

# **INVESTMENT SERVICES RULES FOR NOTIFIED ALTERNATIVE INVESTMENT FUNDS**

## **PART B: ONGOING REQUIREMENTS**

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# REVISIONS LOG

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VERSION	DATE ISSUED	DETAILS
1.00	24 June 2021	See: <a href="#">Circular on the Revisiting of the MFSA Notified AIF Regime</a>
2.00	21 December 2021	See: <a href="#">Circular dated 21 December 2021 on the Annual Fund Return</a>
3.00	18 December 2023	See: <a href="#">Circular dated 18 December 2023 on the Launch of the Notified PIF framework</a>

## **1. Applicability of the Investment Services Act (List of Notified AIFs) Regulations**

1.01 The AIFM and/ or the NAIF as applicable shall comply with the following requirements on an ongoing basis:

- i. the provisions of the Regulations;
- ii. the requirements set out in these Rules; and
- iii. with the AIFMD, including any related Guidelines issued by ESMA.

Provided that the NAIF shall endeavour to comply on a best efforts basis with the Corporate Governance Manual for Directors of Investment Companies and Collective investment Schemes.

## **2. Due Diligence Process undertaken by the AIFM on an ongoing basis**

2.01 After the inclusion of the AIF in the List of Notified AIFs, the AIFM shall carry out the necessary due diligence exercise to ensure that the service providers, the governing body and the founder shareholders of the NAIF satisfy the fitness and properness standards expected by the MFSA on an ongoing basis as referred to in Rule 7.02, Part A of these Rules.

2.02 The AIFM shall immediately notify the MFSA of any change in such circumstances as they become known to the AIFM.

2.03 The AIFM shall retain records of all evidence and correspondence related to the due diligence process carried out in relation to each service provider, member of the governing body and founder shareholder of the NAIF. The documentation related to the due diligence exercise carried out in relation to each member of the governing body, service provider and founder shareholder shall be made available upon request for inspection by the MFSA.

2.04 The AIFM shall update the relevant due diligence records and documents on an annual basis and shall document the updates carried out. The AIFM shall retain records of all the updates carried out and shall make these available to the MFSA upon request.

2.05 The MFSA may carry out random checks on compliance with the provisions of the Regulations and these Rules and give all the necessary directions it deems fit in the circumstances. Any adverse findings by the MFSA in relation to the funder shareholders or any appointment of service providers and members of the governing body of the NAIF may lead, *inter alia* to the removal of the NAIF from the List of Notified AIFs.

### 3. Amendments to the prospectus of a Notified AIF

3.01 Where the NAIF is included in the List of NAIFs, the AIFM will submit to the MFSA a notification with any amendments to the prospectus by means of a notification, provided that the following requirements are met:

- a. The NAIF's prospectus continues to be compliant with Rule 4.03(i), Part A of these Rules;
- b. The governing body of the NAIF certifies under its own responsibility that:
  - i. the amendments are not contrary to the requirements prescribed in the Regulations;
  - ii. the prospectus, as amended, has the minimum contents required in terms of the Rules; and
  - iii. the NAIF's prospectus, as amended, is compliant with the appropriate template referred to in Rule 4.03(i), Part A of these Rules.

3.02 The AIFM shall include with the notification to the MFSA the following documents:

- a. a resolution of the governing body of the NAIF certifying that the amendments to the prospectus comply with the standards prescribed in these Rules and with the templates available;
- b. if changes to the investment objectives, policies and restrictions are being made, the governing body of the NAIF should also confirm that the NAIF currently operates in line with the investment objectives, policies and restrictions as set out in the prospectus and that the NAIF and its sub-fund(s) are not in breach of either the provisions set out in the prospectus and Constitutional Documents;
- c. confirmation from the governing body of the NAIF confirming that changes to the prospectus have been undertaken in accordance with the provisions of the Constitutional Documents and in line with the relevant Rules; and
- d. the NAIF's prospectus as amended, both a clean version and a version showing the amendments made for records purposes only.

3.03 Changes to the investment objectives of the NAIF shall be notified to investors in advance of the change.

3.04 In the case of changes to the investment objectives of an open-ended NAIF, the notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being affected. The change in the investment objectives should only become effective after all pending redemptions

linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

Changes to the investment objectives of a closed-ended NAIF should be subject to the approval of the investors in line with the terms of the constitutional documents of the NAIF.

- 3.05 Any changes to the prospectus shall be carried out in accordance with any procedures set out in the NAIF's prospectus.
- 3.06 The AIFM shall submit a notification in relation to any amendments to the prospectus together with the documents required in terms of Rule 3.02 above within **thirty calendar (30) days** from the date of the resolution of the governing body of the NAIF approving the amendments to the prospectus of the NAIF.

In the event that the above timeframe is not respected, the notification is considered as not valid and a new notification would need to be submitted.

- 3.07 The MFSA shall acknowledge receipt of the amendments to the prospectus within **five (5) business days** from the date of filing of the notification request together with the documents required in terms of Rule 3.02 above with the MFSA. Changes to the prospectus shall not be effective until such time as they are acknowledged by the MFSA.

#### **4. Changes to the Constitutional Documents of a NAIF**

- 4.01 Without prejudice to any rights of unit-holders of a NAIF, any changes to the constitutional document of the NAIF shall be subject to the approval of the AIFM.

#### **5. Audited Financial Statements and other reporting obligations**

- 5.01 The AIFM shall make the annual report of the NAIF available to the MFSA and where applicable, the European Regulatory Authority of the home Member State or EEA State of the AIFM.
- 5.02 The NAIF's annual report shall be published and provided to investors in the NAIF and submitted to the MFSA within six months of the end of the period concerned.

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

- i. the Annual Fund Return in the form set out in the Annex to these rules.
- ii. the Representation Sheet as found in the Annual Fund Return template, signed by at least two directors; and
- iii. an Auditor's Report signed by the statutory approved auditor, confirming that:

- the contents of items 1.1 and 2.1 within the annual fund return agree with the independent auditor's report and the management letter issued by the Auditor, respectively;
- the contents of items 5, 6, 7 and 8 within the Annual Fund Return agree with the annual report and audited financial statements; and
- the portfolio statement reported under item 15 within the Annual Fund Return is consistent with the portfolio statement disclosed in the annual report and audited financial statements (or the underlying records of the Scheme).

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

- 5.03 The AIFM shall submit to the MFSA any statistical returns in relation to the NAIFs which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations, on the following e-mail address: [fundreporting@mfsa.com.mt](mailto:fundreporting@mfsa.com.mt).

## **6. Removal from the List of Notified AIF**

- 6.01 The MFSA may remove a NAIF, including any sub-fund, from the List of NAIFs at any time at its sole discretion, following notification thereof to the AIFM.
- 6.02 The AIFM shall report to the MFSA issues which have a material impact on the NAIF and/or its investors as soon as it becomes aware of such issues. These material issues may include, but are not limited to, breaches of the provisions of the offering documentation, pricing errors and valuation errors.

Provided that the MFSA, may, at its discretion allow the AIFM a period of time, which shall be established by the Authority, within which to rectify any specified issue or breach. Where, after expiry of such period of time, the issue or breach has not been rectified or resolved to the satisfaction of the MFSA, then the MFSA may remove the NAIF from the List of NAIFs.

- 6.03 The AIFM may submit a request to the MFSA for the removal of a NAIF from the List of NAIFs. A request shall be submitted by the AIFM in the following circumstances:
- i. upon expiration of the duration of the NAIF or its winding up;
  - ii. in any case where the custodian is in liquidation or subject to bankruptcy proceedings or has had its license to provide custody services in respect of NAIFs suspended or cancelled;

Provided that the AIFM shall request the MFSA to remove the NAIF from the list of NAIFs where the transitional period agreed to between the parties in terms of regulation 8 of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations will expire in less than 10 days and the AIFM has not entered into any arrangements with a substitute custodian or where at any time during such transitional period, it becomes clear to the AIFM that a replacement custodian will not be appointed before the end of the transitional period;

- iii. in any case where the AIFM has given notice of termination or is in liquidation or subject to bankruptcy proceedings or has had its licence to act as an AIFM suspended or cancelled and an eligible replacement AIFM has not been appointed within thirty (30) days from notice of termination;
- iv. in any case where any member of the governing body of the NAIF or any service provider appointed by the NAIF or by the AIFM on behalf of the NAIF fails to comply on an ongoing basis with the required high standards of fitness and properness and the AIFM has not within thirty (30) days arranged for a suitable replacement member of the governing body or service provider to be appointed;
- v. in all other cases as may be specified in the agreement between the NAIF and the AIFM as grounds for requesting removal of the NAIF from the List of NAIFs in terms of the regulations and these Rules;
- vi. in all other cases as may be specified in the custody agreement between the NAIF or the AIFM on behalf of the NAIF and the custodian as grounds for requesting removal of NAIF from the List of NAIFs in terms of the Regulations and these Rules; and
- vii. in any other case where the AIFM reports to the MFSA material issues or breaches pursuant to Rule 6.02 above and such issue or breach has not been rectified or resolved within the period of time established by the MFSA.

6.04 The AIFM shall include with the notification to the MFSA a self-certification signed by the governing body of the AIFM:

- requesting the NAIF to be removed from the List of NAIFs;
- confirming that the relevant service providers have been informed that the NAIF will be removed from the List of NAIFs;
- confirming that there are no pending litigations or any other material issues concerning the NAIF;
- confirming that there are no investors in the NAIF;
- confirming that the accruals and liabilities of the NAIF have been cleared;



- confirming that the disbursement of the assets of the NAIF has been completed in order;
- confirming that the relevant competent authorities have been informed of the NAIF's intention to cease the use of its passporting rights.

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

## **7. Conversion of a NAIF into a Notified PIF ('NPIF')**

7.01 The NAIF shall obtain the written consent of the MFSA before applying for a conversion of the NAIF into a NPIF. The NAIF shall inform the MFSA at an early stage of its intention to convert from a NAIF into a Notified PIF.

7.02 Requests for conversions from NAIFs to NPIFs, will be subject to the satisfactory resolution of the requirements stipulated within this section and are at the discretion of the MFSA.

7.03 The MFSA may require the scheme to delay the conversion in accordance with conditions imposed by the MFSA, in order to protect the interests of unitholders.

7.04 The general procedure for conversion is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.

7.05 The governing body of the NAIF shall submit to the MFSA:

a. a signed confirmation which:

- i. Provides the rationale for the required conversion;
- ii. Confirms that there are no regulatory implications associated with the required conversion;
- iii. Discloses whether there are any open breaches, in relation to any applicable framework, relating to the NAIF, and provides the MFSA with an updated breaches register of the scheme;
- iv. Declares that existing investors in the NAIF have been duly notified of the prospective conversion:

Provided that the application for conversion to a NPIF of a NAIF can only be made after any redemptions linked to investors opting to exiting the

- fund have been duly satisfied and any applicable redemption fees would also need to be waived accordingly;
- v. Confirms that there will be no subscription fees for existing investors in the NAIF.;
  - vi. Confirms that the NAIF has informed its service providers of its intention to give up its licensed status and convert to a Notified PIF.
- b. A declaration by the service provider appointed in terms of Regulation 18 of S.L. 370.\_\_\_\_ – the Investment Services Act (Notified CISs) Regulations – confirming that it has carried out the necessary due diligence with regards to the functionaries and the governing body of the NPIF. This declaration must include a statement that the service provider (appointed in terms of Regulation 18 of the Regulations) is satisfied with the outcome of this due diligence exercise.
- c. The original inclusion letter granted to it by the MFSA.

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