MFSA MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART BI: RULES APPLICABLE TO INVESTMENT SERVICES LICENCE HOLDERS WHICH QUALIFY AS MIFID FIRMS

THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

CONTENTS

PART 1: GENERAL: ALL CLASSES.....5

TITLE 1 GENERAL REQUIREMENTS AND OBLIGATIONS.....5

SECTION 1 GENERAL SCOPE AND APPLICATION.....5
SECTION 2 DEFINITIONS.....5
SECTION 3 HIGH LEVEL PRINCIPLES.....26
SECTION 4 GENERAL REQUIREMENTS.....29
SECTION 5 ORGANISATIONAL STRUCTURE.....34
SECTION 6 ONGOING OBLIGATIONS.....43
SECTION 7 REQUIREMENT OF MFSA NOTIFICATION.....47
SECTION 8 RECORD KEEPING AND ACCOUNTING RECORDS.....51
SECTION 9 PROFESSIONAL INDEMNITY INSURANCE REQUIREMENT.....55
SECTION 10 BUSINESS CONTINUITY PROCESS.....58
SECTION 11 RECOVERY AND RESOLUTION REQUIREMENTS.....62
SECTION 12 SYSTEM CERTIFICATION.....62
SECTION 13 SYNCHRONISATION OF BUSINESS CLOCKS.....63
SECTION 14 ICT AND SECURITY RISK MANAGEMENT.....63
SECTION 15 OUTSOURCING REQUIREMENTS.....63
SECTION 16 AUDITING.....72
SECTION 17 ARBITER.....75
SECTION 18 FEES.....75
SECTION 19 SIGNIFICANT LICENCE HOLDERS.....76
SECTION 20 APPLICATION OF THE INVESTOR COMPENSATION SCHEME REGULATIONS ISSUED IN TERMS OF THE ACT 76
SECTION 21 FOREIGN CURRENCY LENDING.....77
SECTION 22 LICENCE HOLDERS OPERATING AN MTFS AND OTFS.....78
SECTION 23 REPORTING OF INFRINGEMENTS.....79

TITLE 2 REPORTING, DISCLOSURES, AND CONFIRMATIONS.....80

SECTION 1 GENERAL RULES FOR RETURNS.....80
SECTION 2 AUDITED ANNUAL REPORTING REQUIREMENTS.....82
SECTION 3 HIGH INCOME EARNERS CONFIRMATION.....84
SECTION 4 DUE DILIGENCE REQUIREMENTS.....85
SECTION 5 DISCLOSURE REQUIREMENT FOR LICENCE HOLDERS ENGAGED IN PORTFOLIO MANAGEMENT WHICH INVEST IN SHARES OF LISTED COMPANIES.....86
SECTION 6 DISCLOSURE REQUIREMENT FOR LICENCE HOLDERS ACTING AS SHAREHOLDERS INTERMEDIARIES.....89
SECTION 7 REMUNERATION AND GENDER PAY DATA COLLECTION EXERCISES.....93
SECTION 8 ESTABLISHMENT OF THE INTERMEDIATE EU PARENT UNDERTAKING.....93

TITLE 3 MIFIR REQUIREMENTS 94
SECTION 1 REFERENCES 94
SECTION 2 TRANSPARENCY FOR TRADING VENUES 94
SECTION 3 TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC 94
SECTION 4 TRANSACTION REPORTING 95
SECTION 5 DERIVATIVES 95
SECTION 6 PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH 95
TITLE 4 IFR REQUIREMENTS 96
SECTION 1 REFERENCES 96
SECTION 2 REPORTING BY INVESTMENT FIRMS 96
TITLE 5 IFD REQUIREMENTS 97
SECTION 1 INITIAL CAPITAL 97
TITLE 6 MICA REQUIREMENTS 99
TITLE 7 SUSTANABLE FINANCE DISCLOSURES REGULATION 100
SECTION 1 REFERENCES 100
TITLE 8 TAXONOMY REGULATION 101
SECTION 1 REFERENCES 101
TITLE 9 ENFORCEMENT AND SANCTIONS 102
SECTION 1 ENFORCEMENT AND SANCTIONS 102
PART 2: CLASS 1 AND CLASS 1 MINUS 105
TITLE 1 GENERAL SCOPE AND APPLICATION 105
TITLE 2 CRR REQUIREMENTS 107
SECTION 1 REFERENCES 107
SECTION 2 LEVEL OF APPLICATION OF REQUIREMENTS 107
SECTION 3 ELEMENTS OF OWN FUNDS 107
SECTION 4 MINORITY INTEREST AND ADDITIONAL TIER 1 AND TIER 2 INSTRUMENTS ISSUED BY SUBSIDIARIES 108
SECTION 5 QUALIFYING HOLDINGS OUTSIDE THE FINANCIAL SECTOR 108
SECTION 6 CAPITAL REQUIREMENTS 108
SECTION 7 LARGE EXPOSURES 110
SECTION 8 EXPOSURES TO TRANSFERRED CREDIT RISK 110
SECTION 9 LIQUIDITY 111
SECTION 10 LEVERAGE 111
SECTION 11 REPORTING REQUIREMENTS 111
SECTION 12 DISCLOSURE BY INSTITUTIONS 112
SECTION 13 TRANSITIONAL PROVISIONS, REPORTS, REVIEWS AND AMENDMENTS 112
TITLE 3 CRD REQUIREMENTS 114

SECTION 1 PRINCIPLES OF PRUDENTIAL SUPERVISION 114
SECTION 2 REVIEW PROCESSES 115
SECTION 3 SUPPLEMENTARY CONDITIONS APPLICABLE TO LICENCE WHICH FORM PART OF A CONSOLIDATED GROUP 144
SECTION 4 SUPERVISION ON A CONSOLIDATED BASIS 145
SECTION 5 CAPITAL BUFFERS 146
SECTION 6 MISCELLANEOUS 169

PART 3: CLASS 1 MINUS, CLASS 2, AND CLASS 3 171

TITLE 1 GENERAL SCOPE AND APPLICATION 171
TITLE 2 IFR REQUIREMENTS 171

SECTION 1 REFERENCES 171
SECTION 2 LEVEL OF APPLICATION OF REQUIREMENTS 171
SECTION 3 OWN FUNDS 172
SECTION 4 CAPITAL REQUIREMENTS 172
SECTION 5 CONCENTRATION RISK 173
SECTION 6 LIQUIDITY 173
SECTION 7 DISCLOSURE BY INVESTMENT FIRMS 173
SECTION 8 REPORTING BY INVESTMENT FIRMS 174
SECTION 9 TRANSITIONAL PROVISIONS 174

TITLE 3 IFD REQUIREMENTS 175

SECTION 1 PRUDENTIAL SUPERVISION 175
SECTION 2 SUPERVISION OF INVESTMENT FIRM GROUPS 189

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	18 December 2017	-
2.00	12 November 2018	-
3.00	10 June 2019	See: Feedback Statement on SRDII
4.00	23 August 2019	See: Circular on Update to Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms (the Rules)
5.00	03 July 2020	See: Circular dated 3 July 2020 on the updates made to the ISP and CIS Rulebooks & Circular dated 3 July 2020 on the Fitness and Properness Assessment of Committee Members involved with ISPs and CIS'
6.00	12 October 2020	See: Circular dated 12 October 2020 on the Update to Investment Services Rulebooks
7.00	07 January 2021	EBA Guidelines on outsourcing arrangements and ESMA Guidelines on outsourcing to cloud service providers
8.00	05 August 2021	Rulebook upgrade to transpose IFD
9.00	06 December 2021	Rulebook upgrade to transpose CRD
9.01	08 February 2022	Updates to Consolidation and Liquidity Requirements
10.00	22 March 2022	See: Circular dated 28 March 2022 on Amendments to the Investment Services Rulebooks
11.00	23 May 2022	See: Circular dated 23 May 2022 on Amendments to the Investment Services Rulebooks to transpose and implement EU Directives, Regulations and EBA Guidelines
12.00	27 July 2022	See: Circular dated 27 July 2022 on Amendments to the Investment Services Rulebooks
13.00	5 February 2024	See: Circular dated 5 February on Various Amendments to the Investment Services Rulebooks
14.00	20 November 2024	See: Implementation of Various EBA & ESMA Guidelines
15.00	4 December 2024	See: Transposition of Directive (EU) 2022/2556 on Digital Operational Resilience for the Financial Sector – Amendments to the Authority's Rules
16.00	12 December 2024	See: Implementation of the MiCA Regulation and Its Corresponding Guidelines
17.00	7 July 2025	Inserted reference to DORA instead of the EBA ICT Guidelines

18.00	1 September 2025	See: Circular to Investment Firms on Amendments to the Investment Services Act, Banking Act, various Subsidiary Legislation and Investment Firms' Rules
19.00	7 October 2025	See: Various Amendments to the Investment Services Rulebooks
20.00	9 March 2026	Update relating to: ESMA's Guidelines on Outsourcing to Cloud Service Providers & MiCA Guidelines
21.00	6 August 2026	See: Amendments to Section 13 of Part A and Section 7 of Part BI of the Investment Services Rules for Investment Services Providers
22.00	5 October 2026	See: Various Amendments to the Investment Services Rulebooks
23.00	14 October 2026	See: Amendments to Sectoral Legislation and Rulebooks to Implement the European Single Access Point (ESAP) Framework

Part 1: General: All Classes

Title 1 General Requirements and Obligations

Section 1 General Scope and Application

R1-1.1.1 Part BI of the Investment Services Rules for Investment Services Providers shall apply to Investment Services Licence Holders which provide services in terms of the Market in Financial Instruments Directive. Therefore, Part BI does not apply to Investment Services Licence Holders which qualify as UCITS Fund Managers, Alternative Investment Fund Managers or Depositaries of Collective Investment Schemes.

R1-1.1.2 This Section shall apply to all classes of investment firms Licence Holders.

R1-1.1.3 Section 23 of this Title shall apply to Investment Services Licence Holders as set out in R1-1.1.1 above, credit institutions in relation to investment services or activities and ancillary services, branches of third-country firms, and APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR.

Section 2 Definitions

R1-1.2.1 This Section should be read in conjunction with the Investment Services Act and Regulations issued thereunder. In the event that definitions contained hereunder conflict with those stipulated in the Investment Services Act or regulations issued thereunder, the definitions set out in the Investment Services Act or the regulations issued thereunder shall prevail.

1. "Accrual Period" means the period during which the performance of the staff member is assessed and measured for the purposes of determining its remuneration.

2. The "Act", or the "ISA" means the Investment Services Act;

3. "Ancillary Services" are any of the services listed in the third schedule of the Investment Services Act;

4. "Approved Publication Arrangement", or "APA" means the same asthe meaning assigned to it in point (34) of Article 2(1) of MiFIR;

5. "Approved Reporting Mechanism", or "ARM" means the same as the meaning assigned to it in point (36) of Article 2(1) of MiFIR;

6. "Asset Management Company" shall have the same meaning as that assigned in point (19) of Article 4 (1) of the CRR, i.e. an asset management company as defined in regulation 2 of the Financial Conglomerates Regulations, 2013 and an AIFM including, unless otherwise provided, third country entities, that carry out similar activities, that are subject to the laws of a third country which applies supervisory and regulatory requirements at least equivalent to those applied in the Union;

7. "Asset-backed commercial paper (ABCP) programme" means a programme of securitisations the securities issued by which predominantly take the form of commercial paper with an original maturity of one year or less;

8. "Beneficial Owners" are individuals who ultimately own or control the proposed acquirer and/ or the persons on whose behalf the proposed acquisition is being conducted. It also includes persons who exercise ultimate effective control over a proposed acquirer which is a legal person or a legal arrangement such as a trust;

9. "Binary Option" means a derivative, irrespective of whether or not it is traded on a trading venue, which meets the following conditions:

    a. 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.

    b. It only provides for payment at its close-out or expiry;

    c. 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;

10. "Branch" means a place of business which forms a legally dependent part of an investment firm and which carries out directly all or some of the transactions inherent in the business of investment firms;

11. "Capital conservation buffer" means the own funds that an investment firm is required to maintain in accordance with Section 2 of Title 5 of Section 2 of these Rules (Article 129 of the CRD);

12. "Capital Requirements Directive", or "CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

13. "Capital Requirements Regulation", or "CRR", means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012;

14. "CBM Directive" means the Central Bank of Malta Directive No. 11 on Macro-prudential policy;

15. "Central Bank of Malta" means:
    a. the 'designate authority' in conjunction with the Authority, in charge of identifying on a consolidated basis, global systemically important investment firms (G-SIIs) and, on an individual, sub-consolidated or consolidated basis, as

applicable, other systemically important institutions (O-SIIs) which have been authorised in Malta in terms of Article 131 of the CRD as appointed by the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014; and

b. the 'designate authority' responsible for setting the countercyclical buffer rate in accordance with Article 136 of the CRD as appointed by the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014;

16. "Civil Partner" means a partner bound by a civil union or a union of equivalent status in terms of the Civil Unions Act;

17. "Civil Union" means a civil union or a union of equivalent status in terms of the Civil Unions Act;

18. "Chief executive officer" or "CEO" means the person who is responsible for managing and steering the overall business activities;

19. "Chief financial officer" or CFO" means the person who is overall responsible for managing all of the following activities: financial resources management, financial planning and financial reporting;

20. "Clawback" means a contractual agreement in which the staff member agrees under certain circumstances to return ownership of an amount of remuneration received. This can be applied to both upfront and deferred variable remuneration. When related to risk outcomes, clawback is a form of ex-post risk adjustment.

21. "Class 1 Licence Holder" means a Licence Holder which falls under the definition of Article 1(2)(a) of the IFR

22. "Class 1 Minus Licence Holder" means a Licence Holders which falls under the definition of Article 1(2)(b), or Article 1(5) of the IFR and is subject to a decision under Artilce 5 of the IFD.

23. "Class 2 Licence Holder" means a Licence Holder which is neither a Class 1 nor a Class 3.

24. "Class 3 Licence Holder" means a Licence Holder which satisfies all requirements of Article 12 of the IFR.

25. "Client" means any natural or legal person to whom a Licence Holder provides investment and/or ancillary services;

26. "Client Assets" shall mean instruments and money belonging to the client.

27. "Close Links" shall have the same meaning as that assigned to it in the Investment Services Act;

28. "Combined buffer requirement" means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following as applicable:
    a. an institution-specific countercyclical capital buffer;
    b. G-SII buffer;
    c. an O-SII buffer; and
    d. a systemic risk buffer.

29. "Common Equity Tier 1 capital" shall have the same meaning as that assigned to it in Article 50 of the CRR;

30. "Compliance Officer" shall refer the person appointed by the Investment Services Licence Holder, responsible for ensuring compliance by the Licence Holder with its applicable Licence Conditions;
31. "Consolidated Basis" - shall have the same meaning as that assigned to it in point (48) of Article 4 (1) of the CRR, i.e. on the basis of the consolidated situation, or the same meaning as that

assigned to it in point (12) of Article 4(1) of the IFR, i.e. on the basis of the consolidated situation, depending on the Class of the Licence Holder;

32. "Consolidated Group" means a group of entities which is subject to Part One, Title II Section 2 of the CRR. When determining consolidation status, Licence Holders should refer to the Supervisory Consolidation Regulations (Capital Requirements Directive);

33. "Consolidating Supervisor" shall have the same meaning as that assigned to it in point (41) of Article 4(1) of the CRR, i.e. where the MFSA is responsible for the exercise of supervision on a consolidated basis of EU parent institutions and of institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies, in accordance with the Supervisory Consolidation Regulations (Capital Requirements Directive);

34. "Control" means the relationship between a parent undertaking and a subsidiary undertaking as defined in Article 2 of the Companies Act, or a similar relationship between any natural or legal person and an undertaking;

35. "Control Functions" means staff (other than senior management) responsible for risk management, compliance, internal audit and similar functions within the AIFM (e.g. the CFO to the extent that he/she is responsible for the preparation of the financial statements);

36. "Control of assets" shall have the same definition as that in Regulation 2 of Subsidiary Legislation 370.05;

37. "Credit Institution" means a credit institution licenced in terms of the Banking Act, 1994 or a branch established in Malta of a credit institution authorised in an EU Member State or EEA State, or of an overseas credit institution which is subject to prudential

requirements at least equivalent to the requirements applicable to Maltese credit institutions;

38. "Countercyclical buffer rate" means the rate that investment firms must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Articles 136 and 137 of the CRD or by a relevant third-country authority, as the case may be;

39. "Customer" shall include a potential customer and a recipient of documents from a Licence Holder including a policyholder and a potential policyholder in relation to linked long term contracts of insurance;

40. "Deferral period" means the period during which variable remuneration is withheld following the end of the accrual period;

41. "Discretionary pension benefits" means enhanced pension benefits granted on a discretionary basis by the Licence Holder to an employee as part of that employee's variable remuneration package, which do not include accrued benefits granted to an employee under the terms of the company pension scheme;

42. "DORA Regulation" means Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector, and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

43. "Durable Medium" means any instrument which:

    a. 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

b. allows the unchanged reproduction of the information stored.

44. "EBA" means the European Banking Authority as established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24th November 2010;

45. "EEA" means European Economic Area;

46. "Employee representative" shall have the same meaning as defined in Article 2(e) of Directive 2002/14/EC.

47. "ESMA" means The European Securities and Markets Authority established by Regulation (EU) no 1095/2010 of the European Parliament and of the Council of 24 November 2010;

48. "EU" means European Union;

49. "EU parent mixed financial holding company" means an EU parent mixed financial holding company as defined in point (58) of Article 4(1) of the IFR;

50. "EUR" means Euro;

51. "EU Member State" means A Member State of the European Union;

52. "Financial Holding company" shall have the same meaning as that assigned to it in point (20) of Article 4(1) of the CRR, i.e. a financial institution, the subsidiaries of which are exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company;
53. "Financial Institution" shall have the same meaning as that assigned to it in point (26) of Article 4(1) of the CRR, i.e. an

undertaking other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, including a financial holding company, a mixed financial holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/EC;

54. "Generally accepted accounting principles and practice" shall have the same meaning as that assigned under the Accountancy Profession Act;

55. "Group" (when used in relation to a Licence Holder) shall mean the group of which that Licence Holder forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 2(11) of Directive 2013/34/EU;

56. "G-SII buffer" means the own funds that are required to be maintained in accordance Article 131(4) of the CRD;

57. "Heads of internal control functions" shall mean the persons at the highest hierarchical level in charge of effectively managing the day-to-day operation of the independent risk management, compliance and internal audit functions;

58. "Holding Company" means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value, and which is either a company:

a. Operating on its own account and whose shares are admitted to trading on a regulated market in the Union; or
b. Not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or assorted companies as evidenced in its annual report or other official documents.

59. "Home Member State" shall have:

a. the meaning assigned to "home Member State or EEA State" in Regulation 2 of the European Passport Right for Investment Firms Regulations 2007, as may be amended from time to time; or
b. the meaning assigned to "home Member State or EEA State" in Regulation 2 of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011, as may be amended from time to time; or the meaning assigned to "home Member State or EEA State" in Regulation 2 of the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations, 2013, as applicable;

60. "Identified staff" means categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the Licence Holders' risk profile or the AIFM's risk profile or the risk profiles of the AIFs it manages and categories of staff of the entity(ies) to which portfolio management or risk management activities have been delegated by the AIFM, whose professional activities have a material impact on the risk profiles of the AIF that the AIFM manages.

61. "Institution" shall have the same meaning as that assigned to it in point (3) of Article 4(1) of the CRR, i.e. a credit institution or an investment firm for the purpose of CRD and CRR;

62. "Institution-specific countercyclical capital buffer" means the own funds that an investment firm is required to maintain in accordance with Article 130 of the CRD;

63. "Institutional investor" means:
    a. an undertaking carrying out activities of life assurance within the meaning of points (a), (b) and (c) of Article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council (4), and of reinsurance as defined in point (7) of Article 13 of that Directive provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive;

    b. an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council (5) in accordance with Article 2 thereof.

64. "Instrument" shall have the same meaning as that assigned to it in Article 2 of the Act;

65. "Investment" means any instrument, contract or right falling within the Second Schedule to the Act and whether or not issued or entered into in Malta;

66. "Investment Firms Directive" or "IFD" means Directive (EU) 2019/2034 of The European Parliament and of The Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU;
67. "Invstment Firms Regulation" or "IFR" means Regulation (EU) 2019/2033 of The European Parliament and of The Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014;

68. "Investment Service" shall have the same meaning as that assigned to it in Article 2 of in the Investment Services Act;

69. "Investment Services Licence Holder" means a person who holds an Investment Services Licence;

70. "Investment Services Licence" shall have the same meaning as that assigned to it in Article 2 of the Act;

71. "Investment Services Rules for Investment Services Providers" shall mean the Investment Services Rules issued by the MFSA in terms of Article 6 of the Investment Services Act, 1994 applicable to Investment Services Licence Holders and equivalent authorised persons;

72. "Key Function Holder" shall mean persons who have significant influence over the direction of the Licence Holder, but who are neither members of the management body and are not the CEO. They include the heads of internal control functions, the CFO, Compliance Officer, MLRO and the Risk Manager, where they are not members of the management body, senior management and other key function holders such as investment management, risk management, advisory, audit and valuation committee members, as may be deemed appropriate. Other key function holders might include heads of significant business lines, European Economic Area/European Free Trade Association branches, third country subsidiaries and other internal functions;

73. "Local Firms" shall have the same meaning as point (4) of Article 4(1) of the CRR, that is, 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 derivative 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, and they shall not service any Client in any manner whatsoever;

74. "Licence Holder" shall have the same meaning as an Investment Services Licence Holder;

75. "Management Body" means:

    a. the governing body of a Licence Holder; or

    b. the body or bodies appointed in accordance with Maltese law which, is empowered to set the strategy, objectives and overall direction of an investment firm, and which oversees and monitors management decision-making, and includes the persons who effectively direct the business of the investment firm;

76. "Management Company" shall mean a company, the regular business of which is the management of UCITS in the form of common fund, unit trusts or of investment companies or one or more AIFs as applicable depending whether the Management Company is a UCITS Fund Manager or an Alternative Investment Fund Manager;

77. "MFSA" or "the Authority" means the Malta Financial Services Authority;

78. "Markets in Financial Instruments Directive" or "MiFID" refer to 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;

79. "Markets in Financial Instruments Regulation" or "MiFIR" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

80. "Member" means an appointed member of the management body;

81. "MiCA" means Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937."

82. "Mixed Activity Holding Company" shall have the same meaning as that assigned to it in point (22) of Article 4(1) of the CRR, i.e. a parent undertaking, other than a financial holding company or an institution or a mixed financial holding company, the subsidiaries of which include at least one institution;

83. "Mixed Financial Holding Company" shall have the same meaning as that assigned to it in point (21) of Article 4(1) of the CRR, i.e. a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC;

84. "Money Laundering Reporting Officer" or "MLRO" means the person appointed by an Investment Services Licence Holder in terms of Regulation 10 of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2003;

85. "Multilateral Trading Facility" or "MTF" means a multilateral system, operated by a Licence Holder or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in a system and in accordance with nondiscretionary rules – in a way that results in a contract in accordance with the provisions of the MiFID;

86. Operational Risk means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk;

87. "Organised Trading Facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with the provisions of MiFID;
88. "Originator" means either of the following:

    a. an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or

    b. an entity which purchases a third party's exposures for its own account and then securitises them;

89. "O-SII buffer" means the own funds that may be required to be maintained in accordance with Article 131(5) of the CRD;

90. "Outsourcing" means an arrangement of any form between a Licence Holder and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the Licence Holder itself;

91. "Own Funds" means the sum of Tier 1 capital and Tier 2 capital as specified in point (118) of Article 4(1) the CRR

92. "Parent Financial Holding Company in a Member State" shall have the same meaning as that assigned to it in point (30) of Article 4(1) of the CRR, i.e. a financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;

93. "Parent institution in a Member State" means parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;

94. "Parent Investment Firm" means an investment firm licensed in terms of the Act which has an institution or a financial institution as a subsidiary or which holds a participation in such an institution or financial institution, and which is not itself a subsidiary of another institution licensed in terms of the Act, or of a financial holding company or mixed financial holding company established in Malta;

95. "Parent Mixed Financial Holding Company in a Member State" shall have the same meaning as that assigned to it in point (32) of Article 4(1) of the CRR, i.e. a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in that same Member State;

96. "Parent Undertaking" means a parent undertaking within the meaning of Article 2(9) and 22 of Directive 2013/34/EU of the European Parliament and of the Council;

97. "Participation" shall have the same meaning as that assigned to it in point (35) of Article 4(1) of the CRR, i.e. participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, or the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking;

98. "Personal Questionnaire" or "PQ" means the Personal Questionnaire, which is available in Schedule F to Part A of the Investment Services Rules for Investment Services Providers;

99. "Proxy Advisor" means a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view

to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights;

100. "Qualifying Shareholder" means a person who has a Qualifying Shareholding;

101. "Qualifying Shareholding" shall have the same meaning as that assigned to it by Article 2 of the Act;

102. "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 and in accordance with Title III of Directive 2014/65/EU of the European Parliament and of the Council;

103. "Relevant person" (when used in relation to a Licence Holder) means any of the following:

    a. director, partner or equivalent, manager of the Licence Holder;

    b. an employee of the Licence Holder , as well as any other natural person whose services are placed at the disposal and under the control of the Licence Holder and who is involved in the provision by the Licence Holder of investment services and activities;

    c. a natural person who is directly involved in the provision of services to the Licence Holder under an outsourcing arrangement for the purpose of the provision by the Licence Holder of investment services and activities.

104. "Retail Client" means a client who is not a professional client;

105. "Remuneration Bracket" refers to the range of the total remuneration of each of the staff members in the senior manager and risk taker categories – from the highest paid to the lowest paid in these categories;

106. "Residual Risk" means the risk that recognised credit risk mitigation techniques used prove less effective than expected.

107. "Risk of Excessive Leverage" means the risk resulting from the Licence Holder's vulnerability due to leverage or contingent leverage that may require unintended corrective measures to its business plan, including distressed selling of assets which might result in losses or in valuation adjustments to its remaining assets.

108. "Securitisation Risk" means the risk arising from securitisation transactions in relation to which the Licence Holder is an investor, originator or sponsor, including reputational risks (such as arise in relation to complex structures or products).

    Securitisation in this context means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched and has both following characteristics:

    i. Payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and

    ii. The subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

109. "Senior Management" means those natural persons who exercise executive functions within the Licence Holder and who are responsible, and accountable to the Governing Body, for the day-to-day management of the Licence Holder, including for the

implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;

110. "Shareholders intermediary" means a Licence Holder which is acting as an intermediary when investing in shares of listed companies on behalf of shareholders being natural or legal person that is recognised as a shareholder under the applicable law;

111. "Significant Influence" means influence which is exercised where a proposed acquirer's shareholding, although below the 10% threshold, allows it to exercise a significant influence over the management of the Investment Services Licence Holder (for example, allows it to have a representative on the board of directors);

112. "Significant Licence Holder" shall mean a Licence Holder, which is not a Credit Institution and considered significant in terms of size, internal organisation and the nature, the scope and the complexity of its investment services and activities, if it meets all of the following conditions:

    a. its total balance sheet assets exceed EUR 43 million;

    b. the annual turnover relating to its investment services activities exceeds EUR 50 million;

    c. the clients' money that it holds or controls exceeds EUR 100 million; and

    d. the assets belonging to its clients that it holds or controls in the course of, or connected with its investment services activities exceeds EUR 3 billion.

113. "Sponsor" means a Licence Holder other than an originator Licence Holder that establishes and manages an asset-backed

commercial paper programme or other securitisation scheme that purchases exposures from third party entities;

114. "Spouse" includes a partner bound by a civil union or by a union of equivalent status in terms of the Civil Unions Act;

115. "Systematic Internaliser" means a systematic internliaser as defined in Article 4(20) of MiFID;

116. "Sub-consolidated basis" shall have the same meaning as that assigned to it in point (49) of Article 4(1) of the CRR, i.e. on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company , excluding a sub-group of entities, or on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company that is not the ultimate parent institution, financial holding company or mixed financial holding company;

117. "Subordinated Loan Agreement" shall mean an instrument which is eligible for inclusion within the own funds calculation of a Licence Holder in accordance with the CRR, and the IFR, as applicable;

118. "Supervisory function" means the relevant persons or body or bodies responsible for overseeing and monitoring management decision making including the assessment and periodical review of the adequacy and effectiveness of the processes and of the policies, arrangements and procedures put in place to comply with the Licence Holders' obligations, including its obligations where applicable under the CRD/ CRR, UCITS and MiFID Directives;

119. "Sustainable Finance Disclousre Regulation" means (EU) 2019/2088 of The European Parliament and of The Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

120. "Systemically important institution" means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk as defined in point (30) of Article 3 (1) of the CRD;

121. "Systemic risk buffer" means the own funds that an investment firm is or may be required to maintain in accordance with paragraphs 14 to 32 of the CBM Directive (Article 133 of the CRD);

122. "Taxonomy Regulation" 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

123. "Tied Agent" means a natural or legal person, who under the full and unconditional responsibility of only one Investment Services Licence Holder or European Investment Firm and 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 and, or provides investment advice to clients or prospective clients in respect of those instruments or services;

124. "Third Country" means a country which is not an EU or an EEA Member State;

125. "Tranche" means a contractually established segment of the credit risk associated with an exposure or a number of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;

126. "Variable remuneration" refers to additional payments or benefits depending on performance or, in certain cases, other contractual criteria

Section 3 High Level Principles

R1-1.3.1 When providing Investment Services, a Licence Holder shall act honestly, fairly and professionally and shall comply with the relevant provisions of the Act, the Regulations issued thereunder, these Rules, the Conduct of Business Rulebook, as well as with other relevant legal and regulatory requirements.

R1-1.3.2 Pursuant to the previous rule, the Licence Holder is also expected to take due account and, where applicable, comply with any relevant EU Regulations and Directives, Commission Delegated Regulations and Directives, Regulatory Technical Standards and Implementing Technical Standards, as well as any Guidelines which may be issued by the EBA, ESMA and EIOPA and as may be amended from time to time. These shall include inter alia:

i. Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser;

ii. Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives;

iii. Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading;

iv. Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;

v. Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre- and post-trade data and the level of disaggregation of data;

vi. Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading;

vii. Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;

viii. Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory

technical standards for the application of position limits to commodity derivatives;

ix. Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities;

x. Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities;

xi. Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments;

xii. Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 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;

xiii. Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing;

xiv. 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;

xv. Commission Delegated Regulation (EU) 2019/443 amending Commission Delegated Regulation (EU) 2017/588 as regards the possibility to adjust the average daily number of transactions for a share where the trading venue with the highest turnover of that share is located outside the Union

xvi. Commission Delegated Regulation (EU) 2021/527 of 15 December 2020 amending Commission Delegated Regulation (EU) 2017/565 as regards the thresholds for weekly position reporting; and

xvii. ESMA Guidelines on Transaction Reporting, order record keeping and clock synchronisation under MiFID II.

xviii. Guidelines on certain aspects of the MiFID II compliance function requirements.

R1-1.3.3 Furthermore, Licence Holders are also expected to make reference to, and where applicable comply with the applicable Maltese Legislation, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant body to assist the Licence Holder in complying with its legal and regulatory obligations.

R1-1.3.4 The Licence Holder may be subjected to the SREP, as the MFSA deems appropriate, as per the Joint EBA and ESMA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP).

Section 4 General Requirements

R1-1.4.1 The Licence Holder shall obtain the written consent of the MFSA before:

i. making a change to the Licence Holder's name or business name (if different);

ii. making any change to its share capital or the rights of its shareholders;

iii. entering into contractual agreements governing capital instruments;

iv. acquiring 10 per cent or more of the voting share capital of another company;

v. establishing a branch in Malta or abroad;

vi. taking any steps to cease its Investment Services business;

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

viii. making application to a Regulator abroad to undertake any form of licensable activity outside Malta;

ix. the appointment of a Director or Senior Manager responsible for the Investment Services business of the Licence Holder or of the Licence Holder's Compliance Officer in terms of Rule R1-1.5.3.4 and/ or Money Laundering Reporting Officer or of the Licence Holder's Risk Manager where applicable, in advance. The request for consent of the appointment shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule F of these Rules – duly completed by the person proposed, which shall in the case of a proposed Compliance Officer and/ or Money Laundering Reporting Officer or Risk Manager where applicable include sufficient details of the individual's background, training and/ or experience relevant to the post, to enable an adequate assessment by the MFSA;

x. the change in the responsibilities of a Director or Senior Manager in advance. The request for consent of the change in responsibilities of a Director or Senior Manager shall be

accompanied by a PQ unless the individual concerned had within the previous three years submitted a PQ to the MFSA in connection with another role occupied by such individual with the same Licence Holder, in which case it shall be accompanied by a confirmation by the Director or Senior Manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto;

A change in the responsibilities of a Director or Senior Manager should only be notified to the MFSA when such a change is material, which shall include a change in the status or seniority of the person concerned (upwards or downwards);

xi. any persons, whether Directors, Senior Managers or other employees are engaged in any of the following activities:

(a) Portfolio or fund management;

(b) Investment advice.

Provided that, where a Committee is tasked to undertake any such activity, only the person responsible for his/her respective activity (i.e. the official(s) holding the role of Portfolio Manager, Risk Manager and Investment Advisor; respectively, whether the person is also a member of the Committee or otherwise) requires the prior approval of the MFSA.

Provided further that, where such Committee is collectively responsible for the day-to-day provision of the respective activity, all its members would require the prior approval of the MFSA.

The request for authorisation shall include the submission of a Personal Questionnaire with all relevant details in order to enable the MFSA to assess whether the persons concerned are sufficiently competent to undertake such activities. For this purpose, details of relevant experience, training and/or qualifications will be required. Applicants should the relevant application form as issued by the MFSA.

Notwithstanding the above, the consent of the MFSA shall be required where any other MFSA approval is required in terms of the Rules

R1-1.4.2 For the purposes of the points (viii) and (ix) of the previous Rule , 'Senior Manager' should be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.

R1-1.4.3 The Licence Holder's Investment Services business shall be effectively directed or managed by at least two individuals in satisfaction of the 'dual control' principle. Such persons shall be of sufficiently good repute, possess sufficient knowledge and experience, commit sufficient time to perform their functions and be sufficiently experienced so as to ensure the sound and prudent management of the Licence Holder.

R1-1.4.4 The Licence Holder shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To that end, the Licence Holder shall employ appropriate and proportionate systems, including information and communication technology ("ICT") systems that are set up and managed in accordance with Article 7 of the DORA Regulation, as well as appropriate and proportionate resources and procedures.

R1-1.4.5 The MFSA may grant a derogation from the requirements of Rule R1-1.4.3, where a Licence Holder is a natural person or a legal person managed by a single natural person, provided that the Licence Holder provides, to the satisfaction of the Authority:

i. alternative arrangements which ensure its sound and prudent management and the adequate consideration of the interest of clients and the integrity of the market;

ii. confirmation that the natural persons concerned are of sufficient good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

R1-1.4.6 Without prejudice to R2-3.2.12, the Licence Holder shall establish, implement and maintain:

i. systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;

ii. an adequate business continuity process in accordance with Section 10, Title 1 of Part 1. The business continuity policy shall be aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its Investment Services and related activities;

iii. accounting policies and procedures that enable it to deliver in a timely manner to the MFSA upon request, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules;

adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under MiFID;

iv. appropriate rules governing personal transactions by its managers, employees and tied agents.

R1-1.4.7 The Licence Holder shall have sound security mechanisms in place to ensure, in accordance with the requirements laid down in the DORA Regulation, the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, thereby maintaining confidentiality of data at all times.

R1-1.4.8 For purposes of safeguarding client's rights in relation to instruments and money belonging to them which are held or controlled by the Licence Holder, a Licence

Holder shall hold clients' money and/or instruments in specially created and segregated accounts entitled "Client Money Account" and/or "Client Financial Instruments Account", respectively. These accounts must be identified separately from any accounts used to hold money and/or financial instruments belonging to the Licence Holder.

R1-1.4.9 The Licence Holder shall obtain a written declaration from the entities with whom the Licence Holder has deposited Client Assets in accordance with SL 370.05 Investment Services Act (Control of Assets) Regulations that that entity renounces and will not attempt to enforce or execute, any charge, right of set-off or other claim against the account, or combine the account with any other account in respect of any debt owed to it by the Licence Holder, and that interest payable on the account will be credited to the account.

R1-1.4.10 A Licence Holder shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.

R1-1.4.11 The Licence Holder holding or controlling Client Assets shall comply with the relevant provisions of the Investment Services Act (Control of Assets) Regulations (Legal Notice 240 of 1998).

Section 5 Organisational Structure

Sub-Section 1 Management Body

R1-1.5.1.1 Without prejudice to any applicable Regulation and/or Directive, Licence Holders shall also ensure that the management body define, approve and oversee:

i. the organisation of the firm for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the

nature, scale and complexity of its business and all the requirements the firm has to comply with;

ii. a policy covering services, activities, products and operations offered or provided in accordance with the risk tolerance of the firm and the characteristics and needs of the clients for the firm to whom they will be offered or provided including carrying out appropriate stress testing as necessary in line with the nature, scale and complexit of operations;

iii. 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 relationship with clients.

R1-1.5.1.2 The Licence Holder shall ensure that the management body monitors and periodically assesses the adequacy and implementation of the firm's strategic objectives in the provision of investment services and ancillary services, the effectiveness of the investment firm's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

R1-1.5.1.3 The Licence Holder shall ensure that members of the management body have adequate access to information and documents which are needed to oversee and monitor management decision-making.

R1-1.5.1.4 The Licence Holder shall ensure that members of the Management Body shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties and be able to understand the Licence Holder's activities, including the main risks.

In this regard, the Licence Holder shall devote adequate human and financial resources to the induction and training of members of the management body.

R1-1.5.1.5 The Licence Holder shall require that the members of the Management Body of a financial holding company or mixed financial holding company be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties and be able to understand the Licence Holder's activities, including the main risks.

In this regard, the Licence Holder shall devote adequate human and financial resources to the induction and training of members of the management body.

R1-1.5.1.6 The number of directorships which may be held by a member of the Management Body at the same time shall take into account individual circumstances and the nature, scale and complexity of the Licence Holder's activities.

R1-1.5.1.7 Unless acting in a national representative capacity, members of the Management Body of a Licence Holder that is significant in terms of internal organization and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time:

i. one executive directorship with two non-executive directorships;

ii. four non-executive directorships.

R1-1.5.1.8 For the purposes of the previous Rule, the following shall count as a single directorship:

i. executive or non-executive directorships held within the same group;

ii. executive or non-executive directorships held within:
   (a) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of the CRR are fulfilled; or

(b) undertakings (including non-financial entities) in which the Licence Holder holds a qualifying holding.

R1-1.5.1.9 Directorships in organizations which do not pursue predominantly commercial objectives shall be disregarded for the purposes of the limitations specified above.

R1-1.5.1.10 Without prejudice to the limitations specified in Rules R1-1.5.1.7 and R1-1.5.1.8 the MFSA may authorise members of the Management Body to hold one additional non-executive directorship. The Authority shall regularly inform the EBA of such authorisations.

R1-1.5.1.11 The Licence Holder shall ensure that each member of the Management Body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

R1-1.5.1.12 The Licence Holder and its nomination committee, where applicable, shall ensure to engage a broad set of qualities and competences when recruiting members to the Management Body and for that purpose to put in place a policy promoting diversity on the Management Body. This requirement is without prejudice to any national requirement on the representation of employees on the Management Body.

R1-1.5.1.13 The Licence Holder shall ensure that the Management Body defines, oversees and accounts for the implementation of the governance arrangements that ensure effective and prudent management of the Licence Holder, including the segregation of duties in the organisation and the prevention of conflicts of interest.

R1-1.5.1.14 The governance arrangements referred to above shall comply with the following principles:

i. the Management Body must have the overall responsibility for the Licence Holder and approve and oversee the

implementation of the Licence Holder's strategic objectives, risk strategy and internal governance;

ii. the Management Body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

iii. the Management Body must oversee the process of disclosure and communications;

iv. the Management Body must be responsible for providing effective oversight of senior management;

v. the chairman of the Management Body in its supervisory function of the Licence Holder must not exercise simultaneously the functions of a chief executive officer within the same Licence Holder, unless justified by the Licence Holder and authorised by the MFSA;

vi. the Management Body shall monitor and periodically assesses the effectiveness of the Licence Holder's governance arrangements and take appropriate steps to address any deficiencies.

Sub-Section 2 Nomination Committee

R1-1.5.2.1 Significant Licence Holders shall establish a committee composed of members of the Management Body who do not perform any executive function in the Licence Holder concerned.

R1-1.5.2.2 The nomination committee shall:

i. identify and recommend, for the approval of the Management Body or for approval of the general meeting, candidates to fill Management Body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the Management Body and prepare a description of the roles

and capabilities for a particular appointment, and assess the time commitment expected;

ii. decide on a target for the representation of the underrepresented gender in the Management Body and prepare a policy on how to increase the number of the underrepresented gender in the Management body in order to meet that target. The target, policy and its implementation shall be made public.

iii. periodically, and at least annually, assess the structure, size, composition and performance of the Management Body and make recommendations to the Management Body with regard to any changes;

iv. periodically, and at least annually, assess the knowledge, skills and experience of individual members of the Management Body and of the Management Body collectively, and report to the Management Body accordingly;

v. periodically review the policy of the Management Body for selection and appointment of senior management and make recommendations to the Management Body;

vi. in performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the Management Body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the Licence Holder as a whole;

vii. the nomination committee shall be able to use any form of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect.

Sub-Section 3 Compliance Function

R1-1.5.3.1 The Licence Holder shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

i. to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the requirements of Rule R1-1.5.4.2, and the actions taken to address any deficiencies in the Licence Holder's compliance with its obligations;

ii. to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the Licence Holder's legal and regulatory obligations.

R1-1.5.3.2 In order to enable the compliance function to discharge its responsibilities properly, the Licence Holder shall ensure that the following conditions are satisfied:

i. the compliance function shall have the necessary authority, resources, expertise and access to all relevant information;

ii. a Compliance Officer shall be appointed and shall be responsible for the compliance function and for any reporting as to compliance required by these Rules;

iii. the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor;

iv. the method of determining the remuneration of the relevant persons involved in the compliance function shall not compromise their objectivity and shall not be likely to do so.

R1-1.5.3.3 However, the MFSA may exempt a Licence Holder from the requirements of points (iii) or (iv) of the previous Rule if the Licence Holder is able to demonstrate to the satisfaction of the MFSA, that in view of the nature, scale and complexity of its business, and the nature and range of Investment Services and related activities, the requirement under that point is not proportionate and that its compliance function continues to be independent, objective and effective.

R1-1.5.3.4 Moreover, with respect to (ii) of Rule R1-1.5.3.2, the appointment of an individual as Compliance Officer is subject to MFSA's prior approval. Such person may also act as the Licence Holder's Money Laundering Reporting Officer. Reference should be made to point (viii) of Rule R1-1.4.1 in this regard.

R1-1.5.3.5 The Licence Holder shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with Rules R2-3.2.12 and R1-1.4.6 and take appropriate measures to address any deficiencies.

R1-1.5.3.6 When allocating functions internally, the Licence Holder shall ensure that senior management, and where appropriate, the supervisory function, are responsible for ensuring that the Licence Holder complies with its obligations under these Rules.

In particular, senior management and where appropriate, the supervisory function shall be required to assess and periodically to review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under these Rules and to take appropriate measures to address any deficiencies.

Sub-Section 4 Risk

R1-1.5.4.1 The Licence Holder shall ensure that it has sound administrative and accounting procedures, internal control mechanisms, and effective procedures for risk assessment.

R1-1.5.4.2 The Licence Holder shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Licence Holder

to comply with its obligations under the Act, the Regulations issued thereunder and these Rules, as well as with its obligations under other applicable legislation, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

The Licence Holder shall, for this purpose, take into account the nature, scale and complexity of its business and the nature and range of investment services and activities undertaken in the course of that business.

R1-1.5.4.3 The Licence Holder shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on Risk Management as outlined in Rules R2-3.2.1 to R2-3.2.56 and the CRR, covered by Rule R1-1.5.4.2 and sub-section 3 Compliance Function, sub-section 5 Internal Audit, and Rules R2-3.2.66 to R2-3.2.69 governing remuneration, as applicable; indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

R1-1.5.4.4 The Licence Holder shall ensure that the supervisory function receives on a regular basis written reports on the same matters at least annually.

R1-1.5.4.5 For the purposes of sub-section, "supervisory function" means the function within a Licence Holder responsible for the supervision of its senior management.

R1-1.5.4.6 The Licence Holder shall confirm on an annual basis, in the Confirmations tab of the audited MiFID Firms Quarterly Reporting, whether a Risk Management function is in place or whether a derogation was granted. A copy, signed by two Directors shall be submitted to the MFSA as per Rule R1-2.2.1(vii) above.

Sub-Section 5 Internal Audit

R1-1.5.5.1 The Licence Holder shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Licence Holder and which has the following responsibilities:

i. to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Licence Holder's systems, internal control mechanisms and arrangements;

ii. to issue recommendations based on the result of work carried out in accordance with point (i) of this Rule;

iii. to verify compliance with those recommendations;

iv. to report in relation to internal audit matters in accordance with R1-1.5.4.3.

R1-1.5.5.2 Provided that where appropriate and proportionate, in view of the nature, scale and complexity of its business and the nature and range of investments services and activities undertaken in the course of its business, the MFSA may, at its discretion, exempt the Licence Holder from the requirements set out by the previous Rule.

R1-1.5.5.3 The Licence Holder shall confirm on an annual basis, in the Confirmations tab of the audited MiFID Firms Quarterly Reporting, whether an Internal Audit function is in place or whether a derogation was granted. A copy, signed by two Directors shall be submitted to the MFSA as per Rule R1-2.2.1(vii).

Section 6 Ongoing Obligations

R1-1.6.1 The Licence Holder shall commence its Investment Services business within twelve months of the date of issue of the Investment Services Licence.

R1-1.6.2 If, for any reason the Licence Holder is not in a position to comply with this condition, it shall notify the MFSA, within 6 months of the expiration of the twelve months in the previous rule, in writing setting out the reasons for such inactivity and providing a business plan for future activity. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Licence in accordance with the relevant provisions of the Act.

R1-1.6.3 The Licence Holder shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Licence Holder shall supply the MFSA with such information and returns as the MFSA requires.

R1-1.6.4 Where any Rule demands that a Licence Holder notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

R1-1.6.5 The Licence Holder shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Investment Services Licence and as required.

R1-1.6.6 The Licence Holder shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.

R1-1.6.7 If so required by the MFSA, the Licence Holder shall do all in its power to delay the cessation of its Investment Services business, or the winding up such business so as to comply with conditions imposed by the MFSA, in order to ensure investor protection and protection of market integrity.

R1-1.6.8 The Licence Holder shall immediately notify the MFSA if at any time it is in breach of its Capital Requirement, as detailed below. In this case, the MFSA may, if the circumstances justify it, allow the Licence Holder a limited period within which to restore its financial resources to the required level.

R1-1.6.9 Without prejudice to these Rules, Licence Holders shall make reference to and where applicable comply with the provisions of the IFR, CRR, MiFIR, SFDR, Taxonomy, as well as national legislation transposing the IFD, CRD, and MiFID II. Licence Holders shall also make reference and where applicable comply with Rules and Regulations issued under the aforesaid national legislation. The Licence Holder shall also refer to the Annexes, Guidelines, Circulars, and any other publication to the Authority where relevant and necessary.

R1-1.6.10 The Licence Holder shall reconcile, at least on a monthly basis, the balance on each client's money account as recorded by the Licence Holder with the balance on that account as set out in the statement issued by the entity with whom the

Licence Holder has deposited clients' money in accordance with SL 370.05 Investment Services Act (Control of Assets) Regulations.

R1-1.6.11 The Licence Holder shall also reconcile the total of the balances on all clients' money accounts as recorded by the Licence Holder with the total of the corresponding credit balances in respect of each of its clients as recorded by the Licence Holder.

R1-1.6.12 The Licence Holder shall carry out physical counts and inspections of clients' instruments and the subsequent reconciliation of all such assets with customers' records at least twice a year.

R1-1.6.13 Where the Licence Holder discovers discrepancies after carrying out the above reconciliations, it shall maintain a record of such discrepancies and the measures taken to remedy such differences.

R1-1.6.14 In complying with these Rules, the Licence Holder shall refer to the reporting requirements established by, *inter alia*:

i. MiFIR;

ii. Delegated Acts issued under MiFIR and MiFID;

iii. CRR

iv. SFDR

v. IFR

vi. the Investment Services Act;

vii. Regulations Issued under the Investment Services Act; and

viii. Rules issued under the Investment Services Act.

R1-1.6.15 Without prejudice to the requirements outlined in this Section, Licence Holders offering contracts for differences (CFDs) and/or rolling spot forex contracts shall, when carrying out transactions with clients, counterparties and other third parties in Malta, have real time access to and control over all transactional data.

Licence Holders shall have this data fully preserved in 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.

Licence Holders shall provide full access to this data as and when required by the Authority, including during Compliance Visits.

R1-1.6.16 The Licence Holder shall obtain the Authority's written consent before entering into, amending, and/or terminating a Subordinated Loan Agreement in line with Rule R1-1.6.17 of this Rulebook.

R1-1.6.17 A Subordinated Loan Agreement shall be drawn up between the Licence Holder and lender. The Subordinated Loan Agreement shall meet all the criteria for it to be an eligible instrument for inclusion within the own funds calculation in accordance with Section 3 of Title 2 of Part 2 of this Rulebook, and Section 3 of Title 2 of Part 3 of this Rulebook, as applicable.

R1-1.6.18 Prior to entering into a Subordinated Loan Agreement, the Licence Holder shall submit the following to the MFSA on investmentfirms@mfsa.mt:

i. the rationale for entering into the Subordinated Loan Agreement and a copy of an amended version of the applicable Financial Returns evidencing the effect of the loan on the own funds of the Licence Holder;
ii. a draft of the agreement; and
iii. a declaration from the external Auditors of the Licence Holder that such Subordinated Loan Agreement, qualifies as an eligible instrument for the purpose of the own funds calculation as specified Section 3 of Title 2 of Part 2 of this Rulebook, and Section 3 of Title 2 of Part 3 of this Rulebook, as applicable.

Section 7 Requirement of MFSA Notification

R1-1.7.1 The Licence Holder shall inform the MFSA in writing on investmentfirms@mfsa.mt, of:

i. a change of address: at least one month in advance;

ii. the appointment or the departure of any key function holders whose appointment is not subject to MFSA approval, upon engagement. The notification of appointment of such officials shall be accompanied by a declaration confirming that:

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

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

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

iii. a proposed adequate replacement for any person who has tendered his resignation in terms of point (ii) this Rule;

iv. the person who shall be temporarily taking the responsibilities of such person until such proposed replacement is appointed in terms of point (ix) of Rule R1-1.4.1;

v. the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Licence Holder's share capital on becoming aware of the situation;

vi. the provision of a related company loan, within 15 days of making the loan; provided that Licence Holder which falls under any one of the following categories need not comply with this requirement:

(a) credit institutions licensed in terms of the Banking Act, 1994; or

(b) financial institutions licensed in terms of the Financial Institutions Act, 1994;

vii. any proposed material change to its business (whether that business constitutes a licensable activity under the Act or not) at least one month before the change is to take effect. Where a new or amended Investment Services Licence is required, the new business shall not begin until the new Investment Services Licence has been granted or the amendment has been approved by the MFSA;

viii. any evidence of fraud or dishonesty by a member of the Licence Holder's staff immediately upon becoming aware of the matter;

ix. a decision to make a material claim on its professional indemnity insurance or on any insurance policy or held in relation to the Licence Holder's Investment Services business as in this Rulebook. Notification should be provided as soon as the decision is taken;

x. any material changes in the information supplied to the MFSA – immediately upon becoming aware of the matter. This shall include the obligation to notify the MFSA on a continuous basis of any changes or circumstances which

give rise to the existence of close links, as defined in in this Rulebook; between the Licence Holder and any other person;

xi. the fact, where applicable, that it has not provided any Investment Service or carried out any investment activity for the preceding six months, setting out the reasons for such inactivity and providing a business plan for future activity;

xii. the proposed appointment of a Tied Agent and of any information required in terms of these Rules, pertaining to a Licence Holder appointing tied agents;

xiii. any other material information concerning the Licence Holder, its business or its staff in Malta or abroad – immediately upon becoming aware of the matter;

xiv. the Licence Holder's counterparties in repurchase and reverse repurchase agreements or securities and commodities-lending and securities and commodities-borrowing transactions default on their obligations;

xv. its auditor's intention to qualify the audit report;

xvi. any breach of this Rulebook.

The notification shall provide adequate justification to the MFSA and shall explain what action is being taken to rectify matters.

xx. Any other breach of the Law as soon as the Licence Holder becomes aware of the breach;

xxi. The Licence Holder shall carry out a rigorous assessment on the liquidity providers/counterparties. The assessment shall be kept on file and made available to the MFSA upon request.

Prior to the appointment of the liquidity providers/counterparties, the Licence Holder shall submit to the Authority the details and regulatory status of the identified liquidity providers/ counterparties.

The MFSA retains the right to object to such an appointment. Notwithstanding, the Licence Holder remains responsible for the appointment of the liquidity providers/counterparties.

xxii. the departure of a Director, Senior Manager or any other person authorised or approved by the MFSA within 14 days of the departure.

Furthermore, the Licence Holder shall also ask such person to:

a. provide to the MFSA a separate written confirmation outlining the reasons which led to their departure; and confirm that there were no regulatory implications, or otherwise;

b. address such confirmation directly to the Authority without disclosing its contents to the Licence Holder; and

c. send such confirmation using means which are independent from the Licence Holder.

xxiii. any acquisitions or disposals of shares which fall within the disclosure provisions of Article 10 of the Act – immediately upon becoming aware of the proposed acquisition or disposal. It should be noted that MFSA has the right to object to such an acquisition;

xxiv. any actual or intended legal proceedings of a material nature by or against the Licence Holder immediately after

the decision has been taken or on becoming aware of the matter;

Section 8 Record Keeping and Accounting Records

R1-1.8.1 The Licence Holder shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable MFSA to monitor compliance with the requirements of these rules, and in particular to ascertain that the Licence Holder has complied with all obligations with respect to clients or potential clients.

R1-1.8.2 In this regard, records shall include the recording of telephone conversations and/or electronic communications involving transactions when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

R1-1.8.3 The Licence Holder shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the Licence Holder.

R1-1.8.4 The Licence Holder shall notify new and existing clients that telephone communications or conversations between the Licence Holder and its clients that result or may result in transactions will be recorded. Such a notification may be made once, before the provision of investment services of new and existing clients.

R1-1.8.5 The Licence Holder shall not provide, by telephone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the receipt, 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. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered to be equivalent to orders received by telephone.

R1-1.8.6 The Licence Holder 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 Licence Holder is unable to record or copy.

R1-1.8.7 Moreover, the Licence Holder shall also keep at the disposal of the MFSA, for at least five years, the relevant data relating to all transactions in Instruments which it has carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under the Prevention of Money Laundering Act, 1994 and Regulations issued thereunder. The Authority may request that such records are kept for a period of up to 7 years.

R1-1.8.8 The Licence Holder shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Investment Services Licence as required by this Rulebook.

R1-1.8.9 The Licence Holder shall retain all the records required under these Rules, MiFIR and MiFID for a period of at least 5 years.

R1-1.8.10 Additionally records which set out the respective rights and obligations of the Licence Holder and the client under an agreement to provide services, or the terms on which the Licence Holder provides services to the client shall be retained for at least the duration of the relationship with the client.

R1-1.8.11 However, MFSA, may, in exceptional circumstances, require the Licence Holder to retain any or all of those records for such longer period as is justified by the nature of the Instrument or transaction, if that is necessary to enable MFSA to exercise its supervisory functions.

R1-1.8.12 The records 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:

i. MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transaction;

ii. 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;

iii. it must not be possible for the records otherwise to be manipulated or altered.

R1-1.8.13 The Licence Holder shall have internal control mechanisms and administrative and accounting procedures which permit the verification of their compliance with these Rules as well as effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems.

R1-1.8.14 The Licence Holder shall maintain proper accounting records to show and explain the Licence Holder's own transactions, assets and liabilities.

R1-1.8.15 The accounting records shall:

i. disclose with reasonable accuracy, at all times, the financial position of the Licence Holder; and

ii. enable the financial statements required by the MFSA to be prepared within the time limits specified in the conditions of the Investment Services Licence.

R1-1.8.16 In particular, the financial records shall contain:

i. entries from day to day of all sums of money received and expended and the matters to which they relate;

ii. a record of all income and expenses, explaining their nature;

iii. a record of all assets and liabilities, including any guarantees, contingent liabilities or other financial commitments; and

iv. entries from day to day of all transactions on the Licence Holder's own account.

R1-1.8.17 The Licence Holder shall retain accounting records for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.

R1-1.8.18 The Licence Holder shall agree with the MFSA its accounting reference date.

R1-1.8.19 The Licence Holder shall ensure that proper accounting records are kept to show and explain transactions processed by the Licence Holder on behalf of its customers.

R1-1.8.20 The records shall:

i. record all purchases and sales of Customers' Assets processed by the Licence Holder;

ii. record all receipts and payments of money belonging to customers which arise from transactions processed by the Licence Holder;

iii. disclose the assets and liabilities of a Licence Holder's customers individually and collectively, to the extent that they are managed by the Licence Holder;

iv. record all Customers' Assets (including title documents) in the possession of the Licence Holder or of another person who is holding such assets for, or to the order of the Licence Holder, showing the location of the assets, their beneficial owner and the extent to which they are subject to any charge of which the Licence Holder has been notified.

R1-1.8.21 Customers' accounting records shall be retained for a minimum period of ten years.

R1-1.8.22 During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.

Section 9 Professional Indemnity Insurance Requirement

R1-1.9.1 The Licence Holder shall take out and maintain a Professional Indemnity Insurance or have additional own funds which are appropriate to cover potential liability risks arising from professional negligence.

R1-1.9.2 The policy shall be governed by Maltese law.

R1-1.9.3 The Licence Holder shall ensure that the PII:

i. covers at least the loss of money or loss or damage to any other asset or property belonging to the Licence Holder or which is in the care, custody or control of the Licence Holder or for which the Licence Holder is responsible.

ii. covers any legal liability in consequence of any negligent act, error or omission in the conduct of the Licence Holder's business by the Licence Holder or any person employed by it or otherwise acting for it, including consultants under a contract for service with the Licence Holder;

iii. covers legal defence costs which may arise in consequence of any negligent act, error or omission in the conduct of the Licence Holder's business by the Licence Holder or any person employed by it or otherwise acting for it, including consultants under a contract for service with the Licence Holder;

iv. cover applies to the whole territory of the European Union and extends to all other territories from, in or to which Investment Services are provided; and

v. includes any dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the Licence Holder, or otherwise acting for it, including consultants under a contract for service with the Licence Holder.

R1-1.9.4 The Licence Holder may, at its discretion, decide to include cover in respect of the following:

i. libel, slander and defamation;

ii. loss of and damage to documents and records belonging to the Licence Holder or which are in the care, custody or control of the Licence Holder or for which the Licence Holder is responsible; including also documents and records stored on magnetic or electronic media; including also liability and costs and expenses incurred in replacing, restoring or reconstructing the documents or records; including also consequential loss resulting from the loss or damage to the documents or records;

iii. liability resulting from any breach of a provision of the Act, any breach of a regulation made under the Act, and any award resulting from any such breach;

iv. claims made after expiry of the policy where the circumstances giving rise to the claim were notified to the insurers during the period of the policy.

R1-1.9.5 For purposes of the above rule, "Relevant Income" shall mean all gross income received or receivable which is commission, brokerage fees or other earnings arising from the Licence Holder's business activities, whether those activities are licensed under the Act or not for the last accounting year or on the basis of the business plan agreed with the competent authority in respect of the relevant year or period. Provided that income received or receivable in the form of interest, whether in respect of bank deposits or bonds and dividends does not form part of "Relevant Income".

R1-1.9.6 The Licence Holder may enter into separate policies to cover activities licensed under other laws, subject to MFSA approval of the terms. Where the Licence Holder is required to maintain professional indemnity insurance cover in terms of an authorisation or licence under any other legislation, separate cover for the activities carried out under that legislation is a requirement.

R1-1.9.7 For the purposes of demonstrating to the satisfaction of the MFSA that the requirements in this Section are being complied with on an on-going basis, the Licence Holder shall, upon request by the MFSA, submit to the MFSA, a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Rules.

R1-1.9.8 A Licence Holder shall within two working days from the date it becomes aware of any of the circumstances specified in (i) to (vii) below, inform the MFSA in writing where:

i. during the period of a policy, the Licence Holder has notified insurers of an incident which may give rise to a claim under the policy;
ii. during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;

iii. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this Section of these Rules has not been taken out from the day on which the previous policy lapsed or was cancelled;

iv. during the period of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of this Section of these Rules;

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

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

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

R1-1.9.9 An Investment Services Licence Holder which is also licensed in terms of the Banking Act, 1994 and subsidiaries of such Licence Holder, need not comply with the requirements of this Section, but instead shall provide MFSA with a brief summary of the nature and amount of its insurance cover.

Section 10 Business Continuity Process

R1-1.10.1 The business continuity process shall consist of:

i. a disaster recovery plan ('DRP');
ii. a business continuity plan ('BCP'); and

iii. business continuity management ('BCM').

The Disaster Recovery Plan shall define the resources (hardware, software, communications, data as well as human resource), actions and tasks required for the recovery of the infrastructure needed to support the Licence Holder's business functions. This document may form part of the Business Continuity Plan.

R1-1.10.2 The Business Continuity Plan is a management process to ensure the continuity of businesses and shall define the advance planning and preparations that are necessary to minimise loss and ensure continuity of the critical business functions of a Licence Holder in the event of disruption. In this regard, the Licence Holder shall ensure that the BCP is available as a formal manual which is made available for reference to all the Licence Holder's personnel.

R1-1.10.3 Business continuity management is an integral part of corporate governance and shall encompass the BCP and DRP and the Licence Holder shall integrate them into an ongoing strategic management process which identifies potential threats which may affect the Licence Holder. As part of BCM, the Licence Holder shall also design a responsive framework to safeguard its interests as well as that of its customers.

R1-1.10.4 The Business continuity management team shall at least be composed of the executive management, and depending on the nature, scale and complexity of the Licence Holder's Business, may also include a BCP co-ordinator and the internal auditor.

R1-1.10.5 The business continuity management team shall:

i. identify key personnel and the person/s responsible for the implementation of the BCP;

ii. identify and define the critical resources and functions of the Licence Holder's business;

iii. define a process to protect the Licence Holder's critical resources and functions;

iv. define alternatives for the continuation of critical functions;

v. prepare and document the BCP, DRP and any relevant training programs promoting company-wide awareness of the recovery function;

vi. test the business continuity process on a regular basis and ensure that logs are maintained;

vii. continuously review and maintain the BCP and DRP;

viii. update personnel with any changes to the business continuity process;

ix. maintain contact with suppliers to assure support during a recovery effort;

x. act as a point of liaison for contingency planning issues between information resources and other business units; and

xi. maintain contracts for alternate facilities and/or services.

R1-1.10.6 The Business Continuity Plan shall at least include:

i. the objectives of the BCP;

ii. the person/s responsible for the BCP;

iii. key personnel required to help in the recovery process including substitutes;

iv. contact details of all the persons mentioned in the previous points;

v. details of any agreement with third parties (if applicable) required to ensure resumptions of operations and their contact details;

vi. an alternative/secondary site from which operations can be resumed;

vii. an outline of the main steps which should be taken to resume operations;

viii. data back-up and recovery (hard and electronic copy);

ix. the means to re-establish physical records;

x. financial and operational assessments;

xi. how the Licence Holder will inform the regulators in the event of non-continuation of business;

xii. how the Licence Holder will satisfy any regulatory reporting requirements to which it is subject to in the event of any business disruption;

xiii. how the Licence Holder will ensure its customers prompt access to their funds and securities in the event of non-continuation of business;

xiv. the planning and implementation of activities for the prevention and protection of any risks anticipated before an event occurs;

xv. the planning for activities to be implemented or executed during an emergency or disastrous event;

xvi. the strategic and tactical planning for resources, vital information and documentation of the activities for resumption, recovery, and restoration of businesses - both physical and logical, exercises/update and plan management;

xvii. an analysis of threats and impact scenarios including a step-by-step approach of how the institution would have its operational activities up and running in the least possible time in the event of a major incident which would render its current offices inoperable;

xviii. a time-table for regular review and updating of plans, resources and procedures; and

xix. a timetable for quarterly and annual testing of the plan and the requirement for testing logs to be maintained.

R1-1.10.7 Where the Licence Holder avails itself of an internal audit function, the internal auditor should:

i. evaluate whether necessary controls were followed during an actual emergency;

ii. report findings to executive management and, where applicable, the BCP co-coordinator; and

iii. follow up on past internal audit reports to ensure compliance with previous findings.

R1-1.10.8 Firms should ensure that their BCP manual is realistic and easy to use during a crisis.

R1-1.10.9 Licence Holders shall make reference to the Section regulating ICT and Security Risk Management.

Section 11 Recovery and Resolution Requirements

R1-1.11.1 Licence Holders which are subject to €750,000 initial capital shall comply with the Rules in this Section in addition to the relevant provisions of the Recovery and Resolution Regulations (SL 330.09).

R1-1.11.2 In this respect the Licence Holder shall develop and maintain a Recovery Plan in accordance with Article 5 of Recovery and Resolution Regulations (SL 330.09).

R1-1.11.3 Such plan should, inter alia be proportionate to the size and business model of the Licence Holder and its interconnectedness to other institutions or to the financial system in general, including its impact on financial markets and on other institutions or on funding conditions.

R1-1.11.4 The Licence Holder shall cooperate closely with the Resolution Authority as established under the Malta Financial Services Authority Act and shall provide it with all the information necessary for the preparation and drafting of viable resolution plans setting out options for the orderly resolution of the Licence Holder in the case of failure, in accordance with the principle of proportionality.

R1-1.11.5 Licence Holders which are subject to SL 330.09 shall submit to the Authority an original copy of the Recovery Plan by not later than 1 June of each year.

Section 12 System certification

R1-1.12.1 In line with Rules 14.6 of Part A of the Investment Services Rules for Investment Services Providers, when the Licence Holder uses a proprietary online trading

platform, it shall submit a confirmation that an independent IT Auditor has certified the adequacy of the systems in place. The Licence Holder shall make such declaration in the Confirmations tab of the audited MiFID Firms Quarterly Reporting. A copy, signed by two Directors shall be submitted to the MFSA as per Rule R1-2.2.1(vii).

R1-1.12.2 The Licence Holder may be required by the Authority to submit the Auditor's report in line with the requirements of Rule R1-2.4.2.

Section 13 Synchronisation of Business Clocks

R1-1.13.1 All Licence Holders being members or participants in trading venues shall synchronise the business clocks they use to record the date and time of any reportable event

Section 14 ICT and Security Risk Management

R1-1.14.1 Licence Holders shall refer to and comply with Regulation (EU) 2022/2554 (the "DORA").

Section 15 Outsourcing Requirements

Sub-Section 1 General

R1-1.15.1.1 A Licence Holder shall ensure, when relying on a third party for the performance of any operational function that it takes reasonable steps to avoid undue additional operational risk for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis.

R1-1.15.1.2 A Licence Holder shall ensure that the outsourcing of important operational functions shall not be undertaken in such a way as to materially impair the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.

R1-1.15.1.3 When the Licence Holder outsources any operational functions or any Investment Services or activities, the Licence Holder shall remain fully responsible for discharging all of their obligations under these Rules and shall adequately manage the risks relating to such outsourcing arrangements at all times.

R1-1.15.1.4 The Licence Holder shall carry out an on-going assessment of the operational risks and the concentration risk associated with all its outsourcing arrangements. The Licence Holder shall notify the MFSA of any material developments.

R1-1.15.1.5 The ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with the Licence Holder.

R1-1.15.1.6 When the Licence Holder outsources any operational function or any Investment Services or activities, the Licence Holder shall ensure that the outsourcing arrangements do not result in the delegation of its senior management's responsibility.

R1-1.15.1.7 The outsourcing of operational functions may not be undertaken in such a way as to materially impair:

i. the ability of the MFSA to monitor the Licence Holder's compliance with all obligations;

ii. the orderliness of the conduct of the outsourcing Licence Holder's business or of the investment services provided;

iii. the quality of the Licence Holder's internal control;

iv. the senior management's ability to manage and monitor the Licence Holder's business and its licensed activities;

v. the ability of other internal governance bodies, such as the board of directors or the audit committee, to fulfil their oversight tasks in relation to the senior management;

R1-1.15.1.8 A Licence Holder shall inform the MFSA of any outsourcing arrangements and shall make available on request all information necessary to enable the Authority to supervise the compliance of the performance of the outsourced activities with the requirements of the Investment Services Rules.

R1-1.15.1.9 A Licence Holder shall inform the MFSA of any material development affecting an outsourced activity and the manner by which it is proposing to rectify its position in order to fulfil its obligation to its customers.

R1-1.15.1.10 Licence Holders shall not outsource management functions such as the setting of strategies and policies in respect of the Licence Holder's risk profile and control, the oversight of the operation of the Licence Holder's processes, and the final responsibility towards customers.

R1-1.15.1.11 A Licence Holder shall not outsource services and activities concerning licensable activities unless the outsourcing service provider either:

i. has an equivalent authorisation of the Licence Holder outsourcing the services; or

ii. is otherwise allowed to carry out those activities in accordance with the relevant national legal framework.

R1-1.15.1.12 The MFSA may impose specific conditions on the Licence Holder for the outsourcing of any activities.

R1-1.15.1.13 An operational function of a Licence Holder shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a Licence Holder with the conditions and obligations of its authorisation or its other obligations under these Rules, or its financial performance, or the soundness or the continuity of its investment services and activities.

R1-1.15.1.14 Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of the previous Rule:

i. the provision to the Licence Holder of advisory services, and other services which do not form part of the investment business of the Licence Holder, including the provision of legal advice to the Licence Holder, the training of the Licence Holder's personnel, billing services and the security of the Licence Holder's premises and personnel;

ii. the purchase of standardised services, including market information services and the provision of price feeds.

When entering into any and all outsourcing arrangements, the Licence Holder shall make reference to the EBA Guidelines on Outsourcing Arrangements and the DORA Regulation.

Sub-Section 2 The Outsourcing Policy

R1-1.15.2.1 A Licence Holder shall have a policy on its approach to outsourcing, including contingency plans, exit strategies as well as a general policy that covers all aspects of outsourcing, including non-material outsourcing, whether the outsourcing takes place within a corporate group or not.

R1-1.15.2.2 The Outsourcing Policy shall:

i. consider the potential effects of any outsourcing activity on the Licence Holder when conducting the risk analysis prior to the outsourcing;

ii. ensure that the outsourcing service provider's financial performance and essential changes in the service provider's organisational and ownership structures are appropriately monitored and assessed by the Licence Holder's management;

iii. identify the internal units or individuals that are responsible for monitoring and managing each outsourcing arrangement;

iv. ensure that the Licence Holder takes remedial action where it considers the outsourcing service provider's agreement to be inadequate;

v. consider the main phases that make up the life cycle of a Licence Holder's outsourcing arrangements and shall include:

vi. the decision to outsource or change an existing outsourcing arrangement;

vii. due diligence checks on the outsourcing service provider;

viii. the drafting of a written outsourcing contract and service level agreement;

ix. the implementation, monitoring, and management of an outsourcing arrangement;

x. dealing with the expected or unexpected termination of a contract and other service interruptions.

Sub-Section 3 The Outsourcing Contract

R1-1.15.3.1 The Licence Holder shall ensure that any outsourcing arrangement is based on a formal, clear, written contract which establishes the respective rights and obligations of the Licence Holder and of the service provider.

R1-1.15.3.2 The Licence Holder shall ensure that the outsourcing contract includes:

i. a clear definition of the operational activity that is to be outsourced;

ii. the precise requirements concerning the performance of the service being outsourced, and the objective of the outsourcing solution.

iii. evidence of prior assessment of the outsourcing service provider's ability to meet performance requirements in both quantitative and qualitative terms;

iv. a termination and exit management clause, where appropriate and if deemed necessary, which allows the activities being provided by the outsourcing service provider to be transferred to another outsourcing service provider or to be reincorporated into the Licence Holder at the request of the Licence Holder;

v. provisions allowing the Licence Holder to cancel the contract by contractual notice of dismissal or extraordinary notice of cancellation.

vi. provisions obliging the outsourcing service provider to protect confidential information and to abide by banking secrecy and any other specific provisions relating to handling confidential information.

vii. an obligation on the Licence Holder to continuously monitor and assess the outsourcing service provider's performance;

viii. an obligation on the outsourcing service provider to allow the Licence Holder's compliance and internal audit departments complete access to its data and its external auditors full and unrestricted rights of inspection and auditing of that data;

ix. an obligation on the outsourcing service provider to allow direct access by the MFSA to relevant data and its premises as required;

x. an obligation on the outsourcing service provider to immediately inform the Licence Holder, or the MFSA directly, of any material changes in circumstances which

could have a material impact on the continuing provision of services.

Sub-Section 4 Conditions for Outsourcing Critical or Important Operational Functions or Investment Services or Activities.

R1-1.15.4.1 When the Licence Holder outsources critical or important operational functions or any Investment Services or activities, the Licence Holder shall remain fully responsible for discharging all of their obligations under these Rules and are required to comply, in particular with the following conditions:

i. the outsourcing must not result in the delegation by senior management of its responsibility;

ii. the relationship and obligations of the Licence Holder towards its clients under these Rules must not be altered;

iii. the compliance with the Licence Holder's applicable licence conditions must not be undermined;

iv. none of the other conditions subject to which the Licence Holder was granted a licence must be removed or modified.

R1-1.15.4.2 The Licence Holder shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any Investment Services or activities.

R1-1.15.4.3 The Licence Holder shall in particular take the necessary steps to ensure that the following conditions are satisfied:

i. the service provider must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

ii. the service provider must carry out the outsourced services effectively, and to this end the Licence Holder must establish

methods for assessing the standard of performance of the service provider;

iii. the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

iv. appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

v. the Licence Holder must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

vi. the service provider must disclose to the Licence Holder any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

vii. the Licence Holder must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

viii. the service provider must cooperate with the MFSA in connection with the outsourced activities;

ix. the service provider must protect any confidential information relating to the Licence Holder and its clients;

x. the Licence Holder, its auditors and the MFSA must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider;

and the MFSA must be able to exercise those rights of access;

xi. the Licence Holder and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

R1-1.15.4.4 Where the Licence Holder and the service provider are members of the same group, the Licence Holder shall, for the purposes of complying with this Section, take into account the extent to which the Licence Holder controls the service provider or has the ability to influence its actions.

Sub-Section 5 Intra-Group Outsourcing

R1-1.15.5.1 When a Licence Holder outsources any of its activities to a company within the same group, the Licence Holder shall provide the MFSA, upon request, with a copy of the intra-group outsourcing agreement.

R1-1.15.5.2 The intra-group outsourcing agreement shall indicate the extent to which the Licence Holder controls the service provider or has the ability to influence its actions, and the extent to which the service provider is included in the consolidated supervision of the group.

Sub-Section 6 Chain Outsourcing

R1-1.15.6.1 The outsourcing Licence Holder shall make use of chain outsourcing only if the sub-contractor fully complies with the obligations existing between the Licence Holder and the outsourcing service provider, including obligations incurred in favour of the MFSA.

R1-1.15.6.2 The Licence Holder shall take appropriate steps to address the risk of any weakness or failure in the provision of the sub-contracted activities having a significant effect on the outsourcing service provider's ability to meet its responsibilities under the outsourcing agreement.

R1-1.15.6.3 The Licence Holder shall treat the sub-outsourcing of outsourced activities and functions to third parties (subcontractors) like a primary outsourcing measure including the requirement of a contractual agreement.

R1-1.15.6.4 The Licence Holder shall ensure that the outsourcing service provider agrees that the contractual terms agreed with the sub-contractor will always conform, or at least not be contradictory, to the provisions of the agreement with the Licence Holder.

Sub-Section 7 Service Providers Located in Third Countries

R1-1.15.7.1 In addition to the requirements of Rule R1-1.15.4.1 to R1-1.15.4.4, where a Licence Holder outsources the Investment Service of portfolio management provided to Retail Clients to a service provider located in a third country, that Licence Holder shall ensure that the following conditions are satisfied:

i. the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;

ii. there must be an appropriate cooperation agreement between the MFSA and the supervisory authority of the service provider.

R1-1.15.7.2 When one or both of the conditions referred to in the previous rule are not satisfied, a Licence Holder may outsource Investment Services to a service provider located in a third country only if the Licence Holder gives prior notification to the MFSA about the outsourcing arrangement and the MFSA does not object to that arrangement within a reasonable time following receipt of that notification.

Section 16 Auditing

R1-1.16.1 The Licence Holder shall appoint an auditor approved by the MFSA. The Licence Holder shall replace its auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an auditor

R1-1.16.2 The Licence Holder shall make available to its auditor the information and explanations he needs to discharge his responsibilities as an auditor and in order to meet the MFSA's requirements.

R1-1.16.3 The Licence Holder shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his firm is:

i. a director, partner, qualifying shareholder, officer, representative or employee of the Licence Holder;
ii. a partner of, or in the employment of, any person in (i) above;

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

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

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

R1-1.16.4 For this purpose, an auditor shall not be regarded as an officer or an employee of the Licence Holder solely by reason of being auditor of that Licence Holder.

R1-1.16.5 The Licence Holder shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his appointment. The Licence Holder shall confirm in writing to its auditor its agreement to the terms in the letter of engagement. The auditor shall provide the MFSA with a letter of confirmation in the form set out in Annex II to the Application Form for an Investment Services Licence (whether the Applicant is a Corporate entity or a Sole Trader).

R1-1.16.6 The letter of engagement shall include terms requiring the auditor:

i. to provide such information or verification to the MFSA as the MFSA may request;

ii. to afford another auditor all such assistance as he/she may require;

iii. to vacate his office if he becomes disqualified to act as auditor for any reason;

iv. to advise the MFSA in the event of resignation, removal or non-reappointment, of that fact and of the reasons for his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he considers should be brought to the attention of the MFSA;

v. to, in accordance with Article 18 of the Act, report immediately to the MFSA and the Management Body of the Licence Holder where applicable, any fact or decision of which he becomes aware in his capacity as auditor of the Licence Holder which:

(a) is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Licence Holder; or

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

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

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

vi. to, in accordance with Article 18 of the Act, report to the MFSA and the Management Body of the Licence Holder where applicable, any facts or decision as specified in (e) above of any person having close links, as defined in this Rulebook, with the Licence Holder, of which the auditor becomes aware in his capacity as auditor of the Licence Holder or of the person having such close links.

R1-1.16.7 Pursuant to the above points, where a Licence Holder holds or controls clients' assets, the letter of engagement shall also require a circularisation exercise by the Auditors in order to reconcile a representative sample of client's assets in cases where the Licence Holder holds or controls client assets.

R1-1.16.8 If at any time the Licence Holder fails to have an auditor in office for a period exceeding four weeks the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Licence Holder.

Section 17 Arbiter

R1-1.17.1 The Licence Holder is required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of each complaint received from clients, and to keep a record of each complaint and the measures taken for its resolution. The Licence Holder is also required to inform eligible complainants in writing that they may refer their complaint to the Office of the Arbiter for Financial Services as established by the Arbiter for Financial Services Act, if they are not satisfied with the manner in which it has been handled by the Licence Holder.

R1-1.17.2 Where a complaint has been lodged with the Arbiter for Financial Services and the case duly decided, the Licence Holder shall immediately provide the Authority with a copy of the Arbiter's final decision. The Licence Holder shall also notify the Authority immediately in the event that an appeal from the decision of the arbiter is lodged by the complainant or by the Licence Holder itself, in terms of the Arbiter for Financial Services Act, and once such appeal has been decided, of the final decision of the Court.

Section 18 Fees

R1-1.18.1 The Licence Holder shall promptly pay all amounts due to the MFSA.

R1-1.18.2 The Annual Supervisory Fee shall be payable by the Licence Holder on the day when the Licence is first issued and, and thereafter upon submission of the annual audited financial statements.

Section 19 Significant Licence Holders

R1-1.19.1 The Licence Holder shall regularly assess, whether at any time, it becomes a significant Licence Holder as defined in this Rulebook and shall notify the MFSA regarding any change of status as soon as practicable thereafter.

R1-1.19.2 The MFSA may, on a case by case basis, exempt a significant Licence Holder from the requirements of Rules R1-1.5.1.7 to R1-1.5.1.10, Sub-Section 2 Nomination Committee, Rule R2-3.2.17, and Rule R2-3.2.19 if it believes the rules that apply to a significant Licence Holder may be disproportionate to it, taking into account the size, internal organisation and the nature, the scope and the complexity of its investment services and activities.

R1-1.19.3 On the other hand, if a Licence Holder exceeds one or more of the thresholds as defined in this Rulebook, the MFSA may, at its discretion, on a case by case basis, waive a requirement or requirements, if it is of the opinion that the granting of a waiver is justified and appropriate.

R1-1.19.4 The MFSA in exercising these discretions may also consider non-quantitative criteria including but not limited to, the complexity of its investment services and activities, market share, level of cross border activity and staff headcount of the Licence Holder and shall be guided by principles of investor protection and protection of market integrity.

Section 20 Application of the Investor Compensation Scheme Regulations Issued in terms of the Act

R1-1.20.1 The Licence Holder is required to contribute to the Investor Compensation Scheme ("ICS"), in such manner and within such time limits stipulated in the Regulations, as may be amended from time to time. The Regulations require the Licence Holder to make a Fixed and Variable Contribution.

R1-1.20.2 The Variable Contribution must be computed at every accounting reference date of the Licence Holder. Transfers to the Investor Compensation Scheme Reserve which may be required in terms of the Regulations, are to be made by the Licence Holder when drawing up the annual financial statements, and are to be reflected

in the ACR The Licence Holder is not required to make any transfers to the Investor Compensation Scheme Reserve in the ICRs.

R1-1.20.3 The Licence Holder must insert a suitable note in its annual audited financial statements, outlining the market value of the instruments in which the Investor Compensation Scheme Reserve has been invested, together with a maturity schedule according to the type of instrument, as appropriate.

R1-1.20.4 The process leading to a possible claim for compensation payable by the ICS is triggered by a determination which the MFSA shall make to the ICS in accordance with the terms stipulated in the Regulations. The MFSA may consider the following circumstances in arriving at a decision as to whether to make a determination to the ICS in terms of the Regulations. These should be interpreted as merely indicative, rather than an exhaustive list of such circumstances:

i. a prolonged and recurrent material deficit of the Licence Holder's Capital Requirement, where the MFSA is of the opinion that the shareholders are unable to financially support the Licence Holder; or

ii. the MFSA is informed of a voluntary winding up of the Licence Holder; or

iii. the MFSA has received a complaint from one or more investors to the extent that the Licence Holder was unable to fulfil its obligations arising from claims by such investor(s).

Section 21 Foreign currency lending

R1-1.21.1 This Section shall only apply to Licence Holders which carry out foreign currency lending.

R1-1.21.2 The Licence Holder shall abide by the high level principles on foreign currency lending as outlined in MFSA Rule 1 of 2012 on foreign currency lending which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1).fca

R1-1.21.3 Foreign currency lending means lending in any currency other than the legal tender of the country in which the borrower is domiciled. This includes situations where the Euro is the foreign currency due to the borrower's domicile being outside the Euro Zone.

R1-1.21.4 When the Licence Holder has engaged in any form of foreign currency lending during the period under review, it shall submit a confirmation to this effect together with its Annual Financial Return. Any foreign currency lending activity shall be indicated as a percentage of its total lending. A Licence Holder which has not carried out any foreign currency lending during the period under review is not required to submit a 'nil' return.

R1-1.21.5 When requested to do so by the MFSA, a Licence Holder shall also submit, on the following email address: statistics@mfsa.com.mt, any statistical returns which may be required under MFSA Rule 1 of 2012 on foreign currency lending.

Section 22 Licence Holders operating an MTFs and OTFs

R1-1.22.1 This Section shall only apply to Licence Holders which operate an MTF or OTF.

R1-1.22.2 For the purposes of these rules, reference should also be made to the Multilateral Trading Facilities and Organised Trading Facilities Regulations

R1-1.22.3 The operator of an MTF or OTF shall establish and maintain transparent rules, based on objective criteria, governing access to its facility. These rules shall provide that the MTF may admit as members or participants or that the OTF may admit as users, Licence Holders, credit institutions authorised under Directive 2000/12/EC and other persons who:

i. are fit and proper;

ii. have a sufficient level of trading ability and competence;

iii. have, where applicable, adequate organisational arrangements; and

iv. have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the MTF may have established in order to guarantee the adequate settlement of transactions.

Section 23 Reporting of Infringements

R1-1.23.1 Licence Holders, ARMs and APAs with a derogation in accordance with Article 2(3) of MiFIR, credit institutions in relation to investment services or activities and ancillary services, and branches of third-country firms shall develop and maintain appropriate mechanisms for employees to report potential or actual infringements of the local provisions transposing MiFID and MIFIR internally through a specific, independent and autonomous channel. Such mechanisms shall include at least:

i. specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports;

ii. appropriate protection for employees who report breaches committed within the Licence Holder, ARM or APA with a derogation in accordance with Article 2(3) of MiFIR, credit institution in relation to investment services or activities and ancillary services or branch of a third-country firm against retaliation, discrimination or other types of unfair treatment;

iii. protection of the identity of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required by Maltese law in the context of further investigation or subsequent administrative or judicial proceedings.

R1-1.23.2 Licence Holders and ARMs and APAs with a derogation in accordance with Article 2(3) of MiFIR shall also refer to and comply with the applicable provisions of the Protection of the Whistleblower Act, Chapter 527 of the Laws of Malta.

Title 2 Reporting, Disclosures, and Confirmations

Section 1 General Rules for Returns

R1-2.1.1 The Licence Holder shall prepare the MiFID Firms Quarterly Reporting as mentioned under this title according to the guidelines issued by the MFSA.

R1-2.1.2 The Licence Holder shall prepare and submit such additional MiFID Firms Quarterly Reporting as the MFSA may require.

R1-2.1.3 The Licence Holder shall be responsible for the correct compilation of the MiFID Firms Quarterly Reporting. The nature and content of the MiFID Firms Quarterly Reporting shall be as follows:

i. They shall be in the form set out in the latest version of the MiFID Firms Quarterly Reporting, to be downloaded on the last day or subsequently to the reporting period;

ii. Information to be included in the MiFID Firms Quarterly Reporting shall be prepared in accordance with general accepted accounting principles and practice, and shall be in agreement with the underlying accounting records;

iii. The accounting policies shall be consistent with those adopted in the audited annual financial statements and shall be consistently applied. These accounting policies should adequately cater for the following:

a. Amounts in respect of items representing assets or income may not be offset against amounts in respect of items representing liabilities or expenditure, as the case may be, or vice versa, unless duly authorised by the MFSA; and
b. Balances representing clients' money and/or assets held/controlled by the Licence Holder must not form part of the Licence Holder's Balance Sheet.

iv. MiFID Firms Quarterly Reporting] shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;

v. MiFID Firms Quarterly Reporting shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;

vi. In the case of an individual or individuals in partnership or association, MiFID Firms Quarterly Reporting shall be prepared to show relevant figures for the Investment Services business exclusively. If required by the MFSA to do so, the individual (or individuals) shall submit, in addition, a statement of personal assets and liabilities.

R1-2.1.4 Class 1 minus and Class 2 Licence Holders shall prepare an Interim MiFID Firms Quarterly Reporting as at dates three, six, and nine months after the accounting reference date. The first interim MiFID Firms Quarterly Reporting should cover the three months immediately following the accounting reference date, the second interim MiFID Firms Quarterly Reporting should cover six months immediately following the accounting reference date and the third interim MiFID Firms Quarterly Reporting should cover the nine months immediately following the accounting reference date. In the event of a change to the accounting reference date, the dates for the preparation of the interim MiFID Firms Quarterly Reporting shall be agreed with the MFSA. Licence Holders shall refer to the Documentation Timetable as published on the MFSA website.

R1-2.1.5 Class 3 Licence Holders shall prepare an interim MiFID Firms Quarterly Reporting as at date three months after the accounting reference date. The interim MiFID

Firms Quarterly Reporting should cover the three months immediately following the accounting reference date. In the event of a change to the accounting reference date, the dates of the preparation of the interim MiFID Firms Quarterly Reporting shall be agreed with the MFSA. Licence Holders shall refer to the Documentation Timetable as published on the MFSA website.

R1-2.1.6 Class 1 minus, Class 2 and Class 3 Licence Holders shall submit the soft copy of the interim MiFID Firms Quarterly Reporting to the MFSA within 42 days following the reporting date.

Section 2 Audited Annual Reporting Requirements

R1-2.2.1 The Licence Holder shall be required to submit to the MFSA within four months of the accounting reference date, the soft and hard copies of the following:

i. The MiFID Firms Quarterly Reporting with audited figures for the section pertaining to Prudential Supervision;

ii. An original copy of the audited annual financial statements prepared in accordance with generally accepted accounting principles and practice;

iii. A copy of the Auditors' management letter. Where there have been no findings, it shall contain a statement to that effect;

iv. an original copy of the Auditors' report;

v. an original copy of the Auditors' confirmation to the MFSA;

vi. A copy of the Supervisory Fee Calculation from the MiFID Firms Quarterly Reporting both in electronic format through the LH Portal and physical format, signed by two Directors and the auditor;

vii. A signed copy of the Confirmations tab of the MiFID Firms Quarterly Reporting both in electronic format via the LH Portal, and in physical format; and

viii. Pursuant to R1-1.16.7, a copy of the report of factual findings in connection with the circularisation exercise.

R1-2.2.2 The auditor must confirm to the MFSA that:

i. Proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA pursuant to R1-1.8.15, R1-1.8.16, and R1-1.8.17, during the period covered by the audited MiFID Firms Quarterly Reporting;
ii. All information and explanations necessary for the purpose of the audit have been obtained;

iii. The audited MiFID Firms Quarterly Reporting together with the annual financial statements are in agreement with the Licence Holder's accounting records;

iv. The audited MiFID Firms Quarterly Reporting has been prepared in accordance with the MFSA's requirements in the Guidelines and is consistent with the audited financial statements.

R1-2.2.3 Furthermore, pursuant to point (i) of Rule R1-2.1.3, the Licence Holder is required to include in the Directors' Report or by way of a separate confirmation signed by the Directors, as applicable under the generally accepted accounting principles and practice, a statement regarding breach/es of the Rules or other regulatory requirements which occurred during the reporting period, and which were subject to an administrative penalty or other regulatory sanction. Where there has been no breach, it shall contain a statement to that effect.

R1-2.2.4 Pursuant to Rule R1-2.2.1(iii), the Licence Holder in receipt of a management letter from its auditor which contains recommendations to remedy any weakness identified during the course of the audit, is required to submit to the MFSA by not later than six months from the end of the financial period to which the management letter relates, a statement setting out in detail the manner in which the auditor's recommendations have been/are being implemented. In the instance where the Licence Holder has not taken/is not taking any action in respect of any one or more recommendations in the auditor's management letter, the reasons are to be included.

R1-2.2.5 Pursuant to point (iv) of R1-2.2.1, the auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether:

i. In the auditor's opinion, the Licence Holder has maintained internal control systems adequate to safeguard customers' assets and clients' money as required pursuant to R1-1.4.11, throughout the period covered by the audited MiFID Firms Quarterly Reporting or otherwise highlight the deficiencies identified; or
ii. Nothing came to the auditor's attention that indicates that the Licence Holder held customers' assets and clients' money during the period covered by the MiFID Firms Quarterly Reporting.

R1-2.2.6 Where, in the auditor's opinion, one or more of the requirements have not been met, the auditor shall be required to include in his report a statement specifying the relevant requirements and the respects in which they have not been met. Where the auditor is unable to form an opinion as to whether the requirements have been met, the auditor shall be required to specify the relevant requirements and the reasons why he has been unable to form an opinion.

R1-2.2.7 A Licence Holder which is also a credit institution in terms of the Banking Act, 1994 shall be required to submit to MFSA, together with its annual financial statements, a separate note confirmation, disclosing the net revenue derived from activities for which an investment services licence was issued to it, that is the gross revenue derived from such activities less any commissions that are directly related to the acquisition of the said gross revenue, paid or payable to third parties.

Section 3 High Income Earners Confirmation

R1-2.3.1 Pursuant to the EBA/GL/2022/08 Guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034 where any individual within the Class 1 and Class 1 minus Licence Holder earns at least EUR 1 million, the Licence Holder shall submit to the Authority the EBA XBRL Annex I as specified in the Guidelines, duly completed on the LH portal, by not later than 15 June of every calendar year.

R1-2.3.2 Pursuant to the EBA/GL/2022/08 Guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034 where any individual within the Class 2 Licence Holder earns at least EUR 1 million, the Licence Holder shall submit to the Authority the EBA XBRL Annex II as specified in the Guidelines, duly completed on the LH portal, by not later than 15 June of every calendar year

R1-2.3.3 By derogation from the previous two Rules, all other Licence Holders which do not satisfy the requirements of EBA/GL/2022/08 Guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034,shall complete and submit a copy of the Confirmations tab in the audited MiFID Firms Quarterly Reporting signed by two Directors. This shall be submitted as per Rule R1-2.2.1(vii).

R1-2.3.4 The Authority will consolidate and forward to the EBA in line with its obligations under the aforementioned Guidelines.

Section 4 Due diligence requirements

R1-2.4.1 In line with ESMA and EBA Guidelines on the assessment of suitability of members of the management body and key function holders and the provisions of Part A of the Rules, the Licence Holder is required to undertake an ongoing due diligence check and assess the suitability of the members of the management body and, where applicable, key function holders, as defined in this Rulebook.

R1-2.4.2 On an annual basis, within the Confirmations tab of the audited MiFID Firms Quarterly Reporting, the Licence Holder shall confirm to the Authority, whether all the due diligence requirements have been carried out during the period under review. A copy, signed by two Directors shall be submitted to the MFSA as per R1-2.2.1(vii) above.

R1-2.4.3 Licence Holder are required to state whether any adverse information emerged from the due diligence checks mentioned in the previous Rule within the audited MiFID Firms Quarterly Reporting. In case of adverse findings, the Licence Holder shall report such findings to the MFSA immediately.

R1-2.4.4 Without prejudice to R1-2.4.2 the Licence Holder shall immediately inform the MFSA of any material information emanating from the checks conducted which could impinge on the '*fit and proper*' status of members of the management body and, where applicable, key function holders.

R1-2.4.5 For the purposes of this Section the Licence Holder shall retain a record of the due diligence check and suitability assessment at the registered office of the Licence Holder.

Section 5 Disclosure requirement for Licence Holders engaged in Portfolio Management which invest in shares of Listed Companies

Sub-Section 1 General provisions

R1-2.5.1.1 Provisions of this Section shall not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council.

R1-2.5.1.2 This Section shall apply solely to Licence Holders which invest in shares traded on a regulated market on behalf of an institutional investor, whether on a discretionary client-by-client basis or through a collective investment scheme.

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

Sub-Section 2 Engagement policy

R1-2.5.2.1 Licence Holder shall develop and publicly disclose an engagement policy that describes how it integrates shareholder engagement in its investment strategy.

Such engagement policy stipulated how the Licence Holder:

i. monitors the listed company on relevant matters, including:

(a) strategy;

(b) financial and non-financial performance and risk;

(c) capital structure; and

(d) social and environmental impact and corporate governance;

ii. conducts dialogues with the listed companies;

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

iv. cooperates with other shareholders;

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

vi. manages actual and potential conflicts of interests in relation to the such engagement.

This information shall be submitted to the MFSA, for the purposes of the ESAP Directive, in accordance with Article 35(9) of the Investment Services Act.

R1-2.5.2.2 Further to the previous Rule, the Licence Holder shall publicly disclose, on an annual basis, how such engagement policy has been implemented, including:

i. a general description of voting behaviour;

ii. an explanation of the most significant votes; and

iii. the use of the services of proxy advisors.

Provided that the Licence Holder shall publicly disclose how it has cast votes in the general meetings of listed companies in which it holds shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the listed company.

This information shall be submitted to the MFSA, for the purposes of the ESAP Directive, in accordance with Article 35(9) of the Investment Services Act.

R1-2.5.2.3 Any information referred to in the two previous Rules shall be available free of charge on the Licence Holder's website. In addition, such information can be made available free of charge by other means that are easily accessible online.

R1-2.5.2.4 Where the Licence Holder decides not to comply with this Sub-Section, it shall publicly disclose a clear and reasoned explanation as to why it has chosen not to comply with one or more of those requirements.

This information shall be submitted to the MFSA, for the purposes of the ESAP Directive, in accordance with Article 35(9) of the Investment Services Act.

Sub-Section 3 Transparency provisions

R1-2.5.3.1 Where applicable, the Licence Holder shall disclose to institutional investors how the investment strategy and implementation thereof, as referred to in Rules R1-2.5.2.1 and R1-2.5.2.2, contributes to the medium to long-term performance of the assets of institutional investors or a collective investment scheme.

Such disclosure shall be made in the annual report for the financial year, or together with the periodic communications referred to in Article 25(6) of Directive 2014/65/EU to the institutional investor or a collective investment scheme, or published on the Licence Holder's website, and shall include reporting on:

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

ii. portfolio composition; and

iii. turn-over and turn-over costs; and

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

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

Where the information disclosed pursuant to first paragraph of this Rule is already publicly available, the Licence Holder is not required to provide the information to the institutional investor directly.

Provided that where the Licence Holder does not manage the assets on a discretionary client-by-client basis, it shall disclose the information pursuant to to the previous Rule also to other investors of the same collective investment scheme, at least upon request.

Section 6 Disclosure requirement for Licence Holders acting as Shareholders intermediaries

R1-2.6.1 This Section shall apply to Licence Holders acting as "shareholders intermediaries" in so far they are shareholders intermediaries to shareholders or other intermediaries with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

R1-2.6.2 Licence Holders acting as shareholders intermediaries shall be subject to the proivisions of Rules R1-2.5.1.1 and R1-2.5.1.2.

R1-2.6.3 This Section shall also apply to shareholders intermediaries which have neither their registered office nor their head office in the Union when they provide the services referred to in Rule R1-2.6.1.

Sub-Section 1 Identification of shareholders

R1-2.6.1.1 On the request of the listed company or of a third-party nominated by the listed company, the Licence Holder shall communicate, without delay to the listed company the information regarding shareholder identity.

R1-2.6.1.2 Where there is more than one shareholders intermediary in a chain of intermediaries, the request of the listed company, or of a third-party nominated by the listed company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the listed company or to a third-party nominated by the company without delay by the intermediary who holds the requested information.

R1-2.6.1.3 At the request of the listed company, or of a third party nominated by the company, the Licence Holder shall communicate to the company without delay the details of the next intermediary in the chain of intermediaries.

R1-2.6.1.4 The Licence Holder shall not store any personal data of shareholders transmitted to them for the purpose specified in this Section for longer than 12 months after they have become aware that the person concerned has ceased to be a shareholder.

R1-2.6.1.5 A Licence Holder that discloses information regarding shareholder identity in accordance with the rules laid down in this Section shall not be considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

Sub-Section 2 Transmission of information

R1-2.6.2.1 A Licence Holder is required to transmit the following information, without delay, from the listed company to the shareholder or to a third-party nominated by the shareholder:

i. the information which the listed company is required to provide to the shareholder to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or

ii. where the information referred to in point (i) is available to shareholders on the website of the listed company, a notice indicating where on the website that information can be found.

The requirement referred to in the first paragraph of the Rule shall not apply where the information referred to in point (i) or the notice referred to in point (ii) is transmitted or provided by the listed companies directly to all their shareholders or to a third party nominated by the shareholder.

R1-2.6.2.2 The Licence Holder shall transmit, without delay, to the listed company, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.

R1-2.6.2.3 Where there is more than one shareholders intermediary in a chain of intermediaries, information referred to in the previous Rule shall be transmitted between shareholder intermediaries without delay, unless the information can be directly transmitted by the shareholders intermediary to the listed company or to the shareholder or to a third-party nominated by the shareholder.

Sub-Section 3 Facilitation of the exercise of shareholder rights

R1-2.6.3.1 The Licnece Holder shall facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following:

i. it makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights;

ii. it exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder's benefit.

R1-2.6.3.2 Where the Licence Holder receives confirmation of receipt of the votes, it shall transmit it without delay to the shareholder or a third-party nominated by the shareholder.

R1-2.6.3.3 Where there is more than one shareholders intermediary in the chain of intermediaries, the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third-party nominated by the shareholder.

When votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.

Provided that after the general meeting the shareholder or a third-party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the listed company, unless that information is already available to them.

Sub-Section 4 Non-discrimination, proportionality and transparency of costs

R1-2.6.4.1 Licence Holders acting as shareholders intermediaries shall disclose publicly any applicable charges for services provided for under this Section separately for each service.

R1-2.6.4.2 Any charges levied by a Licence Holder on shareholders, companies and other shareholders 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 variation in actual costs incurred for delivering the services.

Section 7 *Remuneration and gender pay data collection exercises*

R1-2.7.1 Pursuant to EBA/GL/2022/07 Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2023), the Licence Holder may be requested to submit information in relation to remuneration and gender pay gap in line with such Guidelines.

R1-2.7.2 Pursuant to the EBA/GL/2022/08 Guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034 where any individual within the Class 1 and Class 1 minus Licence Holder earns at least EUR 1 million, the Licence Holder shall submit to the Authority the EBA XBRL Annex I as specified in the Guidelines, duly completed on the LH portal, by not later than 15 June of every calendar year.

R1-2.7.3 Pursuant to EBA/GL/2023/08 Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034, the Licence Holder may be requested to submit information in relation to the benchmarking of diversity practices in line with such Guidelines.

Section 8 *Establishment of the Intermediate EU Parent Undertaking*

R1-2.8.1 Licence Holders shall make reference to the Guidelines on the monitoring of the threshold and other procedural aspects.

R1-2.8.2 Licence Holders which are subject to the Guidelines shall submit to the MFSA Annex I – MFSA Template for IPU Threshold Monitoring by 26 May annually using the information as of the previous 31 December.

Title 3 MiFIR Requirements

Section 1 References

R1-3.1.1 Unless otherwise stated, all references to Sections, Legislation, Sections, and Articles under this Title shall be construed as references to the MiFIR.

Section 2 Transparency for Trading Venues

R1-3.2.1 Licence Holders shall make reference to "Chapter 1 Transparency for equity instruments" of Title II.

R1-3.2.2 Licence Holders shall make reference to "Chapter 2 Transparency for non-equity instruments" of Title II.

R1-3.2.3 Licence Holders shall make reference to "Chapter 3 Obligation to offer trade data on a separate and reasonable commercial basis" of Title II.

Section 3 Transparency For Systematic Internalisers And Investment Firms Trading Otc

R1-3.3.1 Licence Holders shall make reference to "Title III - Transparency For Systematic Internalisers And Investment Firms Trading Otc".

R1-3.3.2 Licence Holders shall, every quarter, do all the necessary calculations as per R1-3.3.4 to determine whether they satisfy the definition of Systematic Internalisers.

R1-3.3.3 Licence Holders that meet the definition of Systematic Internalisers shall immediately inform the MFSAusing the form available on the MFSA website.

R1-3.3.4 Systematic Internalisers shall, where applicable, refer to and comply with the respective obligations as laid down in Title III of Section 3 of Title II of MiFIR and Regulatory Technical Standard 2017/565 .

R1-3.3.5 The obligation contained in R1-3.3.2 shall irrevocably last for three months after crossing the relevant thresholds in a financial instrument at the relevant quarterly assessment.

R1-3.3.6 Systematic Internalisers which, following a threshold calculation as outlined in R1-3.3.4 do not meet the definition of Systematic Internaliser, shall inform the MFSA in writing of such a change in status immediately. Therefore, Systematic Internalisers which continue to qualify as such, need not inform the MFSA of their continued status as Systematic Internalisers.

Section 4 Transaction Reporting

R1-3.4.1 Licence Holders shall make reference to "Title IV - Transaction Reporting".

Section 5 Derivatives

R1-3.5.1 Licence Holders shall make reference to "Title V Derivatives".

Section 6 Provision Of Services And Performance Of Activities By Third-Country Firms Following An Equivalence Decision With Or Without A Branch

R1-3.6.1 Licence Holders shall make reference to "Title VIII Provision Of Services And Performance Of Activities By Third-Country Firms Following An Equivalence Decision With Or Without A Branch".

Title 4 IFR Requirements

Section 1 References

R1-4.1.1 Unless otherwise stated, all references to Chapters, Legislation, Sections, and Articles under this Title shall be construed as references to the IFR.

Section 2 Reporting By Investment Firms

R1-4.2.1 Licence Holders shall make reference to "Part Seven – Reporting by Investment Firms".

R1-4.2.2 In the case of reporting errors by the Licence Holder, such Licence Holder shall resubmit the correct data to the MFSA.

The resubmission may also be requested either by the EBA or the MFSA.

The resubmission of data shall be in line with the Guidelines on resubmission of historical data under the EBA reporting framework.

Title 5 IFD Requirements

Section 1 Initial Capital

R1-5.1.1 Licence Holders shall have a minimum initial capital at authorisation stage as described in the table below, with reference and adherence to Article 14 of the IFR.

R1-5.1.2 Initial Capital shall be constituted in accordance with Article 9 of the IFD.

€750,000	€150,000	€75,000
Either - Dealing on own account And/Or - Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis And If applicable, any other activities and services as licensed under the ISA Or - OTFs that deal on own account	- Reception & Transmission of Orders in relation to one or more financial instruments And/Or - Execution of orders on behalf of clients And/Or - Portfolio Management And/Or - Investment Advice And/Or - Placing of financial instruments without a firm commitment basis And - Holds Client Money or Client Securities Or - MTFs Or - OTFs that do not deal on own account Or - Any Investment Firms other than those referred to in Article 9(1), 9(2) and 9(4) of the IFD.	- Reception & Transmission of Orders in relation to one or more financial instruments And/Or - Execution of orders on behalf of clients And/Or - Portfolio Management And/Or - Investment Advice And/Or - Placing of financial instruments without a firm commitment basis And - Does not hold Client Money or Client Securities

Title 6 MiCA Requirements

Section 1 Ongoing Obligations for Investment Firms

R1-6.1.1 Licence Holders shall make reference to Title V of the MiCA Regulation where they offer crypto-asset services in terms of such Title.

R1-6.1.2 The Licence Holder shall comply with any applicable Guidelines and Delegated Acts/Regulatory Technical Standards issued by the European Supervisory Authorities (ESAs), as implemented in the Authority's MiCA Rulebook. The Licence Holder shall carry out and maintain a documented assessment to determine the applicability of such Guidelines and Delegated Acts/Regulatory Technical Standards, having regard to the authorised services and activities as stipulated in the Licence.

Title 7 Sustanable Finance Disclosures Regulation

Section 1 References

R1-7.1.1 Licence Holders shall make reference to the Sustanable Finance Disclosures Regulation

Title 8 Taxonomy Regulation

Section 1 References

R1-8.1.1 Licence Holders shall make reference to the Taxonomy Regulation.

Title 9 Enforcement and Sanctions

Section 1 Enforcement and Sanctions

R1-9.1.1 The Licence Holder shall at all times observe the Licence Conditions which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against a Licence Holder which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

R1-9.1.2 In determining whether to impose a penalty or other sanction, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may *inter alia* include:

i. the repetition, frequency, gravity or duration of the infringement by the Licence Holder;

ii. the degree of responsibility of the natural or legal person responsible for the infringement;

iii. the financial strength of the Licence Holder;

iv. the profits gained or losses avoided by the Licence Holder by reason of the infringement, insofar as they can be determined;

v. the losses for third parties caused by the infringement, insofar as they can be determined;

vi. the level of cooperation of the Licence Holder with the Authority;

vii. previous infringements by the Licence Holder and prior sanctions imposed by MFSA or other regulatory authorities on the same Licence Holder;

viii. the good faith, the degree of openness and diligence of the Licence Holder in the fulfilment of his obligations under the Act, relative regulations, Rules and Licence Conditions or of decisions of the competent authority in this regard;

ix. any evidence of wilful deceit on the part of the Licence Holder or its officers; and

x. any potential systemic consequences of the infringement.

R1-9.1.3 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Licence Holder from its performance, unless the decision of the MFSA explicitly states the contrary.

R1-9.1.4 These Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, Licence Holders will be considered as breaching the relevant Rule(s) and will be penalised accordingly.

R1-9.1.5 Documents may be submitted in various ways. The date of receipt will be as follows:

i. If it is sent by fax and/or email, the date of receipt recorded shall be the time stamp of the fax and/or email, respectively;

ii. If it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt;

iii. If it is delivered by hand, on the date such delivery was made and recorded by MFSA.

R1-9.1.6 The MFSA will use its discretion to decide what action to take in respect of Licence Holders who do not submit documents by their due date, after taking into consideration the reasons (if any) put forward by the Licence Holder for the delay.

R1-9.1.7 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.

R1-9.1.8 A right of appeal to the Financial Services Tribunal is available to Licence Holders on whom penalties are imposed.

Part 2: Class 1 and Class 1 Minus

Title 1 General Scope and Application

R2-1.1.1 This Section shall apply to Licence Holders which fall under the definition of Article 1(2)(a) or Article 1(2)(b) of the IFR, or Article 1(2)(c) and are subject to a decision by the MFSA as per Article 5 of the IFD. This Section shall also apply to Licence Holders which fall under the definition of Article 1(5) of the IFR.

R2-1.1.2 The Licence Holders shall make reference to:

i. the Commission Delegated Regulation (EU) No 241/2014 on Regulatory Technical Standards for Own Funds requirements for institutions as amended by Commission Delegated Regulation (EU) 2015/923;

ii. Commission Delegated Regulation (EU) 2015/850;

iii. Commission Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014;

iv. Commission Delegated Regulation (EU) No 523/2014;

v. Commission Delegated Regulation (EU) 2016/101;

vi. Commission Implementing Regulation (EU) 2016/428 of 23 March 2016 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions as regards the reporting of the Leverage Ratio.

vii. Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council

with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014

Title 2 CRR Requirements

Section 1 References

R2-2.1.1 Unless otherwise stated, all references to Chapters, Legislation, Sections, Titles, and Articles under this Title shall be construed as references to the CRR and any Regulation which amends it.s

Section 2 Level Of Application Of Requirements

R2-2.2.1 Licence Holders shall make reference to "Part One Title II Chapter 1: Application Of Requirements On An Individual Basis".

R2-2.2.2 Licence Holders shall make reference to "Part One Title II Chapter 2: Prudential Consolidation".

Section 3 Elements Of Own Funds

R2-2.3.1 Licence Holders shall make reference to "Chapter 1: Tier 1 Capital" of Title I of Part Two.

R2-2.3.2 Licence Holders shall make reference to "Chapter 2: Common Equity Tier 1 Capital" of Title I of Part Two.

R2-2.3.3 Licence Holders shall make reference to "Chapter 3: Additional Tier 1 Capital of Title I of Part Two.

R2-2.3.4 Licence Holders shall make reference to "Chapter 4: Tier 2 Capital" of Title I of Part Two.

R2-2.3.5 Licence Holders shall make reference to "Chapter 5: Own Funds" of Title I of Part Two.

R2-2.3.6 Licence Holders shall make reference to "Chapter 5A: Eligible Liabilities" of Title I of Part Two.

R2-2.3.7 Licence Holders shall make reference to "Chapter 6: General Requirements For Own Funds And Eligible Liabilities" of Title I of Part Two.

Section 4 Minority Interest And Additional Tier 1 And Tier 2 Instruments Issued By Subsidiaries

R2-2.4.1 Licence Holders shall make reference to "Title II Minority Interest And Additional Tier 1 And Tier 2 Instruments Issued By Subsidiaries" of Part Two.

Section 5 Qualifying Holdings Outside The Financial Sector

R2-2.5.1 Licence Holders shall make reference to "Title III: Qualifying Holdings Outside The Financial Sector" of Part Two.

Section 6 Capital Requirements

Sub-Section 1 General Requirements, Valuation And Reporting

R2-2.6.1.1 Licence Holders shall make reference to "Chapter 1: Required Level Of Own Funds" of Title I of Part Three.

R2-2.6.1.2 Licence Holders shall make reference to "Chapter 2: Calculation And Reporting Requirements" of Title I of Part Three.

R2-2.6.1.3 Licence Holders shall make reference to "Chapter 3: Trading Book" of Title I of Part Three.

Sub-Section 2 Capital Requirements For Credit Risk

R2-2.6.2.1 Licence Holders shall make reference to "Chapter 1: General Principles" of Title II of Part Three.

R2-2.6.2.2 Licence Holders shall make reference to "Chapter 2: Standardised Approach" of Part Three.

R2-2.6.2.3 Licence Holders shall make reference to "Chapter 3: Internal Ratings Based Approach" of Part Three.

R2-2.6.2.4 Licence Holders shall make reference to "Chapter 4: Credit Risk Mitigation" of Part Three.

R2-2.6.2.5 Licence Holders shall make reference to "Chapter 5: Securitisation" of Part Three.

R2-2.6.2.6 Licence Holders shall make reference to "Chapter 6: Counterparty Credit Risk" of Part Three.

Sub-Section 3 Own Funds Requirements For Operational Risk

R2-2.6.3.1 Licence Holders shall make reference to "Chapter 1: General Principles Governing The Use Of The Different Approaches" of Title III of Part Three.

R2-2.6.3.2 Licence Holders shall make reference to "Chapter 2: Basic Indicator Approach" of Title III of Part Three.

R2-2.6.3.3 Licence Holders shall make reference to "Chapter 3: Standardised Approach" of Title III of Part Three.

R2-2.6.3.4 Licence Holders shall make reference to "Chapter 4: Advanced Measurement Approaches" of Title III of Part Three.

Sub-Section 4 Own Funds Requirements For Market Risk

R2-2.6.4.1 Licence Holders shall make reference to "Chapter 1A: Alternative Standardised Approach" of Title IV of Part Three.

R2-2.6.4.2 Licence Holders shall make reference to "Chapter 1B: Alternative Internal Model Approach" of Title IV of Part Three.

R2-2.6.4.3 Licence Holders shall make reference to "Chapter 2: Own Funds Requirements For Position Risk" of Title IV of Part Three.

R2-2.6.4.4 Licence Holders shall make reference to "Chapter 3: Own Funds Requirements For Foreign-Exchange Risk" of Title IV of Part Three.

R2-2.6.4.5 Licence Holders shall make reference to "Chapter 4: Own Funds Requirements For Commodities Risk" of Title IV of Part Three.

R2-2.6.4.6 Licence Holders shall make reference to "Chapter 5: Use Of Internal Models To Calculate Own Funds Requirements" of Title IV of Part Three.

Sub-Section 5 Own Funds Requirements For Settlement Risk

R2-2.6.5.1 Licence Holders shall make reference to "Title V: Own Funds Requirements For Settlement Risk" of Part Three.

Sub-Section 6 Own Funds Requirements For Credit Valuation Adjustment Risk

R2-2.6.6.1 Licence Holders shall make reference to "Title VI: Own Funds Requirements For Credit Valuation Adjustment Risk" of Part Three.

Section 7 Large Exposures

R2-2.7.1 Licence Holders shall make reference to "Part Four: Large Exposures".

Section 8 Exposures To Transferred Credit Risk

Sub-Section 1 General Provisions For This Part

R2-2.8.1.1 Licence Holders shall make reference to "Title I: General Provisions For This Part" of Part Five.

Sub-Section 2 Requirements For Investor Institutions

R2-2.8.2.1 Licence Holders shall make reference to "Title II: Requirements For Investor Institutions" of Part Five.

Sub-Section 3 Requirements For Sponsor And Originator Institutions

R2-2.8.3.1 Licence Holders shall make reference to "Title III: Requirements For Sponsor And Originator Institutions" of Part Five.

Section 9 Liquidity

Sub-Section 1 Definitions And Liquidity Coverage Requirement

R2-2.9.1.1 Licence Holders shall make reference to "Title I: Definitions And Liquidity Coverage Requirement" of Part Six.

Sub-Section 2 Liquidity Reporting

R2-2.9.2.1 Licence Holders shall make reference to "Title II: Liquidity Reporting" of Part Six.

Sub-Section 3 Reporting On Stable Funding

R2-2.9.3.1 Licence Holders shall make reference to "Title III: Reporting On Stable Funding" of Part Six.

Section 10 Leverage

R2-2.10.1 Licence Holders shall make reference to "Part Seven: Leverage".

R2-2.10.2 Licence Holders are also required to follow the disclosure requirements and templates provided in the Commission Implementing Regulation (EU) 2016/200 of 15 February 2016 laying down implementing technical standards with regard to disclosure of the leverage ratio for institutions, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council and its respective Annexes.

Section 11 Reporting Requirements

R2-2.11.1 Licence Holders shall make reference to "Part Seven A: Reporting Requirements".

Section 12 Disclosure By Institutions

R2-2.12.1 The Licence Holder shall make use of the standard templates published in Commission Implementing Regulation (EU) No 1423/2013 of 20 December 2013 laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013.

Sub-Section 1 General Principles

R2-2.12.1.1 Licence Holders shall make reference to "Title I: General Principles" of Part Eight.

Sub-Section 2 Technical Criteria On Transparency And Disclosure

R2-2.12.2.1 Licence Holders shall make reference to "Title II: Technical Criteria On Transparency And Disclosure" of Part Eight.

Sub-Section 3 Qualifying Requirements For The Use Of Section

R2-2.12.3.1 Licence Holders shall make reference to "Title III: Qualifying Requirements For The Use Of Section" of Part Eight.

Section 13 Transitional Provisions, Reports, Reviews And Amendments

Sub-Section 1 Transitional Provisions

R2-2.13.1.1 Licence Holders shall make reference to "Chapter 1: Own Funds Requirements, Unrealised Gains And Losses Measured At Fair Value And Deductions" of Title I of Part Ten.

R2-2.13.1.2 Licence Holders shall make reference to "Chapter 2: Grandfathering Of Capital Instruments" of Title I of Part Ten.

R2-2.13.1.3 Licence Holders shall make reference to "Chapter 3: Transitional Provisions For Disclosure Of Own Funds" of Title I of Part Ten.

R2-2.13.1.4 Licence Holders shall make reference to "Chapter 4: Large Exposures, Own Funds Requirements, Leverage And The Basel I Floor" of Title I of Part Ten.

Title 3 CRD Requirements

Section 1 Principles OF Prudential Supervision

Sub-Section 1 Procedures for Reporting of Breaches

R2-3.1.1.1 The Licence Holder shall develop and maintain appropriate procedures for employees to report breaches internally through a specific, independent and autonomous channel. Such a channel may also be provided through arrangements provided for by social partners and shall include at least:

i. specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports;

ii. appropriate protection for employees who report breaches committed within the License Holder against retaliation, discrimination or other types of unfair treatment;

iii. protection of personal data concerning both the person who reports the breaches and the person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC;

iv. clear rules ensuring that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the Licence Holder, unless disclosure is required by Maltese law in the context of further investigations or subsequent judicial proceedings.

R2-3.1.1.2 Licence Holders shall also refer to and comply with the applicable provisions of the Protection of the Whistleblower Act.

Section 2 Review Processes

R2-3.2.1 Pursuant to Rule R2-3.2.11, a Licence Holder is inter alia required to have in place a risk management process to:

i. identify the risks to which the Licence Holder is/could be exposed; and

ii. manage those risks, in the light of the level of risk tolerance set by the Licence Holder.

R2-3.2.2 The Licence Holder is required to assess on a yearly basis whether its RMICAAP is comprehensive and proportionate to the nature, scale and complexity its activities, and to take any necessary measures to ensure this is the case.

R2-3.2.3 The Licence Holder is required to provide the Authority with a confirmation that it has an RMICAAP in place and that this is comprehensive and proportionate to the nature scale and complexity of the activities of the Licence Holder.

R2-3.2.4 Licence Holder may be required by the Authority to submit an RMICAAP Report in line with the requirements of this Section.

R2-3.2.5 Given the above-quoted requirements, the Licence Holder shall keep a record and update on a yearly basis the following:

i. all the risks which it has identified,

ii. the estimation of such risks,

iii. its risk tolerance level and evaluation; and

iv. the manner in which these risks are being addressed.

R2-3.2.6 For the purposes of the previous Rule, if risk financing is used, the Licence Holder should also retain a record of the RMICAAP Risk Financing Calculation

R2-3.2.7 Should the Licence Holder be requested by the Authority to submit an RMICAAP Report, it should at least include:

i. the Licence Holder's risk identification and monitoring process, which would include a general overview of the arrangements and processes implemented by the Licence Holder with the aim of identifying and monitoring its risks;

ii. the individual risks to which the Licence Holder is exposed; and

iii. an RMICAAP Risk Financing Calculation Report.

R2-3.2.8 The Licence Holder should at least keep a record of:

i. its risk identification and monitoring process;

ii. all the risks which it has identified; and

iii. the RMICAAP Risk Financial Calculation.

R2-3.2.9 The RMICAAP Report shall be signed by two directors of the Licence Holder.

R2-3.2.10 Pursuant to Rule R2-3.2.81, Licence Holders shall subdivide the RMICAAP into six stages, (i) risk identification; (ii) description of risk; (iii) risk estimation; (iv) risk tolerance and evaluation; (v) risk treatment; and (vi) risk recording/ reporting as specified in the CRR.

R2-3.2.11 The Licence Holder shall take the following actions with a view to managing its risks:

i. establish, implement and maintain adequate risk management policies and procedures, which identify, measure and provide for the proper reporting of all material risks relating to the Licence Holder's activities, processes and systems, and where appropriate, set the level of risk

tolerated by the Licence Holder. In so doing, the Licence Holder shall also adopt remuneration policies and practices that are consistent with and promote sound and effective risk management;

ii. adopt effective arrangements, processes and mechanisms to manage the risks relating to the Licence Holder's activities, processes and systems, in light of that level of risk tolerance;

iii. monitor the following:

(a) the adequacy and effectiveness of the Licence Holder's risk management policies and procedures;

(b) the level of compliance by the Licence Holder and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (ii) above; and

(c) the adequacy and effectiveness of measures taken to address any deficiencies in those arrangements and procedures, including failures by the relevant persons to comply with such arrangements or follow such procedures.

R2-3.2.12 The Licence Holder shall:

i. have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, network and information systems that are set up and managed in accordance with the DORA

Regulation, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

The remuneration policies and practices shall be gender neutral.

Furthermore, the arrangements, processes and mechanisms referred to in this Rule shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the Licence Holder's activities. The technical criteria established in Articles 76 to 95 of the CRD as transposed in Maltese Law shall be taken into account.

The Licence Holder shall make reference to these Guidelines

ii. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

iii. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder;

iv. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;

v. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Licence Holder;

vi. maintain adequate and orderly records of its business and internal organisation;

vii. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

viii. adopt effective arrangements, processes and mechanisms to manage the risks relating to the Licence Holder's activities, processes and systems, in light of that level of risk tolerance;

ix. monitor the following:

a. the adequacy and effectiveness of the Licence Holder's risk management policies and procedures;

b. the level of compliance by the Licence Holder and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (ii) above; and

c. the adequacy and effectiveness of measures taken to address any deficiencies in those arrangements and procedures, including failures by the relevant persons to comply with such arrangements or follow such procedures.

For these purposes, the Licence Holder shall take into account the nature, scale and complexity of its business, and the nature and range of investment and ancillary services undertaken in the course of that business.

R2-3.2.13 The Management Body shall approve and periodically review the strategies policies for taking up, managing, monitoring and mitigating the risks the Licence Holder is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

R2-3.2.14 The Management Body shall devote sufficient time to consideration of risk issues. The Management Body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in the

CRD and the CRR as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks. The Licence Holder shall establish reporting lines to the Management Body that cover all material risks and risk management policies and changes thereof.

R2-3.2.15 The MFSA may allow a Licence Holder which is not considered significant to combine the Risk Committee with the Audit Committee as referred to in Article 41 of Directive 2006/43/EC. Members of the combined committee shall have the knowledge, skills and expertise required for the Risk Committee and for the Audit Committee.

R2-3.2.16 The Management Body in its supervisory function and, where a risk committee has been established, the Risk Committee shall have adequate access to information on the risk situation of the Licence Holder and, if necessary and appropriate, to the risk management function and to external expert advice.

R2-3.2.17 Licence Holders that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a Risk Committee composed of members of the Management Body who do not perform any executive function in the Licence Holder concerned. Members of the Risk Committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the Licence Holder.

R2-3.2.18 The Management Body in its supervisory function and, where one has been established, the Risk Committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

R2-3.2.19 The Risk Committee shall:

i. advise the Management Body on the Licence Holder's overall current and future risk appetite and strategy and assist the Management Body in overseeing the implementation of that strategy by senior management. The Management Body shall retain overall responsibility for risks;

ii. review whether prices of liabilities and assets offered to clients take fully into account the Licence Holder's business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the Risk Committee shall present a remedy plan to the Management Body;

iii. without prejudice to the Remuneration Committee referred to in this Title, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timings of earnings.

R2-3.2.20 The Licence Holder is required to establish and maintain a risk management function which independently carries out the following tasks:

i. the implementation of the policy and procedures referred to in Rule R2-3.2.12

ii. the provision of reports and advice to senior management in accordance with Rule R2-3.2.13.

R2-3.2.21 The Licence Holder is required to establish and maintain a risk management function that operates independently and which has sufficient authority and resources, including access to the Management Body where necessary, to facilitate the carrying out of the following tasks:

i. the implementation of the policy and procedures referred to in R2-3.2.11 and Section 2 of this Title and the relevant CRR provisions;

ii. the provision of reports and advice to senior management;

iii. the development of the Licence Holder's risk strategy and participation in all material risk management decisions;

iv. direct communication with the Management Body in its supervisory function, independently from the Licence's Holder senior management, where appropriate, regarding concerns, where specific risk developments affect or may affect the Licence Holder, without prejudice to the responsibilities of the Management Body in its supervisory and/or managerial functions.

R2-3.2.22 The Licence Holder shall appoint a head of the risk management function that shall be an independent senior manager with distinct responsibility for the risk management function and shall not be removed without the prior approval of the Management Body in its supervisory function.

R2-3.2.23 However, the MFSA may allow the Licence Holder to establish and maintain a risk management function which does not operate independently, provided this does not give rise to conflicts of interest and the Licence Holder demonstrates to the MFSA that the establishment and maintenance of a dedicated independent risk management function with sole responsibility for the risk management function is not appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business.

R2-3.2.24 Where a Licence Holder is granted such derogation it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with Rule R2-3.2.11 satisfy the requirements thereof and are consistently effective.

R2-3.2.25 The IRB approach is based on the Licence Holder's assessments of the risks to which it is exposed. Without prejudice to the fulfilment of criteria laid down in Part Three, Title II, Chapter 3, Section 1 of the CRR. It is recommended that Significant Licence Holders develop an internal credit risk assessment capacity and increase the use of the IRB approach for the purposes of calculating the credit/counterparty risk component, where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties.

R2-3.2.26 Without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5, of the CRR, it is recommended that Significant Licence Holders develop an internal specific risk assessment capacity and increase the use of internal models for calculating the specific risk component of traded debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they hold a large number of material positions in traded debt instruments of different issuers.

R2-3.2.27 Licence Holders are advised to seek the MFSA's guidance prior to adopting the IRB approach, which method is to be approved by the MFSA. Licence Holders which have obtained the Authority's approval to use the IRB approach must report annually to the MFSA:

i. the results of the calculations of their internal approaches for their exposures that are included in the benchmark portfolios; and

ii. an explanation of the methodologies used to produce those calculations in (i) above.

R2-3.2.28 Licence Holders must submit the results referred to in point (i) of the previous Rule, in line with the template developed by EBA in accordance with Article 78 (8) of CRD to the MFSA and to EBA.

R2-3.2.29 Where the MFSA has chosen to develop specific portfolios in accordance with Article 78 (2) of CRD, the Licence Holder must report the results of the calculations separately from the results of the calculations for EBA portfolios.

R2-3.2.30 For the purposes of managing credit/counterparty risk as referred to in the CRR the Licence Holder shall ensure that:

i. credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established;

ii. internal methodologies are established which enables assessment of the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating applied through the Credit Quality Steps Approach or based on the fact that an exposure is unrated, this shall not exempt the Licence Holder from additionally considering other relevant information for assessing their allocation of internal capital;

iii. the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of the Licence Holder, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems;

iv. diversification of credit portfolios is adequate given a Licence Holder's target markets and overall credit strategy.

R2-3.2.31 Residual risk as defined in this Rulebook, shall be addressed and controlled by means of written policies and procedures.

R2-3.2.32 The Licence Holder shall address and control the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, by means of written policies and procedures.

R2-3.2.33 For the purposes of the organisation and treatment of securitisation risk as defined in this Rulebook, the Licence Holder is required to evaluate and address the risks arising from securitisation transactions through appropriate policies and

procedures, to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

R2-3.2.34 Liquidity plans to address the implications of both scheduled and early amortisation must exist at Licence Holders which are originators of revolving securitisation transactions involving early amortisation provisions.

R2-3.2.35 For the purposes of the treatment of market risk, the Licence Holder shall implement policies and processes for the identification, measurement and management of all material sources and effects of market risks.

R2-3.2.36 Where the short position falls due before the long position, the Licence Holder shall ensure that it takes measures against the risk of a shortage of liquidity.

R2-3.2.37 The internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

R2-3.2.38 The Licence Holder which has, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of the CRR, netted off its positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock- index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities. The Licence Holder shall also have such adequate internal capital where it holds opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

R2-3.2.39 Where using the treatment in Article 345 of the CRR, the Licence Holder shall ensure that it holds sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

R2-3.2.40 The Licence Holder shall implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect the non-trading activities of the Licence Holder.

R2-3.2.41 The Licence Holder shall implement policies and processes to evaluate and manage the exposure to operational risk, including model risk[1], and to cover low-frequency high-severity events. The Licence Holder shall specify what constitutes operational risk for the purposes of those policies and procedures.

R2-3.2.42 Licence Holders shall have adequate contingency and business continuity policies and plans, including ICT business continuity policies and plans and ICT response and recovery plans for the technology they use for the communication of information, and that those plans are established, managed and tested in accordance with Article 11 of the DORA Regulation, in order to allow Licence Holders to keep operating in the event of severe business disruption and limit losses incurred as a consequence of such disruption.

R2-3.2.43 For the purposes of the organisation and treatment of liquidity risk as referred to in the CRR, the Licence Holder is required to have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk, over an appropriate set of time horizons, including intra-day, so as to ensure that adequate levels of liquidity buffers are maintained. The strategies, policies, processes and systems of the Licence Holder shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

R2-3.2.44 The strategies, policies, processes and systems referred to in Rule R2-3.2.43 shall be proportionate to the complexity, risk profile, scope of operation of the Licence Holder and risk tolerance set by the management body and reflect the Licence Holder's importance in each Member State, in which it carries out business. The Licence Holder shall communicate risk tolerance to all relevant business lines.

R2-3.2.45 The Licence Holder, taking into account the nature, scale and complexity of its investment services activities, shall establish liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.

[1] Model risk means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models.

R2-3.2.46 The Licence Holder is required to develop methodologies for the identification, measurement, management and monitoring of funding positions. These methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance sheet items, including contingent liabilities and the possible impact of reputational risk.

R2-3.2.47 The Licence Holder must distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account as well as their eligibility and shall monitor how assets can be mobilised in a timely manner.

R2-3.2.48 The Licence Holder must also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the EEA.

R2-3.2.49 The Licence Holder must consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.

R2-3.2.50 Alternative scenarios on liquidity positions and on risk mitigants must be considered by the Licence Holder and the assumptions underlying decisions concerning the funding position shall be reviewed at least annually. For these purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities or other special purpose entities, as referred to in the CRR, in relation to which the Licence Holder acts as sponsor or provides material liquidity support.

R2-3.2.51 The Licence Holder is required to consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stressed conditions must also be considered.

R2-3.2.52 The Licence Holder should adjust its strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in Rule R2-3.2.50.

R2-3.2.53 In order to deal with liquidity crises, the Licence Holder must have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State. Those plans should be regularly tested, at least annually, updated on the basis of the outcome of the alternative scenarios set out in Rule R2-3.2.50 above, be reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Licence Holders shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. Those operational steps shall include holding collateral immediately available for central bank funding.

R2-3.2.54 The Licence Holder shall have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage.

R2-3.2.55 The Licence Holder shall address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the Licence Holder's own funds through expected or realised losses, depending on the applicable accounting rules. To that end, the Licence Holder shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

R2-3.2.56 In addition to the indicators for the risk of excessive leverage, the Licence Holder shall include the leverage ratio as applicable in accordance with Title 7 of Section 2 of the CRR.

R2-3.2.57 The Licence Holder shall ensure that data on loans to members of the management body and their related parties are properly documented and made available to the MFSA upon request.

For the purposes of this Rule, the term "related party" means:

(i) a spouse, a civil partner, child or parent of a member of the management body;

(ii) a commercial entity, in which a member of the management body or his or her close family member as referred to in point (i) has a qualifying holding of 10 % or more of capital or of voting rights in that entity, or in which those persons can exercise significant influence, or in which those persons hold senior management positions or are members of the management body.

R2-3.2.58 The governance arrangements referred to above shall comply with the following principles:

i. the Management Body must have the overall responsibility for the Licence Holder and approve and oversee the implementation of the Licence Holder's strategic objectives, risk strategy and internal governance;

ii. the Management Body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

iii. the Management Body must oversee the process of disclosure and communications;

iv. the Management Body must be responsible for providing effective oversight of senior management;

v. the chairman of the Management Body in its supervisory function of the Licence Holder must not exercise simultaneously the functions of a chief executive officer within the same Licence Holder, unless justified by the Licence Holder and authorised by the MFSA;

vi. the Management Body shall monitor and periodically assesses the effectiveness of the Licence Holder's governance arrangements and take appropriate steps to address any deficiencies.

R2-3.2.59 Licence Holders should publicly disclose annually, on a consolidated basis, by country where they have an establishment for the financial year:

i. their name(s), nature of activities and geographical location;

ii. turnover;

iii. number of employees on a full time equivalent basis;

iv. profit or loss before tax;

v. tax on profit or loss;

vi. public subsidies received;

R2-3.2.60 The information listed in (i) - (iii) of the previous Rule shall be disclosed commencing from 1 July 2014. The information listed at (iv) - (vi) of the previous Rule shall be disclosed commencing 1 January 2015.

R2-3.2.61 The information referred to above shall be subject to audit and shall be published where possible, as an annex to the annual financial statements or where applicable, to the consolidated financial statements of the Licence Holder concerned.

R2-3.2.62 All global systemically important institutions authorised within the Union, as identified internationally, shall submit to the European Commission the information referred to in (iv) - (vi) of Rule R2-3.2.59 on a confidential basis.

R2-3.2.63 The Licence Holder shall disclose in its Annual Report among the key indicators, its return on assets, calculated as its net profit divided by its total balance sheet.

R2-3.2.64 The Licence Holder is required to establish and apply the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile.

R2-3.2.65 The Licence Holder must be able to demonstrate to the MFSA how it has assessed and selected identified staff, in accordance with Commission Delegated Regulation (EU) No 604/2014 regarding the regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

R2-3.2.66 When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on the institution's risk profile, Licence Holders shall ensure that they comply with the following requirements in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities::

i. the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the Licence Holder;

ii. the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the Licence Holder, and incorporates measures to avoid conflicts of interest;

iii. the Licence Holder's management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation;

iv. the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

v. staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

vi. the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the Remuneration Committee referred to in Rule R2-3.2.68 or, if such a committee has not been established, by the management body in its supervisory function;

vii. the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting:

(a) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and

(b) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

viii. In the case of a Licence Holder that benefits from exceptional government intervention:

(a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(b) the MFSA requires the Licence Holder to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the Licence Holder;

(c) no variable remuneration is paid to the members of the management body of the Licence Holder unless justified.

ix. where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the Licence Holder and when assessing individual performance, financial and non-financial criteria are taken into account;

x. the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the Licence Holder and its business risks;

xi. the total variable remuneration does not limit the ability of the Licence Holder to strengthen its capital base;

xii. guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance

principle and shall not be a part of prospective remuneration plans;

xiii. guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the Licence Holder has a sound and strong capital base and is limited to the first year of employment;

xiv. fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;

xv. the Licence Holder must set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply:

(a) the variable component shall not exceed 100% of the fixed component of the total remuneration for each individual;

(b) shareholders or owners or members of the Licence Holder may approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual.

Any approval of a higher ratio in accordance with (xv)(a) shall be carried out in accordance with the following procedure:

- the shareholders or owners or members of the Licence Holder shall act upon a detailed recommendation by the Licence Holder giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;

- shareholders or owners or members of the Licence Holder shall act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75% of the ownership rights represented;

- the Licence Holder shall notify all shareholders or owners or members of the Licence Holder, providing a reasonable notice period in advance, that an approval under the first subparagraph of this paragraph will be sought;

- the Licence Holder shall, without delay, inform the MFSA of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the MFSA that the proposed higher ratio does not conflict with the Licence Holder's obligations under the Investment Services Rules and the CRR, having regard in particular to the Licence Holder’s own funds obligations;

- the Licence Holder shall, without delay, inform the MFSA of the decisions taken by its shareholders or owners or members, including

any approved higher maximum ratio pursuant to the first subparagraph of this paragraph, and the MFSA shall use the information received to benchmark the practices of Licence Holders in that regard. The MFSA shall provide this information to EBA;

– staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this paragraph shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the Licence Holder.

(c) Licence Holders may apply the discount rate referred to in Article 94 (1) (g) (iii) of the CRD to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

Licence Holders should make reference to EBA's Guidelines on the applicable notional discount rate for variable remuneration.

xvi. payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct;

xvii. remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the Licence Holder including retention, deferral, performance and clawback arrangements;

xviii. the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and

future risks and takes into account the cost of the capital and the liquidity required;

xix. the allocation of the variable remuneration components within the Licence Holder shall also take into account all types of current and future risks;

xx. a substantial portion, and in any event at least 50%, of any variable remuneration must consist of an appropriate balance of:

(a) shares or, subject to the legal structure of the Licence Holder concerned, equivalent ownership interests; or share-linked instruments or, subject to the legal structure of the Licence Holder concerned, equivalent noncash instruments, , in the case of a non-listed Licence Holder and

(b) where possible, other instruments within the meaning of Articles 52 or 63 of the CRR or other instruments that can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the Licence Holder as a going concern and are appropriate to be used for the purposes of variable remuneration.

Licence Holders should refer to Commission Delegated Regulation (EU) No 527/2014 to determine the classes of instruments that are appropriate to be used for the purposes of variable remuneration.

The instruments referred to in this paragraph must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the Licence Holder. The MFSA may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. This paragraph shall be applied to both the portion of the variable remuneration

component deferred in accordance with point (xxi) and the portion of the variable remuneration component not deferred;

xxi. a substantial portion, and in any event at least 40 %, of the variable remuneration component is deferred over a period which is not less than four to five years and is correctly aligned with the nature of the business, its risks and the activities of the staff member concerned. For members of the management body and senior management of Licence Holders that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities, the deferral period should not be less than five years. Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the staff member concerned;

xxii. the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the Licence Holder as a whole, and justified on the basis of the performance of the Licence Holder, the business unit and the individual concerned.

Without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the Licence Holder occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.
Up to 100% of the total variable remuneration shall be subject to malus or clawback arrangements. Licence Holders shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member:

(a) participated in or was responsible for conduct which resulted in significant losses to the Licence Holder;

(b) failed to meet appropriate standards of fitness and propriety.

xxiii. the pension policy is in line with the business strategy, objectives, values and long-term interests of the Licence Holder.

If the employee leaves the Licence Holder before retirement, discretionary pension benefits must be held by the Licence Holder for a period of five years in the form of instruments referred to in point (xx). In case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (xx) subject to a five-year retention period;

xxiv. staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

xxv. variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the Act, Investment Services Rules or the CRD and the CRR;

xxvi. the remuneration policy is a gender neutral remuneration policy.

By way of derogation from the introductory paragraph, the requirements set out in points (xx), (xxi) and (xv)(b) of this Rule shall not apply to:

(a) a Licence Holder that is not a large and the value of the assets of which is on average and on an individual basis in accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;

(b) a staff member whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one third of the staff member's total annual remuneration.

By way of derogation from point (a) of the previous paragraph, the MFSA may lower or increase the threshold referred to therein, provided that:

(a) the Licence Holder in relation to which the Licence Holder makes use of this provision is not a large institution and, where the threshold is increased:

(i) the institution meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the CRR; and

(ii) the threshold does not exceed EUR 15 billion;

(b) it is appropriate to modify the threshold in accordance with this paragraph taking into account the Licence Holder's nature, scope and complexity of its activities, its internal organisation or, if applicable, the characteristics of the group to which it belongs.

By way of derogation from point (b) of two paragraphs earlier, the MFSA may decide that staff members entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.

R2-3.2.67 For the purposes of the previous Rule, categories of staff whose professional activities have a material impact on the investment firm's risk profile shall, at least, include:

(i) all members of the management body and senior management;

(ii) staff members with managerial responsibility over the institution's control functions or material business units;

(iii) staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:

(a) the staff member's remuneration is equal to or greater than EUR 500 000 and equal to or greater than the average remuneration awarded to the members of the institution's management body and senior management referred to in point (i);

(b) the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile

R2-3.2.68 The Licence Holder, which is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities, shall establish a Remuneration Committee. The Remuneration Committee shall be constituted in such a way as to enable it to exercise competent and independent judgement on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

R2-3.2.69 The Remuneration Committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the Licence Holder concerned and which are to be taken by the management body. The chairperson and the members of the Remuneration Committee shall be members of the Management Body who do not perform any executive function in the Licence Holder concerned. If employee representation on the management body is provided for by Maltese law, the Remuneration Committee shall include one or more employee representatives. When preparing such decisions, the Remuneration Committee must take into account the long-term interests of shareholders, investors and other stakeholders in the Licence Holder and the public interest.

R2-3.2.70 Where the Licence Holder maintains a website, it shall disclose the manner in which it complies with the corporate governance requirements referred to in this Rulebook and the reporting requirements referred to in this Part.

R2-3.2.71 The Licence Holder shall on an annual basis publicly disclose all the information referred to in Part Eight of the CRR, as amended by the applicable transitional provisions set out in Part Ten of the CRR, which *inter alia* includes information on the Licence Holder's:

i. Own funds;

ii. Risk Components;

iii. Risk management and the internal capital adequacy assessment process, including governance arrangements; and

iv. Remuneration policy and practices.

R2-3.2.72 The Licence Holder may publish information other than the financial statements. If disclosures are not included in the financial statements, the Licence Holder shall unambiguously indicate where they can be found.

R2-3.2.73 Parent undertakings shall ensure that a description of the legal structure, governance and organisational structure of the Consolidated Group is publicly disclosed at least on an annual basis.

R2-3.2.74 Licence Holders shall be required to apply the principles in R2-3.2.66 (xv) to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before or after 1 January 2014;

R2-3.2.75 In addition to R2-3.2.1, the Licence Holder shall have in place, sound effective and complete strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that it considers adequate to cover the nature and level of the risks to which it is or might be exposed. This

is hereinafter referred to as the Licence Holder's Risk Management and the Internal Capital Adequacy Assessment Process ("RMICAAP").

R2-3.2.76 Licence Holders which are neither subsidiaries nor parent undertakings and Licence Holders not included in consolidation pursuant to Article 19 of the CRR shall meet the obligations set out in Rules R2-3.2.74 to R2-3.2.77 on an individual basis.

R2-3.2.77 Where the Licence Holder is the parent investment firm or is controlled by a parent financial holding company or a parent mixed financial holding company established in a Member State it shall meet the obligations set out in Rules R2-3.2.74 to R2-3.2.77 as supplemented by the provisions of this Section, on a consolidated basis.

R2-3.2.78 Where the Licence Holder is a subsidiary member of a Consolidated Group and either of the following point (i) and (ii), the Licence Holder shall comply with the requirements set out in Rules R2-3.2.74 to R2-3.2.77 on a sub-consolidated basis:

i. the parent of the Licence Holder is a financial holding company or a mixed financial holding company which also holds an institution or a financial institution or an asset management company as a subsidiary in a third country or holds a participation in such an entity; or;
ii. the Licence Holder itself holds an institution or a financial institution or an asset management company as a subsidiary in a third country or holds a participation in such an entity.

R2-3.2.79 The RMICAAP has the purpose of:

i. ensuring that the Licence Holder adequately identifies, measures, aggregates and monitors its risks;

ii. holding adequate internal capital in relation to its risk profile; and

iii. using sound risk management systems.

R2-3.2.80 The Licence Holder shall, on yearly basis, review its RMICAAP with the aim of ensuring that this process remains comprehensive and proportionate to the nature, scale and complexity of the activities of the Licence Holder concerned.

R2-3.2.81 In preparing, reviewing and updating its RMICAAP, a Licence Holder shall refer to this Section.

Section 3 Supplementary Conditions applicable to Licence which form part of a Consolidated Group

R2-3.3.1 Parent undertakings and subsidiaries subject to the CRD as transposed in Maltese Law shall be required to comply with the provisions relating to Financial Resources Requirement, Governance, Risk Management, Reporting requirements applicable to Licence Holders forming part of a consolidated group on a consolidated or sub-consolidated basis, to ensure that the arrangements, processes and mechanisms required by those provisions are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

R2-3.3.2 In particular, parent undertakings and subsidiaries subject to the CRD as transposed in Maltese Law, shall implement those arrangements, processes and mechanisms in their subsidiaries not subject to the CRD, including those established in offshore financial centres. Those arrangements, processes and mechanisms shall also be consistent and well-integrated and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision. Subsidiary undertakings that are not themselves subject to the CRD shall comply with their sector-specific requirements on an individual basis.

R2-3.3.3 Provided that where any of the abovementioned subsidiaries is established in a third country, the obligations arising out of the previous two Rules, shall not apply if the EU parent institution demonstrates to the MFSA that the application of the abovementioned Rules is unlawful under the laws of the third country where the subsidiaries are established.

R2-3.3.4 The remuneration requirements laid down in the Rules R2-3.2.70, R2-3.2.71, and R2-3.2.72 shall not apply on a consolidated basis to either of the following:

i. subsidiary undertakings established in the Union where they are subject to specific remuneration requirements in accordance with other Union legal acts; or

ii. subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other Union legal acts if they were established in the Union.

R2-3.3.5 By way of derogation from the previous Rule, and in order to avoid circumvention of
Rules R2-3.2.70, R2-3.2.71, and R2-3.2.72, the requirements laid down in those rules shall apply to members of staff of subsidiaries that are not subject to the CRD as transposed in Maltese Law on an individual basis where:

i. the subsidiary is either an asset management company, or an undertaking that provides the investment services and activities listed in points (2), (3), (4), (6) and (7) of Section A of MiFID II; and

ii. those members of staff have been mandated to perform professional activities that have a direct material impact on the risk profile or the business of the institutions within the group.

R2-3.3.6 Notwithstanding the previous two Rules, the MFSA may apply Rules R2-3.2.70, R2-3.2.71, and R2-3.2.72 on a consolidated basis to a broader scope of subsidiary undertakings and their staff.

Section 4 Supervision On A Consolidated Basis

R2-3.4.1 The Licence Holder shall have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with their parent mixed activity holding company and its subsidiaries appropriately. The Licence Holder shall report to the MFSA any significant transactions with those entities other than those referred to in Article 394 of the CRR. These procedures shall be subject to review by the MFSA.

Section 5 Capital Buffers

R2-3.5.1 In addition to the Common Equity Tier 1 capital that is maintained to meet any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR, Licence Holders shall maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2,5 % of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and on a consolidated basis, as applicable in accordance with Title II of Part One of the CRR.

R2-3.5.2 Where an investment firms fails to fully meet the Combined Buffer Requirement, it shall be subject to the restrictions on distributions set out in Rules R2-3.5.4 to R2-3.5.7.

R2-3.5.3 Investment firms shall maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount, calculated in accordance with Article 92(3) of the CRR multiplied by the weighted average of the countercyclical buffer rates, calculated in accordance with this Rulebook on an individual and consolidated basis, as applicable in accordance with Part One, Title II of the CRR. That buffer shall consist of Common Equity Tier 1 capital.

R2-3.5.4 Where an investment firm fails to meet fully the requirement prescribed in terms Article 129(1) of the CRD, it shall be subject to the restrictions on distributions set out in this Section.

R2-3.5.5 The Authority shall, in accordance with Article 12(1)(k) and (l) of the Act, together with the Central Bank of Malta, appointed as the designate authority for the purposes of Article 131(1) of the CRD in terms of the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014 (Legal Notice 29 of 2014), be responsible for identifying, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been licensed in terms of the Act.

R2-3.5.6 G-SIIs shall be a group headed by either an EU parent institution, or an EU parent financial holding company, or an EU parent mixed financial holding company or

an institution as defined in the CRR. G-SIIs shall not be an institution that is a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

R2-3.5.7 O-SIIs may either be a group headed by an EU parent institution, or an EU parent financial holding company, or an EU parent mixed financial holding company, or a parent institution in a Member State, or a parent financial holding company in a Member State, or a parent mixed financial holding company.

R2-3.5.8 An additional identification methodology for G-SIIs shall be based on the following categories:

i. the categories referred to in points (i) to (iv) of the previous Rule;

ii. cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of Regulation (EU) No 806/2014 of the European Parliament and of the Council

Each category shall receive an equal weighting and shall consist of quantifiable indicators. For the categories referred to in point (i), the indicators shall be the same as the corresponding indicators determined pursuant the previous rule.

The additional identification methodology shall produce an additional overall score for each entity as referred to in these Rules, on the basis of which the competent authority may take one of the measures referred to in point (iii) of Rule R2-3.5.24.

R2-3.5.9 O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution as defined in the CRR.

R2-3.5.10 The identification methodology for G-SIIs shall be based on the following categories:

i. size of the group;

ii. interconnectedness of the group with the financial system;

iii. substitutability of the services or of the financial infrastructure provided by the group;

iv. complexity of the group;

v. cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

Each category shall receive an equal weighting and shall consist of quantifiable indicators.

The methodology shall produce an overall score for each entity assessed as referred to previously, which allows G-SIIs to be identified and allocated into a sub-category as described in Rule R2-3.4.20.

R2-3.5.11 O-SIIs shall be identified in accordance with the previous Rule, Systemic importance shall be assessed on the basis of at least any of the following criteria:

i. size;

ii. importance for the economy of the Union or of Malta;

iii. significance of cross-border activities;

iv. interconnectedness of the investment firm or group with the financial system.

In determining the conditions for the application of the previous Rule in relation to the assessment of O-SIIs, the Authority may be guided, *inter alia*, by any guideline/s published by the EBA in accordance with Article 131(3) of the CRD.

R2-3.5.12 Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

R2-3.5.13 The Authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 3% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, taking into account the criteria for the identification of the O-SII. That buffer shall consist of Common Equity Tier 1 capital.

R2-3.5.14 Subject to the Commission authorisation referred to in the third subparagraph of this Rule, the Authority, acting jointly with the Central Bank of Malta, may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer higher than 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013. That buffer shall consist of Common Equity Tier 1 capital.

Within six weeks of receipt of the notification referred to in paragraph 7 of this Article, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

Within three months of the ESRB forwarding the notification referred to in this Section to the Commission, the Commission, taking into account the assessment of the ESRB and EBA, if relevant, and if it is satisfied that the O-SII buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an act authorising the competent authority or the designated authority to adopt the proposed measure.

R2-3.5.15 When requiring an O-SII buffer to be maintained the Authority, acting jointly with the Central Bank of Malta, shall comply with the following:

i. the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;

ii. the Authority, acting jointly with the Central Bank of Malta, shall review the O-SII buffer at least annually.

R2-3.5.16 Before setting or resetting an O-SII buffer, the Authority, acting jointly with the Central Bank of Malta, shall notify the ESRB, one month before the publication of the decision referred to in this Section and shall notify the ESRB three months before the publication of the decision referred to in this Section. The ESRB shall forward such notifications to the Commission, to EBA and to the competent and designated authorities of the Member States concerned without delay.

Such notifications shall set out in detail:

i. the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;

ii. an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the Authority and the Central Bank of Malta;

iii. the O-SII buffer rate that the Authority, acting jointly with the Central Bank of Malta, wishes to set.

R2-3.5.17 The Authority, acting jointly with the Central Bank of Malta, shall establish at least five subcategories of G-SIIs.

The lowest boundary and the boundaries between each sub-category shall be determined by the scores under the identification methodology.

The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear

increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category.

The lowest sub-category shall be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and the buffer assigned to each sub-category shall increase in gradients of 0.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR up to and including the fourth sub-category.

The highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR.

For the purposes of this paragraph, "systemic significance" is the expected impact exerted by the G-SII's distress on the global financial market.

R2-3.5.18 Without prejudice to the above rules, where an O-SII is a subsidiary of either a G-SII or an O-SII which is either an institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the lower of:

i. the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and;

ii. 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, or the rate the Commission has authorised to be applied to the group on a consolidated basis in accordance with Rule R2-3.5.17.

R2-3.5.19 Where the Authority, acting jointly with the Central Bank of Malta, takes a decision in accordance with point (ii) of the previous rule, it shall notify the EBA accordingly, providing reasons.

R2-3.5.20 The Authority, acting jointly with the Central Bank of Malta, shall establish at least five subcategories of G-SIIs.

The lowest boundary and the boundaries between each sub-category shall be determined by the scores under the identification methodology.

The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of sub-category five and any added higher sub-category. The lowest sub-category shall be assigned a G-SII buffer of 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and the buffer assigned to each sub-category shall increase in gradients of at least 0.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR.

For the purposes of this Rule, "systemic significance" is the expected impact exerted by the G-SII's distress on the global financial market.

R2-3.5.21 Without prejudice to the above Rules and using the sub-categories and cut-off scores referred to in the previous Rule, the Authority, acting jointly with the Central Bank of Malta may, in the exercise of sound supervisory judgment:

i. re-allocate a G-SII from a lower sub-category to a higher sub-category;

ii. allocate an entity that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII;

iii. taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to previously, re-allocate a G-SII from a higher sub-category to a lower sub-category.

R2-3.5.22 The Authority, acting jointly with the Central Bank of Malta, shall notify to the ESRB the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated. The notification shall contain full reasons why supervisory judgment has been exercised or not in accordance with this Section. The ESRB shall forward such notifications to the Commission and to EBA without delay, and shall publicly disclose their names.

The Authority, acting jointly with the Central Bank of Malta shall publicly disclose the sub-category to which each G-SII is allocated. The Authority, acting jointly with the Central Bank of Malta shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the ESRB which shall forward the results to the Commission and to EBA without delay.

The Authority, acting jointly with the Central Bank of Malta shall publicly disclose the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated

R2-3.5.23 Systemically important institutions shall not use the Common Equity Tier 1 capital which is maintained in terms of these Rules, to meet any of the following requirements:

i. requirements imposed under Article 92 of the CRR;

ii. requirements to maintain a capital conservation buffer as prescribed in this Rulebook;

iii. requirements to maintain an institution-specific countercyclical capital buffer as prescribed in this Rulebook; and

iv. any requirements imposed in terms of Article 16 of the Investment Services Act (Supervisory Review) Regulations, 2013 (L.N. 30 of 2014).

v. any requirements imposed in terms of Schedule III of the Investment Services Act (Supervisory Review) Regulations, 2013 (L.N. 30 of 2014).

R2-3.5.24 Where a group, on a consolidated basis, is subject to a G-SII buffer and to an O-SII buffer the higher buffer shall apply:

Where an investment firm, on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with Article 133 of the CRD, the higher of the two shall apply.

Where an investment firm is subject to a systemic risk buffer, set in accordance with Article 133 of the CRD as transposed in Maltese Law, that buffer shall be cumulative with the O-SII buffer or the G-SII buffer that is applied in accordance with the above Rules.

Where the sum of the systemic risk buffer rate as calculated for the purposes of this Section and the O-SII buffer rate or the G-SII buffer rate to which the same investment firm is subject to would be higher than 5 %, the procedure set out in above shall apply.

R2-3.5.25 Notwithstanding the provisions of this Section, where the systemic risk buffer applies to all exposures located in Malta, but does not apply to exposures outside Malta, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with this Section.

R2-3.5.26 Where an investment firm is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that such investment firm is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

R2-3.5.27 Where the previous Rule applies and an investment firm is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that such investment firm is, on an individual basis, subject to a combined buffer

requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

R2-3.5.28 The Authority, acting jointly with the Central Bank of Malta, shall identify an EU parent institution or EU parent financial holding company or EU parent mixed financial holding company as a G-SII and shall define the sub-categories and the allocation of G-SIIs in sub-categories based on their systemic significance in accordance with the methodology specified in the Commission Delegated Regulation (EU) No 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to Regulatory Technical Standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions:

Provided that, pursuant to Article 441 of the CRR, investment firms identified as G-SIIs shall disclose indicator values used in the identification process in accordance with the Commission Implementing Regulation (EU) No 1030/2014 of 29 September 2014 laying down Implementing Technical Standards with regard to the uniform formats and date for the disclosure of the values used to identify globally systemic important institutions according to Regulation (EU) No 575/2013 of the European Parliament and Council and the Guidelines on Disclosure of Indicators of Global Systemic Importance, which were published by the EBA on the 5 June 2014.

R2-3.5.29 Investment firms are to refer to the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014 (Legal Notice 29 of 2014) and to the CBM Directive with regards to the maintenance of a systemic risk buffer under Article 133 of the CRD.

R2-3.5.30 For the purposes of this Section, the institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the investment firm are located or are applied by virtue of paragraphs 62 and 63 of the CBM Directive.

R2-3.5.31 If, in accordance with paragraph 55 of the CBM Directive, the Central Bank of Malta sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the CRR, investment firms shall apply that buffer rate in excess of 2.5% of total risk exposure amount to relevant credit exposures located in Malta for the purposes of the calculation prescribed in terms of this Rulebook including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the investment firm in question.

R2-3.5.32 If, in accordance with Article 136(4) of the CRD, a designated authority in another Member State sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the CRR, the following buffer rates shall apply to relevant credit exposures located in the Member State of that designated authority for the purposes of the calculation prescribed in terms of this Rulebook including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the investment firm in question:

i. investment firms shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the Central Bank of Malta has not recognised the buffer rate in excess of 2.5% in accordance with paragraph 59 of the CBM Directive (Article 137(1) of the CRD);

ii. investment firms shall apply the countercyclical buffer rate set by the designated authority of another Member State appointed for the purposes of Article 136(1) of the CRD if the Central Bank of Malta has recognised the buffer rate in accordance with paragraph 59 and 60 of the CBM Directive (Article 137 of the CRD).

R2-3.5.33 If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the CRR, the following buffer rates shall apply to relevant credit exposures located in that third country for the purposes of the calculation prescribed in terms of this Rulebook including, where relevant, for the

purposes of the calculation of the element of consolidated capital that relates to the investment firm in question:

i. investment firms shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the Central Bank of Malta has not recognised the buffer rate in excess of 2.5% in accordance with paragraph 59 of the CBM Directive (Article 137(1) of the CRD);

ii. investment firms shall apply the countercyclical buffer rate set by the relevant third-country authority if the Central Bank of Malta has recognised the buffer rate in accordance with paragraphs 59 and 60 of the CBM Directive (Article 137 of the CRD).

R2-3.5.34 Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of the CRR, that are subject to:

i. the own funds requirements for credit risk under Part Three, Title II of the CRR;

ii. where the exposure is held in the trading book:

(a) own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of the CRR; or

(b) incremental default and migration risk under Part Three, Title IV, Chapter 5 of the CRR.

iii. where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Section 5 of the CRR.

R2-3.5.35 Investment firms shall identify the geographical location of a relevant credit exposure in accordance with Commission Delegated Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates. Moreover,

pursuant to Article 440 of the CRR, investment firms shall disclose key elements of the calculation of their countercyclical capital buffer in accordance with the Commission Delegated Regulation (EU) 2015/1555 of 28 May 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the disclosure of information in relation to the compliance of institutions with the requirement for a countercyclical capital buffer.

R2-3.5.36 For the purposes of the calculation relating to the countercyclicar buffer rate:

i. a countercyclical buffer rate for Malta shall apply from the date specified in the information published in accordance with paragraphs 58(e) or 60(c) of the CBM Directive if the effect of that decision is to increase the buffer rate;

ii. a countercyclical buffer rate for another Member State shall apply from the date specified in the information published in accordance with Article 136(7)(e) or Article 137(2)(c) of the CRD if the effect of that decision is to increase the buffer rate;

iii. subject to point (iv), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;

iv. where the Central Bank of Malta sets the countercyclical buffer rate for a third country pursuant to paragraphs 62 and 63 of the CBM Directive (Article 139(2) or (3) of the CRD), or recognises the countercyclical buffer rate for a third country pursuant to paragraphs 59 and 60 of the CBM Directive (Article 137 of the CRD), that buffer rate shall apply from the date specified in the information published in accordance with paragraphs 65(c) or 60(c) of the CBM Directive (Article 139(5)(c) or Article 137(2)(c) of

the CRD), if the effect of that decision is to increase the buffer rate;

v. a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

For the purposes of point (iii) of this Rule, a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

R2-3.5.37 A Licence Holder that meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

R2-3.5.38 A Licence Holder that fails to meet the combined buffer requirement shall be required to calculate the Maximum Distributable Amount ('MDA') in accordance with Rule R2-3.5.43. Such investment firms shall be required to notify the Authority of that MDA.

In such circumstances the investment firm shall be prohibited from undertaking any of the following actions before it has calculated the MDA:

i. make a distribution in connection with Common Equity Tier 1 capital;

ii. create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirement; or

iii. make payments on Additional Tier 1 instruments.

R2-3.5.39 An investment firm that fails to meet or exceed its combined buffer requirement shall be prohibited from distributing more than the MDA calculated in

accordance with Rule R2-3.5.43 through any action referred to in points (i), (ii) and (iii) of the previous Rule.

R2-3.5.40 An investment firm shall calculate the MDA by multiplying the sum calculated in accordance with Rule R2-3.4.44 by the factor determined in accordance with Rule R2- 3.4.45.

The MDA shall be reduced by any of the actions referred to in points (i), (ii) or (iii) Rule R2-3.5.41.

R2-3.5.41 The sum to be multiplied in accordance with Rule R2-3.4.43 shall consist of:

i. any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR, net of any distribution of profits or any payment resulting from the actions referred to in points (i), (ii) or (iii) of Rule R2-3.5.41;

plus

ii. any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR, net of any distribution of profits or any payment resulting from the actions referred to in points (i), (ii) or (iii) of Rule R2-3.5.44;

minus

iii. amounts which would be payable by tax if the items specified in points (i) and (ii) of this Rule were to be retained.

R2-3.5.42 The factor shall be determined as follows:

i. where the Common Equity Tier 1 capital maintained by the investment firm which is not used to meet any of the own funds requirements set out in points (a), (b) and (c) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in point (a) of Article 104(1) of

the CRD as transposed in Maltese Law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CR, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

ii. where the Common Equity Tier 1 capital maintained by the investment firm which is not used to meet any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in point (a) of Article 104(1) of the CRD as transposed in Maltese Law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

iii. where the Common Equity Tier 1 capital maintained by the investment firm which is not used to meet the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in point (a) of Article 104(1) of the CRD as transposed in Maltese Law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

iv. where the Common Equity Tier 1 capital maintained by the investment firm which is not used to meet the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in point (a) of Article 104(1) of the CRD as transposed in Maltese Law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the fourth (that

is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound} = \frac{Combined\ buffer\ requirment}{4} \times (Q_n - 1)$$

$$\text{Upper bound} = \frac{Combined\ buffer\ requirment}{4} \times (Q_n)$$

Where Q_n indicates the ordinal number of the quartile concerned.

R2-3.5.43 An investment firm shall be considered as failing to meet the combined buffer requirement for the purposes of these Rules where it does not have own funds in an amount and of the quality needed to meet at the same time the combined buffer requirement and each of the following requirements in:

i. point (a) of Article 92(1) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage under point (a) of Article 104(1) of the CRD as transposed in Maltese Law;

ii. point (b) of Article 92(1) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage under point (a) of Article 104(1) of the CRD as transposed in Maltese Law;

iii. point (c) of Article 92(1) of the CRR and the additional own funds requirement addressing risks other than the risk of excessive leverage under point (a) of Article 104(1) of the CRD as transposed in Maltese Law.

R2-3.5.44 An investment firm that meets the leverage ratio buffer requirement pursuant to Article 92(1a) of the CRR shall not make a distribution in connection with Tier 1

capital to an extent that would decrease its Tier 1 capital to a level where the leverage ratio buffer requirement is no longer met.

R2-3.5.45 An investment firm that fails to meet the leverage ratio buffer requirement shall calculate the leverage ratio related maximum distributable amount (L-MDA) in accordance with Rule R1-2.3.5.50 and shall notify the competent authority thereof. Where the previous Rule applies, the investment firm shall not undertake any of the following actions before it has calculated the L-MDA:

i. make a distribution in connection with Common Equity Tier 1 capital;

ii. create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the investment firm failed to meet the leverage ratio buffer requirements; or

iii. make payments on Additional Tier 1 instruments.

R2-3.5.46 Where an investment firm fails to meet or exceed its leverage ratio buffer requirement, it shall not distribute more than the L-MDA calculated in accordance with Rule R1-2.3.5.50 through any action referred to in points (a), (b) and (c) of the previous Rule.

R2-3.5.47 Investment firms shall calculate the L-MDA by multiplying the sum calculated in accordance with Rule R1-2.3.5.51 by the factor determined in accordance with Rule Rule R1-2.3.5.52. The L-MDA shall be reduced by any amount resulting from any of the actions referred to in point (a), (b) or (c) of Rule Rule R1-2.3.5.50.

R2-3.5.48 The sum to be multiplied in accordance with the previous Rule shall consist of:

i. any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR net of any distribution of profits or any payment related to the actions referred to in point (i), (ii) or (ii) of R2-3.5.48;

plus

ii. any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR net of any distribution of profits or any payment related to the actions referred to in in point (i), (ii) or (ii) of R2-3.5.48;

minus

iii. amounts which would be payable by tax if the items specified in points (i) and (ii) of this Rule were to be retained

R2-3.5.49 The factor referred to in Rule R1-2.3.5.50 shall be determined as follows:

i. where the Tier 1 capital maintained by the institution which is not used to meet the requirements under point (d) of Article 92(1) of the CRR and under point (a) of Article 104(1) of the CRD as transposed in Maltese Law when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the first (that is, the lowest) quartile of the leverage ratio buffer requirement, the factor shall be 0;

ii. where the Tier 1 capital maintained by the investment firm which is not used to meet the requirements under point (d) of Article 92(1) the CRR and under point (a) of Article 104(1) of the CRD when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0,2;

iii. where the Tier 1 capital maintained by the investment firm which is not used to meet the requirements under point (d) of Article

92(1) of the CRR and under point (a) of Article 104(1) of the CRD as transposed in Maltese Law when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the third quartile of the leverage ratio buffer requirement, the factor shall be 0,4;

iv. where the Tier 1 capital maintained by the investment firm which is not used to meet the requirements under point (d) of Article 92(1) of the CRR and under point (a) of Article 104(1) of the CRD as transposed in Maltese Law when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of the CRR, is within the fourth quartile (that is, the highest) quartile of the leverage ratio buffer requirement, the factor shall be 0,6.

The lower and upper bounds of each quartile of the leverage ratio buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{Leverage\ ratio\ buffer\ requirment}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{Leverage\ ratio\ buffer\ requirment}{4} \times (Q_n)$$

Where Q_n indicates the ordinal number of the quartile concerned.

R2-3.5.50 The restrictions imposed by Rules R2-3.5.47 to Rule R2-3.5.56 shall only apply to payments that result in a reduction of Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event

of default or a condition for the commencement of proceedings under the insolvency regime applicable to the investment firm.

R2-3.5.51 Where an investment firm fails to meet the leverage ratio buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (i), (ii) and (iii) Rule R2-.3.5.48, it shall notify the competent authority and provide the information listed in Rule R2-3.5.59, with the exception of point (i)(c) thereof, and the L-MDA calculated in accordance with paragraph Rule R2-.3.5.50.

R2-3.5.52 Investment Firms shall maintain arrangements to ensure that the amount of distributable profits and the L-MDA are calculated accurately, and shall be able to demonstrate that accuracy to the competent authority on request.

R2-3.5.53 For the purposes of Rules Rule R2-3.5.47 and Rule R2-3.5.48, a distribution in connection with Tier 1 capital shall include any of the items listed in Rule R2-3.5.61.

An investment firm shall be considered as failing to meet the leverage ratio buffer requirement for the purposes of this Section where it does not have Tier 1 capital in the amount needed to meet at the same time the requirement laid down in Article 92(1a) of the CRR and the requirement laid down in point (d) of Article 92(1) of the CRR and in point (a) of Article 104(1) of the CRD as transposed in Maltese Law when addressing the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR.

R2-3.5.54 Where an investment firm fails to meet its combined buffer requirement, or, where applicable, its leverage ratio buffer requirement, it shall prepare a capital conservation plan and submit it to the Authority no later than five working days after it identified that it was failing to meet that requirement, unless the Authority authorises a longer delay not exceeding ten days.

R2-3.5.55 The restrictions imposed by Rules R2-3.5.44 to R2-3.5.53 shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does

not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the investment firm.

R2-3.5.56 Where an investment firm fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (i), (ii) or (iii) of Rule R2-3.4.54, it shall notify the Authority and provide the following information:

i. the amount of capital maintained by the investment firm, subdivided as follows:

(a) Common Equity Tier 1 capital;

(b) Additional Tier 1 capital; and

(c) Tier 2 capital.

ii. the amount of its interim and year-end profits;

iii. the MDA calculated in accordance with this Rulebook;

iv. the amount of distributable profits it intends to allocate between the following:

(a) dividend payments;

(b) share buybacks;

(c) payments on Additional Tier 1 instruments; and

(d) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the investment firm failed to meet its combined buffer requirements.

R2-3.5.57 Investment firms shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to provide the Authority with the necessary information relating to such calculation upon request.

R2-3.5.58 For the purposes of Rules R2-3.5.41 and R2-3.5.42, a distribution in connection with Common Equity Tier 1 capital shall include the following:

i. a payment of cash dividends;

ii. a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of the CRR;

iii. a redemption or purchase by an investment firm of its own shares or other capital instruments referred to in Article 26(1)(a) of the CRR;

iv. a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of the CRR;

v. a distribution of items referred to in points (b) to (e) of Article 26(1) of the CRR.

R2-3.5.59 Where an investment firm fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the Authority no later than five working days after it identified that it was failing to meet that requirement, unless the Authority authorises a longer delay not exceeding ten days.

The Authority shall grant such authorisations only on the basis of the individual situation of a Licence Holder and taking into account the scale and complexity of the investment firm's activities.

R2-3.5.60 The capital conservation plan shall include the following:

i. estimates of income and expenditure and a forecast balance sheet;

ii. measures to increase the capital ratios of the investment firm;

iii. a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;

iv. any other information that the Authority considers to be necessary to carry out the assessment required in terms of Rule R2-3.5.48.

R2-3.5.61 The Authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the investment firm to meet its combined buffer requirements within a period which the Authority considers appropriate.

R2-3.5.62 If the Authority does not approve the capital conservation plan in accordance with Rule R2-3.5.48 it shall impose one or both of the following:

i. require the investment firm to increase own funds to specified levels within specified periods;

ii. exercise its powers in terms of Article 17 of the Act (Article 102 of the CRD) to impose more stringent restrictions on distributions than those required by this Rulebook.

Section 6 Miscellaneous

R2-3.6.1 Financial holding companies and mixed financial holding companies shall have the primary responsibility for ensuring that members of the management body are at all times of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.

Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8 of Article 91 of the CRD as transposed in Maltese Law.

Where members of the management body do not fulfil the requirements set out in this rule, the competent authority may remove such members from the management body.

R2-3.6.2 The competent authority shall in particular verify whether the requirements set out in the previous rule are still fulfilled where it has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that Licence Holder.

R2-3.6.3 The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks. The overall composition of the management body shall reflect an adequately broad range of experience.

R2-3.6.4 Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Being a member of affiliated companies or affiliated entities does not in itself constitute an obstacle to acting with independence of mind.

Part 3: Class 1 Minus, Class 2, and Class 3

Title 1 General Scope and Application

R3-1.1.1 This shall apply to all other Investment Services Licence Holders which are not captured by Part Two of this Rulebook.

R3-1.1.2 The Licence Holder shall make reference to all Delegated Acts, Regulatory Techincal Standards, Implementing Technical Standards, and Guidelines issued under the IFR and IFD.

Title 2 IFR Requirements

Section 1 References

R3-2.1.1 Unless otherwise stated, all references to Chapters, Titles, Legislation, Sections, and Articles under this Title shall be construed as references to the IFR.

Section 2 Level Of Application Of Requirements

R3-2.2.1 Licence Holders shall make reference to "Chapter 1 - Application of Requirements On An Individual Basis" of Title II.

Provided that, Class 3 Licence Holders which satisfy the requirements outlined therein shall notify the Authority immediately, and start applying such exemptions automatically without obtaining the Authority's approval.

R3-2.2.2 Licence Holders shall make reference to "Chapter 2 - Prudential Consolidation and Exemptions For An Investment Firm Group" of Title II.

R3-2.2.3 The Licence Holder shall confirm to the MFSA, on an annual basis, in the Confirmations tab of the audited MiFID Firms Quarterly Reporting, whether they fall under the definition described in Article 7 of the IFR. A copy, signed by two Directors shall be submitted to the MFSA as per Rule Rule R1-2.2.1(vii).

Section 3 Own Funds

R3-2.3.1 Licence Holders shall make reference to "Part Two - Own Funds".

Section 4 Capital Requirements

Sub-Section 1 General Requirements

R3-2.4.1.1 Licence Holders shall make reference to "Title I - General Requirements" of Part Three.

R3-2.4.1.2 The MFSA requires that every Licence Holder has in place early warning mechanisms, as part of its on-going monitoring of its Capital Requirements, so as to ensure that its own funds would not fall below the amount required under this section. That is, the Licence Holder shall at all times have own funds, in accordance with Article 9 IFR, which amount to at least the highest of:

a. Their fixed overheads requirements;
b. Their permanent minimum capital;
c. Their K-Factor Requirement, where applicable.

Sub-Section 2 K-Factor Requirement

R3-2.4.2.1 Licence Holders shall make reference to "Chapter 1 - General Principles" of Title II of Part Three.

R3-2.4.2.2 Licence Holders shall make reference to "Chapter 2 - Rtc K-Factors" of Title II of Part Three.

R3-2.4.2.3 Licence Holders shall make reference to "Section 3 - Rtm K-Factors" of Title II of Part Three.

R3-2.4.2.4 Licence Holders shall make reference to "Section 4 - Rtf K-Factors" of Title II of Part Three.

R3-2.4.2.5 Licence Holders shall make reference to "Section 5 - Environmental And Social Objectives" of Title II of Part Three.

Section 5 Concentration Risk

R3-2.5.1 Licence Holders shall make reference to "Part Four - Concentration Risk".

Section 6 Liquidity

R3-2.6.1 Licence Holders shall make reference to "Part Five – Liquidity".

R3-2.6.2 A Licence Holder, which in its opinion satisfies the conditions laid down in "Part Five – Liquidity" of the IFR and the EBA/GL/2022/10 Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033 shall formally request a derogation from the Authority in writing explaining its rationale on investmentfirms@mfsa.mt

R3-2.6.3 Should there be a change to any circumstances or factors affecting the assessment of the Licence Holder as per the previous Rule, which subsists for at least 30 calendar days, the Licence Holder shall formally notify the MFSA in writing on the above email without any delay.

Section 7 Disclosure By Investment Firms

R3-2.7.1 Licence Holders shall make reference to "Part Six - Disclosure by Investment Firms".

R3-2.7.2 Licence Holders shall make disclosures on own funds in accordance with the template of Annex VI pursuant to the ITS on reporting and disclosures for investment firms.

R3-2.7.3 Licence Holders shall make disclosures in accordance with the RTS On disclosure of investment policy by investment firms.

Section 8 Reporting By Investment Firms

R3-2.8.1 Licence Holders shall make reference to "Part Seven - Reporting By Investment Firms".

Class 1 Minus and Class 2 Licence Holders shall submit via the LH Portal Annex I pursuant to ITS on reporting and disclosures for investment firms.

R3-2.8.2 Class 3 Licence Holders shall submit via the LH Portal Annex III pursuant to the ITS on reporting and disclosures for investment firms.

R3-2.8.3 Licence Holders shall refer to Article 8 of the IFR to determine whether they shall submit Annex VIII as per ITS on reporting and disclosures for investment firms.

R3-2.8.4 In addition to this Section, Licence Holders shall refer to Title 2 of Part 1 of this Rulebook.

Section 9 Transitional Provisions

R3-2.9.1 Licence Holders shall make reference to "Title I - Transitional Provisions" of Part Nine.

Title 3 IFD Requirements

Section 1 Prudential Supervision

Sub-Section 1 Review Process

R3-3.1.1.1 Licence Holder shall confirm to the MFSA that it has in place sound, effective, and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that they consider adequate to cover the nature and level of risks which they may pose to others and to which the investment firms are or might be exposed.

R3-3.1.1.2 The arrangements, strategies and processes referred to in the previous rule shall be appropriate and proportionate to the nature, scale and complexity of the activities of the Licence Holder concerned. They shall be subject to regular internal review.

R3-3.1.1.3 The MFSA may request Class 3 Licence Holders to apply the previous two rules to the extent that it deems it to be appropriate.

R3-3.1.1.4 The Licence Holder shall confirm on an annual basis, in the Confirmations tab of the audited MiFID Firms Quarterly Reporting, whether an internal capital adequacy assessment process and internal risk-assessment process as per Rules R3-3.1.1.1 and R3-3.1.1.2 is in place. A copy, signed by two Directors shall be submitted to the MFSA as per Rule R1-2.2.1(vii).

Sub-Section 2 Internal governance, transparency, treatment of risks and remuneration

Applicability of this Sub-Section

R3-3.1.2.1 This sub-Section, that is: *Internal governance, transparency, treatment of risks and remuneration* shall not apply to Class 3 Licence Holders.

R3-3.1.2.2 If a Class 2 Licence Holder which has not met all Class 3 Licence Holder conditions, subsequently meets those conditions, this sub-Section shall cease

to apply after a period of six months from the date on which those conditions are met.

This sub-Section shall cease to apply to a Class 2 Licence Holder after that period only where the Licence Holder continued to meet the Class 3 Licence Holder conditions without interruption during that period and where it notified the MFSA accordingly.

R3-3.1.2.3 Where a Class 3 Licence Holder determines that it no longer meets all of the Class 3 Licence Holder licensable activity conditions, it shall notify the MFSA and comply with this Section within 12 months of the date on which that assessment took place.

R3-3.1.2.4 Class 3 Licence Holders shall apply the provisions laid down under the sub-section "Variable Remuneration" below, to remuneration awarded for services provided or performance in the financial year following the financial year in which the assessment referred to in the previous rule took place.

Class 3 Licence Holders shall apply this sub-Section on an individual basis where this sub-Section applies and Article 8 of the IFR, the group capital test, is also applied,

Where this sub-Section applies and prudential consolidation as referred to in Article 7 of the IFR is applied, Class 3 Licence Holders shall apply this sub-Section on an individual and consolidated basis.

By way of derogation from the third subparagraph of this Rule, this sub-Section shall not apply to subsidiary undertakings included in a consolidated situation that are established in third countries, where the parent undertaking in the European Union can demonstrate to the MFSA that the application of this sub-Section is unlawful under the laws of the third country where those subsidiary undertakings are established.

Internal Governance

R3-3.1.2.5 Licence Holders shall have robust governance arrangements, including all of the following:

i. a clear organisational structure with well-defined, transparent and consistent lines of responsibility;

ii. effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others;

iii. adequate internal control mechanisms, including sound administration and accounting procedures;

iv. remuneration policies and practices that are consistent with and promote sound and effective risk management.

The remuneration policies and practices referred to in point (iv) shall be gender neutral.

R3-3.1.2.6 When establishing the arrangements referred to in the previous rule, the criteria set out in :

i. Role of the management body in risk management;

ii. Treatment of risks;

iii. Remuneration policies;

iv. Investment firms that benefit from extraordinary public financial support;

v. Variable remuneration; and

vi. Remuneration committee

shall be taken into account;

R3-3.1.2.7 The arrangements referred to in R3-3.1.2.5 shall be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

R3-3.1.2.8 The arrangements referred to in R3-3.1.2.5 shall take into account the EBA Guidelines on internal governance under Directive (EU) 2019/2034.

Country by Country Reporting

R3-3.1.2.9 Licence Holders that have a branch or subsidiary that is a financial institution as defined in point (26) of Article 4(1) of the CRR in a country other than Malta, shall disclose the following information by country on an annual basis:

i. the name, nature of activities and location of any subsidiaries and branches;

ii. turnover;

iii. the number of employees on a full time equivalent basis;

iv. profit or loss before tax;

v. tax on profit or loss; and

vi. the public subsidies received.

R3-3.1.2.10 The information referred to in the previous Rule shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of the Licence Holder.

Role of the management body in risk management

R3-3.1.2.11 The management body of the Licence Holder shall approve and periodically review the strategies and policies on the risk appetite of the Licence Holder, and on managing, monitoring and mitigating the risks the Licence Holder is

or may be exposed to, taking into account the macroeconomic environment and the business cycle of such Licence Holder.

R3-3.1.2.12 The management body shall devote sufficient time to ensure proper consideration of the matters referred to in the previous rule and shall allocate adequate resources to the management of all material risks to which the Licence Holder is exposed.

R3-3.1.2.13 The Licence Holder shall establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.

R3-3.1.2.14 The Licence Holder that does not meet the criteria set out in R3-3.1.2.26(i), shall establish a risk committee composed of members of the management body who do not perform any executive function within.

Members of the risk committee referred to in the previous paragraph shall have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the Licence Holder. The risk committee shall advise the management body on the Licence Holder'ss overall current and future risk appetite and strategy and assist the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for the risk strategies and policies.

R3-3.1.2.15 The Licence Holder shall ensure that the management body in its supervisory function and the risk committee of that management body, where a risk committee has been established, have access to information on the risks to which the Licence Holder is or may be exposed.

Treatment of risks

R3-3.1.2.16 Licence Holders shall have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of the following:

i. material sources and effects of risk to clients and any material impact on own funds;

ii. material sources and effects of risk to market and any material impact on own funds;

iii. material sources and effects of risk to the investment firm, in particular those which can deplete the level of own funds available;

iv. liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that the investment firm maintains adequate levels of liquid resources, including in respect of addressing material sources of risks under points (i), (ii) and (iii).

The strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, and scope of operation of the Licence Holder and risk tolerance set by the management body, and shall reflect the Licence Holder's importance in each Member State in which it carries out business.

For the purposes of point (i) the Licence Holder shall consider national law governing segregation applicable to client money.

For the purposes of point (i) and the above paragraph, the Licence Holder shall consider holding professional indemnity insurance as an effective tool in their management of risks.

For the purposes of point (iii), material sources of risk to the Licence Holder itself shall include, if relevant, material changes in the book value of assets, including any claims on tied agents, the failure of clients or counterparties, positions in financial instruments, foreign currencies and commodities, and obligations to defined benefit pension schemes.

Licence Holders shall give due consideration to any material impact on own funds where such risks are not appropriately captured by the own funds requirements calculated under Article 11 of the IFR.

R3-3.1.2.17 Where Licence Holders need to wind down or cease their activities, they shall, whilst taking into account the viability and sustainability of their business models and strategies, give due consideration to requirements and necessary resources which are realistic, in terms of timescale and maintenance of own funds and liquid resources, throughout the process of exiting the market.

R3-3.1.2.18 By way of derogation from "Applicability of this Sub-Section", points (i), (iii) and (iv) Rule R3-3.1.2.16 shall apply to Class 3 Licence Holders.

Remuneration policies

R3-3.1.2.19 Licence Holders shall, when establishing and applying their remuneration policies for categories of staff, including senior management, risk takers, staff engaged in control functions and any employees receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages, comply with the following principles:

i. the remuneration policy is clearly documented and proportionate to the size, internal organisation and nature, as well as to the scope and complexity of the activities of the Licence Holder;

ii. the remuneration policy is a gender-neutral remuneration policy;

iii. the remuneration policy is consistent with and promotes sound and effective risk management;

iv. the remuneration policy is in line with the business strategy and objectives of the Licence Holder, and also takes into account long term effects of the investment decisions taken;

v. the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;

vi. the management body in its supervisory function adopts and periodically reviews the remuneration

vii. policy and has overall responsibility for overseeing its implementation;

viii. the implementation of the remuneration policy is subject to a central and independent internal review by control functions at least annually;

ix. staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, regardless of the performance of the business areas they control;

x. the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in in this Title or, where such a committee has not been established, by the management body in its supervisory function;

xi. the remuneration policy, taking into account national rules on wage setting, makes a clear distinction between the criteria applied to determine the following:

(a) basic fixed remuneration, which primarily reflects relevant professional experience and organisational;

(b) responsibility as set out in an employee's job description as part of his or her terms of employment;

(c) variable remuneration, which reflects a sustainable and risk adjusted performance of the employee, as well asperformance in excess of the employee's job description;

xii. the fixed component represents a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component

R3-3.1.2.20 For the purposes of point (xi) above, Licence Holders shall set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account its business activities and associated risks, as well as the impact that different categories of staff referred to in Rule R3-3.1.2.19 have on the risk profile of the Licence Holder

R3-3.1.2.21 Licence Holders shall establish and apply the principles referred to Rule R3-3.1.2.19 in a manner that is appropriate to their size and internal organisation and to the nature, scope and complexity of their activities.

R3-3.1.2.22 The arrangements referred to in R3-3.1.2.19 to R3.1.2.21 shall take into account the EBA Guidelines on sound remuneration policies for investment firms under Directive (EU) 2019/2034.

Investment firms that benefit from extraordinary public financial support

R3-3.1.2.23 Licence Holders that benefit from extraordinary public financial support as defined in point (28) of Article 2(1) of Directive 2014/59/EU shall not pay any variable remuneration to members of the management body.

R3-3.1.2.24 Where variable remuneration paid to staff other than members of the management body would be inconsistent with the maintenance of a sound capital base of the Licence Holder and its timely exit from extraordinary public financial support, variable remuneration shall be limited to a portion of net revenue.

Variable remuneration

R3-3.1.2.25 Any variable remuneration awarded and paid by a Licence Holder to categories of staff referred to in Rule R3-3.1.2.19 shall comply with all of the

following requirements under the same conditions as those set out in Rule R3-3.1.2.22:

i. where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the Licence Holder;

ii. when assessing the performance of the individual, both financial and non-financial criteria are taken into account;

iii. the assessment of the performance referred to in point (i) is based on a multi-year period, taking into account the business cycle of the Licence Holder and its business risks;

iv. the variable remuneration does not affect the Licence Holder's ability to ensure a sound capital base;

v. there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and where the Licence Holder has a strong capital base;

vi. payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct

vii. remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the Licence Holder;

viii. the measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with the IFR;

ix. the allocation of the variable remuneration components within the Licence Holder takes into account all types of current and future risks;

x. at least 50 % of the variable remuneration consists of any of the following instruments:

   a. shares or equivalent ownership interests, subject to the legal structure of the Licence Holder concerned;

   b. share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the Licence Holder concerned;

   c. Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;

   d. non-cash instruments which reflect the instruments of the portfolios managed;

xi. by way of derogation from the previous point, where a Licence Holder does not issue any of the instruments referred to in that point, the MFSA may approve the use of alternative arrangements fulfilling the same objectives;

xii. at least 40 % of the variable remuneration is deferred over a three- to five-year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60 %;

xiii. up to 100 % of the variable remuneration is contracted where the financial performance of the investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by Licence Holders which in particular cover situations where the individual in question:

a. participated in or was responsible for conduct which resulted in significant losses for the Licence Holder;
b. is no longer considered fit and proper;

xiv. discretionary pension benefits are in line with the business strategy, objectives, values and long-term interests of the investment firm.

R3-3.1.2.26 For the purposes of the previous Rule, Licence Holders shall ensure the following:

i. individuals referred to in R3-3.1.2.19 do not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles referred to in the previous rule;

ii. variable remuneration is not paid through financial vehicles or methods that facilitate non-compliance with the IFD or the IFR.

R3-3.1.2.27 For the purposes of point (x) of Rule R3-3.1.2.25, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients. The MFSA may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.

For the purposes of point (xii) of Rule R3-3.1.2.25, the deferral of the variable remuneration shall vest no faster than on a pro-rata basis.

For the purposes of point (xiv) of Rule R3-3.1.2.25, where an employee leaves the Licence Holder before retirement age, discretionary pension benefits shall

be held by the Licence Holder for a period of five years in the form of instruments referred to in point (x). Where an employee reaches retirement age and retires, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (x), subject to a five-year retention period.

R3-3.1.2.28 Points (x) and (xii) of Rule R3-3.1.2.25 and the first subparagraph of the previous Rule shall not apply to:

i. a Licence Holder, where the value of its on and off-balance sheet assets is on average equal to or less than EUR 100 million over the four-year period immediately preceding the given financial year;

ii. an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual's total annual remuneration.

R3-3.1.2.29 By way of derogation from point (i) of the previous Rule, the MFSA may increase the threshold referred to in that point, provided that the Licence Holder meets the following criteria:

i. the Licence Holder is not, in Malta, one of the three largest Licence Holders in terms of total value of assets;

ii. the Licence Holder is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;

iii. the size of the Licence Holder's on and off-balance sheet trading-book business is equal to or less than EUR 150 million;

iv. the size of the Licence Holder's on and off-balance sheet derivative business is equal to or less than EUR 100 million;

v. the threshold does not exceed EUR 300 million; and

vi. it is appropriate to increase the threshold, taking into account the nature and scope of the Licence Holder's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

R3-3.1.2.30 By way of derogation from point (i) of the previous Rule, the MFSA may lower the threshold referred to in that point, provided that it is appropriate to do so, taking into account the nature and scope of the Licence Holder's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

R3-3.1.2.31 By way of derogation from point (ii) of Rule R3-3.1.2.29, the MFSA may decide that staff members who are entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members. A Licence Holder may benefit from such derogation upon approval from the MFSA.

Remuneration committee

R3-3.1.2.32 Licence Holders which do not meet the criteria set out in point (i) of Rule R3-3.1.2.28 shall establish a remuneration committee. That remuneration committee shall be gender balanced and shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee may be established at group level.

R3-3.1.2.33 The remuneration committee is responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the Licence Holder concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm concerned. Where employee representation in the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.

R3-3.1.2.34 When preparing the decisions referred to in R3-3.1.2.33, the remuneration committee shall take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the Licence Holder.

Publication requirements

R3-3.1.2.35 The MFSA may require Class 2 Licence Holders and Class 3 Licence Holders which issue Additional Tier 1 instruments:

i. to publish the information referred to in Article 46 of the IFR more than once a year and to set deadlines for that publication;

ii. to use specific media and locations, in particular their websites, for publications other than the financial statements;

iii. parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the investment firm group in accordance with Rule R3-3.1.2.5 and with Article 10 of Directive 2014/65/EU.

This shall be submitted to the MFSA, for the purposes of the ESAP Directive, in accordance with Article 35(7) of the Investment Services Act.

Section 2 Supervision of investment firm groups

R3-3.2.1 Members of the management body of an investment holding company or mixed financial holding company shall be of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company. The Licence Hoder is also expected to monitor the fitness and properness of key function holders within an investment holding company or mixed financial holding company on an ongoing basis.