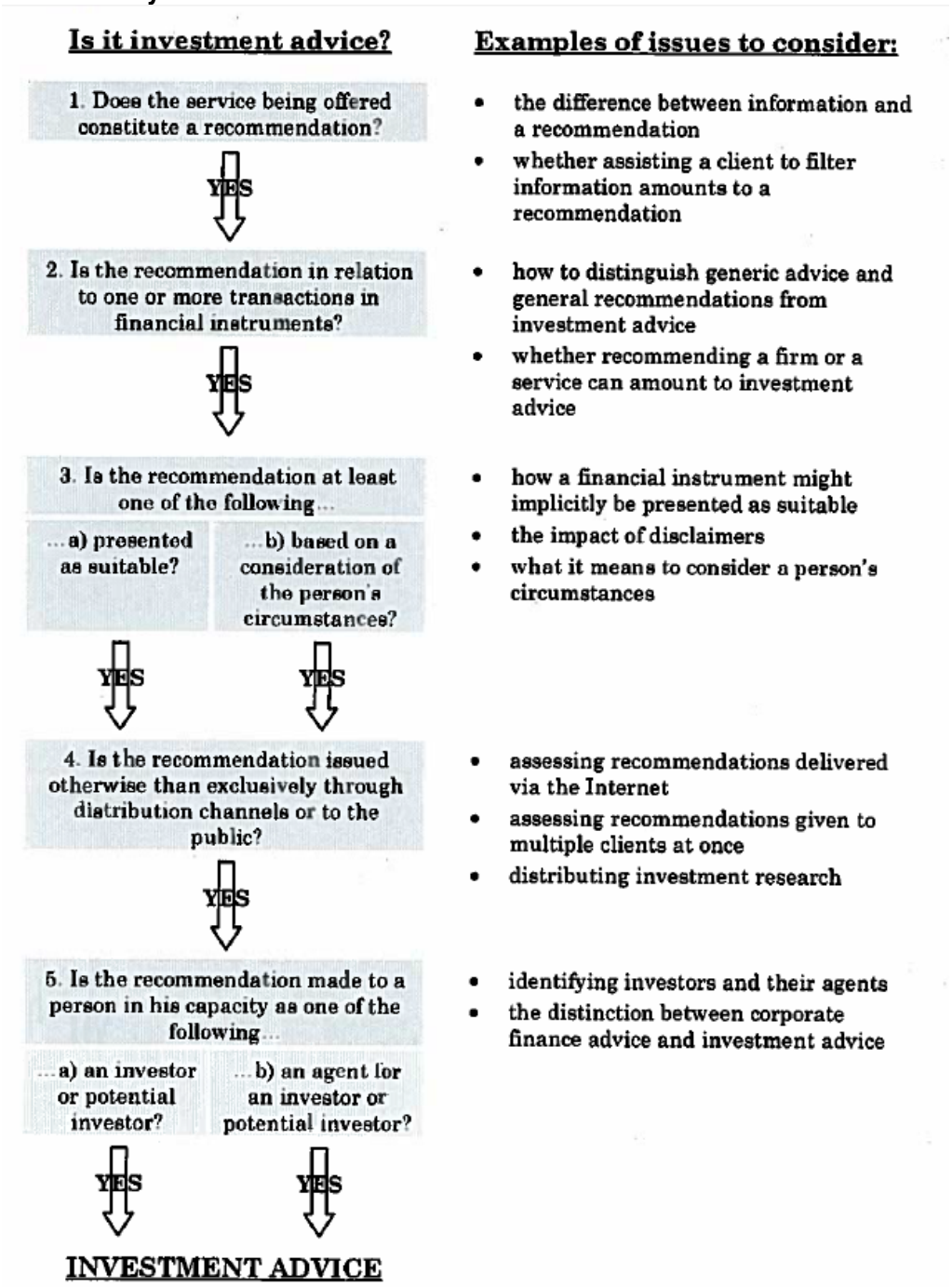
It is important to note that in referring to this matrix and seeking to apply it in practice, Regulated Persons should take into account the particular circumstances of the scenario they are faced with in light of contents of this Guidance Note. The matrix should only serve as a rough guide and does not remove the need for Regulated Persons to exercise their own judgment.

Subsequent Service/transaction *at Initiative of the Client*	Regulated Person sends envelope/ email addressed to Client including covering letter **drawing recipients' attention to enclosures/attachments** which are a Product leaflet and relevant application form and a general buy/sell recommendation.	Regulated Person sends envelope/email to Client containing/attaching a Product leaflet and/or relevant application form and/or general recommendation **(without covering letter**)	Regulated Person sends a text message to a small number of selected Clients, referring to their existing investments and inviting them to consider Products or instruments offered by the Regulated Person	Regulated Person sends mailshot to all or some of its existing Clients, referring to their particular circumstances, e.g. "Dear Mr. Borg, as you are reaching retirement, we have Products which may suit your needs…"	Regulated Person distributes a communication advertising a particular Product or its Services. (e.g. flyer in newspaper or magazine)	Regulated Person issues advertorial in the newspaper advertising its Services and referring to a general buy/sell recommendation with respect to a particular Product/instrument	Regulated Person simply on forwards primary issues application forms to Clients
			TEST A:				
Is means of communication **OF ITS VERY NATURE** general (and hence excludes a personal communication)?	NO	NO	NO	NO	Yes	Yes	No
			TEST B:				
Personalised Communication	No*	No	Yes	Yes	No	No	No

Contains an Invitation **or** is Intended to influence the Client	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Analysis	Transaction at initiative of Client	Transaction at initiative of Client	Transaction **NOT** at initiative of Client	Transaction **NOT** at Initiative of Client	Transaction at Initiative of Client	Transaction at Initiative of Client	Transaction at Initiative of Client

Appendix 2

The Five Key Tests for Investment Advice.



Appendix 3

Long Term Business Notice

Customers are reminded that any policy of life assurance required by the bank as security against credit or loan facilities, or for any other reason, may, provided the policy meets the requirements of the bank, be arranged with and obtained from any insurance undertaking, or through an enrolled insurance agent, broker or tied insurance intermediary

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Avviż dwar Kummerċ fit-Tul

Infakkru lill-klijenti illi kull polza ta' assigurazzjoni fuq il-ħajja mitluba mill-bank bħala garanzija fuq dejn jew self mal-bank, jew għal kull raġuni oħra, kemm-il darba l-polza tissodisfa l-ħtiġijiet tal-bank, tista' tinxtara mingħand kull impriża tal-assigurazzjoni jew permezz ta' kull agent, *broker* fl-assigurazzjoni iskritt, jew ta' xi intermedjarju marbut fl-assigurazzjoni iskritt.

Appendix 4

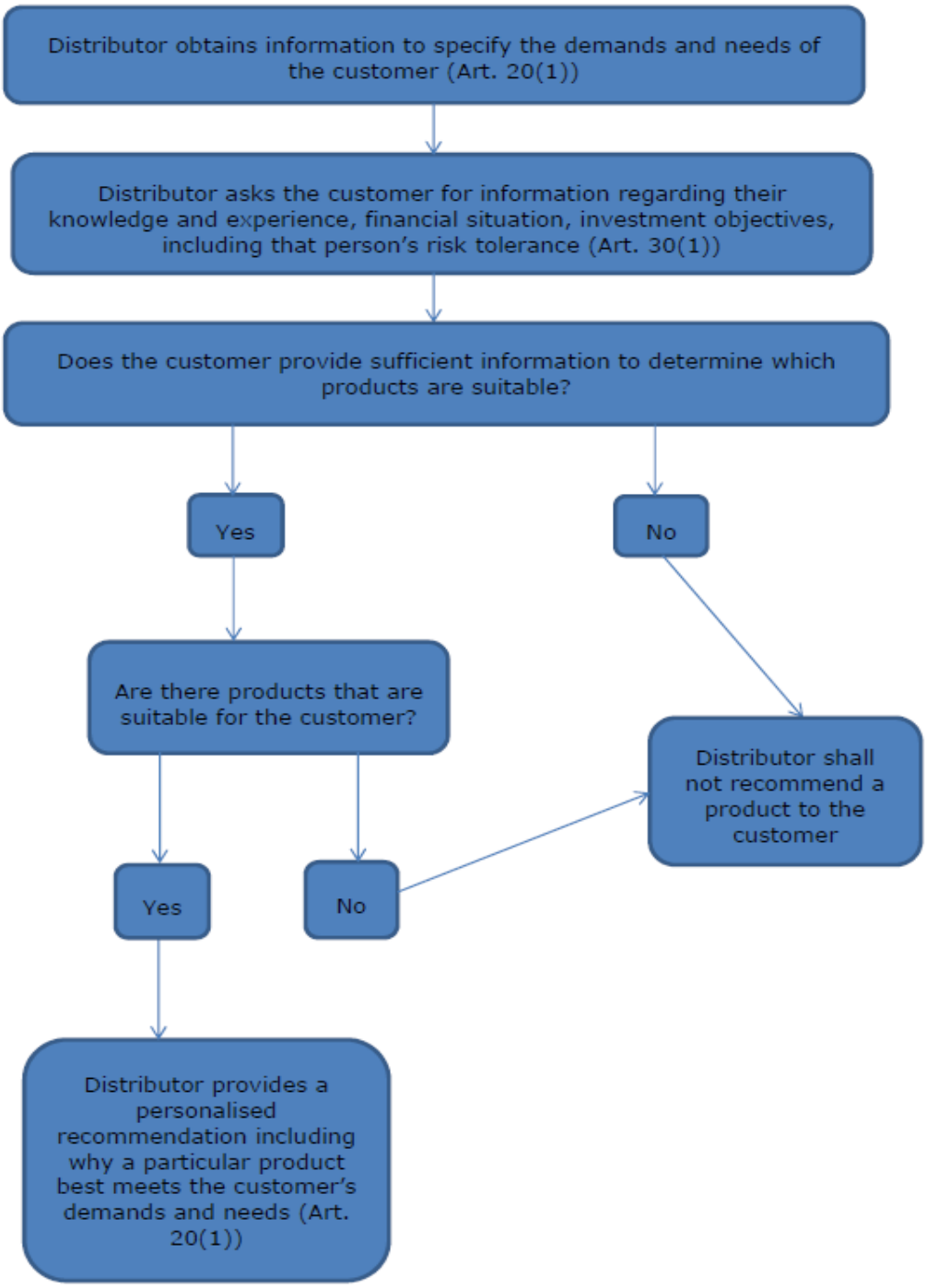
Decision tree on the sale of Insurance-based investment products

The decision tree included in this Appendix is intended to explain the distribution process for the sale of Insurance-based investment products via execution only in general, and how it compares to the sale of Products not via execution only. The decision tree does not detail the specific assessment process for whether an Insurance-based investment product incorporates a structure which makes it difficult for the Client to understand the risks involved.

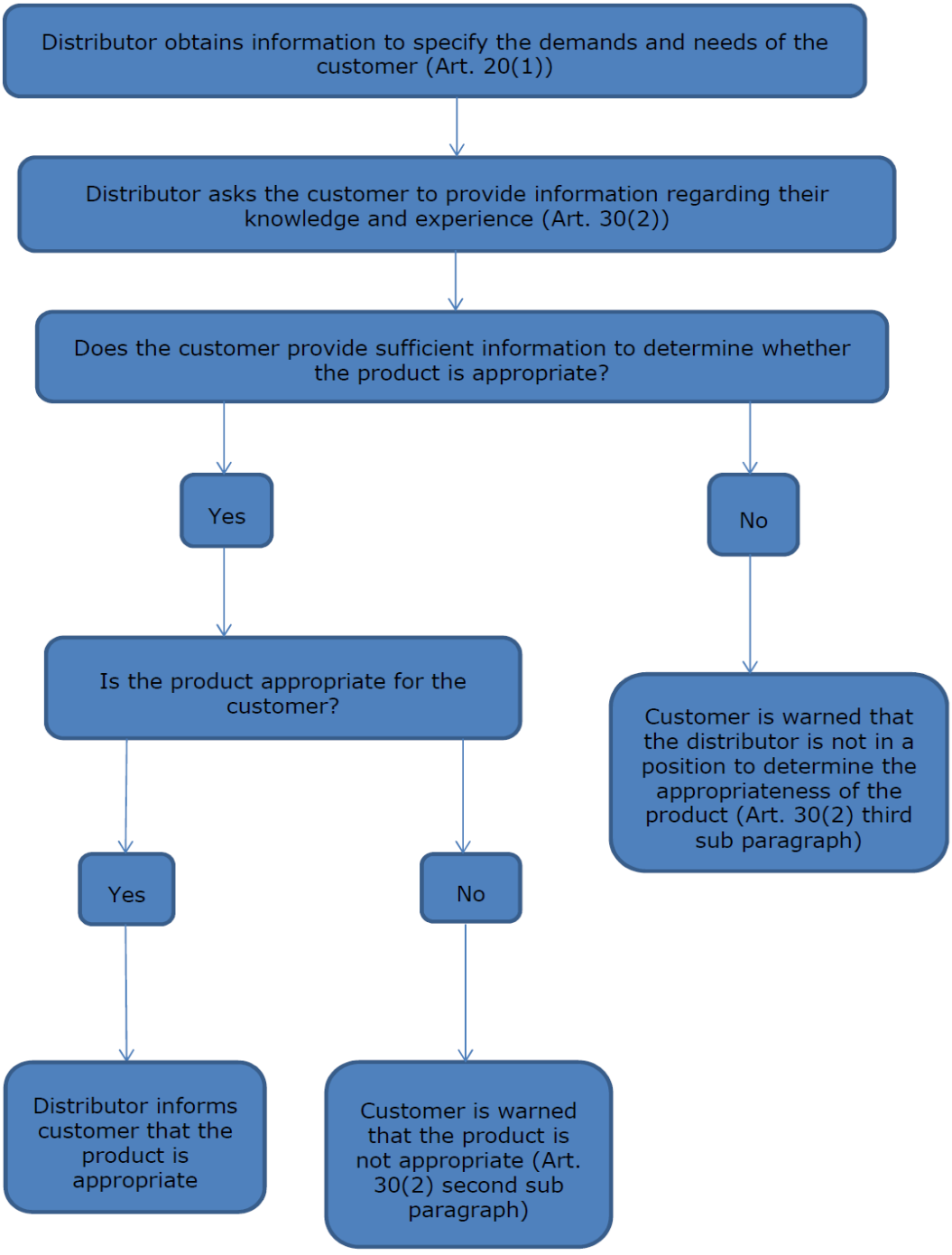
It is important to note that, in particular for the sale of Insurance-based investment products with Advice or with an appropriateness assessment, the process outlined in the decision tree may not correspond directly to the steps that will need to be taken by Distributors in different Member States. This will depend on how the different provisions of the Directive (EU) 2016/97 (Insurance Distribution Directive) are implemented in the Member State.

All article references are to the Insurance Distribution Directive, unless otherwise stated.

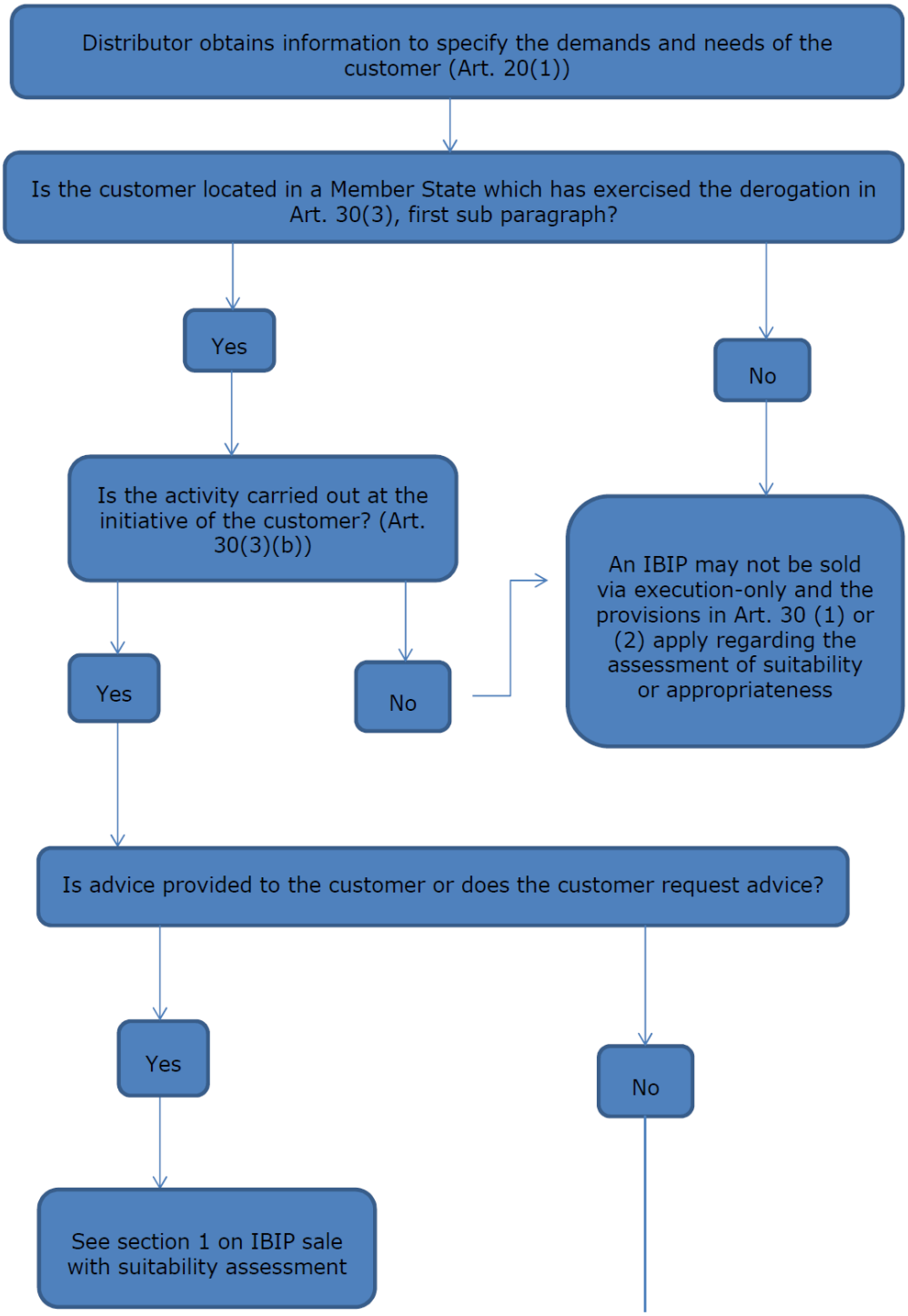
Section 1: Advised sale with a suitability assessment

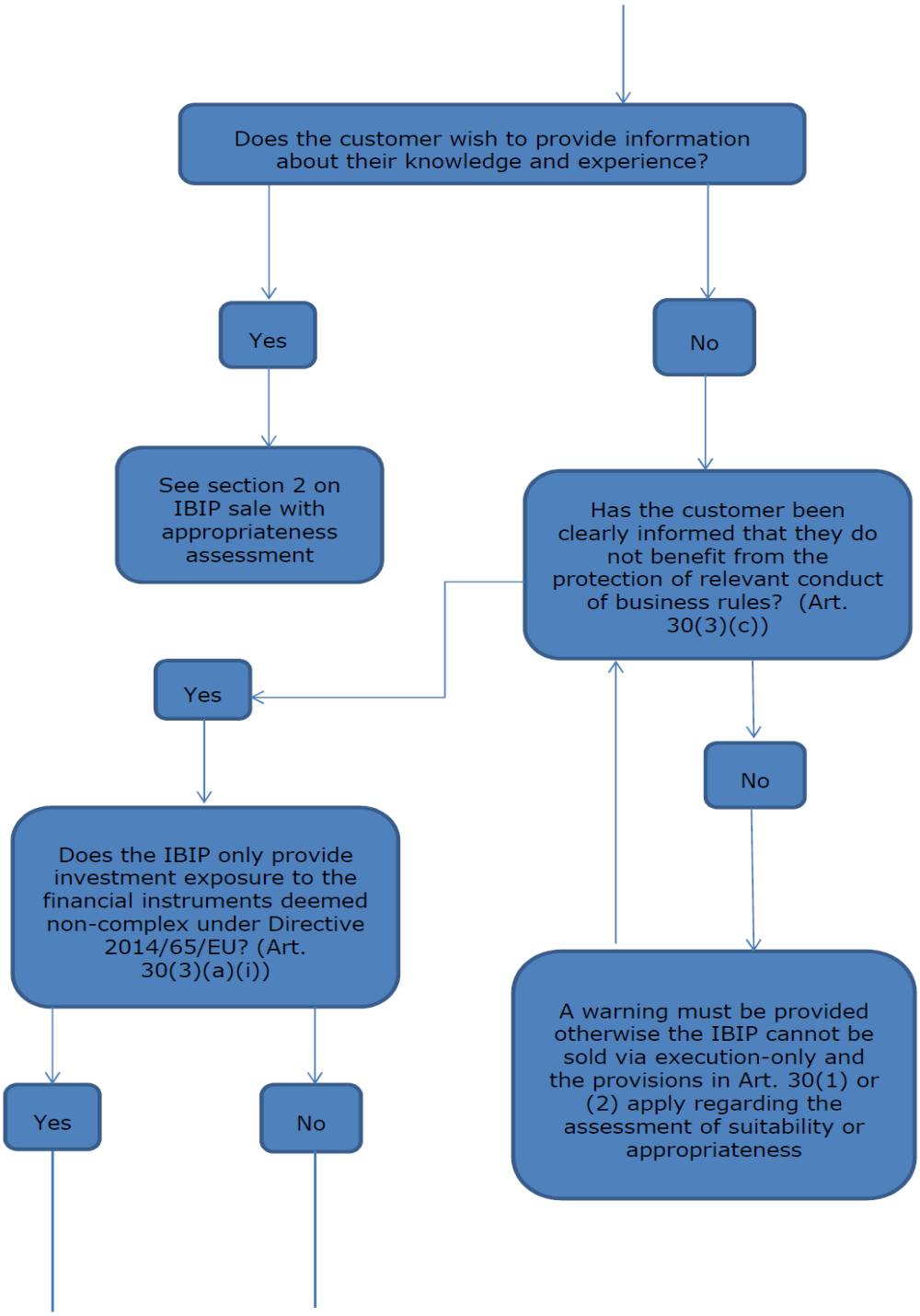


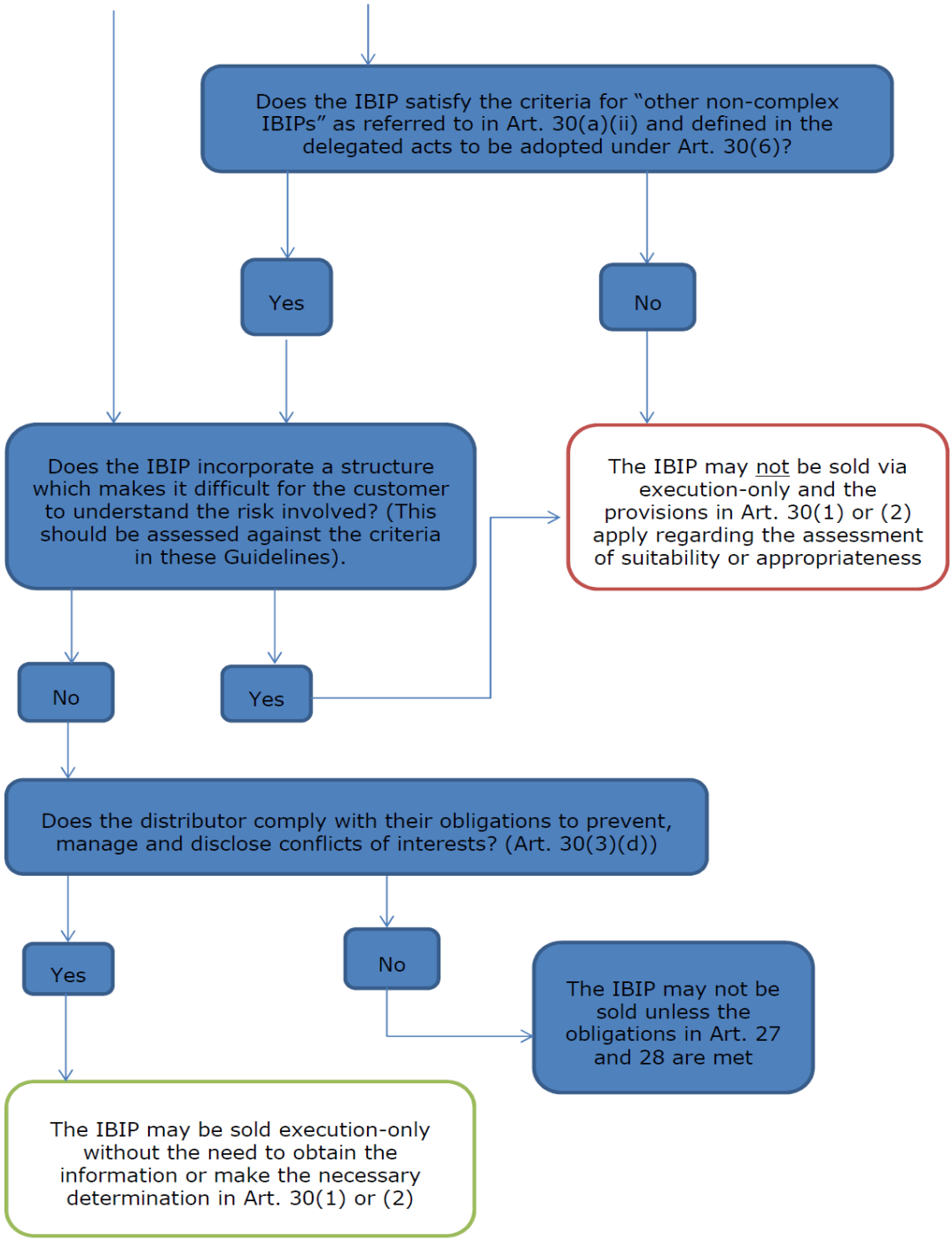
Section 2: Non-advised sale with an appropriateness assessment



Section 3: Execution-only sale (without a suitability or appropriateness assessment)




Does the customer wish to provide information about their knowledge and experience?
Yes
No
See section 2 on IBIP sale with appropriateness assessment
Has the customer been clearly informed that they do not benefit from the protection of relevant conduct of business rules? (Art. 30(3)(c))
Yes
No
Does the IBIP only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU? (Art. 30(3)(a)(i))
A warning must be provided otherwise the IBIP cannot be sold via execution-only and the provisions in Art. 30(1) or (2) apply regarding the assessment of suitability or appropriateness
Yes
No


Does the IBIP satisfy the criteria for "other non-complex IBIPs" as referred to in Art. 30(a)(ii) and defined in the delegated acts to be adopted under Art. 30(6)?
Yes
No
Does the IBIP incorporate a structure which makes it difficult for the customer to understand the risk involved? (This should be assessed against the criteria in these Guidelines).
The IBIP may not be sold via execution-only and the provisions in Art. 30(1) or (2) apply regarding the assessment of suitability or appropriateness
No
Yes
Does the distributor comply with their obligations to prevent, manage and disclose conflicts of interests? (Art. 30(3)(d))
Yes
No
The IBIP may not be sold unless the obligations in Art. 27 and 28 are met
The IBIP may be sold execution-only without the need to obtain the information or make the necessary determination in Art. 30(1) or (2)

Appendix 5

The following table provides a non-exhaustive list of examples of debt instruments that embed a derivative or incorporate a structure which makes it difficult for the Client to understand the risk involved and complex structured deposits for the purpose of Rule 4.4.55 (a) (ii), (iii) and (iv).

CATEGORY OF INSTRUMENT	(NON-EXHAUSTIVE) LIST OF EXAMPLES
DEBT INSTRUMENTS EMBEDDING A DERIVATIVE	(a) Convertible and exchangeable bonds. (b) Indexed bonds and turbo certificates. (c) Contingent convertible bonds. (d) Callable or puttable bonds. (e) Credit-linked notes. (f) Warrants.
DEBT INSTRUMENTS INCORPORATING A STRUCTURE MAKING IT DIFFICULT FOR THE CLIENT TO UNDERSTAND THE RISK	(a) Debt instruments the return of which is dependent on the performance of a defined asset pool. Examples: Asset-backed securities and asset-backed commercial papers, Residential Mortgage Backed Securities (RMBS), Commerciale Mortgage Backed Securities (CMBS), Collateralised Debt Obligations (CDOs) (b) Debt instruments the return of which is subordinated to the reimbursement of debt held by others. Examples: - subordinated debt instruments; - certificates (as defined under Article 2(1)(27) of MiFIR). (c) Debt instruments where the issuer enjoys discretion to modify the cash flows of the instruments.

	(d) Debt instruments lacking a specified redemption or maturity date. Examples: - perpetual bonds. (e) Debts instruments having an unusual or unfamiliar underlying. Examples: - Debt instruments referencing underlying such as non-public benchmarks, synthetic indices, niche markets, highly technical measures (including price volatility and combinations of variables); - catastrophe bonds. (f) Debt instruments with complex mechanisms to determine or calculate the return. Examples: - Debt instruments structured in such a way that the anticipated revenue stream may vary frequently and/or markedly at different points of time over the duration of the instrument either because certain pre-determined threshold conditions are met or because certain time-points are reached. (g) Debt instruments structured in a way that may not provide for a full repayment of the principal amount: - debt instruments eligible for bail-in tool purpose. (h) Debt instruments issued by a special purpose vehicle (SPV) in circumstances in which the name of the debt instrument or the legal name of the SPV may mislead the investors as to the identity of the issuer or guarantor: (i) Debt instruments with complex guarantee mechanisms. Examples: -Debt instruments with a guarantee mechanism where the trigger for the guarantee depends upon one or several conditions in addition to the default of the issuer; -Debt instruments with a guarantee mechanism where the level of guarantee or the actual trigger of the guarantee are subject to time limitations. (j)Debt instruments with leverage features

STRUCTURED DEPOSITS INCORPORATING A STRUCTURE MAKING IT DIFFICULT FOR THE CLIENT TO UNDERSTAND THE RISK OF RETURN	Structured deposits, in cases where: a) More than one variable affects the return received. Examples: - Structured deposits where a basket of instruments or assets have to outperform a specified benchmark for a return to be paid; - Structured deposits where the return is determined by the combination of two or more indices. b) The relationship between the return and relevant variable or the mechanism to determine or calculate the return is complex. Examples: - structured deposits structured in a way that the mechanism under which the price level of an index is reflected in the return involves different market data points (i.e. one or more thresholds have to be met), or several index measurements at different dates; - structured deposits structured in a way that the capital gain or interest payable step up or down in certain specific circumstances; - structured deposits structured in a way that the anticipated revenue stream may vary frequently and/or markedly at different points of time over the duration of the instrument. c) The variable involved in the calculation of the return is unfamiliar or unusual to the average retail investor. Examples: - structured deposits where the return is linked to a niche market, an in-house index or other non-public benchmark, a synthetic index, or a highly technical measure such as asset price volatility. d) The contract gives the credit institutions the unilateral right to terminate the agreement before maturity

STRUCTURED DEPOSITS INCORPORATING A STRUCTURE MAKING IT DIFFICULT FOR THE CLIENT TO UNDERSTAND THE COST OF EXITING BEFORE TERM	Structured deposits, in cases where: a) An exit fee is not a fixed sum. Examples: - structured deposits having a variable or "capped" exit fee (i.e. a fee up to 300 euros is charged in case of early exit); - structured deposits referring a variable factor such as an interest rate for the calculation of the exit fee. b) An exit fee is not a fixed sum for each month remaining until the agreed term. Examples: - structured deposits having a variable or capped exit fee per month remaining until the agreed term (i.e. a fee up to 50 euro per month in case of early exit). c) An exit fee is not a percentage of the original sum invested. Examples: - structured deposits having an exit fee that is at least equal to the amount of the returns accrued until the early exit date.

Appendix 6

(R.4.4.39 of Chapter 4 of the Rulebook)

Obligations and Guidelines on certain aspects of the MiFID II Appropriateness and Execution-only Requirements

The requirements set out in this Appendix primarily implement the *ESMA Guidelines on certain aspects of the MIFID II appropriateness and execution requirements.*

The purpose of the said requirements is to clarify the application of certain aspects of the MiFID II appropriateness requirements (in terms of the relevant Rules implementing Article 25(3) of MIFID II and Articles 55 and 56 of the MiFID II Delegated Regulation 2017/565 and of certain aspects of the execution-only requirements, in terms of the relevant Rules implementing Article 25(4) of MiFID II Directive 2014/65/EU and Article 57 of the MiFID II Delegated Regulation 2017/565.

Scope

The requirements and the relative Guidance set out in this Appendix shall apply to persons falling under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary, when providing non-advised services.

The contents of this Appendix shall be read and construed together with other relevant requirements laid down in the various Chapters of this Rulebook, in particular Chapter 4 thereof.

Definitions

In this Annex, the following definitions shall apply. Other terms used shall be construed in terms of the Glossary to these Rules:

"investment product" means a Financial Instrument or a Structured Deposit;

"***non-advised services"*** means the provision of investment services other than investment advice and portfolio management; and the selling of Structured Deposits.

Information to Clients about the Purpose of the Appropriateness Assessment and about Execution-Only

(Relevant EU legislation: Article 24(1), 24(4), 24(5), 25(3) and 25(4) of MiFID II)

1. The Regulated Person should, in good time before the provision of non-advised services, inform its Clients, by using clear and simple language, about the appropriateness assessment and its purpose which is to enable the Regulated Person to act in the Client's best interest.

1.1 In fulfilling the requirements set out in point 1 above, the Regulated Person should ensure that the information provided to Clients includes the following:

(a) a clear explanation that it is the Regulated Person's responsibility to conduct the appropriateness assessment, so that Clients understand the reasons why Clients are requested by the Regulated Person to provide certain information and the importance of having the Clients provide information that is up-to-date, accurate and complete;

(b) a reminder that it is in the Client's interest to provide accurate and complete answers to the questions asked by the Regulated Person for the purpose of the appropriateness assessment;

(c) information regarding the situations where no appropriateness assessment will be conducted (that is, where the Client does not provide the information requested or such information is not sufficient for the Regulated Person to conduct the appropriateness assessment; or where services are provided under the execution-only exemption[22]) and the consequences thereof. However, such information should not give the impression that as a default option the Client may refrain from submitting his or her information. In this respect reference is to be also made to paragraph 2.10 below;

(d) a short explanation of the main differences between advised and non-advised investment services taking into account the applicable requirements, to avoid any confusion between both such services.

1.2 In case of an ongoing relationship with the Client, the Regulated Person should not provide the above-mentioned information before the provision of each non-advised service. In such a case, this information may be provided before the provision of the initial non-advised service and, with respect to the information under paragraphs (a) and (b) of paragraph 1.1 above, whenever the Client is requested to update the information on his or her level of knowledge and experience.

1.3 A Regulated Person is required to decide how it will inform its Clients about the appropriateness assessment and should ensure that the format used to inform its Clients enables it to keep records of the information provided to its Clients. This requirement is to be fulfilled while taking into account point 11 below and its supporting provisions.

1.4 A Regulated Person should avoid stating, or giving the impression, that it is the Client who decides on the appropriateness of the investment service or product, or who establishes which service or product fits his or her own knowledge and experience. In general, the Regulated Person should not make any misleading statements to Clients in relation to the Regulated Person's obligation to carry out the appropriateness assessment.

1.5 Provided that, all the information given to Clients complies with the relevant provisions of the Conduct of Business Rulebook (including obligations on the provision of information in a durable medium), the Regulated Person should also carefully consider whether its written disclosures are designed to be effective (for instance, the disclosures are made available directly to Clients and are not hidden or incomprehensible).

[22] Referring to Investment services that only consist of execution or reception and transmission of client orders relating to investment products defined under MiFID II as being *'non-complex'*.

In the context of the Regulated Person providing online services this may include the following:

(a) emphasising the relevant information (for instance, through the use of design features such as pop-up boxes);

(b) considering whether some information should be accompanied by interactive text (for instance, through the use of design features such as tooltips) or other means to provide additional details to clients who are seeking further information, for instance, through a Frequently Asked Questions section).

Know Your Client and Know Your Product

Arrangements necessary to understand Clients

(Relevant EU legislation: Articles 16(2) and 25(3) of MiFID II and Article 55 of the Delegated Regulation)

2. The Regulated Person's policies and procedures should aim to enable the Regulated Person to collect all information necessary to conduct the appropriateness assessment in relation to the specific product types offered or demanded. In this respect, the Regulated Person shall also take into account point 3 below and its supporting provisions.

2.1 The Regulated Person shall establish, implement, and maintain adequate policies and procedures (including appropriate tools) to ask the Client or potential Client to provide information regarding the Client's knowledge and experience in the investment field relevant to the specific type of investment service or product offered or demanded and including, as appropriate, the elements listed in R.4.4.106 of Chapter 4 of the Rulebook implementing Article 55(1) of the MiFID II Delegated Regulation 2017/565.

2.2 To that end, the Regulated Person should ensure that within its policies and procedures it does not abstain from asking information, or discourage Clients or potential Clients in any way from providing information on their knowledge and experience.

2.3 The Regulated Person is required to determine the means for asking the Client to provide information on his or her knowledge and experience. The Regulated Person may use questionnaires (also in a digital format) completed by its Clients or information collected during discussions with the Client to conduct the appropriateness assessment. The Regulated Person should ensure that:

(a) the questions it asks to Clients are specific enough and are likely to be understood correctly; and

(b) any other method used to collect information (such as the use of transaction data on certain types of products from an existing client to assess his or her experience), is designed to obtain the necessary information about the Client's level of knowledge and experience. This is particularly important when the Regulated Person is collecting the information through an online channel without any human interaction.

2.4 When designing the questionnaires aiming at collecting information about its Clients for the purpose of an appropriateness assessment, the Regulated Person should be aware and consider the most common reasons why potential Clients or Clients may

fail to answer questionnaires correctly. The Regulated Person should ensure that, in particular:

(a) attention is given to the clarity, exhaustiveness, and comprehensibility of the questionnaire, avoiding misleading, confusing, imprecise, and excessively technical language (for instance, abbreviations);

(b) careful consideration is given to the layout and format of questionnaires and shall avoid orienting potential Client's choices (for instance, font and line spacing);

(c) collecting information on a series of items through a single question should be avoided;

(d) it carefully considers the order in which the Regulated Person asks questions in order to collect information in an effective manner;

(e) In order to prevent a Client from guessing and thereby providing unreliable information, the Client should be able to reply that he or she does not know how to answer the question.

2.5 The Regulated Person should have procedures and mechanisms in place to limit the risk of circumventing the requirements, making sure that the information collected adequately reflects the Client's level of knowledge and experience.

For instance, the Regulated Person may: consider limiting the number of times clients can answer the questionnaire(s) within a certain period of time; work with different sets of questionnaires when a client requests to re-take the questionnaire; and, or use a cooling-off period. Where such measures are imposed, a Client may still be allowed to proceed with the transaction, provided that a warning is issued by the Regulated Person in case of transactions in relation to which the Client does not have sufficient knowledge and experience (in this respect reference is to be made to point 9 below and its supporting provisions).

The Regulated Person may also implement other controls to ensure that a Client cannot repeat the questionnaire several times to check what kind of answers are needed to get the desired outcome.

2.6 Given that it is the responsibility of the Regulated Person to aim for collecting the relevant information from Clients, the Regulated Person should take all reasonable steps to sufficiently assess its Clients' understanding of the main characteristics and the risks related to the specific types of investment products offered by the Regulated Person or at least to the product types in which the Client has an interest. In this respect, the Regulated Person shall ensure that this includes an understanding of the relationship between risk and return on investments (for instance, by using questionnaires with multiple choice questions aimed at assessing the client's real knowledge about the specific types of investment products).

2.7 In assessing the knowledge of the Client, the Regulated Person should put in place mechanisms to ensure that Clients are not being asked to complete a self-assessment. In order to ensure the correct assessment of the Client's knowledge, the Regulated Person should address the risk that a Client may tend to over-estimate his or her knowledge and shall take the necessary steps to ensure the consistency of the

answers provided by the Client (in this respect reference is to be made to point 4 below and its supporting provisions).

In this respect, the Regulated Person should, in particular, avoid using yes or no questions and, or a tick-the-box self-assessment approach, when asking the Client whether he or she has sufficient knowledge about the main characteristics and risks of specific types of investment products (for instance, the Regulated Person shall avoid submitting a list of investment products to the Client and asking the Client to indicate which products he or she understands).

In this respect, the Regulated Person should also ensure that self-assessment is to be counter-balanced by objective criteria, and shall, for instance:

(a) instead of asking whether a Client understands the notions of risk-return trade-off of specific types of investment products, the Regulated Person should, for instance, question Clients on some practical examples of situations that may occur in practice (for example, by means of graphs or through positive and negative scenarios which are based on reasonable assumptions);

(b) instead of asking a Client whether he or she has sufficient knowledge about the main characteristics and risks of specific types of investment products, the Regulated Person should for instance ask questions aimed at assessing the client's real knowledge about the specific types of investment products, for example by asking the client multiple choice questions to which the Client should provide the right answer.

2.8 In assessing a Client's experience, the Regulated Person should also avoid using overly broad questions with a yes or no type of answer and, or a very broad tick-the-box approach. Instead of asking a Client whether he or she feels sufficiently experienced to invest in certain products, the Regulated Person should, for instance, ask the Client what specific types of investment products the Client is familiar with and how recent and frequent is his or her trading experience with such products.

2.9 In case of online services, the Regulated Person should design its questionnaires taking into account factors such as the following:

(a) whether the questions are sufficiently clear and, or whether the questionnaire is designed to provide additional clarification or examples to Clients when necessary (for instance, through the use of design features, such as tool-tips or pop-up boxes);

(b) whether some human interaction or support (including remote interaction via emails or mobile phones) is available to Clients when responding to the online questionnaire;

(c) whether steps have been taken to address inconsistent Client responses (such as incorporating in the questionnaire design features to alert Clients when their responses appear to be internally inconsistent and suggesting they re-consider such responses; or implementing systems to automatically flag apparently inconsistent information provided by a Client for review or follow-up by the Regulated Person).

2.10 The Regulated Person should refrain from providing the Client with a warning that the Client is not in a position to determine whether the envisaged investment service or product is appropriate for him or her without previously asking the Client for information about his or her knowledge and experience. The Regulated Person should also abstain from emphasising that the Client may proceed without such an appropriateness assessment. In these situations, such a warning should only be issued by the Regulated Person when the outcome of the appropriateness assessment cannot be determined because the Client has not responded to all or part of the questions (in this respect, the Regulated Person is to take into account point 9 and its supporting provisions).

2.11 Where the Regulated Person pre-fill answers based on the Client's transactions history with that Regulated Person (for instance, through another investment service), the Regulated Person should ensure that only fully objective, pertinent, and reliable information is used and that the Client is given the opportunity to review and, if necessary, correct and, or complete each of the pre-filled answers, in order to ensure the accuracy of any pre-populated information. The Regulated Person should also refrain from predicting clients' experience based on assumptions.

2.12 For the purpose of the appropriateness assessment, the Regulated Person should only take into account the information on the Client's knowledge and experience. In this respect, the Regulated Person should avoid giving the perception to Clients that information collected other than that which relates to a Client's knowledge and experience (in particular information with regard to the Client's financial situation and investment objectives that may be collected for other purposes, for instances, in the context of product governance, or in the context of advised services to the same Client), is taken into account when conducting the appropriateness assessment.

Extent of Information to be Collected from Clients (Proportionality)

(Relevant EU legislation: Article 25(3) of MiFID II and Article 55 of the Delegated Regulation)

3. In determining the extent of the information to be asked about the Client's or potential Client's knowledge and experience, the Regulated Person should take into account the type and characteristics of the investment products or services to be considered (that is, the level of complexity and risk of the investment products or services) and the nature of the Client.

3.1 In accordance with R.4.4.39, R.4.4.40, R.4.4.42 and R.4.4.43 of Chapter 4 of the Rulebook implementing Article 25(3) of MiFID II Directive 2014/65/EU, before providing non-advised services for which an appropriateness assessment is required, the Regulated Person shall ask the Client or potential Client to provide information regarding his or her knowledge and experience in the investment field relevant to the specific type of investment service or product offered or demanded, so as to enable the Regulated Person to assess whether the investment service or product envisaged is appropriate for the Client or potential Client.

3.2 A Regulated Person should ensure that it asks for information that takes into account the type and characteristics of the investment products or services that are considered (that is, level of complexity and risk of the investment products or services) and the nature of the Client.

3.3 In particular, in order to ensure that the Regulated Person is able to carry out the appropriateness assessment to the same standard, regardless of the investment product or investment service considered, the Regulated Person should, when providing access to more complex or risky investment products, carefully consider whether the it needs to ask more in-depth information about the Client's knowledge and experience than the Regulated Person would ask when less complex or risky investment products are being provided. In this respect, the Regulated Person should be able to assess, on the basis of the answers provided, the client's capacity to understand the risks associated with such more complex or risky investment products.

For such investment products with a high level of complexity or risk (for instance, derivatives or leveraged products), the Regulated Person should carry out, on the basis of the answers provided, a reliable assessment of the Client's knowledge and experience (including, for instance, amongst other matters, his or her ability to understand the mechanisms which make the investment product more complex or risky; whether the client has already traded in such products, the length of time he or she has been trading them for).

3.4 Depending on the level of complexity of the investment products involved, the Regulated Person should assess the Client's knowledge and experience more specifically than solely on the basis of the type to which the product belongs (for instance, subordinated debt instead of bonds in general).

3.5 When the Regulated Person intends to provide a non-advised service that has specific features, the Regulated Person should also, before such service is provided, conduct an appropriateness assessment relating to such specific features. This would for instance be relevant where a bundle of services or products is envisaged, for which, as required in terms of R.4.4.39, R.4.4.40, R.4.4.42 and R.4.4.43 of Chapter 4 of the Rulebook implementing Article 25(3) of MiFID II Directive 2014/65/EU, the Regulated Person shall consider whether the overall bundled package is appropriate. For example, if a Regulated Person intends to provide both execution services and the ancillary service of granting loans allowing the Client to carry out the transaction, this bundle of services will have different risks than each of the components considered in isolation.

To take these differences into account when conducting the appropriateness assessment, the Regulated Person should not only relate to the envisaged investment products, but also to the ancillary service of granting loans and to the risks resulting from the combination of both. Another example would be a Regulated Person that enables clients to open a short position by selling an investment product. In this context, the Regulated Person should specifically assess whether the Client has the necessary knowledge and experience to understand the risks involved in short positions.

3.6 Pursuant to R.4.4.41 and R.4.4.44 of Chapter 4 of the Rulebook implementing Article 56(1), second subparagraph of the MiFID II Delegated Regulation 2017/565, a Regulated Person shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or investment product, for which the Client is classified as a professional client.

Reliability of Client Information

(Relevant EU legislation: Article 25(3) of MiFID II and Article 55(3) of the Delegated Regulation)

4. The Regulated Person should take reasonable steps and have appropriate tools to ensure that the information provided by its clients is reliable and consistent, without unduly relying on clients' self-assessment.

This shall include, but shall not be limited to the following:

(a) ensuring that Clients are aware of the importance of providing accurate and up-to-date information;
(b) ensuring questions used in the process are likely to be understood by Clients, capture an accurate reflection of the Client's objectives and needs, and the information necessary to undertake the suitability assessment; and
(c) taking steps, as appropriate, to ensure the consistency of Client information. This includes, considering whether there are obvious inaccuracies in the information provided by Clients;
(d) ensuring that no undue reliance is made on any Clients' self-assessment in relation to knowledge, experience and financial situation.

4.1 If the information collected is not sufficiently reliable and consistent, this would amount to the Regulated Person not having received sufficient information to conduct the appropriateness assessment and the Regulated Person shall issue a warning to the client in accordance with R.4.4.43 of chapter 4 of the Rulebook implementing Article 25(3) of MiFID II Directive 2014/65/EU, third subparagraph.

4.2 The Regulated Person should take reasonable steps to check the reliability, accuracy and consistency of information collected about clients and not merely rely on the fact that clients are expected to provide correct, up-to-date, and complete information as is necessary for the appropriateness assessment. Such steps by the Regulated Person may, for instance, include asking the client for further clarification where the information collected on his or her knowledge and experience shows that he or she has more knowledge about complex bonds than about plain vanilla bonds.

4.3 The Regulated Persons' policies and procedures should aim at assessing the quality and effectiveness of the means used to collect information on the knowledge and experience of clients or potential clients. Where the Regulated Person relies on tools to be used by clients as part of the appropriateness process (such as online questionnaires or *'profiling software'*, that is, software assessing whether an investment product is appropriate or if a warning should instead be issued), the Regulated Person should ensure that it has appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results. The Regulated Person should include consistency controls on the replies provided by clients in questionnaires in order to highlight contradictions between different pieces of information collected.

4.4 In order to ensure the consistency of Client information, the Regulated Person shall view the information collected as a whole. The Regulated Person should be alert to any relevant contradictions between different pieces of information collected in order to resolve any relevant potential inconsistencies or inaccuracies. The Regulated Person

should ensure that the assessment of information collected about its clients is done in a consistent way irrespective of the means used to collect such information.

Relying on up-to-date Client Information

(Relevant EU legislation: Articles 16(2) and 25(3) of MiFID II and Article 55(3) of the MiFID II Delegated Regulation)

5. When the Regulated Person relies on previously collected information on the client's knowledge and experience, the Regulated Person shall establish procedures defining the frequency of updating such information in order to ensure that the information remains up to date and is accurate and complete for the purpose of the appropriateness assessment.

5.1 For the purposes of the appropriateness assessment, the Regulated Person may either collect information on a client's knowledge and experience each time before an investment product is offered or demanded (in case of one-off transactions) or rely on previously collected information, provided that it is up to date.

5.2 It is acknowledged that the issue of updating information in the context of the appropriateness assessment has a different nature than for the suitability assessment, because the information on a client's knowledge and experience will tend to be less volatile than other elements of the suitability assessment, and knowledge and experience generally increases overtime. Therefore, the frequency for updating information on clients may be lower under the appropriateness regime than under the suitability regime. However, the Regulated Person should develop a policy to assess knowledge and experience on a more regular basis with regard to groups of clients that are deemed more vulnerable.

5.3 The Regulated Person should ensure that the appropriateness assessment is performed on the basis of reliable information about the client's knowledge and experience. The Regulated Person should implement procedures aimed at having at its disposal up-to-date information about the client's knowledge and experience anytime a product is offered or demanded (for instance, by asking clients with whom the Regulated Person has an ongoing relationship to inform the Regulated Person regularly of any change or update regarding the information originally provided). The Regulated Person should also have adequate procedures to deal with situations where the client does not answer to its questions regarding changes or updates of the information provided initially.

5.4 The information could be updated, for instance, by sending a questionnaire to clients, or providing clients with the client information available to the Regulated Person and requesting confirmation that it remains accurate, complete, and up to date. If in such a questionnaire, the Regulated Person uses pre-filled answers based on the client's transactions history with the Regulated Person, it should ensure that only fully objective, pertinent, and reliable information is used to pre-fill those answers and that the client has the possibility to review and, if necessary, correct each of the pre-filled answers and complete them. Relevant actions by the Regulated Person following updating might include changing the client's level of knowledge and experience based on the updated information collected.

5.5 In order to avoid relying on client information that is incomplete, inaccurate, or out of date, the Regulated Person should have arrangements in place to ensure that the Regulated Person asks the client to update the information on his or her knowledge and, or experience upon becoming aware of a relevant change that may affect his or her level of knowledge and, or experience.

5.6 The Regulated Person should adopt measures to mitigate the risk of inducing the client to update his or her level of knowledge or experience so as to make a certain investment product appear appropriate that would otherwise be inappropriate for him or her, without there being a real modification in the client's level of knowledge and experience.

In this respect, an instance of good practice to address this type of risk is the adoption of policies and procedures by the Regulated Person to verify, before or after transactions are made, whether a client's profile has been updated too frequently or only after a short period of time from the last modification. Such situations would therefore be escalated or reported to the relevant control function within the Regulated Person. The said policies and procedures are particularly important in situations where there is a heightened conflict of interest risk (for instance, in self-placement situations or where the Regulated Person receives inducements for the distribution of an investment product). Another relevant factor to consider in this context is the type of interaction that occurs with the client (for instance, face-to-face or through automated assessment).

Client Information for Legal Entities or Groups

(Relevant EU legislation: Articles 16(2) and 25(3) of MiFID II)

6. The Regulated Person should have a policy defining on an ex-ante basis how to conduct the appropriateness assessment in situations where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person. The Regulated Person should ensure that such a policy is drafted in accordance with point 6 and its supplementing provisions of Appendix 7 to this Chapter relating to the ESMA Guidelines on certain aspects of the MiFID II suitability requirements.

6.1 This requirement implied that, the Regulated Person should ensure, amongst other matters, that such a policy makes a clear distinction between situations where a representative is foreseen under applicable Maltese law (as it may be the case for instance for legal persons), and situations where no representative is foreseen; and should also ensure that such policy focuses on this latter situation. In addition, where the policy allows clients to agree to designate a representative, the Regulated Person should ensure that in terms of the said policy such clients are made aware clearly and in written form about the effects that such agreements may have regarding the protection of their respective interests. The steps taken by the Regulated Person in accordance with its policy should be appropriately documented to enable ex-post controls.

6.2 Where a representative is foreseen under applicable Maltese law or is designated, the Regulated Person should ensure that information about knowledge and experience is collected from that representative and that the appropriateness assessment is done with regards to that representative.

6.3 If the group of two or more natural persons involved have difficulties in deciding the person or persons with regard to whom the information on knowledge and experience is to be assessed, the Regulated Person should adopt the most prudent approach by taking into account the information on the person with the least knowledge and experience. The Regulated Person should in such cases at least be prudent whenever there is a significant difference in the level of knowledge and experience of the different clients part of the group, or when the intended transaction may include leveraged investment products or contingent liability transactions that pose a risk of significant losses that may exceed the initial investment of the group of clients. The Regulated Person should clearly document the approach chosen in this respect.

6.4 When a Regulated Person decides to ask information to assess the appropriateness for each individual client part of the group, the Regulated Person's policy should clearly specify how it will deal with those situations where there are significant differences between the level of knowledge and, or experience of those individual clients. In this respect, the Regulated Person should also adopt the most prudent approach by taking into account the information on the client part of the group with the least knowledge and experience. Alternatively, the Regulated Person's policy may also specify that it will not be able to assess the appropriateness in such a situation. In this context, it should be noted that collecting information on all the clients part of the group and considering, for the purposes of the appropriateness assessment, an average profile of the level of knowledge and experience of all of them, would lead to situation where the Regulated Person is unlikely to be compliant with the overarching principle of acting in the clients' best interests pursuant to MiFID II Directive 2014/65/EU.

Arrangements necessary to Understand Investment Products

(Relevant EU legislation: Articles 16(2) and 25(3) of MiFID II)

7. The Regulated Person should ensure that policies and procedures are implemented to understand the characteristics, nature, and features of investment products in order to allow it to assess if such products are appropriate to its clients.

7.1 For that purpose, a Regulated Person should adopt reliable and objective procedures and tools that allow it to appropriately and in a proportionate manner consider the different characteristics and relevant risk factors (such as: credit risk, market risk and liquidity risk) of the investment products offered or demanded.

This should include the Regulated Person taking into consideration the Regulated Person's analysis conducted for the purposes of product governance obligations (whereby, in particular, the Regulated Person shall, in terms of R.4.4.15 implementing Article 24(2), second subparagraph of MiFID II Directive 2014/65/EU, understand the financial instruments it offers or recommends in order to be able to comply with its obligation to ensure the compatibility between products offered or recommended and the related target market of end clients).

In this context, the Regulated Person should carefully assess how certain investment products may behave under different circumstances (for instance, convertible bonds which may change their nature into shares).

7.2 It is particularly important to note that the Regulated Person should consider the level of "complexity" of products, which shall then be matched with the client's information on knowledge and experience. It is to be noted that even though the *"complexity"* is a relative term, which depends on several factors, the Regulated Person should (further

to the assessment of products as complex or non-complex as required for the distinction between services that require an appropriateness assessment and those that do not require such an assessment) also take into account the criteria and principles identified in the MiFID II Directive 2014/65/EU, when defining and appropriately graduating the level of complexity to be attributed to investment products for the purposes of the appropriateness assessment.

7.3 The Regulated Person should adopt procedures to ensure that the information used to correctly classify investment products included in its product offer is sufficiently reliable, accurate, consistent, and up to date. The Regulated Person should ensure that the said procedures take into account the different characteristics and nature of the investment products considered. In addition, the Regulated Person should review the information used so as to be able to reflect any relevant changes that may impact the investment product's classification. This is particularly important taking into account the continuing evolution and growing speed of financial markets.

7.4 When categorising investment products for the purpose of the appropriateness assessment, the Regulated Person should use a sufficient level of granularity to ensure that only investment products with sufficiently comparable characteristics and risk features are grouped together and that the client's experience and knowledge is being assessed by the Regulated Person on such characteristics and risks.

The Regulated Person should consider the following:

(a) multiple key factors for the categorisation (such as, for instance: optionality elements in the case of derivatives, or products with embedded derivatives);
(b) financial leverage;
(c) eligibility to bail-in;
(d) subordination clauses;
(e) observability of the underlying, such as the use of unfamiliar or opaque indices;
(f) guarantees of principal repayment or capital protection clauses;
(g) liquidity of the product, that is, tradability on trading venues, bid-ask spread, selling restrictions and exit charges; and
(h) the currency denomination of the investment product.

Matching Clients with Appropriate Products

Arrangements necessary to ensure a consistent Appropriateness Assessment

(Relevant EU legislation: Articles 16(2) and 25(3) of MiFID II and Articles 21 and 56(1) of the Delegated Regulation)

8. In order to assess whether an investment service or product envisaged is appropriate for the client, the Regulated Person should establish policies and procedures to ensure that the Regulated Person consistently takes into account:

(a) all information obtained about the client's knowledge and experience necessary to assess whether an investment product is appropriate;

(b) all relevant characteristics and risks of the investment products considered in the appropriateness assessment.

The Regulated Person should establish policies and procedures enabling the Regulated Person to issue a clear and not misleading warning in case it considers that the investment service or product is not appropriate for the client or potential client.

8.1 A sale of an investment product that amounts to a disinvestment by the Client should not trigger the necessity for the Regulated Person to conduct an appropriateness assessment.

8.2 A Regulated Person that relies on automated tools when conducting an appropriateness assessment should have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results when matching the client's and investment product's characteristics.

8.3 In this regard, the Regulated Person should ensure that the tools are designed so that these take account of all the relevant specificities of each client or investment product. In this respect, tools which, for instance, classify clients (according to their level of knowledge and experience) or investment products too broadly would not be fit for purpose.

8.4 The Regulated Person should clearly define and document the applicable methodology used to determine the outcome of the appropriateness assessment. Where the Regulated Person uses a defined scoring system to grade and assess appropriateness, the methodology, metrics, and formula used should be clear, unambiguous, and documented.

8.5 When assessing, in the course of conducting an appropriateness assessment, a client's understanding of the main characteristics and risks of the specific types of investment products offered or demanded, the Regulated Person should consider the information that the Regulated Person has collected about the client's knowledge and experience altogether for the overall appraisal of his or her understanding of the investment products and of the risks involved in the envisaged transactions.

8.6 The Regulated Person should ensure that its relevant staff is provided with sufficient and unambiguous guidelines as to how to perform the appropriateness assessment, to ensure they do not have undue discretion when performing this assessment, and to be in a capacity to justify the decision taken ex-post.

The Regulated Person should ensure that tools and procedures adopted for the appropriateness assessment are designed in such a way that a client would not match with types of investment products for which the client's experience and, or knowledge has not been assessed, or for which the client has not shown a sufficient level of knowledge and, or experience; and that a proper warning is issued accordingly.

8.7 In order to ensure the consistency of the appropriateness assessment conducted through automated tools (even if the interaction with clients does not occur through automated systems), the Regulated Person should ensure that algorithms which determine the appropriateness of investment products offered or demanded are properly documented and regularly monitored and tested. When defining such algorithms, the Regulated Person should take into account the nature and characteristics of the investment products included in its offer to clients. In particular, the Regulated Person should, at least:

(a) establish an appropriate system-design documentation that clearly sets out the purpose, scope, and design of the algorithms; Decision trees or decision rules should form part of this documentation, where relevant;

(b) have a documented test strategy that explains the scope of testing of algorithms. This should include test plans, test cases, test results, defect resolution (if relevant), and final test results;

(c) have in place appropriate policies and procedures for managing any changes to an algorithm, including monitoring, and keeping records of any such changes; this includes the Regulated Person having security arrangements in place to monitor and prevent unauthorised access to the algorithm;

(d) review and update algorithms to ensure that these reflect any relevant changes (for instance, market changes and changes in the applicable law) that may affect their effectiveness;

(e) have in place policies and procedures enabling the Regulated Person to detect any error within the algorithm and deal with it appropriately, including, for instance, suspending the provision of services if that error is likely to result in an inappropriate transaction and, or a breach of relevant law or regulation;

(f) have in place adequate resources, including human and technological resources, to monitor and supervise the performance of algorithms through an adequate and timely review of the services provided; and

(g) have in place an appropriate internal sign-off process to ensure that the steps above have been followed.

Effectiveness of Warnings

(Relevant EU legislation: Article 25(3) of MiFID II and Article 56(2) of the Delegated Regulation)

9. The Regulated Person shall ensure that the warning issued by the Regulated Person in case no or insufficient information is provided by the client on his or her knowledge or experience, or in case the assessment of such information shows that the investment service or product offered or demanded is not appropriate for the client, is "*prominent, clear, and not misleading*", in order to ensure the effectiveness of such warning.

9.1 In this respect, the Regulated Person should take reasonable steps to ensure the warnings the Regulated Person issues to clients are correctly received and understood as such. To this end, the Regulated Person should ensure, amongst other matters that the warnings shall be prominent and this may be done, for instance, by using a different colour for the warning message from the rest of the information provided or, if the order is placed over the telephone, by explaining the warning and its impact to the client while answering any questions from the client to ensure that the client has correctly received and understood the warning.

9.2 The warnings issued by the Regulated Person should also clearly state the reason for warning the client:

(a) either that no information was provided by the client or that the information collected is insufficient; and that therefore, the Regulated Person, is not in a position to determine the appropriateness of the envisaged transaction; or

(b) that the assessment of the information provided by the client shows that the envisaged transaction is inappropriate for the client.

In this respect, the Regulated Person should ensure that, for instance, ambiguous messages stating that the product is appropriate for *"basic/intermediate/expert clients"* are to be avoided. Similarly, the Regulated Person should avoid issuing warnings containing imprecise language (such as, stating that the product or service *"may not be appropriate"* for the client), as such warnings are unlikely to make the client sufficiently aware of the risks of proceeding with the transaction. The Regulated Person should also avoid overly long warnings that obscure the key message that the client does not have or did not demonstrate having the necessary knowledge and experience for the investment service or product.

9.3 The Regulated Person should not downplay the importance of warnings and should not encourage the client to ignore them (for instance, during telephone conversations or in language used in the warning).

9.4 The Regulated Person should avoid the use of messages in the warnings that may encourage the client to proceed with the transaction, to re-take the appropriateness assessment or to request an upgrade to professional client. For instance, the Regulated Person may implement a process that the client needs to confirm that he or she is aware of the information provided in the warning before he or she can proceed with the transaction.

9.5 If a client who does not have the necessary knowledge and experience is offered educational tools, webinars, or *'demo'* trading platforms with the aim of improving his or her knowledge, the Regulated Person should, subsequently, determine that the client has the necessary knowledge regarding the envisaged investment service or product by conducting another appropriateness assessment focused on his or her level of knowledge. The Regulated Person should ensure that such educational tools are not structured in such a way that they specifically aim to improve the client's ability to provide correct answers to a pre-defined set of questions, as this may lead to a circumvention of the Regulated Person's obligation to assess the client's knowledge and experience of the investment products offered or demanded.

9.6 Where the Regulated Person's policies and procedures provide for the possibility to accept its clients' requests to proceed with the transaction after a warning has been issued, the Regulated Person should evaluate the overall effectiveness of the warnings issued on an ex-post basis (for instance, by assessing the ratio of warnings that were followed by a transaction to the total of all warnings issued) and should make adjustments to its relevant policies and procedures where necessary.

9.7 Additionally, by way of good practice, the Regulated Person may have policies and procedures identifying any conditions and criteria under which a client's request to proceed with a transaction after having received a warning may be accepted or not. For instance, a Regulated Person may take into account situations where there is a heightened risk of conflicts of interest because the Regulated Person is selling its own investment products (or investment products issued by entities of the same group), or actively marketing investment products from within the Regulated Person's range. Another factor that may be considered by the Regulated Person is a high level of complexity or risk of products offered or demanded.

Other Related Requirements

Qualifications of Staff of the Regulated Person

(Relevant EU legislation: Articles 16(2) and 25(3) of MiFID II and Article 21(1)(d) of the Delegated Regulation)

10. The Regulated Person should ensure that staff involved in the appropriateness assessment understand the role they play in the appropriateness assessment and have an adequate level of skills, knowledge, and expertise (including sufficient knowledge of the relevant regulatory requirements and procedures) in order to discharge their responsibilities. To that end, the Regulated Person should regularly train its staff.

10.1 It is to be emphasised that the Regulated Person shall ensure that staff giving information about investment products, investment services or ancillary services to clients on behalf of the Regulated Person possess the necessary knowledge and competence required under R.4.4.4 of Chapter 4 of the Rulebook implementing Article 25(1) of MiFID II Directive 2014/65/EU (and specified further in the ESMA Guidelines for the assessment of knowledge and competence), including with regard to the appropriateness assessment.

10.2 The Regulated Person should also ensure that other staff that do not directly face clients but are involved in the appropriateness assessment in any other way, should still possess the necessary skills, knowledge and expertise required depending on their particular role in the appropriateness process. This may regard, for instance, setting up the questionnaires, defining algorithms governing the assessment or other aspects necessary to conduct the appropriateness assessment and controlling compliance with the appropriateness requirements.

10.3 Where relevant, when employing automated tools (including hybrid tools), the Regulated Person should ensure that its staff involved in the activities related to the development of these tools:

(a) have an appropriate understanding of the technology and algorithms used to conduct an automated assessment (particularly, staff should be able to understand the rationale, risks and rules behind the algorithms underpinning the automated assessment); and

(b) are able to understand and review the automated assessment generated by the algorithms.

Record-Keeping

(Relevant EU legislation: Articles 16(6), 16(7), 25(5) and 25(6) of MiFID II and Articles 56(2) and 72 and 76 of the Delegated Regulation)

11. The Regulated Person shall, as part of its obligation to maintain records of the appropriateness assessment referred to in R.4.4.115 of Chapter 4 of the Rulebook implementing Article 56(2) of the MiFID II Delegated Regulation 2017/565, the Regulated Person should, at least:

(a) maintain adequate recording and retention arrangements to ensure orderly and transparent record-keeping regarding the appropriateness assessment, including the collection of information from the client and the non-advised service provided;

(b) ensure that record-keeping arrangements are designed to enable the detection of failures regarding the appropriateness assessment;

(c) ensure that records kept are accessible for the relevant persons in the Regulated Person and for competent authorities;

(d) have adequate processes to mitigate any shortcomings or limitations of the record-keeping arrangements.

11.1 Record-keeping arrangements adopted by the Regulated Person should be designed to enable the Regulated Person to track ex-post:

(a) the result of the appropriateness assessment including its rationale, that is, a clear and straightforward link between the client information gathered and assessed and the outcome of the assessment;

(b) any warning issued by the Regulated Person where the investment service or product was assessed as potentially inappropriate for the client, or where the client did not provide sufficient information to enable the Regulated Person to undertake an appropriateness assessment (irrespective of whether the client asked to proceed with the transaction or not);

(c) whether the client asked to proceed with the transaction despite the warning; and

(d) whether the Regulated Person accepted the client's request to proceed with the transaction in accordance with the related procedures adopted.

11.2 Therefore, the Regulated Person should, record all relevant information about the appropriateness assessment, such as information about the client (including how that information is used and interpreted to define the client's knowledge and experience profile), and information about investment products offered to the client. The Regulated Person should ensure that such records include:

(a) any updates to the information provided in the context of the appropriateness assessment, in particular any change to the client's knowledge and experience profile;

(b) the types of investment products that fit that profile and the rationale for such an assessment, as well as any changes and the reasons for such changes.

11.3 The Regulated Person should have in place arrangements enabling it to understand and mitigate the additional risks that may affect the provision of investment services through online or digital tools, such as malicious cyber activity.

In this respect, the Regulated Person should consider such risks, not only in the context of point 11 above and its supporting provisions, but also as part of the Regulated Person's wider obligations under R1-1.4.4 of Part BI of the Investment Services Rules for Investment Service Providers issued under the Investment Services Act, (implementing Article 16(4) of MiFID II Directive 2014/65/EU), to take reasonable steps to ensure continuity and regularity in the performance of investment service and activities, and corresponding requirements contained in the MiFID II Delegated Regulation 2017/565 related to this.

11.4 Record-keeping arrangements adopted by the Regulated Person may vary depending on the distribution channel used to provide non-advised services. For instance, the Regulated Person should:

(a) where services are provided online, develop IT tools to track and store the information;
(b) where services are provided by telephone, adopt appropriate arrangements to ensure that the Regulated Person is able to link any warning issued by it with a possible transaction made by the client who decides to proceed despite that warning; and
(c) where services are provided face-to-face, collect and record all relevant forms and documents used in the appropriateness process, in particular those signed by the client and, or the Regulated Person's staff.

Determining Situations where the Appropriateness Assessment is required

(Relevant EU legislation: Articles 16(2), 25(3) and 25(4) of MiFID II and Article 57 of the Delegated Regulation)

12. The Regulated Person should adopt appropriate arrangements to ensure that the Regulated Person is able to determine situations where an appropriateness assessment needs to be performed and avoid performing one in situations where a suitability assessment needs to be performed.

12.1 The Regulated Person should have procedures and controls in place regarding the interaction between its sales staff and clients to guide and record the interaction (while taking into account point 11 above and its supporting provisions) and ensure that there is a clear distinction between advised and non-advised transactions on the one hand, and, on the other, between transactions falling within the *"execution-only"* exemption and other non-advised transactions.

12.2 The Regulated Person should have in place policies and procedures to ensure that the conditions provided in R.4.4.45 of Chapter 4 of the Rulebook implementing Article 25(4) of the MiFID II Directive 2014/65/EU for providing *"an execution-only"* service where an appropriateness assessment is not conducted are being met. This does not prevent the Regulated Person from carrying out an appropriateness assessment for all kinds of products, complex and non-complex.

12.3 The Regulated Person should design, implement, and update policies and processes to identify which of its investment products may be regarded as "complex" and "non-complex" for the purposes of the appropriateness requirements. The Regulated Person should ensure that *"other non-complex financial instruments"* as referred to in R.4.4.45(a)(vi) of Chapter 4 of the Rulebook implementing Article 25(4)(a)(vi) of the MiFID II Directive 2014/65/EU are categorised as complex, unless the investment products have been assessed against and have met all the criteria of R.4.4.53 of Chapter 4 of the Rulebook implementing Article 57 of the MiFID II Delegated Regulation 2017/565.

12.4 The Regulated Person's policies and processes should ensure that the investment products expressly excluded from the list of non-complex instruments of R.4.4.45(a)(i) to (v) of Chapter 4 of the Rulebook implementing Article 25(4)(a)(i) to (v) of the

MiFID II Directive 2014/65/EU are in any case not assessed against the criteria set out in R.4.4.53 of Chapter 4 of the Rulebook implementing Article 57 of the MiFID II Delegated Regulation 2017/565 Regulation to potentially be categorised as non-complex investment products for the purposes of the appropriateness assessment.

12.5 The Regulated Person should be able to trace whether a client has submitted his or her order in response to a personalised communication from or on behalf of the Regulated Person. In such cases, the Regulated Person should disqualify the transaction for the purposes of the *"execution-only"* exemption.

Controls

(Relevant EU legislation: Articles 16(2), the second subparagraph of 16(5) and 25(3) of MiFID II and 76 of the Delegated Regulation)

13. The Regulated Person should have appropriate monitoring arrangements and controls in place to ensure compliance with the appropriateness requirements.

13.1 When the Regulated Person relies on automated systems or tools in the appropriateness assessment process (for instance, client-profiling tools based on knowledge and experience, automatic warnings, or controls on complexity of investment products), the Regulated Person should ensure that such systems or tools are fit for purpose and should ensure that such systems or tools are monitored periodically. The Regulated Person should keep records of this monitoring. In this respect, reference shall also be made to point 11 above and its supporting provisions.

13.2 When making use of automated controls in the context of the appropriateness assessment, the Regulated Person should ensure that the automated controls cannot be circumvented (exceptions need to be reserved for specific circumstances set in the Regulated Person's procedures and with specific hierarchical authorisation). The Regulated Person should periodically monitor the correct functioning of these automated controls and should have appropriate policies and procedures in place to detect IT issues at an early stage.

13.3 In the context of the appropriateness assessment, the Regulated Person shall pay particular attention to the complexity of investment products. The Regulated Person should ensure that, for instance, databases with complexity codes used for the appropriateness assessment tools are reviewed on a regular basis and are be kept up to date.

13.4 When the appropriateness assessment is done through face-to-face meetings or by telephone, in which case a human intervention exists, the Regulated Person should include written records from face-to-face meetings or telephone recordings in its regular control processes to monitor whether its sales staff comply with their duties in the context of the appropriateness assessment. The Regulated Person should monitor the written records or telephone recordings as part of its control procedures.

13.5 The Regulated Person should monitor matters (such as, the ratio of warnings that were followed by a transaction to the total of all warnings issued) in order to evaluate the overall effectiveness of the warnings issued.

Appendix 7

(R.4.4.16 of Chapter 4 of the Rulebook)

Obligations and Guidelines on certain aspects of the MiFID II Suitability Requirements[23]

The requirements set out in this Appendix mainly implement the ESMA Guidelines on certain aspects of the MiFID Suitability Requirements which primarily aim to address the provision of suitable personal recommendations to Clients and/or the taking of suitable investment decisions on behalf of Clients.

Some of the requirements contained in this Appendix supplement the Rules and Guidelines of this Rulebook which implement the changes made to the MiFID II Directive 2014/65/EU framework by means of Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms.

Scope

The requirements and the relative guidance set out in this Appendix shall apply to persons falling under points (i) and (v) of the definition of *'Regulated Person'* in the Glossary, (hereinafter referred to as *'Regulated Person')*, in relation to the provision of Advice and/or Portfolio Management, as well as when selling or advising clients in relation to Structured Deposits. The said requirements and guidance shall apply irrespective of the means of interaction with Clients.

The provisions of this Appendix address situations where Investment Services are provided to Retail Clients. These provisions also apply, to the extent they are relevant, when Services are provided to Professional Clients, taking into account the provisions under relevant provisions implementing Article 54(3) of the MiFID II Delegated Regulation 2017/565 and Annex II of MiFID II Directive 2014/65/EU.

The contents of this Appendix shall be read and construed together with other relevant requirements laid down in the various Chapters of this Rulebook, in particular Chapter 4 thereof.

Updating of Client Questionnaires in relation to Sustainability Preferences

Regulated Persons are required by the MiFID II Delegated Regulation 2017/565 to have the updated client questionnaires ready at the date of application of the new requirements on 2 August 2022, so as to allow any new Client or any existing Client that wishes to update his or her profile to do it from that date. That said, in line with G.4.4.8 of Chapter 4, Regulated

[23] With the Conduct of Business Rulebook changes of October 2023 there has been a reorganization and shift of certain Rules and guidance from the main body of the relevant Chapter to this Appendix. It is to be particularly noted that contents of this Appendix which are new or amended when compared with the immediately preceding ESMA Guidelines on the subject-matter are applicable as from *3 October 2023*.

Persons could also decide to collect the Client's individual Sustainability Preferences at the *"next regular update"* of the Client profile review.

However, in this respect and in consideration of the importance of sustainability-related matters and the operational complexities that a complete update of Client profiles can entail, Regulated Persons are expected to launch the campaign to proactively invite Clients to update their profiles with regard to sustainability preferences no later than 2 August 2023.

For the avoidance of doubt, until the Regulated Persons acquire information on the client's sustainability preferences, the Client will be considered as *"sustainability-neutral"* and therefore, in line with points 5.4 and 8.9 below, the Client could be recommended Products both with and without sustainability-related features.

Definitions

In this Appendix, the following definitions shall apply. Other terms used shall be construed in terms of the Glossary to these Rules and in terms of MiFID II Directive 2014/65/EU and the MiFID II Delegated Regulation 2017/565:

> ***"suitability assessment"*** means the whole process of collecting information about a Client and the subsequent assessment by the Regulated Person that a given investment Product is suitable for him or her, based also on the Regulated Person's solid understanding of the Products that it can recommend or invest into on behalf of the Client;
>
> ***"robo-advice"*** means the provision of Advice or Portfolio Management Services (in whole or in part) through an automated or semi-automated system used as a Client-facing tool.

Information to Clients about the purpose of the Suitability Assessment and its Scope

(Relevant EU legislation: Articles 24(1), 24(4) and 24(5) of MiFID II and Article 54(1) of the MiFID II Delegated Regulation)

1. The Regulated Persons are to inform their Clients clearly and simply about the suitability assessment and its purpose which is to enable the Regulated Person to act in the Client's best interest. This is to include a clear explanation that it is the Regulated Person's responsibility to conduct the assessment, so that Clients understand the reason why they are asked to provide certain information and the importance that such information is up-to-date, accurate and complete. Such information may be provided by the Regulated Person in a standardised format.

1.1 Information about the suitability assessment should help Clients understand the purpose of the requirements and should encourage them to provide up-to-date, accurate and sufficient information about their knowledge, experience, financial situation (including their ability to bear losses), and investment objectives (including their risk tolerance). Regulated Persons should highlight to their Clients that it is important to gather complete and accurate information so that the Regulated Person can recommend suitable Products or Services to the Client. Without this information, Regulated Persons cannot provide Advice and Portfolio Management services to Clients.

1.2 It is up to the Regulated Persons to decide how it will inform its Clients about the suitability assessment and such Information can be provided in a standardised format. The format used should however enable *a posteriori* controls to check if the information was provided by the Regulated Person.

1.3 Regulated Persons should avoid stating, or giving the impression, that it is the Client who decides on the suitability of the investment, or that it is the Client who establishes which Financial Instruments fit his or her own risk profile. For instance, Regulated Persons should avoid indicating to the Client that a certain Financial Instrument is the one that the Client chose as being suitable, or requiring the Client to confirm that a Financial Instrument or service is suitable.

1.4 Any disclaimers (or other similar types of statements) aimed at limiting the Regulated Person's responsibility for the suitability assessment would not in any way impact the characterisation of the service provided in practice to Clients nor the assessment of the Regulated Person's compliance to the corresponding requirements. For instance, when collecting Clients' information required to conduct a suitability assessment (such as the Clients' investment horizon/holding period or information related to risk tolerance), Regulated Persons should not claim that they do not assess the suitability.

1.5 In order to help Clients understand the concept of "Sustainability Preferences" as defined in paragraph (a) of the definition of this term in the Glossary to these Rules (in accordance with Article 2(7) of the MiFID II Delegated Regulation 2017/565) and the choices to be made in this context, Regulated Persons should explain the terms and the distinctions between the different elements of the definition of Sustainability Preferences outlined under paragraph 1 (a) to (c) of the said definition in the Glossary to these Rules *(implementing Article 2(7)(a) to (c) of the MiFID II Delegated Regulation 2017/565); and also the distinctions between these Products* and Products without such sustainability features in a clear manner, avoiding technical language. Regulated Persons should also explain terms and concepts used when referring to Environmental, Social and Governance aspects.

1.6 In order to address potential gaps in Clients' understanding of the services provided through robo-advice, Regulated Persons should inform Clients, in addition to other required information, on the following:

(a) a very clear explanation of the exact degree and extent of human involvement and if and how the Client can ask for human interaction;

(b) an explanation that the answers Clients provide will have a direct impact in determining the suitability of the investment decisions recommended or undertaken on the Clients behalf;

(c) a description of the sources of information used to generate an Advice or to provide the Portfolio Management Service (for instance, if an online questionnaire is used, Regulated Persons should explain that the responses to the questionnaire may be the sole basis for the robo-advice or whether the Regulated Person has access to other Client information or accounts);

(d) an explanation of how and when the Client's information will be updated with regard with regard to for instance, his or her situation and/or personal circumstances and other matters.

1.7 Provided that all the information and reports given to Clients should comply with the relevant provisions (including obligations on the provision of information in durable medium), Regulated Persons should also carefully consider whether their written disclosures are designed to be effective (for instance, ensure that the disclosures are made available directly to Clients and are not hidden or incomprehensible). For Regulated Persons providing robo-advice this may in particular include:

(a) emphasising the relevant information (for example, through the use of design features such as pop-up boxes);

(b) considering whether some information should be accompanied by interactive text (for example, through the use of design features such as tool-tips) or other means to provide additional details to clients who are seeking further information (for example, through an F.A.Q. section).

Know your Client and Know your Product

Arrangements necessary to understand Clients

(Relevant EU legislation: Articles 16(2) and 25(2) of MiFID II and Articles 54(2) to 54(5) and Article 55 of the MiFID II Delegated Regulation)

2. Regulated Persons shall establish, implement and maintain adequate policies and procedures (including appropriate tools) to enable them to understand the essential facts and characteristics about their Clients. Regulated Persons should ensure that the assessment of information collected about their Clients is done in a consistent way, irrespective of the means used to collect such information.

2.1 The Regulated Persons' policies and procedures should enable them to collect and assess all information necessary to conduct a suitability assessment for each Client, while taking into account the elements developed in point 3 below and its supporting provisions.

2.2 For instance, Regulated Persons may use questionnaires (also in a digital format) completed by their Clients or information collected during discussions with the Clients. Regulated Persons should ensure that the questions they ask their Clients are specific enough and are likely to be understood correctly; and that any other method used to collect information is designed to get the information required for a suitability assessment.

2.3 When designing the questionnaires aiming at collecting information about their Clients for the purpose of a suitability assessment Regulated Persons should be aware and consider the most common reasons why Clients could fail to answer questionnaires correctly. In particular:

(a) attention should be given to the clarity, exhaustiveness and comprehensibility of the questionnaire, avoiding misleading, confusing, imprecise and excessively technical language;

(b) the layout should be carefully elaborated and shall avoid orienting Client' choices (for instance: font and line spacing);

(c) presenting questions in batteries to collect information on a series of items through a single question, particularly when assessing knowledge and experience and the risk tolerance, should be avoided;

(d) Regulated Persons should carefully consider the order in which they ask questions in order to collect information in an effective manner;

(e) in order to be able to ensure necessary information is collected, the possibility not to reply should generally not be available in questionnaires (particularly when collecting information on the Client's financial situation).

2.4 Regulated Persons should also take reasonable steps to assess the Client's understanding of investment risk as well as the relationship between risk and return on investments, as this is key to enable Regulated Persons to act in accordance with the Client's best interest when conducting the suitability assessment. When presenting questions in this regard, Regulated Persons should explain clearly and simply that the purpose of answering them is to help assess Clients' attitude to risk (risk profile), and therefore the types of Financial Instruments (and risks attached to them) that are suitable for the Clients.

2.5 Information necessary to conduct a suitability assessment includes different elements that may affect, for instance, the analysis of the Client's financial situation (including his ability to bear losses) or investment objectives (including his risk tolerance). Examples of such elements are the Client's:

(a) marital status (especially the client's legal capacity to commit assets that may belong also to his or her partner);

(b) family situation (changes in the family situation of a client may impact his financial situation, for instance, a new child or a child of an age to start university);

(c) age (which is mostly important to ensure a correct assessment of the investment objectives, and in particular the level of financial risk that the Client is willing to take, as well as the holding period/investment horizon, which indicates the willingness to hold an investment for a certain period of time);

(d) employment situation (the degree of job security or that fact the Client is close to retirement may impact his financial situation or his or her investment objectives);

(e) need for liquidity in certain relevant investments or need to fund a future financial commitment (for instance, property purchase and education fees).

2.6 When determining what information is necessary, Regulated Persons should keep in mind the impact that any significant change regarding that information could have concerning the suitability assessment.

2.7 The information on the Sustainability Preferences of the Client should include all aspects mentioned in points (a) to (c) of paragraph 1 of the definition of *"Sustainability Preferences"* in the Glossary to these Rules *(implementing Article 2(7)(a) to (c) of the MiFID II Delegated Regulation 2017/565) and* should be sufficiently granular to allow for a matching of the Client's Sustainability Preferences with the sustainability-related features of Financial instruments. Regulated Persons should collect the following information from clients:

(a) whether the Client has any Sustainability Preferences (yes/no);

(b) if the Client answers *"yes"* to the previous question, whether the Client has Sustainability Preferences with regard to one or more of points (a) to (c) of paragraph 1 of the definition of *"Sustainability Preferences"* in the Glossary to these Rules *(implementing points (a), (b) or (c) of the definition according to Article 2(7) of the MiFID II Delegated Regulation 2017/565);*

(c) for aspects (a) and (b) of the definition in the Glossary *(implementing points (a) and (b) of the definition in Article 2(7) of the MiFID II Delegated Regulation 2017/565), the* minimum proportion;

(d) for aspect (c) of the *definition in the Glossary (implementing point (c) of the definition in Article 2(7) of the MiFID II Delegated Regulation 2017/565), which* Principal Adverse Impacts (the *"PAI")* should be considered including quantitative or qualitative criteria demonstrating that consideration.

In addition, throughout the process, Regulated Persons should adopt a neutral and un-biased approach as to not influence Clients' answers.

2.8 To achieve this (in the context of paragraph 2.7 above), Regulated Persons could choose the following approach to collect Clients' preferences:

(a) Regulated Persons could collect information on the Sustainability Preferences of the Client which would refer to one or more of the aspects expressed through points (a) to (c) of paragraph 1 of the definition of *"Sustainability Preferences"* in the Glossary to these Rules *(implementing points (a), (b) or (c) of the definition according to Article 2(7) of the MiFID II Delegated Regulation 2017/565).* This aspect could be assessed through closed-ended yes/no-questions;

(b) Regulated Persons could also collect information on whether the Client's Sustainability Preferences with regard to points (b) and (c) of paragraph 1 of the definition of *"Sustainability Preferences"* in the Glossary to these Rules *(implementing points (b) and (c) of the definition according to Article 2(7) of the MiFID II Delegated Regulation 2017/565), if any*, have a focus on either Environmental, Social or Governance Sustainability Factors or a combination of them or whether the Client does not have such a focus;

(c) where the Client expresses preferences in terms of the "minimum proportion" as mentioned in points (a) and (b) of paragraph 1 of the definition of "Sustainability Preferences" in the Glossary to these Rules *(implementing points (a) and (b) of the definition according to Article 2(7) of the MiFID II Delegated Regulation 2017/565),* Regulated Persons could collect this information not in terms of an exact percentage but by minimum percentages. These percentages should be presented in a neutral way to the Client and should be sufficiently granular. Regulated Persons could, for instance, assist the Client to identify the minimum proportion by approximating the minimum proportion by standardised minimum proportions, such as "minimum 20%, minimum 25%, minimum 30%";

(d) in case the Client wishes to include a Financial Instrument that considers PAI, the information collected should cover the qualitative or quantitative elements of PAI mentioned under point (c) of paragraph 1 of the definition of *"Sustainability Preferences"* in the Glossary to these Rules *(implementing point (c) of the definition according to Article 2(7) of the MiFID II Delegated Regulation 2017/565). Regulated* Persons could test the Client's preferences and appetite for PAI integration with regard to the families of PAI indicators as whole, based on a possible focus of the client on Environmental, Social or Governance aspects, using the categories

presented in the SFDR RTS (Commission Delegated Regulation (EU) 2022/1288), (instead of an approach based on each PAI indicator) such as emissions, energy performance, water and waste;

An evaluation could then be initiated for each category that is important/key for the Client or not. This qualitative evaluation could be based on the approaches in which Products consider PAI (for instance, exclusion strategies/controversies policies/voting and engagement policies).

In case the Client wishes to include a Financial Instrument that considers PAI, Regulated Persons could also ask the Client if there are specific economic activities that, on the basis of relevant PAIs, it wishes to exclude from its investments (for instance, specific economic activities that are considered as significantly harmful under the framework of the Taxonomy Regulation (Regulation (EU) 2020/852) and/or that are opposed to the environmental and ethical views held by the Client and that are linked to certain principal adverse impacts on Sustainability Factors).

2.9 Regulated Persons should have policies and instructions for their Client-facing staff in place for situations where Clients answer that they do have Sustainability Preferences but do not state a preference with regard to any of the specific aspects mentioned under points (a) to (c) of paragraph 1 of the definition of *"Sustainability Preferences"* in the Glossary to these Rules *(implementing points (a), (b) or (c) of the definition according to Article 2(7) of the MiFID II Delegated Regulation 2017/565)*, or with regard to a minimum proportion. For instance, the Regulated Person could consider any of the aspects under the said points (a) to (c).

Where Regulated Persons make use of this approach, they should explain it and inform the Client about the sustainability features of the Product(s) recommended or on which the Regulated Person will invest on behalf of the Client and document within the suitability report (the "statement of suitability" referred to in the relevant Rules implementing Article 25 of MiFID II Directive 2014/65/EU) the Client's choice not to further specify the Sustainability Preferences. Regulated Persons should ensure that similar arrangements are in place when Regulated Persons provide robo-advice services given the limited human interaction.

2.10 When providing Portfolio Management or Advice with a portfolio approach Regulated Persons should collect information on the Client's Sustainability Preferences with the same granularity as set out in paragraphs 2.7 and 2.8 above. Regulated Persons should also ask the Client which part/percentage of the portfolio (if any) the Client wants to be invested in Products meeting the client's Sustainability Preferences. Where Regulated Persons work with model portfolios that combine some or all of the criteria listed under paragraph 2.7 above, these model portfolios should allow for a granular assessment of the Client's preferences and should not be translated into a questionnaire that pushes the Client into a certain combination of the criteria that would not meet the Client's Sustainability Preferences. This paragraph should be read in conjunction with paragraph 8.10 below).

2.11 Regulated Persons should take all reasonable steps to sufficiently assess the understanding by their Clients of the main characteristics and the risks related to the Product types in the offer of the Regulated Person. The adoption by Regulated Persons

of mechanisms to avoid self-assessment and ensure the consistency of the answers provided by the Client (vide point 4 below and its supporting provisions) is particularly important for the correct assessment of the Client's knowledge and experience. Information collected by Regulated Persons about a Client's knowledge and experience should be considered altogether for the overall appraisal of his understanding of the Products and of the risks involved in the transactions recommended or in the management of his or her portfolio.

2.12 Regulated Persons should appraise the Client's understanding of basic financial notions such as investment risk (including concentration risk) and risk-return trade off. To this end, Regulated Persons should consider using indicative, comprehensible examples of the levels of loss/return that may arise depending on the level of risk taken and should assess the Client's response to such scenarios.

2.13 Regulated Persons should design their questionnaires so that they are able to gather the necessary information about their Client. This may be particularly relevant for Regulated Persons providing robo-advice services given the limited human interaction. In order to ensure their compliance with the requirements concerning that assessment, Regulated Persons should take into account factors, such as:

(a) whether the information collected through the online questionnaire allows the Regulated Persons to conclude that the Advice provided is suitable for their Clients on the basis of their knowledge and experience, their financial situation and their investment objectives and needs;

(b) whether the questions in the questionnaire are sufficiently clear and/or whether the questionnaire is designed to provide additional clarification or examples to Clients when necessary (for instance, through the use of design features, such as tool-tips or pop-up boxes);

(c) whether some human interaction (including remote interaction via emails or mobile phones) is available to Clients when responding to the online questionnaire;

(d) whether steps have been taken to address inconsistent client responses (such as incorporating in the questionnaire design features to alert Clients when their responses appear internally inconsistent and suggest them to re-consider such responses; or implementing systems to automatically flag apparently inconsistent information provided by a Client for review or follow-up by the Regulated Person).

Extent of information to be collected from Clients (proportionality)

(Relevant legislation: Article 25(2) of MiFID II and Articles 54(2) to 54(5) and Article 55 of the MiFID II Delegated Regulation)

3. Before providing Advice or Portfolio Management Services, Regulated Persons need to always collect all *'necessary information'* (to be understood as meaning the information that Regulated Persons must collect to comply with the suitability requirements in accordance with Chapter 4 of this Rulebook) about the Client's knowledge and experience, financial situation and investment objectives. The extent of necessary information may vary and Regulated Persons have to take into account the features of the Advice or Portfolio Management Services to be provided, the type

and characteristics of the Products to be considered and the characteristics of the Clients.

3.1 In determining what information is 'necessary' Regulated Persons should consider, in relation to a Client's knowledge and experience, financial situation and investment objectives:

(a) the type of Financial Instrument or transaction that the Regulated Person may recommend or enter into (including the complexity and level of risk);

(b) the nature and extent of the service that the Regulated Person may provide;

(c) the needs and circumstances of the Client;

(d) the type of Client.

3.2 While the extent of the information to be collected may vary, the standard for ensuring that a recommendation or an investment made on the Client's behalf is suitable for the Client will always remain the same. The principle of proportionality under MiFID II Directive 2014/65/EU allows Regulated Persons to collect the level of information proportionate to the Products and Services these offer, or on which the Client requests specific Advice or Portfolio Management Services. However, it does not allow Regulated Persons to lower the level of protection due to Clients.

3.3 For instance, when providing access to complex Financial Instruments (as defined in MiFID II Directive 2014/65/EU, and taking into account the criteria identified in point 7 below and its supporting provisions) or access to risky Financial Instruments (it is up to each Regulated Person to define *a priori* the level of risk of the Financial Instruments included in its offer to Clients), Regulated Persons should carefully consider whether they need to collect more in-depth information about the Client than they would collect when less complex or risky instruments are at stake. This is so that Regulated Persons can assess the Client's capacity to understand, and financially bear, the risks associated with such Financial Instruments (in any case, to ensure that Clients understand the investment risk and potential losses they may bear, Regulated Persons should, as far as possible, present these risks in a clear and understandable way, potentially using illustrative examples of the extent of losses in the event of an investment performing poorly).

For such complex Products, Regulated Persons are expected to carry out a robust assessment of, amongst other matters:

(a) the Client's knowledge and experience (including, for instance, his or her ability to understand the mechanisms which make the Product "complex");

(b) whether the Client has already traded in such Products (for example, derivatives or leverage Products); and

(c) the length of time he or she has been trading them for.

3.4 In the case of illiquid Financial Instruments (it is up to each Regulated Person to define *a priori* which of the Financial Instruments included in its offer to Clients it considers as being illiquid), as part of the suitability assessment carried out by the Regulated Persons, the *'necessary information'* to be gathered will include information on the length of time for which the Client is prepared to hold the investment.

As information about a Client's financial situation will always need to be collected, the extent of information to be collected may depend on the type of Financial Instruments to be recommended or entered into. For instance, for illiquid or risky financial instruments *'necessary information'* to be collected may include all of the following elements as necessary to ensure whether the Client's financial situation allows him or her to invest or be invested in such instruments:

(a) the extent of the Client's regular income and total income, whether the income is earned on a permanent or temporary basis, and the source of this income (for example, from employment, retirement income, investment income and/or rental yields);

(b) the Client's assets, including liquid assets, investments and real property, which would include what financial investments, personal and investment property, pension funds and any cash deposits, amongst other assets, the Client may have. The Regulated Persons should, where relevant, also gather information about conditions, terms, access, loans, guarantees and other restrictions, if applicable, to the above assets that may exist;

(c) the Client's regular financial commitments, which would include what financial commitments the Client has made or is planning to make (such as, Client's debits, total amount of indebtedness and other periodic commitments).

3.5 In determining the information to be collected, Regulated Persons should also take into account the nature of the Service to be provided. Practically, this means that:

(a) when Advice is to be provided, Regulated Persons should collect sufficient information in order to be able to assess the ability of the Client to understand the risks and nature of each of the Financial Instruments that the Regulated Persons envisages recommending to that Client;

(b) when Portfolio Management Services are to be provided, as investment decisions are to be made by the Regulated Persons on behalf of the Client, the level of knowledge and experience needed by the Client with regard to all the Financial Instruments that can potentially make up the portfolio may be less detailed than the level that the Client should have when Advice is to be provided. Nevertheless, even in such situations, the Client should at least understand the overall risks of the portfolio and possess a general understanding of the risks linked to each type of Financial Instrument that can be included in the portfolio. Regulated Persons should gain a very clear understanding and knowledge of the investment profile of the Client.

3.6 Similarly, the extent of the service requested by the Client may also impact the level of detail of information collected about the Client. For instance, Regulated Persons should collect more information about Clients asking for Advice covering their entire financial portfolio than about Clients asking for specific Advice on how to invest a given amount of money that represents a relatively small part of their overall portfolio.

3.7 Regulated Persons should also take into account the nature of the Client when determining the information to be collected. For instance, more in-depth information would usually need to be collected for potentially vulnerable Clients (such as older Clients could be) or inexperienced ones asking for Advice or Portfolio Management Services for the first time. Where a Regulated Person provides Advice or Portfolio

Management Services to a Professional Client (who has been correctly classified as such), it is entitled to assume that the Client has the necessary level of experience and knowledge, and therefore is not required to obtain information on these aspects.

3.8 Similarly, where the investment Service consists of the provision of Advice to *a* per se Professional Client (as set out in Section I of Annex II of MiFID II Directive 2014/65/EU on *'Categories of client who are considered to be professionals'),* the Regulated Person is entitled to assume that the Client is able to financially bear any related investment risks consistent with the investment objectives of that Client and therefore, is not generally required to obtain information on the financial situation of the Client. Such information should be obtained, however, where the Client's investment objectives demand it. For instance, where the Client is seeking to hedge a risk, the Regulated Person will need to have detailed information on that risk in order to be able to propose an effective hedging instrument.

3.9 Information to be collected will also depend on the needs and circumstances of the Client. For instance, a Regulated Persons is likely to need more detailed information about the Client's financial situation where the Client's investment objectives are multiple and/or long-term, than when the client seeks a short-term secure investment. There may be situations where the Client is unwilling to disclose his full financial situation and for this particular instance reference should be made to the ESMA Q&As on MiFID II investor protection topics, as updated from time to time.

3.10 Information about a Client's financial situation includes information regarding his or her investments. This implies that Regulated Persons are expected to possess information about the Client's financial investments he or she holds with the Regulated Persons on an instrument-by-instrument basis. Depending on the scope of Advice provided, Regulated Persons should also encourage Clients to disclose details on Financial Investments they hold with other Regulated Persons, if possible also on an instrument-by-instrument basis.

Reliability of Client Information

(Relevant legislation: Article 25(2) of MiFID II and Articles 54(7), first subparagraph of the MiFID II Delegated Regulation)

4. Regulated Persons need to take reasonable steps and have appropriate tools to ensure that the information collected about their Clients is reliable and consistent, without unduly relying on Clients' self-assessment.

Regulated Persons remain responsible for ensuring they have the necessary information to conduct a suitability assessment. In this respect, any agreement signed by the Client, or disclosure made by the Regulated Person, that would aim at limiting the responsibility of the Regulated Person with regard to the suitability assessment, would not be considered compliant with the relevant requirements of Chapter 4 of this Rulebook and of this Appendix.

4.1 Clients are expected to provide correct, up-to-date and complete information necessary for the suitability assessment. However, Regulated Persons need to take reasonable steps to check the reliability, accuracy and consistency of information collected about Clients (when dealing with Professional Clients, Regulated Persons should take into account the proportionality principles as referred to in point 3 above

and its supporting provisions, in line with relevant Rules implementing Article 54 (3) of the MiFID II Delegated Regulation 2017/565).

4.2 In this respect, the Regulated Person should also ensure that the Self-assessment is to be counter-balanced by objective criteria, and should for instance:

(a) instead of asking whether a Client understands the notions of risk-return trade-off and risk diversification, the Regulated Person should present some practical examples of situations that may occur in practice (for example by means of graphs or through positive and negative scenarios which are based on reasonable assumptions);

(b) instead of asking a Client whether he or she has sufficient knowledge about the main characteristics and risks of specific types of Products, the Regulated Person should for instance, ask questions aimed at assessing the Client's real knowledge about the specific types of Products, for example by asking the Client multiple choice questions to which the Client should provide the right answer;

(c) instead of asking a Client whether he or she feels sufficiently experienced to invest in certain Products, the Regulated Person should ask the Client what types of Products the Client is familiar with and how recent and frequent his trading experience with them is;

(d) instead of asking whether Clients believe they have sufficient funds to invest, the Regulated Person should ask Clients to provide factual information about their financial situation, for example, the regular source of income and whether outstanding liabilities exist (such as, bank loans or other debts, which may significantly impact the assessment of the Client's ability to financially bear any risks and losses related to the investment);

(e) instead of asking whether a Client feels comfortable with taking risk, the Regulated Person should ask what level of loss over a given time period the Client would be willing to accept, either on the individual investment or on the overall portfolio.

4.3 In assessing a Client's knowledge and experience, a Regulated Persons should also avoid using overly broad questions with a yes/no type of answer and or a very broad tick-the-box self-assessment approach (for instance, Regulated Persons should avoid submitting a list of Products to the Client and asking him/her to indicate which Products s/he understands).

Where Regulated Persons pre-fill answers based on the Client's transactions history with that Regulated Person (for instance, through another investment service), it should ensure that only fully objective, pertinent, and reliable information is used and that the Client is given the opportunity to review and, if necessary, correct and/or complete each of the pre-filled answers to ensure the accuracy of any pre-populated information.

Regulated Persons should also refrain from predicting Clients' experience based on assumptions.

4.4 When assessing the risk tolerance of their Clients through a questionnaire, Regulated Persons should not only investigate the desirable risk-return characteristics of future investments, but they should also take into account the Client's risk perception. To this end, whilst self- assessment for the risk tolerance should be avoided, explicit questions

on the Clients' personal choices in case of risk uncertainty could be presented. Furthermore, Regulated Persons could for example make use of graphs, specific percentages or concrete figures when asking the Client how he would react when the value of his portfolio decreases.

4.5 Where Regulated Persons rely on tools to be used by Clients as part of the suitability process (such as questionnaires or risk-profiling software), they should ensure that they have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results. For instance, risk-profiling software could include some controls of coherence of the replies provided by clients in order to highlight contradictions between different pieces of information collected.

4.6 Regulated Persons should also take reasonable steps to mitigate potential risks associated with the use of such tools. For instance, potential risks may arise if Clients were encouraged to provide certain answers in order to get access to Financial Instruments that may not be suitable for them (without correctly reflecting the Clients' real circumstances and needs). In this regard, reference should be made also to paragraph 5.3 of Point 5 below, which addresses the risk of Clients being influenced by Regulated Persons to change answers previously provided by them, without there being any real modification in their situation.

4.7 In order to ensure the consistency of Client information, Regulated Persons should view the information collected as a whole. Regulated Persons should be alert to any relevant contradictions between different pieces of information collected, and contact the Client in order to resolve any material potential inconsistencies or inaccuracies. Examples of such contradictions are Clients who have little knowledge or experience and an aggressive attitude to risk, or who have a prudent risk profile and ambitious investment objectives.

4.8 Regulated Persons should adopt mechanisms to address the risk that Clients may tend to over-estimate their knowledge and experience, for example by including questions that would help Regulated Persons assess the overall Clients' understanding about the characteristics and the risks of the different types of Financial Instruments. Such measures may be particularly important in the case of robo-advice, since the risk of over-estimation by Clients may result higher when they provide information through an automated (or semi-automated) system, especially in situations where very limited or no human interaction at all between Clients and the Regulated Persons' employees is foreseen.

Updating Client Information

(Relevant legislation: Article 25(2) of MiFID II, as well as the second subparagraph of Articles 54(7) and Article 55(3) of the MiFID II Delegated Regulation)

5. Where a Regulated Person has an ongoing relationship with the Client (such as by providing ongoing Advice or Portfolio Management Services), in order to be able to perform the suitability assessment, the Regulated Person should adopt procedures defining:

(a) what part of the Client information collected should be subject to updating and at which frequency;

(b) how the updating should be done and what action should be undertaken by the Regulated Person when additional or updated information is received or when the Client fails to provide the information requested.

5.1 Regulated Persons should regularly review Client information to ensure that it does not become manifestly out of date, inaccurate or incomplete. To this end, Regulated Persons should implement procedures to encourage Clients to update the information originally provided where significant changes occur.

5.2 In this respect, the frequency of updating Client information might vary depending on, for example, Clients' risk profiles and taking into account the type of Financial Instrument recommended. Based on the information collected about a Client under the suitability requirements, a Regulated Person will determine the Client's investment risk profile, that is, what type of investment Services or Financial Instruments can in general be suitable for him or her taking into account his or her knowledge and experience, his or her financial situation (including his ability to bear losses) and his or her investment objectives (including his risk tolerance). For instance, a risk profile giving to the Client access to a wider range of riskier Products is an element that is likely to require more frequent updating. Certain events might also trigger an updating process; this could be so, for instance, for Clients reaching the age of retirement.

5.3 The above-referred updating could, for instance, be carried out during periodic meetings with Clients or by sending an updating questionnaire to Clients. Relevant actions might include changing the Client's profile based on the updated information collected.

5.4 With regard to the Sustainability Preferences of a Client, this information should be updated (for ongoing relationships) at the latest through the next regular update of Client information following the entry-into-application of the Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565. Clients should be provided the opportunity to have their profile updated immediately if they wish so. Where the Client does not request the immediate update of its profile, and during the period preceding the acquisition from the Regulated Person of the information on the Client's Sustainability Preferences, the Client will be considered as *"sustainability-neutral"* and therefore, in line with paragraph 8.9 of point 8 below, the Client could be recommended Products both with and without sustainability-related features.

5.5 It is also important that Regulated Persons adopt measures to mitigate the risk of inducing the Client to update his or her own profile so as to make appear as suitable a certain Product that would otherwise be unsuitable for him or her, without there being a real modification in the Client's situation (also relevant in this context are the measures adopted by Regulated Persons to ensure the reliability of Clients' information as set out under point 4 above).

As an example of a good practice to address this type of risk, Regulated Persons could adopt procedures to verify, before or after transactions are made, whether a Client's profile has been updated too frequently or only after a short period from last modification (especially if this change has occurred in the immediate days preceding a recommended investment). Such situations would therefore be escalated or reported to the relevant control function.

These policies and procedures are particularly important in situations where there is a heightened risk that the interest of the Regulated Person may come into conflict with the best interests of its Clients (for instance, in self-placement situations or where the Regulated Person receives inducements for the distribution of a Product). Another relevant factor to consider in this context is also the type of interaction that occurs with the Client (for instance, face-to-face as opposed to through an automated system). In this regard, reference should be made to the clarifications provided by in the ESMA Q&As on MiFID II investor protection topics (in particular the question on 'Transactions on unsuitable Products'), as amended from time to time.

5.6 Regulated Persons should inform the Client when the additional information provided results in a change of his profile, whether it becomes riskier (and therefore, potentially, a wider range of riskier and more complex Products may result suitable for him or her, with the potential to incur in higher losses) or vice-versa more conservative (and therefore, potentially, a more restricted range of Products may as a result be suitable for him or her).

Client Information for Legal Entities or Groups

(Relevant legislation: Article 25(2) of MiFID II and Articles 54(6) of the MiFID II Delegated Regulation)

6. Regulated Persons must have a policy defining on an *ex-ante basis*, how to conduct the suitability assessment in situations where a Client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person. Regulated Persons are to ensure that the said policy specifies, for each of those situations, the procedure and criteria that should be followed in order to comply with the suitability requirements under Chapter 4 of this Rulebook.

Steps taken by the Regulated Person in accordance with the policy should be appropriately documented to enable *ex-post* controls.

The Regulated Person should, clearly, inform *ex-ante* those of its Clients that are legal entities, groups of persons or natural persons represented by another natural person about:

(a) who should be subject to the suitability assessment;
(b) how the suitability assessment will be done in practice; and
(c) the possible impact this could have for the relevant Clients, in accordance with the existing policy.

6.1 Regulated Persons should consider whether the applicable national legal framework provides specific indications that should be taken into account for the purpose of conducting the suitability assessment (this could be the case for instance, where the appointment of a legal representative is required by law, such as, for under-age or incapacitated persons or for a legal person).

6.2 The policy referred above should make a clear distinction between situations where a representative is foreseen under applicable national law (as it can be the case for instance, for legal persons) and situations where no representative is foreseen, and it should focus on the latter situations.

Where the policy foresees agreements between Clients, the Clients should be made aware by the Regulated Person, clearly and in written form, about the effects that such agreements may have regarding the Clients' interests. Steps taken by the Regulated Person in accordance with its policy should be appropriately documented to enable *ex-post* controls.

Situations where a Representative is foreseen under applicable national law

6.3 The requirements set out in the relevant Rules implementing subparagraph 2 of Article 54(6) of the MiFID II Delegated Regulation 2017/565 define how the suitability assessment should be done with regard to situations where the Client is a natural person represented by another natural person or is a legal person having requested treatment as a Professional Client. It seems reasonable that the same approach could apply to all legal persons, regardless of the fact that they may have requested to be treated as Professional Clients or not.

6.4 Regulated Persons should ensure that their procedures adequately incorporate the provisions of this point 6 and its supporting provisions in their organisation, which would imply, amongst other matters, that the Regulated Persons verify that the representative is indeed (according to relevant national law) authorised to carry out transactions on behalf of the underlying Client.

Situations where no Representative is foreseen under applicable national law

6.5 Where the Client is a group of two or more natural persons and no representative is foreseen under applicable national law, the Regulated Person's policy should identify from whom necessary information will be collected and how the suitability assessment will be done. Clients should be properly informed about the Regulated Person's approach (as decided in the Regulated Person's policy) and the impact of this approach on the way the suitability assessment is done in practice.

6.6 In these circumstances, approaches such as the following could possibly be considered by Regulated Persons:

(a) choose to invite the group of two or more natural persons to designate a representative; or

(b) consider collecting information about each individual Client and assessing the suitability for each individual Client.

Inviting the group of two or more natural persons to designate a Representative

6.7 If the group of two or more natural persons agrees to designate a representative as referred, the same approach as the one described in the relevant Rules implementing subparagraph 2 of Article 54(6) of the MiFID II Delegated Regulation 2017/565 could be followed, so that, the knowledge and experience shall be that of the representative, while the financial situation and the investment objectives would be those of the underlying Client(s).

Such designation should be made in written form as well as according to and in compliance with the applicable national law, and recorded by the relevant Regulated Person.

The Clients, part of the group, should be clearly informed, in written form, about the impact that an agreement amongst Clients could have on the protection of their respective interests.

The Regulated Person's policy could however require the underlying Client(s) to agree on their investment objectives.

6.8 If difficulties are encountered in respect of:

(a) the person/s from whom the information on knowledge and experience should be collected;
(b) the basis on which the financial situation should be determined for the purpose of the suitability assessment; and/or
(c) on defining their investment objectives,

the Regulated Person should adopt the most prudent approach by taking into account, accordingly the following:

(i) in the case of scenario (a), the information on the person with the least knowledge and experience;
(ii) in the case of scenario (b), the weakest financial situation;
(iii) in the case of scenario (c), the most conservative investment objectives.

Alternatively, in the circumstances, the Regulated Person's policy may also specify that it will not be able to provide Advice or Portfolio Management Services in such a situation.

Regulated Persons should at least be prudent whenever there is a significant difference in the level of knowledge and experience or in the financial situation of the different Clients forming part of the group, or when the Advice or Portfolio Management Services may include leveraged Financial Instruments or contingent liability transactions that pose a risk of significant losses that could exceed the initial investment of the group of Clients and should clearly document the approach chosen.

Collecting information about each individual Client and assessing the Suitability for each individual Client

6.9 When a Regulated Person decides to collect information and assess suitability for each individual Client forming part of a group, if there are significant differences between the characteristics of those individual Clients (for instance, if the Regulated Person would classify them under different investment profiles), the Regulated Person's policy should clearly specify how it will deal with such situations, in particular how the Regulated Person is to ensure the consistency of the Advice or Portfolio Management Services provided with regard to the assets or portfolio of that group of Clients. In such a situation, a Financial Instrument may be suitable for one Client forming part of the group but not for another such Client.

Similarly to point 6.8 above, the Regulated Person should adopt the most prudent approach by taking into account the information on the Client forming part of the group with the least knowledge and experience, the weakest financial situation or the most conservative investment objectives. The Regulated Person's policy may also specify that it will not be able to provide Advice or Portfolio Management Services in such a situation.

6.10 In this context, it should be noted that collecting information on all the Clients part of the group and considering, for the purposes of the assessment, an average profile of the level of knowledge and competence of all of them, would unlikely be compliant with the overarching principle of acting in the Clients' best interests pursuant to MiFID II (Directive 2014/65/EU).

Arrangements necessary to understand Investment Products

(Relevant legislation: Articles 16(2) and 25(2) of MiFID II and Articles 54(9) of the MiFID II Delegated Regulation)

7. Regulated Persons should ensure that the policies and procedures implemented to understand the characteristics, nature and features (including costs and risks) of Products allow them to recommend suitable investments, or invest into suitable Products on behalf of their Clients.

7.1 Regulated Persons should adopt robust and objective procedures, methodologies and tools that allow them to appropriately consider the different characteristics, including Sustainability Factors, and relevant risk factors (such as, credit risk, market risk, and liquidity risk) of each Product they may recommend or invest in on behalf of clients. In this respect, when taking into consideration liquidity risk, It is particularly important that the said risk identified is not balanced out with other risk indicators (such as, for example, those adopted for the assessment of credit/counterparty risk and market risk), since the liquidity features of Products should be compared with information on the Client's willingness to hold the investment for a certain length of time (that is, the so called 'holding period').

The said procedures, methodologies and tools should include taking into consideration the Regulated Person's analysis conducted for the purposes of Product governance obligations. Reference is to be made, in particular, to the fact that Regulated Persons are required under R.4.4.15 implementing subparagraph 2 of Article 24(2) MIFID to *'understand the Financial Instruments they offer or recommend'* in order to be able to comply with their obligation to ensure the compatibility between Products offered or recommended and the related target market of end Clients.

In addition, in this context Regulated Persons should carefully assess how certain Products could behave under certain circumstances (for instance, convertible bonds or other debt instruments subject to the Bank Recovery and Resolution Directive (Directive 2014/59/EU) which may, for example, change their nature into shares).

Moreover, it is particularly important for Regulated Persons to consider the level of *'complexity'* of Products, and this should be matched with a Client's information (in particular regarding their knowledge and experience). Although complexity is a relative term, which depends on several factors, Regulated Persons should also take into account the criteria and principles identified in MiFID II Directive 2014/65/EU and in this Rulebook, when defining and appropriately graduating the level of complexity to be attributed to Products for the purposes of the assessment of suitability.

7.2 When considering the Sustainability Factors of Products in view of the subsequent matching with the Client's Sustainability Preferences, Regulated Persons could, for

instance, rank and group the Financial Instruments included in the range of Products they offer in terms of:

(a) the proportion invested in economic activities that qualify as "environmentally sustainable" (as defined in Article 2, point (1) of the Taxonomy Regulation (Regulation (EU) 2020/852));
(b) the proportion of "sustainable investments" (as defined in Article 2, point (17), of the SFDR (Regulation (EU) 2019/2088));
(c) the consideration of PAIs and other Environmental, Social and Governance sustainability features.

Such grouping should also be consistent with the Regulated Person's analysis conducted for the purposes of Product governance obligations. Regulated Persons are reminded that a grouping of Financial Instruments for the purpose of the suitability assessment cannot replace the collection of information from Clients as described in paragraphs 2.7 and 2.8 above.

7.3 Regulated Persons should adopt procedures to ensure that the information used to understand and correctly classify investment Products included in their Product offer is reliable, accurate, consistent and up-to-date. When adopting such procedures, Regulated Persons should take into account the different characteristics and nature of the Products considered (for instance, more complex Products with particular features may require more detailed processes and Regulated Persons should not solely relying on one data provider in order to understand and classify Products but should check and challenge such data or compare data provided by multiple sources of information).

7.4 In addition, Regulated Persons should review the information used so as to be able to reflect any relevant changes that may impact the Product's classification. This is particularly important, taking into account the continuing evolution and growing speed of financial markets.

Matching Clients with Suitable Products

Arrangements necessary to ensure the Suitability of an Investment

(Relevant legislation: Articles 16(2) and 25(2) of MiFID II and Article 21 of the MiFID II Delegated Regulation)

8. In order to match clients with suitable investments, Regulated Persons should establish policies and procedures to ensure that they consistently take into account:

(a) all available information about the Client that is necessary to assess whether an investment is suitable, including the Client's current portfolio of investments (and asset allocation within that portfolio);

(b) all material characteristics of the investments considered in the suitability assessment, including all relevant risks and any direct or indirect costs to the client. Reference should be made to the relevant Rules in this Rulebook implementing Articles 50 and 51 of the MiFID II Delegated Regulation 2017/565 regarding the obligation to inform clients about costs.

8.1 Regulated Persons are reminded that the suitability assessment is not limited to recommendations to buy a Financial Instrument. Every recommendation must be suitable, whether it is, for instance, a recommendation to buy, hold or sell a Financial Instrument, or not to do so.

For the avoidance of doubt, in accordance with the suitability assessment requirement, Regulated Persons should undertake a suitability assessment not only in relation to recommendations made to buy a Financial Instrument but for all decisions whether to trade including whether or not to buy, hold or sell an investment. In this respect, reference should also be made to relevant provisions laid down in the ESMA Supervisory briefing on understanding the definition of advice under MiFID II of 11 July 2023.

8.2 Regulated Persons that rely on tools in the suitability assessment process (such as model portfolios, asset allocation software or a risk-profiling tool for potential investments), should have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results.

8.3 In this regard, the tools should be designed so that they take account of all the relevant specificities of each Client or Product. For example, tools that classify Clients or Products broadly would not be fit for purpose.

8.4 A Regulated Person should establish policies and procedures which enable it to ensure *inter alia* that:

(a) the Advice and Portfolio Management Services provided to the Client take account of an appropriate degree of risk diversification;

(b) the Client has an adequate understanding of the relationship between risk and return, that is, of the necessarily low remuneration of risk-free assets, of the incidence of time horizon on this relationship and of the impact of costs on his investments;

(c) the financial situation of the Client can finance the investments and the Client can bear any possible losses resulting from the investments;

(d) any Personal Recommendation or transaction entered into in the course of providing Advice or Portfolio Management Services, where an illiquid Product is involved, takes into account the length of time for which the Client is prepared to hold the investment; and

(e) any conflicts of interest are prevented from adversely affecting the quality of the suitability assessment.

8.5 Sustainability Preferences should only be addressed once the suitability has been assessed in accordance with the criteria of knowledge and experience, financial situation and other investment objectives.

Once the range of suitable Products has been identified following this assessment, in a second step the Product or, with regard to Portfolio Management or Advice with a portfolio approach, an investment strategy that fulfils the Client's Sustainability Preferences should be identified.

8.6 Where a Regulated Person intends to recommend a Product that does not meet the initial Sustainability Preferences of the Client in the context of Advice as referred to in G.4.4.20 of Chapter 4 of this Rulebook, it can only do so once the Client has adapted his or her Sustainability Preferences. The Regulated Person's explanation regarding the reason to resort to such possibility as well as the Client's decision should be documented in the suitability report. Regulated Persons are reminded that this possibility only refers to the Sustainability Preferences and that with regard to the other criteria of the suitability assessment, the Product has to meet the Client profile and otherwise shall not be recommended as stated in the relevant Rules implementing Article 54(10) of the MiFID II Delegated Regulation.

8.7 Where a Client adapts the Sustainability Preferences, this adaption should only refer to the Advice in question and not to the Client's profile in general. In case of Advice, the adaptation should also be documented in the suitability report and be subject to the regular monitoring procedures.

After the Client has expressed the intention to adapt its preferences, and not before, the Regulated Person could disclose to the Client information about its offering of Products with sustainability features.

8.8 In case of Portfolio Management, the Client's Sustainability Preferences, including the minimum proportion that shall be invested in investments with sustainability features, need to be collected and assessed when agreeing on the mandate and the investment strategy. If the Regulated Person cannot meet those preferences, it should discuss this with the Client when agreeing on the mandate in which the investment strategy is defined and ask the Client if he or she would like to adapt his or her preferences. The decision of the Client should be recorded in the mandate.

When providing Advice with a portfolio approach, Regulated Persons should assess the Client's Sustainability Preferences including the minimum proportion when conducting the initial suitability assessment. Then the Regulated Person should monitor whether those Sustainability Preferences are still met or not at portfolio level and issue appropriate recommendations as the case may be.

In case of Portfolio Management Services or Advice with a portfolio approach, if the Client adapts the Sustainability Preferences after the initial suitability assessment, Regulated Persons should evaluate the impact of this change and whether this triggers a re-balancing of the portfolio.

8.9 Where a Client does not answer the question whether it has Sustainability Preferences or answers *"no"*, the Regulated Person may consider this Client as *"sustainability-neutral"* and recommend Products both with and without sustainability-related features.

8.10 When making a decision on the methodology to be adopted to conduct the suitability assessment, the Regulated Person should also take into account the type and characteristics of the services provided and, more in general, its business model. For instance, where a Regulated Person manages a portfolio or advises a Client with regard to his portfolio, it should adopt a methodology that would allow it to conduct a suitability assessment based on the consideration of the Client's portfolio as a whole.

8.11 When conducting a suitability assessment, a Regulated Person providing the service of Portfolio Management should, on the one hand, assess (in accordance with the

second bullet paragraph 3.5(b) of point 3 above) the knowledge and experience of the Client regarding each type of Financial Instrument that could be included in his portfolio, and the types of risks involved in the management of his or her portfolio. Depending on the level of complexity of the Financial Instruments involved, the Regulated Person should assess the Client's knowledge and experience more specifically than solely on the basis of the type to which the Financial Instrument belongs (for instance, subordinated debt instead of bonds in general).

On the other hand, with regard to the Client's financial situation and investment objectives, the suitability assessment about the impact of the Financial Instrument(s) and transaction(s) can be done at the level of the Client's portfolio as a whole. In practice, if the Portfolio Management agreement defines in sufficient details the investment strategy that is suitable for the client with regard to the suitability criteria defined by MiFID II Directive 2014/65/EU and that will be followed by the Regulated Person, the assessment of the suitability of the investment decisions could be done against the investment strategy as defined in the portfolio management agreement and the portfolio of the Client as a whole should reflect this agreed investment strategy.

When a Regulated Person conducts a suitability assessment based on the consideration of the Client's portfolio as a whole within the service of Advice, this means that, on the one hand, the level of knowledge and experience of the Client should be assessed regarding each Product and risks involved in the related transaction. On the other hand, with regard to the Client's financial situation and investment objectives, the suitability assessment about the impact of the Product and transaction can be done at the level of the Client's portfolio.

8.12 When a Regulated Person conducts a suitability assessment based on the consideration of the Client's portfolio as a whole it could assess suitability as regards the Sustainability Preferences, for instance, by applying those preferences (including the minimum proportion that shall be invested in investments with sustainability features. In this respect, reference should be made to paragraph 2.7 of point 2 above) on average at the level of the portfolio as a whole or at the level of the part or percentage of the portfolio the Client wants to be invested in Products with sustainability features (In this respect reference should be made to paragraph 2.10 of point 2 above).

8.13 When a Regulated Person conducts a suitability assessment based on the consideration of the Client's portfolio as a whole, it should ensure an appropriate degree of diversification within the Client's portfolio, taking into account the Client's portfolio exposure to the different financial risks (such as, geographical exposure, currency exposure, asset class exposure). In cases where, for instance, from the Regulated Person's perspective, the size of a Client's portfolio is too small to allow for an effective diversification in terms of credit risk, the Regulated Person could consider directing those Clients towards types of investments that are *'secured'* or *'per se diversified'* (such as, for instance, a diversified investment fund).

Regulated Persons should be especially prudent regarding credit risk: exposure of the client's portfolio to one single Issuer or to Issuers part of the same group should be particularly considered. This is because, if a Client's portfolio is concentrated in

Products issued by one single entity (or entities of the same group), in case of default of that entity, the Client may lose up to his or her entire investment.

When operating through so called *self-placement models*, Regulated Persons are reminded of ESMA's 2016 Statement on BRRD (in particular relating to 'MiFID practices for Regulated Persons selling financial instruments subject to the BRRD resolution regime' (ESMA/2016/902)) according to which *"they should avoid an excessive concentration of investments in financial instruments subject to the resolution regime issued by the Regulated Person itself or by entities of the same group"*.

Therefore, in addition to the methodologies to be implemented for the assessment of Products credit risk (see point 7 above and its supporting provisions), Regulated Persons should also adopt *ad hoc* measures and procedures to ensure that concentration with regard to credit risk is effectively identified, controlled and mitigated (for instance, the identification of *ex ante* thresholds could be encompassed). To this end, in line with the ESMA's Statement referred to above, Regulated Persons should also take into account the specific features of the securities offered (including their risk features and the circumstances of the Issuer) as well as the Clients' financial situation, including the Client's ability to bear losses, and their investment objectives, including their risk profile.

8.14 In order to ensure the consistency of the suitability assessment conducted through automated tools (even if the interaction with Clients does not occur through automated systems), Regulated Persons should regularly monitor and test the algorithms that underpin the suitability of the transactions recommended or undertaken on behalf of Clients. When defining such algorithms, Regulated Persons should take into account the nature and characteristics of the Products included in their offer to Clients. In particular, Regulated Persons should at least:

(a) establish an appropriate system-design documentation that clearly sets out the purpose, scope and design of the algorithms. Decision trees or decision rules should form part of this documentation, where relevant;

(b) have a documented test strategy that explains the scope of testing of algorithms. This should include test plans, test cases, test results, defect resolution (if relevant), and final test results;

(c) have in place appropriate policies and procedures for managing any changes to an algorithm, including monitoring and keeping records of any such changes. This includes having security arrangements in place to monitor and prevent unauthorised access to the algorithm;

(d) review and update algorithms to ensure that they reflect any relevant changes (for instance, market changes and changes in the applicable law) that may affect their effectiveness;

(e) have in place policies and procedures enabling to detect any error within the algorithm and deal with it appropriately, including, for instance, suspending the provision of Advice if that error is likely to result in an unsuitable Advice and/or a breach of relevant law or regulation;

(f) have in place adequate resources, including human and technological resources, to monitor and supervise the performance of algorithms through an adequate and timely review of the Advice provided; and

(g) have in place an appropriate internal sign-off process to ensure that the steps above have been followed.

Costs and Complexity of Equivalent Products

(Relevant legislation: Article 25(2) of MiFID II and Article 54(9) of the MiFID II Delegated Regulation)

9. Suitability policies and procedures should ensure that, before a Regulated Person makes a decision on the Product(s) that will be recommended, or invested in the portfolio managed on behalf of the Client, a thorough assessment of the possible investment alternatives is undertaken, taking into account Products' cost and complexity.

9.1 Regulated Person should have a process in place, taking into account the nature of the service, the business model and the kind of Products that are provided, to assess Products available that are *'equivalent'* to each other in terms of ability to meet the Client's needs and circumstances, such as Financial Instruments with similar target markets and similar risk-return profile.

9.2 Where a Client adapts the Sustainability Preferences, this adaption should only refer to the Advice in question and not to the Client's profile in general. In case of Advice, the adaptation should also be documented in the suitability report and be subject to the regular monitoring procedures. After the Client has expressed the intention to adapt its preferences, and not before, the Regulated Person could disclose to the Client information about its offering of Products with sustainability features.

9.3 When considering the cost factor, Regulated Persons should take into account all costs and charges covered by the relevant provisions under the relevant Rules implementing Article 24(4) of MiFID II Directive 2014/65/EU and the related provisions laid down in MiFID II Delegated Regulation 2017/565 provisions. As for the complexity, Regulated Persons should refer to the criteria identified in point 7 above and its supplementary provisions.

For Regulated Persons with a restricted range of Products, or those recommending one type of Product, where the assessment of *'equivalent'* Products could be limited, it is important that Clients are made fully aware of such circumstances. In this context, it is particularly important that Clients are provided appropriate information on how restricted the range of Products offered is, pursuant to the requirements of R.1.3.9 and R.1.4.18(c) implementing Article 24(4)(a)(ii) of MiFID II Directive 2014/65/EU (in accordance with MiFID II Directive 2014/65/EU, Regulated Persons are therefore not expected to consider the whole universe of possible investment options existing in the market in order to comply with the requirement under relevant Rules implementing Article 54(9) of MiFID II Delegated Regulation 2017/565.

9.4 Where a Regulated Person uses common portfolio strategies or model investment propositions that apply to different Clients with the same investment profile (as determined by the Regulated Person), the assessment of cost and complexity for *'equivalent'* Products could be done on a higher level, centrally, (for instance, within an investment committee or any other committee defining common portfolio strategies or model investment propositions) although a Regulated Person will still need to

ensure that the selected Products are suitable and meet its Clients' profile on a client-by-client basis.

9.5 Regulated Persons should be able to justify those situations where a more costly or complex Product is chosen or recommended over an equivalent Product, taking into account that for the selection process of Products in the context of Advice or Portfolio Management Services further criteria can also be considered (for instance: the portfolio's diversification, liquidity, or risk level).

Regulated Persons should document and keep records about these decisions, as these decisions should deserve specific attention from control functions within the Regulated Person. The respective documentation should be subject to internal reviews. When providing Advice Regulated Persons could, for specific well-defined reasons, also decide to inform the Client about the decision to choose the more costly and complex Financial Instrument.

Costs and Benefits of Switching Investments

(Relevant legislation: Articles 16(2) and 25(2) of MiFID II and Article 54(11) and (12) of the MiFID II Delegated Regulation)

10. Regulated Persons should have adequate policies and procedures in place to ensure that an analysis of the costs and benefits of a switch is undertaken such that Regulated Persons are reasonably able to demonstrate that the expected benefits of switching are greater than the costs. Regulated Persons should also establish appropriate controls to avoid any circumvention of the relevant Rules within this Rulebook and MiFID II Directive 2014/65/EU requirements.

10.1 For the purpose of point 10 and its supporting provisions, investment decisions such as re-balancing a portfolio under management, in the case of a *"passive strategy"* to replicate an index (as agreed with the Client) would normally not be considered as a switch. For the avoidance of doubt, any transaction without maintaining these thresholds would be considered as a switch. For per se Professional Clients, the cost benefit analysis may be carried out on investment strategy level.

10.2 Regulated Persons should take all necessary information into account, so as to be able to conduct a cost-benefit analysis of the switch, that is, an assessment of the advantages and disadvantages of the new investment(s) considered. When considering the cost dimension, Regulated Persons should take into account all costs and charges covered by the relevant Rules implementing Article 24(4) of MiFID II Directive 2014/65/EU and the related provisions laid down in the MiFID II Delegated Regulation 2017/565. In this context, both monetary and non-monetary factors of costs and benefits could be relevant. These may include, for example:

(a) the expected net return of the proposed alternative transaction (which also considers any possible up-front cost to be paid by the Client(s)) vs the expected net return of the existing investment (that should also consider any exit cost which the Client(s) might incur to divest from the Product already in his/her/their portfolio);

(b) a change in the client's circumstances and needs, which may be the reason for considering the switch, for instance, the need for liquidity in the short term as a consequence of an unexpected and unplanned family event;

(c) a change in the Products' features and/or market circumstances, which may be a reason for considering a switch in the Client(s) portfolio(s), for instance, if a Product becomes illiquid due to market trends;

(d) benefits to the Client's portfolio stemming from the switch, such as:

(i) an increase in the portfolio diversification (such as, by geographical area, type of instrument and type of Issuer);
(ii) an increased alignment of the portfolio's risk profile with the Client's risk objectives;
(iii) an increase in the portfolio's liquidity; or
(iv) a decrease of the overall credit risk of the portfolio.

10.3 When providing Advice, a clear explanation of whether or not the benefits of the recommended switch are greater than its costs should be included in the suitability report the Regulated Person has to provide to the Retail Client before the transaction is made.

10.4 Regulated Person should also adopt systems and controls to monitor the risk of circumventing the obligation to assess costs and benefits of recommended switch, for instance, in situations where an Advice to sell a Product is followed by an Advice to buy another Product at a later stage (such as, days later), but the two transactions were in fact strictly related from the beginning.

10.5 Where a Regulated Person uses common portfolio strategies or model investment propositions that apply to different Clients with the same investment profile (as determined by the Regulated Person), the costs/benefits analysis of a switch could be done on a higher level than at the level of each individual Client or each individual transaction. More especially, when a switch is decided centrally, for instance, within an investment committee or any other committee defining common portfolio strategies or model investment propositions, the costs/benefits analysis could be done at the level of that committee.

If such a switch is decided centrally, the costs/benefits analysis done at that level would usually be applicable to all comparable Client portfolios without making an assessment for each individual Client. In such a situation also, the Regulated Person could determine, at the level of the relevant committee, the reason why a switch decided will not be performed for certain Clients. Although the costs/benefits analysis could be done at a higher level in such situations, the Regulated Person should nevertheless have appropriate controls in place to check that there are no particular characteristics of certain Clients that might require a more discrete level of analysis.

10.6 Where a portfolio manager has agreed a more bespoke mandate and investment strategy with a Client due to the Client's specific investment needs, a cost-benefit analysis of the switch at Client-level should be more appropriate, in contrast to the above (for relationships with Professional Clients reference should be made to paragraph 10.1 above).

10.7 Notwithstanding the above, if a portfolio manager considers that the composition or parameters of a portfolio should be changed in a way that is not permitted by the mandate agreed with the Client (for instance, from an equities-focused to a fixed income-focused strategy), the portfolio manager should discuss this with the Client and review or conduct a new suitability assessment to agree a new mandate.

Other related Requirements

Qualifications of the Regulated Person's Staff

(Relevant legislation: Articles 16(2) and 25(1) and (9) of MiFID II and Article 21(1)(d) of the MiFID II Delegated Regulation)

11. Regulated Persons are required to ensure that staff involved in material aspects of the suitability process have an adequate level of skills, knowledge and expertise.

11.1 Staff must understand the role they play in the suitability assessment process and possess the skills, knowledge and expertise necessary, including sufficient knowledge of the relevant regulatory requirements and procedures, to discharge their responsibilities.

11.2 Staff must possess the necessary knowledge and competence required under the relevant Rules implementing Article 25(1) of the MiFID II Directive 2014/65/EU (and specified further in the ESMA Guidelines for the assessment of knowledge and competence), including with regard to the suitability assessment. Staff should also have the necessary knowledge and competence with regard to the criteria of the Sustainability Preferences as specified in paragraph (a) of the definition of this term in the Glossary to these Rules (in accordance with Article 2(7) of the MiFID II Delegated Regulation) and be able to explain to Clients the different aspects in non-technical terms. To that effect, Regulated Persons should give staff appropriate training.

11.3 Other staff that does not directly face Clients but is involved in the suitability assessment in any other way must still possess the necessary skills, knowledge and expertise required depending on their particular role in the suitability process. This may regard, for example, setting up the questionnaires, defining algorithms governing the assessment of suitability or other aspects necessary to conduct the suitability assessment and controlling compliance with the suitability requirements.

11.4 Where relevant, when employing automated tools (including hybrid tools), Regulated Persons should ensure that their staff involved in the activities related to the definition of these tools:

(a) have an appropriate understanding of the technology and algorithms used to provide digital Advice (particularly they are able to understand the rationale, risks and rules behind the algorithms underpinning the digital Advice); and

(b) are able to understand and review the digital/automated Advice generated by the algorithms.

Record-Keeping

(Relevant legislation: Articles 16(6) and 25(5) and (6) of MiFID II and Articles 72, 73, 74 and 75 of the MiFID II Delegated Regulation)

12. Regulated Persons should at least:

(a) maintain adequate recording and retention arrangements to ensure orderly and transparent record-keeping regarding the suitability assessment, including the collection of information from the Client, any Advice provided and all investments (and disinvestments) made following the suitability assessment made, and the related suitability reports provided to the Client);

(b) ensure that record-keeping arrangements are designed to enable the detection of failures regarding the suitability assessment (such as mis-selling);

(c) ensure that records kept, including the suitability reports provided to Clients, are accessible for the Relevant Persons in the Regulated Person, and for the MFSA;

(d) have adequate processes to mitigate any shortcomings or limitations of the record-keeping arrangements.

12.1 Record-keeping arrangements adopted by Regulated Persons must be designed to enable Regulated Persons to track *ex-post* why an (dis)investment was made and why an Advice was given even when the Advice didn't result in an actual (dis)investment. This could be important in the event of a dispute between a Client and the Regulated Person. It is also important for control purposes (for example, any failures in record-keeping may hamper the MFSA's assessment of the quality of a Regulated Person's suitability process, and may weaken the ability of management to identify risks of mis-selling).

12.2 Therefore, a Regulated Person is required to record all relevant information about the suitability assessment, such as information about the Client (including how that information is used and interpreted to define the Client's risk profile), and information about Financial Instruments recommended to the Client or purchased on the Client's behalf, as well as the suitability report provided to Clients. Those records should include:

(c) any changes made by the Regulated Person regarding the suitability assessment, in particular any change to the Client's investment risk profile;

(d) the types of Financial Instruments that fit that profile and the rationale for such an assessment, as well as any changes and the reasons for them;

(e) the situations where a Client's Sustainability Preferences are adapted in accordance with R.4.4.29 implementing Article 54(10) of the MiFID II Delegated Regulation, including a clear explanation of the reasons for such adaptation.

12.3 Regulated Persons should understand the additional risks that could affect the provision of Services through online/digital tools such as malicious cyber activity and should have in place arrangements able to mitigate those risks. Regulated Persons should consider such risks not only in relation to the provisions stated in point 12 and its supporting provisions, but also as part of a Regulated Person's wider obligations under R1-2.2.6 of Part BI of the Investment Services Rules for Investment Services Providers implementing Article 16(4) of MiFID II Directive 2014/65/EU to take reasonable steps to ensure continuity and regularity in the performance of Service and activities, and implementing the corresponding requirements of the Commission Delegated Regulation (EU) 2017/565 linked to this.

CHAPTER 5 EXECUTION OF CLIENTS' ORDERS

Introduction

As a general principle, it is expected that Regulated Persons shall, at all times, carry out their activities with utmost good faith and integrity.

This Chapter is principally addressed to persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary, including UCITS Management Companies where applicable.

Regulated Persons which execute orders on behalf of their Clients shall take all sufficient steps to obtain, when executing orders, the best possible result for their Clients. By way of guidance, the application of the best execution requirement is ultimately dependent on whether the Client legitimately relies on the Regulated Person to protect his or her interests in relation to the pricing and other elements of the transaction that may be affected by the choices made by the Regulated Person when executing the order.
In order for Regulated Persons to obtain the best possible result for their Clients, this Chapter deals with the requirement to establish and implement an order execution policy. In addition, Regulated Persons are required to implement procedures and arrangements which provide for the prompt, fair and expeditious execution of Client orders.

Correspondingly, this Chapter requires persons which fall under point (iv) of the definition of 'Regulated Person', excluding Tied insurance intermediaries and Ancillary insurance intermediaries, to do everything which is reasonably possible to satisfy the insurance requirements of their Clients and to place the interests of those Clients before all other considerations.

Application

The Rules and any relative Guidance set out under Part A under the heading "Rules which apply generally to all Regulated Persons" are applicable to all Regulated Persons, except as otherwise indicated.
The Rules and any relative Guidance set out under Part B are applicable to persons which fall under points (i) of the definition of 'Regulated Person' in the Glossary to these Rules, including UCITS Management Companies. The requirements provided in R.5.14 to R.5.19 shall also apply to Regulated Persons which fall under point (v) of the definition of 'Regulated Person' in the Glossary.

The Rules and any relative Guidance set out under Part C are applicable to persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules, excluding UCITS Management Companies. The requirements provided in R.5.38 shall also apply to Regulated Persons which fall under point (v) of the definition of 'Regulated Person' in the Glossary.
The Rules and any relative Guidance set out under Part D are applicable to UCITS Management Companies.
The Rules and any relative Guidance set out under Part E are applicable to persons which fall under points (ii), (iii) or (iv) of the definition of 'Regulated Person' in the Glossary to these Rules, excluding Tied Insurance Intermediaries and Ancillary insurance intermediaries.

The Rules and any relative Guidance set out in this Chapter shall not apply with respect to transactions concluded on a Regulated Market between members and participants thereof which are Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules. Provided that such Regulated Persons shall apply the requirements of this Chapter with respect to their clients when they, acting on behalf of their clients, execute orders on a Regulated Market.

Part A: Rules which are applicable to all Regulated Persons

General Rule

R.5.1 A Regulated Person shall at all times carry out its activities with utmost good faith and integrity.

Part B: Rules Applicable to Persons which fall under Point (i) and (v) of the Definition of 'Regulated Person' in the Glossary to these Rules, including UCITS Management Companies.

Obligation to Execute Orders on Terms Most Favourable to the Client

R.5.2 For the purposes of this Part, a "Regulated Person" shall refer to a person which falls under point (i) of the definition of 'Regulated Person' in the Glossary to these Rules, and includes a UCITS Management Company. The requirements provided in R.5.14 to R.5.19 shall also apply to Regulated Persons which fall under point (v) of the definition of 'Regulated Person'.

R.5.3 A Regulated Person, shall take all sufficient steps to obtain, when executing orders, the best possible result for its Clients taking into account the best execution factors of price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.
A UCITS Management Company shall, in relation to each UCITS scheme it manages, act in the best interests of the UCITS scheme when executing decisions to deal on its behalf in the context of the management of its portfolio, and the requirements of this Rule relating to best execution shall apply in relation to all such decisions.

In order to ensure compliance with this Rule, a Regulated Person is also required to comply with the requirements relating to the obligation to execute orders on terms most favourable to the Client as set out in Part C below, as applicable.

R.5.4 The above Rule applies to Regulated Persons which:

(a) execute orders on behalf of Clients or directly execute discretionary investment management decisions to deal on behalf of Clients; and/or
(b) provide the service of Portfolio Management and who execute the decisions to deal on behalf of its Client's portfolio; and/or
(c) provide the service of reception and transmission of orders and also executes the orders received.

G.5.1 The obligation of best execution as set out in R.5.3 is also owed by Regulated Persons which "act on behalf of a Client" and which therefore either:

(a) directly execute orders themselves; or
(b) make investment management decisions to deal on behalf of Clients; or
(c) transmit or place orders with other entities for execution on behalf of Clients.

G.5.2 *The application or otherwise of the best execution requirements will depend on whether the execution of the Client's order by the Regulated Person can be seen as being truly done on behalf of the Client. This is a question of fact in each case which ultimately depends on whether the Client legitimately relies on the Regulated Person to protect his or her interests in relation to the pricing and other elements of the transaction that may be affected by the choices made by the Regulated Person when executing the order.*

G.5.3 *The following factors should be taken into consideration cumulatively in order to determine the applicability or otherwise of the best execution requirements:*

(a) *whether the Regulated Person initiates the transaction with the Client or, whether it is the Client who approaches the Regulated Person first. In the former case it is more probable that the Client (especially when it is a Retail Client) will be relying on the Regulated Person to protect his or her interests in relation to the pricing and other details of the transaction, whilst in the latter case it is less probable that such reliance will subsist;*

(b) *questions of market practice will help to determine whether it is legitimate for Clients to rely on the Regulated Person;*

(c) *the transparency of a market - it will be more likely that Clients rely on the Regulated Person in relation to the pricing of the transaction in markets where Clients do not have ready access to prices ;*

(d) *the information provided by the Regulated Person about its Services and the terms of an agreement between the Client and the Regulated Person will also be relevant, but not determinative of the question. The use of standard term agreements to characterise commercial relationships otherwise than in accordance with economic reality should be avoided.*

G.5.4 *The factors referred to in the G.5.3 above are likely to indicate that, in ordinary circumstances, a Retail Client legitimately relies on the Regulated Person to protect his or her interests in relation to the pricing and other parameters of the transaction.*

G.5.5 *Transactions based on a Client's request to a Regulated Person to buy or sell a Financial Instrument for him, fall within the concept of "Execution of an order on behalf of a Client". Such transactions include:*

(a) *executing a Client order by dealing as agent for a Client. In this situation, the Regulated Person takes a Client's order and places the order on behalf of the Client with an Execution venue for execution;*

(b) *executing a Client order against the Regulated Person's own proprietary position (including as a systematic internaliser), where the Regulated Person is making decisions as to how the order is executed, for example, where it is "working the order" on the Client's behalf;*

(c) *executing a Client order by dealing as a riskless principal on behalf of the Client, including cases where the Client is charged a spread on the transaction. In this type of transaction, the Regulated Person will typically deal as principal with its Client at the same time, and on the same terms (as to instrument, time and price – allowing for any spread) as it enters a transaction as a principal with a counterparty.*

G.5.6 *Regulated Persons which operate by providing "quotes" i.e. prices at which they may be willing to buy or sell, are still considered to deal on their own account and hence subject to the best execution requirements. This applies irrespective of whether such quotes are provided continuously (for example through bulletin boards) or to particular persons who request the Regulated Person to provide a quote for a particular instrument and then dealing with the person to whom they made a quote.*

G.5.7 *In determining whether an entity is likely to enable the Regulated Person to obtain the best possible result for its Clients as required by R.5.3, a Regulated Person which transmits or places orders with other entities for execution may also need to consider:*

(a) *whether the entity itself is an investment firm within the meaning of Directive 2014/65/EU (MiFID II) executing or receiving and transmitting orders on behalf of the Regulated Person and the entity has agreed to treat the Regulated Person as a Retail or Professional Client;*
(b) *whether the entity will undertake by contract to comply with any or all of the best execution requirements in relation to the relevant business with the result that it has contractual but not regulatory responsibilities for best execution; and*
(c) *whether the entity can demonstrate that it delivers a high level of execution quality for the kind of orders that the Regulated Person is likely to place with or transmit to it.*

G.5.8 *The obligation to deliver the best possible result when executing Client orders applies in relation to all types of Financial Instruments. However, given the differences in market structures or the structure of Financial Instruments, it may be difficult to identify and apply a uniform standard procedure for best execution that would be valid and effective for all classes of instruments. The obligation to execute orders on terms most favourable to the Client should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of Financial Instruments. For example transactions involving a customised over-the – counter ("OTC") Financial Instrument that involve a unique contractual relationship tailored to the circumstances of the Client and the Regulated Person may not be comparable for best execution purposes with transactions involving shares traded on centralised Execution venues.*

G.5.9 *The quality of execution, which includes aspects such as the speed and likelihood of execution (fill rate) and the availability and incidence of price improvement, is an important factor in the delivery of best execution. Availability, comparability and consolidation of data related to execution quality provided by the various Execution venues is crucial in enabling Regulated Persons and Clients to identify those Execution venues that deliver the highest quality of execution for their Clients.*

G.5.10 *In order to comply with the requirement to act in the best interest of its Clients, a Regulated Person should consider transmitting Client orders instead of executing them itself where that would deliver a better result for Clients, provided*

the Regulated Person is licensed to receive and transmit orders on behalf of Clients.

R.5.5 When executing Client orders, the Regulated Person shall take into account the following criteria for determining the relative importance of the factors referred to in R.5.3:

(a) the characteristics of the Client, including the categorisation of the Client as Retail or Professional Client;
(b) the characteristics of the Client order, including, where applicable, where the order involves a securities financing transaction;
(c) the characteristics of the Financial Instruments that are the subject of that order;
(d) the characteristics of the Execution venues to which that order can be directed;
(e) for a UCITS Management Company, the objectives, investment policy and risks specific to the UCITS scheme, as indicated in its prospectus or instrument constituting the fund, rules or articles of association of the UCITS.

Order Execution Policy

R.5.6 A Regulated Person shall establish and implement effective execution arrangements to ensure compliance with R.5.3. In particular a Regulated Person shall establish and implement an order execution policy to allow it to obtain, for its Client orders, the best possible result in accordance with R.5.3.

G.5.11 The "execution arrangements" are the means that the Regulated Person employs to obtain the best result when executing orders to deal, whereas the "execution policy" is the document that describes the most important and/or relevant elements of those execution arrangements.

G.5.12 The order execution policy should set out the Regulated Person's strategy for complying with R.5.3 and the key steps it is taking to implement that strategy and how those steps enable the Regulated Person to obtain the best possible result.

The execution policy should be differentiated, for example by type of instrument, Client or order type, to the extent necessary. The policy should reflect any important variations in the way that orders for different types of Client and different Financial Instruments are executed or transmitted.

The policy should also include:

(a) information on how those factors affect the Regulated Person's choice of Execution venues or entities to which it transmits orders;
(b) information on the manner in which the types of Service provided modify the type of execution required (for example, a Regulated Person should select an executing firm when it transmits orders for execution and an executing venue when the Regulated Person itself executes the order);
(c) information on known fees and charges of each alternative venue, presented in the context of the respective Services offered by the different

venues in order for the Client to understand both the advantages and disadvantages of choosing a venue or entity rather than an alternative.

G.5.13 *Regulated Persons executing orders should be able to include a single Execution venue in their policy only where they are able to show that this allows them to obtain best execution for their Clients on a consistent basis.*

R.5.7 A Regulated Person shall ensure that the venue or entity it selects will enable it to obtain results for its Clients that are at least as good as the results that it reasonably could expect from using alternative entities.

G.5.14 *It is possible to include only a single Execution venue in a Regulated Person's order execution policy in cases where a single venue or entity will deliver the best possible result for some Financial Instruments and orders. However, at arriving at such conclusion the Regulated Person should have assessed all the possible alternatives to the inclusion of a single venue/entity, including the advantages of indirect access (i.e. the transmitting or orders of its Clients to another execution intermediary rather than executing those orders itself).*

G.5.15 *The order execution policy must include, in respect of each class of Financial Instruments, information on the different venues where the Regulated Person executes its Client orders and the factors affecting the choice of Execution venue. This means that the execution policy of a Regulated Person, irrespective of whether that Regulated Person executes the order itself or passes on that order for execution to another intermediary) should reflect any significant variations in its approach with respect to each class of Financial Instrument. It follows that appropriate information about these significant variations should be included as part of the information that must be disclosed by the Regulated Person to its Clients.*

Appropriate differentiation will depend on the types of Clients a Regulated Person serves, the instruments for which it handles orders and the relevant market structures and Execution venues available for those instruments.

In addition to differentiation by class of Financial Instrument, it is recommended that a Regulated Person distinguish its policy by Client or order type.

R.5.8 Regulated Persons shall provide appropriate information to their Clients on their order execution policy. That information shall explain clearly, in sufficient detail and in a way that can easily be understood by Clients, how orders will be executed by the Regulated on for the Client.

R.5.9 The Regulated Person shall obtain the prior consent of their Clients to the order execution policy**.**

Monitoring and Review

R.5.10 Regulated Persons who execute Client orders shall monitor the effectiveness of their order execution arrangements and order execution policy, for the purposes of identifying and, where appropriate, correcting any deficiencies. and in particular, shall monitor the execution quality of the entities identified in the policy, in order to identify and, where appropriate, correct any deficiencies.

G.5.16 *Monitoring is an assessment, on a regular basis, of particular transactions in order to establish whether a Regulated Person is executing orders or decisions to deal, or transmitting orders or decisions to deal, in line with its order execution policy and arrangements, and whether the particular transactions are delivering the best possible result for the Client.*

There are two main areas which the Regulated Person may need to monitor to establish the effectiveness of its execution policy and arrangements:

(a) ***compliance with the execution policy****: The Regulated Person must ensure that it is actually following the execution policy it has established;*

(b) ***the quality of execution obtained through its execution policy****: The Regulated Person must assess whether it is actually obtaining the best possible result under its execution policy. This can be done by comparing similar transactions:*

i. On the same venue, in order to test whether a Regulated Person's judgement about how orders are executed is correct; or

ii. On different venues chosen from among those in the Regulated Person's execution policy, in order to test whether the best venue is being chosen for a given type of transaction.

Regulated Persons which execute Client orders will need to review order execution policies in order to ascertain whether the venues they are using are delivering the best possible result for execution of their Client orders, and decide whether to connect to Execution venues excluded from the current execution policy. It is recommended that the execution quality being delivered by the venues currently included in the policy also be monitored.

Regulated Persons Dealing on own account with Clients will need to review their own execution quality relative to other Execution venues which they or their Clients could potentially access.

Regulated Persons should also monitor the impact of their own actions on the execution quality they achieve.

G.5.17 *The method for monitoring is at the discretion of the Regulated Person. However, it is not necessary for these purposes that a Regulated Person reviews every transaction. Other approaches such as sampling could suffice. Sampling must however reflect the size and nature of the transactions performed and the Regulated Person must appropriately assess and compare the relevant available data.*

G.5.18 *Where monitoring reveals that a Regulated Person has fallen short of obtaining the best possible result, the Regulated Person should consider whether this is because it has failed to follow its execution policy and/or arrangements or because of a deficiency in such policy and/or arrangements and make appropriate amendments.*

R.5.11 A Regulated Person, shall review, at least on an annual basis the execution policy established in terms of R.5.6 as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change as defined in R.5.12 occurs that affects the Regulated Person's ability to continue to obtain the best possible result of the execution of their Clients' orders on a consistent basis using the venues included in their execution policy.

A Regulated Person shall assess whether a material change has occurred and shall consider making changes to the relative importance of the best execution factors in meeting the overarching best execution requirement.

R.5.12 For the purposes of R.5.11, R.5.25 and R.5.26, a material change shall be a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

G.5.19 *'Review' is an overall assessment exercise of the policy and arrangements aimed at verifying whether a Regulated Person is taking all reasonable steps to deliver best execution of orders to its Clients. The Regulated Person should review its approach generally to see whether it could make any changes to improve overall performance. More specifically, the Regulated Person should consider whether the relative importance it has assigned to the factors in R.5.3 has led it to deliver the best possible result for its clients or whether it should reconsider this aspect of its execution approach.*

R.5.13 A Regulated Person shall demonstrate to its Clients, at their request, that it has executed their orders in accordance with the Regulated Person's order execution policy and it shall also ensure that it is able to demonstrate to the MFSA upon request that the Regulated Person is in compliance with the Rules.

Client Order Handling Rules

R.5.14 When carrying out Client orders, a Regulated Person shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of Client orders, relative to other Client orders or the trading interests of the Regulated Person.

In fulfilling the requirements of this Rule, the Regulated Person shall satisfy the following conditions when carrying out Client orders:

(a) it must ensure that orders executed on behalf of Clients or UCITS, as applicable, are promptly and accurately recorded and allocated;
(b) it must carry out otherwise comparable Client or UCITS orders, as applicable, promptly and sequentially in accordance with the time of their reception by the Regulated Person, unless the characteristics of the order or prevailing market conditions make it impracticable, or the interests of the Client or UCITS, as applicable, require otherwise;
(c) it must inform Retail Clients about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.
(d) it must take reasonable steps to ensure that Financial Instruments or sums of money, received in settlement of the executed order shall be promptly and correctly delivered to the account of the appropriate Client or UCITS as applicable. This requirement shall apply where the Regulated

Person is responsible for overseeing or arranging the settlement of an executed order.

G.5.20 *Client orders should not be treated as otherwise comparable if they are received through different media and if it would not be practicable for them to be treated sequentially.*

R.5.15 A Regulated Person shall not misuse information relating to pending Client or UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its Relevant Persons.

G.5.21 *Any use by a Regulated Person of information relating to a pending Client order in order to Deal on own account in the Financial Instruments to which the Client order relates, or in related Financial Instruments, should be considered a misuse of that information. However, the mere fact that market makers or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling Financial Instruments, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.*

R.5.16 A Regulated Person shall not carry out a Client order, or a UCITS order, or a transaction for own account in aggregation with another Client order or with an order of another UCITS unless the following conditions are met:

(a) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of a Client or of any UCITS whose order is to be aggregated;
(b) it must be disclosed to each Client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
(c) an order allocation policy must be established and effectively implemented, provided for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

Where a Regulated Person aggregates an order with one or more orders of other UCITS or other Client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

G.5.22 *The execution of orders in Financial Instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services nor of banking activities should not be considered to be Dealing on own account when executing Client orders.*

R.5.17 Where a Regulated Person has aggregated transactions for own account with one or more UCITS' orders or Clients' orders, as applicable, such Regulated Person shall not allocate the related trades in a way that is detrimental to the UCITS or to another Client.

R.5.18 Where a Regulated Person aggregates a Client order, or an order of a UCITS, as applicable, with a transaction for own account and the aggregated order is partially executed, the Regulated Person shall allocate the related trades to the Client or to the UCITS, as applicable in priority to itself.

Provided that if the Regulated Person is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in R.5.16(c).

R.5.19 The Regulated Person shall, as part of the order allocation policy referred to in R.5.16(c), put in place procedures designed to prevent the reallocation, in a way that is detrimental to the Client or to a UCITS, of transactions for own account which are executed in combination with client orders or with orders from other UCITS.

G.5.23 *Dealing on own account with Clients by a Regulated Person should be considered as the execution of Client orders. However, if a Regulated Person provides a quote to a Client and that quote would meet the Regulated Person's obligations to execute an order on terms most favourable to the Client if the Regulated Person executed that quote at the time the quote was provided, then the Regulated Person will meet those same obligations if it executes its quote after the Client accepts it, provided that, taking into account the offer and acceptance of the quote, the quote is not manifestly out of date.*

Reporting Obligations

R.5.20 A Regulated Person shall notify Clients with whom it has an ongoing Client relationship, or in the case of a UCITS Management Company, the unit holders, of any material changes to its order execution arrangements or order execution policy.

G.5.24 *In determining whether a change is material, a Regulated Person should have regard to the nature and scope of any change and the nature and size of a Regulated Person's business. A change is material where its disclosure is necessary to enable the Client to make a properly informed decision about whether to continue utilising the Services of the Regulated Person and when it falls within the description of R.5.12 above.*

G.5.25 A *Regulated Person that only transmits or places orders with other entities for execution and which does not execute orders or decisions to deal should also notify its Clients of any material changes to its policies (such as a change to the list of the entities to which orders are transmitted for execution).*

Rules Applicable to Regulated Persons Who Receive and Transmit Orders to Third Parties for Execution

The requirements in this Section shall not apply where the Regulated Person that provides the service of Portfolio Management or reception and transmission of orders also executes the orders received or the decision to deal on behalf of its Client's portfolio. In such cases, the Rules contained in the other sections of this Chapter (and also refer to sections in Disclosures) shall apply.

R.5.21 When providing the service of Portfolio Management or management of UCITS, and/or transmission of orders a Regulated Person shall act in accordance with the best interests of its Clients, or the UCITS which they manage, when, as applicable:

(a) placing orders with other entities for execution ; and/or
(b) transmitting Client orders to other entities for execution; and/or
(c) placing orders to deal on behalf of the managed UCITS with other entities for execution.

R.5.22 Regulated Persons shall take all sufficient steps to obtain the best possible result for their Clients or the managed UCITS, as applicable, taking into account the factors indicated in R.5.3. The relative importance of such factors shall be determined by reference to the criteria set out in R.5.5, and for Retail Clients, to the requirements under R.5.3 and 5.30

R.5.23 Regulated Persons shall establish and implement a policy that enables them to comply with the obligation laid down in R.5.5 above. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the Regulated Persons transmit orders for execution. The entities identified shall have execution arrangements that enable the Regulated Person to comply with its obligations under this Section when it places or transmits orders to that entity for execution.

R.5.24 Regulated Persons shall monitor on a regular basis the effectiveness of the policy established in accordance with R.5.23 above and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

R.5.25 Regulated Persons shall review the policy and arrangements at least annually. Such a review shall also be carried out whenever a material change occurs that affects the Regulated Persons ability to continue to obtain the best possible result for their Clients, or the managed UCITS, as applicable.

R.5.26 Regulated Persons shall assess whether a material change has occurred and shall consider making changes to the Execution venues or entities on which they place significant reliance in meeting the overarching best execution requirement.

Part C: ***Rules Applicable to Regulated Persons which fall under points (i) and (v) of the Definition of 'Regulated Person' in the Glossary to these Rules, excluding UCITS Management Companies.***

R.5.27 For the purposes of this Part, a "Regulated Person" shall refer to a person which falls under paragraph (i) of the definition of 'Regulated Person' in the Glossary to these Rules, excluding UCITS Management Companies. The requirements of R.5.38 shall also apply to Regulated Persons which fall under point (v) of the definition of 'Regulated Person'.

Execution of Orders in OTC Products

R.5.28 When executing orders or taking decision to deal in OTC products, including bespoke products, the Regulated Person shall check the fairness of the price proposed to the Client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

Specific Instructions

R.5.29 Notwithstanding the provisions of R.5.3 above, whenever there is a specific instruction from the Client, the Regulated Person shall execute the order following the specific instruction. The Regulated Person shall be deemed to have satisfied its obligation under R.5.3 to take all reasonable steps to obtain the best possible result for a Client to the extent that it executes an order or a specific aspect of the order following specific instructions from a Client relating to the order or the specific aspect of the order.

Provided that a Regulated Person shall, in good time prior to the provision of the Service, provide a Retail Client with a clear and prominent warning that any specific instructions from a Client may prevent the Regulated Person from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

G.5.26 *When a Regulated Person executes an order following specific instructions from the Client, it should be treated as having been executed on terms most favourable to the Client only in respect of the part or aspect of the order to which the Client instructions relate. The fact that the Client has given specific instructions which cover one part or aspect of the order should not be treated as releasing the Regulated Person from its best execution obligations in respect of any other parts or aspects of the Client order that are not covered by such instructions.*

A Regulated Person should not induce a Client to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the Client, when the Regulated Person ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that Client. However, this should not prevent a Regulated Person from inviting a Client to choose between two or more specified Trading Venues, provided that those venues are consistent with the execution policy of the Regulated Person.

R.5.30 Where a Regulated Person executes an order on behalf of a Retail Client, the best possible result shall be determined in terms of the total consideration, representing the price of the Financial Instrument and the costs relating to execution, which shall include expenses incurred by the Client which are directly related to the execution of the order, including Execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering the best possible result in accordance with R.5.3 where there is more than one competing venue to execute an order for a

Financial Instrument, in order to assess and compare the results for the Client that would be achieved by executing the order on each of the Execution venues listed in the Regulated Person's order execution policy that is capable of executing that order, the Regulated Person's own commissions and costs for executing the order on each of the eligible Execution venues shall be taken into account in that assessment.

G.5.27 *For the purposes of determining the "total consideration" to be taken into account in terms of R.5.30, the costs related to execution should include the Regulated Person's own commission or fees charged to the Clients for limited purposes in cases where more than one venue listed in the Regulated Person's execution policy is capable of executing a Client order. In such cases, the Regulated Person's own commissions and costs for executing the order on each of the eligible Execution venues should be taken into account in order to assess and compare the results for the Client that would be achieved by executing the order on each such venue. It is not intended to require a Regulated Person to compare the results that would be achieved for its Client on the basis of its own execution policy and its own commission and fees, with results that might be achieved for the same Client by any other Regulated Person on the basis of a different execution policy or a different structure of commission or fees. Nor is it intended to require a Regulated Person to compare the differences in its own commissions which are attributable to differences in the nature of the Services that the Regulated Person provides to Clients.*

G.5.28 *When choosing a venue for the execution of a particular Client order (from among the venues included in the Regulated Person's order execution policy and which are indicated as being capable of executing such an order), the Regulated Person needs to take into account the effect of its own fees and commissions on the total consideration to the Client. Where a Regulated Person has included a Regulated Market and a systematic internaliser in its execution policy (or itself as a systematic internaliser) because both those venues enable the Regulated Person to obtain on a consistent basis the best possible result for the execution of its Client orders, the Regulated Person will need to take into account not only the prices displayed by those two venues, but also any difference in fees or commission it charges the Client for execution on one venue rather than the other (as well as any other costs or relevant factors).*

G.5.29 *Although R.5.30 limits the concept of total consideration for execution of orders from Retail Clients, the concept is also relevant for the assessment of best execution for orders coming from Professional Clients to ensure that the importance of the net cost of a purchase or the net proceeds of a sale in any evaluation of best execution, is not disregarded.*

G.5.30 *Whilst price is usually expected to merit a high relative importance in obtaining the best possible result for Professional Clients, there may be circumstances where for some Clients, orders, Financial Instruments or markets, the Regulated Person's policy may appropriately determine that other execution factors are more important than price in obtaining the best possible execution result.*

G.5.31 *Regulated Persons owe a duty of best execution to Retail and Professional Clients. The obligation does not apply when Regulated Persons enter into*

transactions with Eligible counterparties, arrange transactions between such counterparties or receive and transmit orders on behalf of such counterparties.

Order Execution Policy

R.5.31 The order execution policy referred to in R.5.6 shall include, in respect of each class of Financial Instruments, information on the different venues where the Regulated Person executes its Client orders and the factors affecting the choice of Execution venue. It shall at least include those venues that enable the Regulated Person to obtain on a consistent basis the best possible result for the Execution of Client orders.

G.5.32 The order execution policy should indicate how the Regulated Person executes orders for the different classes of instruments (even though the criteria for selecting an executing venue / entity may be different, for example, for liquid shares and contracts for difference).

G.5.33 Without prejudice to R.5.32, a Regulated Person should not take into account the fees and commissions it will charge its Clients when it is in the process of selecting venues to be included in its execution policy. At this stage, the Regulated Person should focus on the potential of the venues to enable the Regulated Person to obtain on a consistent basis the best possible result for the execution of its Clients order. In other words, it should focus on the quality of execution available on various venues.

R.5.32 A Regulated Person shall assess, on a regular basis, whether the Execution venues included in the order execution policy provide for the best possible result for the Client or whether they need to make changes to their execution arrangements.

Selection of Execution Venues by Regulated Persons

R.5.33 When executing orders or taking decision to deal in OTC products, including bespoke products, the Regulated Person shall check the fairness of the price proposed to the Client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

R.5.34 A Regulated Person acting on behalf of Retail Clients or on behalf of persons treated as Professional Clients upon request subject to the conditions and procedure set out in Section 2 of Chapter 4 of this Rulebook, shall not receive any fee, commission or non-monetary benefit from any third party:

(a) for executing orders from those Clients on a particular Execution venue; or

(b) for forwarding orders of those Clients to any third party for their Execution on a particular execution venue.

G.5.34 Any fee, commission or non-monetary benefit from any third party in terms of paragraphs (a) or (b) is known as Payment for Order Flow ("PFOF"), and the requirements of Rule R.5.34 constitute a general prohibition of PFOF.

R.5.35 The requirements of PFOF in terms of Rule R.5.34 shall not apply to rebates or discounts on the transaction fees of Execution venues, where permitted under the approved and public tariff structure of a Trading Venue in Malta or in a Member State or EEA State other than Malta or of a Third Country Trading Venue, where they exclusively benefit the Client:

Provided that such rebates or discounts shall not result in a monetary benefit to the Regulated Person.

R.5.36 A Regulated Person shall not structure or charge its commission in such a way as to discriminate unfairly between Execution venues.

G.5.35 *A Regulated Person should be considered to be structuring or charging its commissions in a way which discriminates unfairly between Execution venues if it charges a different commission or spread to Clients for execution on different Execution venues and that difference does not reflect the actual difference in the cost to the Regulated Person of executing on those venues. For example, a Regulated Person may not direct all its orders to another Regulated Person within its corporate group on the basis that it charges its Clients a higher fee for access to other venues that is unwarranted by higher costs.*

Client Order Handling Rules

R.5.37 In the case of a Client limit order in respect of shares admitted to trading on a Regulated Market or traded on a Trading Venue which are not immediately executed under prevailing market conditions, a Regulated Person is, unless the Client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately that Client limit order in a manner which is easily accessible to other market participants.

The Regulated Person is deemed to comply with this requirement by transmitting the Client order limit to a Trading Venue. The MFSA may waive the obligation to make public a limit order that is large in scale compared with normal market size as determined in terms of Regulation (EU) 600/2014 (MIFIR).

R.5.38 A Client limit order in respect of shares admitted to trading on a Regulated Market or traded on a Trading Venue which have not been immediately executed under prevailing market conditions as referred to in R.5.37 shall be considered available to the public when the Regulated Person has submitted the order for execution to a Regulated Market or a MTF or the order has been published by a data reporting services provider located in one Member State and can be easily executed as soon as market conditions allow.

Regulated Markets and MTFs shall be prioritised according to the Regulated Persons execution policy to ensure execution as soon as market conditions allow.

Record Keeping Obligations

R.5.39 A Regulated Person shall arrange for records to be kept of all Services, activities and transactions undertaken by it which shall be sufficient to enable the MFSA to fulfil its supervisory tasks and perform the relevant enforcement actions and in particular to ascertain that the Regulated Person has complied with all obligations including those with respect to Clients and to the integrity of the market.

R.5.40 Regulated Persons shall keep at least the records identified in the Appendix 1 to this Chapter depending on the nature of their activities. The list of records identified in the Appendix 1 is without prejudice to any other record-keeping obligations arising from other legislation to which Regulated Persons are subject.

R.5.41 A Regulated Person shall, in relation to every initial order received from a Client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the MFSA at least the details set out in Section 1 of Appendix 2 to this Chapter to the extent they are applicable to the order or decision to deal in question.

Where the details provided in Section 1 of Appendix 2 to this Chapter are also prescribed under Articles 25 and 26 of Regulation (EU) 600/2014 (MIFIR), these details should be maintained in a consistent manner and according to the same standards prescribed under these Articles.

R.5.42 A Regulated Person shall, immediately after receiving a Client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the MFSA at least the details provided in Section 2 of Appendix 2 to this Chapter. Where the details set out in Section 2 of Appendix 2 to this Chapter are also prescribed under Articles 25 and 26 of Regulation (EU) 600/2014 (MIFIR), they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) 600/2014 (MIFIR).

R.5.43 The records referred to in these Rules shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA and in such a form and manner that the following conditions are met:

(a) MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
(c) it must not be possible for the records otherwise to be manipulated or altered;
(d) it must allow IT or any other efficient exploitation when the IT analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
(e) Regulated Persons must ensure that the arrangements comply with the record keeping requirements irrespective of the technology used.

R.5.44 A Regulated Person shall, depending on the nature of its activities, keep at least the records identified in the Appendix to this Rule. The list of records identified in the Appendix is not to be considered exhaustive and should not be understood as a limitation of the scope of MiFID II Directive 2014/65/EU, MIFIR, MAD and MAR and the respective implementing measures. The list is without prejudice to any other record-keeping obligations arising from other legislation.

A Regulated Person shall keep records of any policies and procedures it is required to maintain pursuant to the requirements of this Rulebook as well as requirements emanating from MiFID II Directive 2014/65/EU, MIFIR, MAD and MAR and the respective implementing measures in writing. These policies and procedures are not included in the Appendix.

The period of time for the retention of a record shall begin on the date when the record is created.

R.5.45 Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when Dealing on own account and the provision of Client order services that relate to the reception, transmission and execution of Client orders.

Such telephone conversations and electronic communications shall also include those which are intended to result in transactions concluded when Dealing on own account or in the provision of Client order services that relate to the reception, transmission and execution of Client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of Client order services.

For these purposes, a Regulated Person shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the Regulated Person to an employee or contractor or the use of which by an employee or contractor has been sanctioned or permitted by the Regulated Person.

A Regulated Person shall notify new and existing Clients that telephone communications or conversations between the Regulated Person and its Clients that result or may result in transactions, will be recorded. Such a notification may be made once, before the provision of Services to new and existing Clients.

A Regulated Person shall not provide, by telephone, Services and activities to Clients who have not been notified in advance about the recording of their telephone communications or conversations, where such Services and activities relate to the reception, transmission and execution of Client orders.

Orders may be placed by Clients through other channels, however such communications must be made in a Durable medium such as mails, faxes, emails, and documentation of Client orders made at meetings. In particular, the content of relevant face-to-face conversations with a Client may be recorded. Such orders will be considered equivalent to orders received by telephone.

A Regulated Person shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the Regulated Person is unable to record or copy.

The records kept in accordance with this Rule shall be provided to the Client involved upon request and shall be kept for a period of five years and, where this is requested by the MFSA, for a period of up to seven years.

R.5.46 The information recorded for the purposes of R.5.45 above shall include at least the following:

(a) date and time of meetings;
(b) location of meetings;
(c) identity of the attendees;
(d) initiator of the meetings; and
(e) relevant information about the Client order including the price, volume, type of order and when it shall be transmitted or executed.

Records shall be stored in a Durable medium, which allows them to be replayed or copied and must be retained in a format that does not allow the original record to be altered or deleted. Records stored must be readily accessible and available to Clients upon request.
A Regulated Person shall ensure the quality, accuracy and completeness of the records of all telephone recordings and electronic communications.

R.5.47 A Regulated Person shall establish, implement and maintain an effective recording of telephone conversations and electronic communications policy, set out in writing, and appropriate to the size and organisation of the Regulated Person itself, and the nature, scale and complexity of its business. The policy shall include the following content:

(a) the identification of the telephone conversations and electronic communications, including relevant internal telephone conversations and electronic communications that are subject to the recording requirements in accordance with R.5.45; and
(b) the specification of the procedures to be followed and measures to be adopted to ensure the Regulated Person's compliance with R.5.45 where exceptional circumstances arise and the Regulated Person is unable to record the conversation/communication on devices issued, accepted or permitted by the Regulated Person. Evidence of these circumstances must be retained in a medium that is accessible by the MFSA.

R.5.48 A Regulated Person shall ensure that the Management body has effective oversight and control over the policies and procedures relating to the Regulated Person's recording of telephone conversations and electronic communications.

R.5.49 A Regulated Person shall ensure that the arrangements in place to comply with recording requirements are technology neutral. A Regulated Person must periodically evaluate the effectiveness of its measures and procedures and

adopt any such alternative or additional measures and procedures as are necessary and appropriate. At a minimum, this shall occur when a new medium of communication is accepted or permitted for use by the Regulated Person.

R.5.50 A Regulated Person must keep and regularly update a record of those individuals who are in possession of devices belonging to the Regulated Person or privately owned devices that have been approved for use by the Regulated Person.

R.5.51 A Regulated Person shall educate and train employees in procedures governing the requirements under R.5.45.

R.5.52 To monitor compliance with the recording and record-keeping requirements in accordance with R.5.45, Regulated Persons shall periodically monitor the records of transactions and orders subject to these requirements, including relevant conversations. Such monitoring shall be risk based and proportionate.

R.5.53 Regulated Persons shall demonstrate the policies, procedures and management oversight of the recording rules to the MFSA upon request.

Reporting Obligations

R.5.54 For Financial Instruments that are subject to the trading obligations laid down in Article 23 and 28 of Regulation (EU) 600/2014 (MIFIR), following the execution of a transaction on behalf of a Client, Regulated Persons which fall under point (i) of the definition of 'Regulated Person' in the Glossary to this Rulebook shall inform the Client where the order was executed.

Part D: Rules Applicable to UCITS Management Companies

Order Execution Policy

R.5.55 For the purposes of this Section the term "Regulated Person" shall refer to a UCITS Management Company.

R.5.56 The order execution policy referred to in R.5.6 shall identify, in respect of each class of instruments, the entities with which the orders may be placed.

Organisational Requirements

R.5.57 A Regulated Person shall have in place sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms. Such procedures and arrangements shall include, rules relating to personal transactions by its employees or for the holding or management of investments in Financial Instruments in order to invest own funds. Such procedures and arrangements shall also ensure that as a minimum, each transaction involving the UCITS 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 UCITS managed by the Regulated Person are invested according to the memorandum and articles of association, the prospectus and the legal provisions in force.

Part E: ***Rules Applicable to Regulated Persons which fall under point (ii), (iii) or (iv) of the definition of 'Regulated Person' in the Glossary to these Rules, excluding Tied insurance intermediaries and Ancillary insurance intermediaries***

R.5.58 For the purposes of this Section the term "Regulated Person" shall refer to persons which fall under point (ii), (iii) or (iv) of the definition of Regulated Person in the Glossary to these Rules, excluding Tied insurance intermediaries and Ancillary insurance intermediaries.

R.5.59 A Regulated Person shall do everything which is reasonably possible to satisfy the requirements of their Clients and shall place the interests of those Clients before all other considerations. Subject to these requirements and interests, a Regulated Person shall have proper regard for others.

G.5.36 *A Regulated Person shall ensure that all work carried out in connection with its business shall be under the control and continuous supervision of a registered insurance broker or a registered insurance agent or a registered insurance manager under Article 13 of the Insurance Distribution Act (Cap. 487), as applicable.*

A Regulated Person shall not withhold from the Client any written evidence or documentation relating to the Insurance contract without adequate and justifiable reasons being disclosed in writing and without delay to the Client.

A Regulated Person shall have proper regard for the wishes of a Client who seeks to terminate any agreement with them to carry out business.

Any information acquired by a Regulated Person from their Client shall not be used or disclosed in the normal course of negotiating, maintaining or renewing an Insurance contract for that Client or in accordance with the provisions of the Insurance Distribution Act (Cap.487) or the Insurance Business Act (Cap. 403) or unless the consent of the Client has been obtained.

In the completion of the proposal form, claim form, or any other material document, Regulated Persons shall make it clear that all answers or statements are the Client's own responsibility. The Client should always be asked to check the details and told that the incomplete and inaccurate information may result in a claim being repudiated.

The Regulated Person should:

(a) acknowledge receipt to the Clients of all money received in connection with a Product and distinguish on the receipt or the invoice the premium, document duty and motor vehicle licence fees, where applicable, and any charge or fee imposed in addition to the premium, shall be disclosed separately;
(b) have printed on the receipt, the full name and business address of the Regulated Person;
(c) have printed on it the enrolment number of the Regulated Person;

(d) show the full name and address or Identity Card number of the prospective Client;
(e) make reference to the type of Product in respect of which the money was paid including, where applicable, the policy number or reference number;
(f) show the name and address of the insurer offering or issuing the policy;
(g) sign and date the receipt and give a copy to the Client.

A Regulated Person carrying on business as insurance brokers shall also comply with the following provisions:

(a) in the conduct of their business, insurance brokers shall provide Advice objectively and independently;
(b) although the choice of an insurer can only be a matter of judgement, insurance brokers shall use their skill objectively in the best interest of their Client;
(c) insurance brokers' independence should not only be respected but also seen to be respected. In the spirit of such independence, insurance brokers who have interest in providing long term business policies when approached by a Client for Advice as to whether or not the Client should cancel or surrender an existing long term policy, insurance brokers shall disclose their interest in providing long term business policies before giving or attempting to give, Advice on the matter.

Appendix 1

The following table sets out the types of records Regulated Persons are obliged to keep depending upon the nature of their activities:

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
Client Assessment	Information to Clients	Information which is provided to Clients in relation to Financial Instruments and proposed investment strategies, Execution venues; certain information provided to a Retail Client such as the language to be used between the Client and the Regulated Person, the method of communication, statement of the fact that the Regulated Person is regulated by the MFSA ; information about all costs and charges as indicated in the relevant rules of the Rulebook; Records of any notification to a Client of re-categorisation.	Contents provided for in R.1.2.15, R.1.2.49-R.1.2.52, R.1.2.61, R.1.2.62, R.1.4.8, R.1.4.9, R.1.4.17(k), R.1.4.19, R.1.4.27, R.1.4.36, R.1.4.38 and R.1.4.39, R.3.59 to R.3.68, and R.3.71 to R.3.74 of the Conduct of Business Rulebook.
	Client agreements	The document or documents agreed between the Regulated Person and Clients setting out the rights and obligations of the parties, and other relevant terms.	R.4.3.8, R.4.3.10 and R.4.3.17 and R.4.5.7 of the Rulebook
	Assessment of suitability and Appropriateness	The information about the Client's knowledge and experience, financial situation and investment objectives, relevant to the specific Product or Service, obtained by the Regulated Person in complying with its	Information required under R.1.4.70-R.1.4.72, R.1.4.75, R.1.4.76, R.1.4.78, R.1.4.80-R.1.4.82, R.1.4.84,

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
		obligations under R.4.4.15 and R.4.4.52.	R.4.4.16, R.4.4.17, R.4.4.50, R.4.4.30 of the Rulebook
Order Handling	Aggregated transaction that includes two or more Client orders, or one or more Client orders and an own account order.	Identity of each Client; whether transaction is in whole or in part of discretionary managed investment portfolio and any relevant proportions as well as the intended basis of allocation.	To fulfil requirements of R.1.4.56-R.1.4.58, R.4.1.4(a) and R.5.14 of the Rulebook
	Allocation of an aggregated transaction that includes the execution of a Client order	The date and time of allocation; relevant Financial Instrument; identity of each Client and the amount allocated to each Client.	To fulfil requirements of R.4.1.4(a), R.5.14, R.5.21-5.24 and R.5.26 , of the Rulebook
Client Orders and transactions	Record keeping of Client orders or decision to deal	The records provided for under Art. 7 of the Regulation (EC) 1287/2006. Regulated Persons may wish to consider the date and hour that the order was sent by the Regulated Person for execution. For every initial order received and in relation to every initial decision to deal taken, the following information shall be recorded: (1)Name and designation of the Client; (2) Name and designation of any Relevant Person acting on behalf of the Client; (3)A designation to identify the trader (Trader ID) responsible within	Record requirements in terms of R.5.17-R.5.19 and R.5.39 of the Rulebook

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
		the Regulated Person for the investment decision; (4)A designation to identify the algorithm (Algo ID) responsible within the Regulated Person for the investment decision; (5) B/S indicator; (6) Instrument identification; (7)Unit price and price notation; (8)Price; (9)Price multiplier; (10)Currency 1; (11) Currency 2; (12) Initial quantity and quantity notation; (13) Validity period; (14)Type of the order; (15) Any other details, conditions and particular instructions from the Client; (16) The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made.	
	Record keeping of transactions and order processing	The records provided for under Art. 8 of the Regulation (EC) 1287/2006.	Record requirements in terms of R.5.38 and R.5.39 of the Rulebook
Reporting to Clients	Obligation in respect of Services provided to Clients	Information provided to the Client in terms of R.1.4.20, R.4.1.4(a), R.4.3.8, R.4.3.10, R.4.3.17, R.4.4.4, R.4.4.20, R.4.4.9, R.4.4.30-R.4.4.32, R.4.4.34-R.4.4.38, R.4.4.40, R.4.4.30, R.4.4.33, R.4.4.36-R.4.4.37, R.4.4.40, R.4.4.53, R.4.4.64-	Records of information to be provided to Clients in terms of R.1.4.20, R.4.1.4(a), R.4.3.8, R.4.3.10, R.4.3.17, R.4.4.4, R.4.4.20 R.4.4.9, R.4.4.30-R.4.4.32, R.4.4.34-

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
		R.4.4.67, R.4.4.74-R.4.4.101 and R.4.5.11.	R.4.4.38, R.4.4.40, R.4.4.30, R.4.4.33, R.4.4.36-R.4.4.37, R.4.4.40, R.4.4.53, R.4.4.64-R.4.4.67, R.4.4.74-R.4.4.101 and R.4.5.11 of the Rulebook.
Safeguarding of client assets	Client Financial Instruments held by a Regulated Person	The records required under the applicable rules under Title 4, Chapter 3 of Part BI Investment Services Rules for Investment Services Providers.	The applicable rules under Title 4 Chapter 3 of Part BI Investment Services Rules for Investment Service Providers.
	Client funds held by a Regulated Person	Sufficient records to show and explain a Regulated Person's transactions and commitments under Article 8 of Regulation 1287/2006 under the applicable rules under Title 4, Chapter 3 of Part BI of the Investment Services Rules for Investment Services Providers.	The applicable rules under Title 4, Chapter 3 of Part BI Investment Services Rules for Investment Services Providers.
	Use of Client Financial Instruments	The identity of Client Financial Instruments that are available to be lent, and those which have been lent under the applicable rules under Title 4, Chapter 3 of Part BI of the Investment Services Rules for the Investment Services Providers.	The applicable rules under Title 4, Chapter 3 of Part BI Investment Services Rules for Investment Services Providers.

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
Communication with Clients	Information about costs and associated charges	Information which is provided to Retail Clients prior to the provision of any Service or Ancillary services or Product, in relation to costs and associated charges, in terms of R.1.4.27, R.1.4.38 and R.1.4.39.	Information to be provided to Clients in satisfaction of R.1.4.27 R.1.4.38 and R.1.4.39 of the Rulebook.
	Information about the Regulated Person and its Products or Services and safeguarding of Client assets	Information which is provided to Clients in terms of, *inter alia*, R.1.2.21, R.1.2.60, R.1.4.19, R.1.4.22, R.1.4.29, R.1.4.36, R.1.4.38, R.1.4.39 and R.1.4.81	R.1.2.21, R.1.2.60, R.1.4.19, R.1.4.27, R.1.4.29, R.1.4.36, R.1.4.38, R.1.4.39 and R.1.4.81 of the Rulebook.
	Information to Clients	Records of communication addressed to Clients, including marketing communications. Such records should show adherence to the requirements of R.1.2.6, R.3.58 and R.3.59	R.1.2.6, R.3.59 and R.3.60 of the Rulebook
	Marketing communications (except in oral form)	Any recommendation relating to Financial Instruments issued by a Regulated Person (except in oral form), which is treated as marketing communication in terms of R.1.2.6, R.3.42 to R.3.46	R.1.2.6, R.3.42 to R.3.46 of the Rulebook
	Investment advice to Retail Clients	(i) The fact, time and date that investment advice was rendered; (ii) the Financial Instrument that was recommended; (iii) the suitability report provided to the Client	R.1.4.20 and R.4.4.65, R.4.4.20, R.4.4.24, R.4.4.30-R.4.4.32, R.4.4.34-R.4.4.37,

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
			R.4.4.40, R.4.4.53 and R.4.4.64-R.4.4.67, of the Rulebook
	Investment research	Each item of Investment research issued by the Regulated Person in a Durable medium	R.1.2.6, R.3.42 to R.3.46 and Definition of 'Investment Research' in Glossary of the Rulebook
Organisational Requirements	The Regulated Person's business and internal organisation	Records provided for under R.2.7, R.2.9, R.2.15, R.2.16, R.2.21, R.3.4, R.5.39, R.5.45 of the Rulebook, Investment Services Rules for Investment Services Providers Part B1, R1-2.2.6, R3-1.2.3(iii), R3-1.2.4, R3-4.5.1, R3-5.7.1.1, R4-2.4.1.	R.2.7, R.2.9, R.2.15, R.2.16, R.2.21, R.3.4, R.5.39, R.5.45 of the Rulebook, Investment Services Rules for Investment Services Providers Part B1, R1-2.2.6, R3-1.2.3(iii), R3-1.2.4, R3-4.5.1, R3-5.7.1.1, R4-2.4.1.
	Compliance Reports	Each compliance report to the Management body under Investment Services Rules for Investment Services Providers Part B1, R3-1.2.3(iii), R3-1.3.2.2, R3-3.2.2.	Investment Services Rules for Investment Services Providers Part B1, R3-1.2.3(iii), R3-1.3.2.2, R3-3.2.2
	Conflict of interest records	Records of any Service, Ancillary service or activity carried out by or on behalf of the Regulated Person in which a conflict of interest entailing a material risk of damage to the interests of one or more Clients has arisen or, in the case of an	R.3.7 and R.3.8 of the Rulebook

Nature of obligation	***Type of record***	***Indicative content of record***	***Reference***
		ongoing service or activity, may arise.	
	Inducements	The information disclosed to Clients under R.1.5.12-R.1.5.14, R.3.11-R.3.14, R.3.20 and R.3.75 .	R.1.5.12-R.1.5.14, R.3.11-R.3.14, R.3.20 and R.3.81 of the Rulebook
	Risk management reports	Each Risk management report to the Management body under R3-1.2.4, R3-1.3.2.2, R3-2.2.1, R3-5.7.1.1, R4-2.4.1 of the Investment Services Rules for Investment Services Providers.	Investment Services Rules for Investment Services Providers Part B1, R3-1.2.4, R3-1.3.2.2, R3-2.2.1, R3-5.7.1.1, R4-2.4.1.
	Internal audit reports	Each internal audit report to senior management body under R3-2.2.1, R3-1.3.2.2, R3-5.2.1 and R3-5.2.2 of the Investment Services Rules for Investment Services Providers.	Investment Services Rules for Investment Services Providers Part B1 R3-2.2.1, R3-1.3.2.2, R3-5.2.1 and R3-5.2.2.
	Complaints-handling records	Records of each complaint, and the complaint handling measures taken to address the complaint under Section 3, Title 2 of Chapter 1, Part BI of the Investment Services Rules for Investment Services Providers and R.4.6.3 to R.4.6.11 of the Rulebook	Rules under Section 3, Title 2 of Chapter 1 of Part BI Investment Services Rules for Investment Services Providers, and R-4.6.3 to R.4.6.11 of the Rulebook. Part B1
	Records of personal transactions	Record of any personal transaction which is notified to the Regulated Person or identified by it, including the details emanating from R.3.35	R.3.48 of the Rulebook

Appendix 2

Section 1: Record keeping of Client orders and decision to deal

1. Name and designation of the Client
2. Name and designation of any Relevant Person acting on behalf of the Client
3. A designation to identify the trader (Trader ID) responsible within the Regulated Person for the investment decision
4. A designation to identify the algorithm (Algo ID) responsible within the Regulated Person for the investment decision;
5. B/S indicator;
6. Instrument identification
7. Unit price and price notation;
8. Price
9. Price multiplier
10. Currency 1
11. Currency 2
12. Initial quantity and quantity notation;
13. Validity period
14. Type of the order;
15. Any other details, conditions and particular instructions from the Client;
16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured ac-cording to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.

Section 2 - Record keeping of transactions and order processing

17. Name and designation of the Client;
18. Name and designation of any Relevant Person acting on behalf of the Client;
19. A designation to identify the trader (Trader ID) responsible within the Regulated Person for the investment decision;
20. A designation to identify the Algo (Ago ID) responsible within the Regulated Person for the investment decision
21. Transaction reference number
22. A designation to identify the order (Order ID)
23. The identification code of the order assigned by the Trading Venue upon receipt of the order;
24. A unique identification for each group of aggregated Clients' orders (which will be subsequently placed as one block order on a given Trading Venue). This identification should indicate "aggregated_X" with X representing the number of Clients whose orders have been aggregated.
25. The segment MIC code of the Trading Venue to which the order has been submitted.
26. The name and other designation of the person to whom the order was transmitted
27. Designation to identify the Seller & the Buyer
28. The trading capacity
29. A designation to identify the Trader (Trader ID) responsible for the execution
30. A designation to identify the Algo (Algo ID) responsible for the execution
31. B/S indicator;
32. Instrument identification

33. Ultimate underlying
34. Put/Call identifier
35. Strike price
36. Up-front payment
37. Delivery type
38. Option style
39. Maturity date
40. Unit price and price notation;
41. Price
42. Price multiplier
43. Currency 1
44. Currency 2
45. Remaining quantity
46. Modified quantity
47. Executed quantity
48. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU
49. The date and exact time of any message that is transmitted to and received from the Trading Venue in relation to any events affecting an order. The ex-act time must be measured according to the methodology prescribed under the Commission Delegated Regulation (EU) 2017/574 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.
50. The date and exact time any message that is transmitted to and received from another Regulated Person in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU
51. Any message that is transmitted to and received from the Trading Venue in relation to orders placed by the Regulated Person;
52. Any other details and conditions that was submitted to and received from another Regulated Person in relation with the order;
53. Each placed order's sequences in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution;
54. Short selling flag
55. SSR exemption flag;
56. Waiver flag

CHAPTER 6 PAN-EUROPEAN PERSONAL PENSION PRODUCT

Introduction

Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP), (the *"PEPP Regulation"*) was published in the EU Official Journal on 25 July 2019, and has become applicable as from **22 March 2022.**

The PEPP Regulation is directly applicable, therefore, the purpose of this Chapter on Pan-European Personal Pension Product in the Rulebook is only primarily to provide an overview of the relevant conduct requirements and make any relevant references to the new PEPP regulatory framework.

The development of a Pan-European Personal Pension Product ("PEPP") aims to contribute to increasing choices for retirement saving, especially for mobile workers, and establish a Union market for PEPP providers. However, it is only considered to be complementary to the public pension systems. The PEPP Regulation lays down uniform rules on the registration, provision, distribution and supervision of personal pension products that are distributed in the Union under the designation of a PEPP.

The purpose of the PEPP Regulation, which is directly applicable, is to establish a more harmonised European market for this individual retirement savings products, the PEPP, which is a regulated, non-compulsory individual supplementary pension product that is characterised by high-portability within the European Union.

Section 1: The Pan-European Personal Pension Product Regulatory Framework

Application

R.6.7.1 The Rules set out in this Chapter are applicable to:

(a) Regulated Persons which fall under points (i) and (iii) of the definition of "Regulated Person" who are considered to be a *"PEPP Provider"* pursuant to Article 2 of the PEPP Regulation; and;

(b) Regulated Persons which fall under points (i), (ii), (iii) and (iv) of the definition of "Regulated Person" in the Glossary to these Rules, who are considered to be a *"PEPP Distributor"* pursuant to Article 2 of the PEPP Regulation.

General Rules

R.6.7.2 Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP), (the *"PEPP Regulation"*) has become applicable as from *22 March 2022*.

R.6.7.3 The PEPP Regulation lays down uniform rules on the registration, manufacturing, distribution and supervision of personal pension products that are distributed in the Union under the designation of a pan-European Personal Pension Product ("PEPP"). It aims to establish a more harmonised European market for individual retirement savings products through this new European retirement savings product called PEPP. The PEPP is a regulated, non-compulsory individual supplementary pension product that is characterised by high-portability within the Member States or EEA States.

R.6.7.4 The contents of the PEPP Regulation shall be read in conjunction with:

(a) the requirements set out in the Implementing and Regulatory Technical Standards, as well as Delegated Acts issued under the PEPP Regulation supplementing in further detail the requirements laid down in the said Regulation;

(b) any relevant Guidelines issued by the European and Insurance Occupational Pensions Authority ("EIOPA"); and

(c) the Malta Financial Services Authority Act Pan-European Personal Pension Product (PEPP) Regulations, 2022 (S.L.330.16), issued under the MFSA Act, and any relevant Rules and guidance issued by the MFSA.

R.6.7.5 As outlined in the said Malta Financial Services Authority Act Pan-European Personal Pension Product (PEPP) Regulations, 2022, the MFSA shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the PEPP Regulation and any technical standards and delegated acts issued thereunder.

R.6.7.6 The PEPP is a portable pan-European Personal Pension Product with a long-term retirement nature which is subscribed to voluntarily by a PEPP saver in view of retirement. A PEPP does not aim at replacing existing national pension

systems and is considered to be an additional and complementary personal pension product.

In terms of Article 2(2) of the PEPP Regulation, a "PEPP" means a long-term savings personal pension product, which is provided by a financial undertaking eligible according to Article 6(1) of the PEPP Regulation under a PEPP contract, and subscribed to by a PEPP saver, or by an independent PEPP savers association on behalf of its members, in view of retirement, and which has no or strictly limited possibility for early redemption and is registered in accordance with the PEPP Regulation.

Distribution of PEPP

R.6.7.7 PEPP providers should be able to distribute PEPPs that they have manufactured and PEPPs that they have not manufactured provided that this would be in compliance with the relevant sectorial law.

PEPP distributors should be entitled to distribute PEPPs which they have not manufactured. PEPP distributors should distribute only those products for which they have the appropriate knowledge and competence in accordance with the relevant sectorial law.

R.6.7.8 Pursuant to Article 23 of the PEPP Regulation relating to the distribution regime applicable to different types of PEPP providers and PEPP Distributors, for the distribution of PEPPs, PEPP providers and PEPP distributors shall also comply with the relevant applicable rules as set out in the said Article 23.

Relevant Disclosures

R.6.7.9 PEPP providers and PEPP distributors shall provide clear, easy to understand, and adequate information to prospective PEPP savers and PEPP beneficiaries to support their decision-making about their retirement.

In terms of the PEPP Regulation, PEPP providers and PEPP distributors shall also ensure a high level of transparency throughout the various phases of a PEPP including the pre-contractual stage, the conclusion of the contract, the accumulation phase (including pre-retirement) and the decumulation phase. In particular, information concerning accrued retirement entitlements, projected levels of PEPP retirement benefits, risks and guarantees, the integration of ESG factors and costs should be given.

R.6.7.10 The PEPP Regulation contains various provisions on the PEPP Key Information Document (the "PEPP KID") which needs to be provided to a prospective PEPP saver, prior to the conclusion of a PEPP contract.

PEPP providers should draw up a PEPP key information document (PEPP KID) for the PEPPs that they manufacture before those PEPPs can be distributed to PEPP savers; and shall also be responsible for the accuracy of the PEPP KID. In accordance with Article 26(2) of the PEPP Regulation, PEPP providers need to ensure that PEPP KIDs are accurate, fair, clear and not misleading, at all times, so that the prospective PEPP saver is able to rely on the standardised

information contained in the document when deciding on the long-term savings for retirement

R.6.7.11 The PEPP Regulation contains various provisions on the Information which needs to be provided to PEPP savers during the term of the contract. This includes the provision of a personalised PEPP Benefit Statement, on an annual basis, which includes the amount of contributions made, costs incurred, investment returns, as well as pension benefit projections.

The PEPP Benefit Statement should be presented in a way that enables PEPP savers to easily track and monitor the development of own PEPP savings. Whilst the PEPP Benefit Statement is by its nature personalised, it should be consistent with pre-contractual information and should allow for constant comparison amongst PEPPs in order to enable the PEPP savers to take informed decisions on changing the investment option, switching PEPP provider or adapting the contribution levels to achieve the PEPP saver's retirement objective.

R.6.7.12 In complying with the provisions of the PEPP Regulation, a PEPP Provider shall also refer to and comply with all the applicable Regulatory Technical Standards and Implementing Technical Standards issued and, or to be issued thereunder, as well as relevant EIOPA Guidelines, including the following *EU Technical Standards relating to Information Documents, Costs and Fees and Risk-Mitigation Techniques:*

Commission Delegated Regulation (EU) 2021/473 of 18 December 2020 supplementing Regulation (EU) 2019/1238 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements on information documents, on the costs and fees included in the cost cap and on risk-mitigation techniques for the pan-European Personal Pension Product.

These Technical Standards and Annexes thereto set out requirements on:

(a) the contents and layout of the information documents (that is, the PEPP KID and the PEPP Benefit Statement), as well as the presentation thereof in an online environment;
(b) the Costs and Fees for the Basic PEPP; and
(c) Risk-Mitigation Techniques.

Advice

R.6.7.13 The PEPP Regulation contains provisions on the specification of demands and needs and provision of advice pursuant to Article 34 of the PEPP Regulation. Advice shall in particular be given to prospective PEPP savers by PEPP providers or PEPP distributors prior to the conclusion of the PEPP contract, taking into account the long-term retirement nature of the product, the individual demands and needs of the PEPP saver and the limited redeemability. Advice should particularly aim at informing a PEPP saver about the features of the investment options, the level of capital protection and the forms of out-payments.

R.6.7.14 Prior to the conclusion of a PEPP contract, the PEPP provider or PEPP distributor shall specify, on the basis of information required and obtained from the prospective PEPP saver, the retirement-related demands and needs of that prospective PEPP saver, including the possible need to acquire a product offering annuities, and shall provide the prospective PEPP saver with objective information about the PEPP in a comprehensible form to allow that PEPP saver to make an informed decision.

The PEPP Provider or PEPP Distributor shall ensure that any PEPP contract proposed shall be consistent with the PEPP saver's retirement-related demands and needs, taking into account the PEPP saver's accrued retirement entitlements.

R.6.7.15 The PEPP provider or PEPP distributor shall provide advice to the prospective PEPP saver prior to the conclusion of the PEPP contract providing the prospective PEPP saver with a personalised recommendation explaining why a particular PEPP, including a particular investment option, if applicable, would best meet the PEPP saver's demands and needs.

The PEPP provider or PEPP distributor shall also provide the prospective PEPP saver with personalised pension benefit projections for the recommended product based on the earliest date on which the decumulation phase may start and a disclaimer that those projections may differ from the final value of the PEPP benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the PEPP contract.

Cross-Border Provision and Portability of PEPP

R.6.7.16 The PEPP can be provided or distributed on a cross-border basis within the territory of a host Member State or EEA State via the freedom of establishment and the freedom of services. In such instances, relevant notifications by the PEPP providers to the MFSA apply.

PEPP Providers shall ensure that PEPP savers have the right to use a portability service when changing their residence to another Member State by opening a PEPP sub-account with the same PEPP provider in their new Member State or EEA State of residence (where the PEPP provider makes such an option available). Where such an option is not available, PEPP savers would be given the possibility to switch provider, free of charge and without delay, or to continue to contribute to the PEPP within the previous Member State or EEA State of residence.

Switching

R.6.7.17 PEPP providers shall comply with Chapter VII of the PEPP Regulation and ensure, amongst other matters, that PEPP savers have the right to switch PEPP providers at a capped cost after a minimum of five years from the conclusion of the contract, and in case of subsequent switching, after five years from the

most recent switching. A PEPP provider may also allow PEPP savers to switch PEPP providers more frequently.

Other Requirements

R.6.7.18 PEPP providers shall comply with all the relevant requirements contained in the PEPP Regulation including, amongst other matters, provisions on the PEPP contract, portability, product oversight and governance, PEPP KID and Pension Benefit Statement and the decumulation phase and out-payments.

R.6.7.19 PEPP providers and PEPP Distributors shall when distributing PEPPs comply with all the relevant requirements contained in the PEPP Regulation including, amongst other matters, the requirements set out in Chapter IV of the PEPP Regulation, which include provisions relating to distribution and information requirements covering general provisions, pre-contractual information, advice and information during the term of the contract.

Malta Financial Services Authority
Triq L-Imdina, Zone 1
Central Business District, Birkirkara, CBD 1010, Malta
communications@mfsa.mt
www.mfsa.mt