

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART B: STANDARD LICENCE CONDITIONS

Appendix 13

Transparency Requirements

1 Introduction

1.0 The SLCs prescribed in this Appendix are applicable to Investment Services Licence Holders which have been authorised to provide the services of an AIFM and are required to comply with Part BIII of these Investment Services Rules.

2 Annual Report

2.01 In terms of SLC 7.01 of Part BIII of these Rules, the Licence Holder, shall, for each of the AIFs established in an EU or EEA Member State which it manages and for each of the AIFs its markets in an EU or EEA Member State, make available an annual report for each financial year no later than 6 months following the end of the financial year.

2.02 The annual report shall contain at least the following information:

- (a) A balance sheet or a statement of assets and liabilities;
- (b) An income and expenditure account for the financial year;
- (c) A report on the activities of the financial year;
- (d) Any material changes in the information listed in SLC 7.04 and SLCs 3.01 to 3.07 of this Appendix during the financial year covered by the report;
- (e) The total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the Licence Holder to its staff, and number of beneficiaries, and where relevant, carried interest paid by the AIF;
- (f) The aggregate amount of remuneration broken down by senior management and members of staff of the Licence Holder whose actions have a material impact on the risk profile of the AIF.

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

- a. in accordance with the limitations imposed on the investment and borrowing powers of the AIF by the Constitutional Documents and by the MFSA; and
- b. in accordance with its Constitutional Document and its Licence Conditions.

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

- 2.03 Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in SLC 2.02 above needs to be provided to investors on request, either separately or as an additional part of the annual financial report. In the latter case, the annual financial report shall be made public no later than 4 months following the end of the financial year.
- 2.04 The accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home Member State or EEA State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the fund rules or instruments of incorporation.
- 2.05 The accounting information given in the annual report shall be audited by a certified auditor. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.
- 2.06 Without prejudice to SLC 2.05, the MFSA may permit a Licence Holder marketing non-EU AIFs to subject the annual reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.
- 2.07 In complying with the requirements prescribed in SLC 2.01 to 2.06 above, the Licence Holder shall also refer and comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision outlining the content and format of the annual report. The content and format of the annual report shall be adapted to the type of AIF to which it applies.

Specific Standard Licence Conditions regarding the annual report of AIFs exercising control of non-listed companies

- 2.08 In terms of SLC 9.21 of Part BIII of these Rules, when an AIF acquires individually or jointly, control of a non-listed company pursuant to SLC 9.01, in conjunction with SLC 9.02, of Part BIII of these Rules, the Licence Holder managing such an AIF shall either:

- (a) Request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with SLC 2.09 hereunder, is made available by the board of directors of the company to the employees' representatives, or, where there are none, to the employees themselves with the period such annual report has to be drawn up in accordance with the Investment Services Rules.
- (b) For each such AIF include in the annual report provided for in SLC 7.01 to 7.03 of Part BIII of these Rules the information referred to in SLC 2.09 hereunder relating to the relevant non-listed company.

2.09 The additional information to be included in the annual report of the company or the AIF in accordance with SLC 2.08 above shall include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report shall also give an indication of:

- (a) Any important events that have occurred since the end of the financial year;
- (b) The company's likely future development;
- (c) The information concerning acquisitions of own shares prescribed in Article 22(2) of Council Directive 77/91/EEC.

2.10 The Licence Holder managing the relevant AIF shall either:

- (a) Request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in SLC 2.08(ii) relating to the company concerned to the employees' representative of the company concerned, or, where there are none, to the employees themselves by no later than 6 months following the end of the financial year; or
- (b) Make available the information referred to in SLC 2.08(i) to the investors of the AIF, in so far as already available, by no later than 6 months following the end of the financial year and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the applicable legal requirements.

3 Disclosure to investors

3.01 In terms of SLC 7.04 of Part BIII of these Rules, the Licence Holder shall, for each EU or EEA AIF it manages and for each of the AIFs it markets in the European Union, make available to AIF investors, in accordance with the fund rules,

prospectus or offering document, the following information before it invests in the AIF, as well as any material changes thereof:

- (a) A description of the investment strategy and the objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restriction on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the Licence Holder is entitled to employ on behalf of the AIF;
- (b) A description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- (c) A description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established.
- (d) The identity of the Licence Holder, the AIF's custodian, auditor and any other service providers and a description of their duties and the investors' rights;
- (e) A description of how the Licence Holder is complying with the requirements of SLC 6.10 of Part BIII of these Rules;
- (f) A description of any delegated management function as referred to in SLC 1.03 of Part BIII of these Rules by the Licence Holder and of any safe-keeping function delegated by the custodian, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- (g) A description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with SLCs 2.18 to 2.33 of Part BIII of these Rules;
- (h) A description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstance, and the existing redemption arrangements with investors;

- (i) A description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
 - (j) A description of how the Licence Holder ensures a fair treatment of investors and, whenever an investor obtains preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or the Licence Holder;
 - (k) The latest annual report referred to in SLCs 7.01 to 7.03 of Part BIII of these Rules as well as SLCs 2.02 to 2.07 of this Appendix;
 - (l) The procedure and conditions for the issue and sale of units or shares;
 - (m) The latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with SLCs 2.18 to 2.33 of Part BIII of these Rules;
 - (n) Where available the historical performance of the AIF;
 - (o) The identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
 - (p) A description of how and when the information required under SLC 3.05 and 3.06 of this Appendix will be disclosed.
- 3.02 The Licence Holder shall inform the investors before they invest in the AIF of any arrangement made by the custodian to contractually discharge itself of liability in accordance with SLCs 4.23 and 4.24 of Part BIV of these Rules.
- 3.03 The Licence Holder shall also inform investors of any changes with respect to custodian liability without delay.
- 3.04 Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC or in accordance with Maltese law, only such information referred to in SLCs 3.01 to 3.03 above which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in prospectus.
- 3.05 The Licence Holder shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the European Union, periodically disclose to investors:

- (a) The percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - (b) Any new arrangements for managing the liquidity of the AIF;
 - (c) The current risk profile of the AIF and the risk management systems employed by the Licence Holder to manage those risks.
- 3.06 The Licence Holder managing EU AIFs employing leverage or marketing in the European Union AIFs employing leverage shall, for each such AIF disclose on a regular basis:
- (a) Any changes to the maximum level of leverage which the Licence Holder may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
 - (b) The total amount of leverage employed by that AIF.
- 3.07 In complying with SLCs 3.05 and 3.06 above, the Licence Holder shall also refer and comply with the applicable provisions of the Commission Delegated Regulation supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision specifying the disclosure obligation of the Licence Holder prescribed in the aforementioned SLCs, including the frequency of disclosure. The SLCs shall be adapted to the type of Licence Holder to which they apply.

4 Disclosure to the Competent Authority

- 4.01 In terms of SLC 7.05 of Part BIII of these Rules the Licence Holder shall regularly report to the MFSA on the principal markets and instruments in which it trades on behalf of the AIFs it manages.
- 4.02 The Licence Holder shall provide information on the main instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the principal exposures and most important concentrations of each of the AIFs it manages.

Provided that in complying with SLCs 4.01 and 4.02 above, the Licence Holder shall submit to the MFSA the information prescribed in Annexes 1 and 2 to this Appendix and shall further comply with:

- a. the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the

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

- b. the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD [ESMA/2013/1339 (revised)].

4.03 The Licence Holder shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the European Union, provide the MFSA with the following information:

- (a) The percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) Any new arrangements for managing the liquidity of the AIF;
- (c) The current risk profile of the AIF and the risk management systems employed by the Licence Holder to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- (d) Information on the main categories of assets in which the AIF invested; and
- (e) The results of the stress tests performed in accordance with SLCs 2.08(ii), 2.11 and 2.12 of Part BIII of these Rules.

Provided that in complying with SLC 4.03 above, the Licence Holder shall submit to the MFSA the information prescribed in Annex 3 to this Appendix and shall further comply with:

- a. the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision; and
- b. the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD [ESMA/2013/1339 (revised)].

4.04 The Licence Holder shall, on request provide the MFSA with the following documents:

- (a) An annual report of each EU AIF managed by the Licence Holder and of each AIF marketed by it in the European Union, for each financial year in accordance with SLCs 7.01 to 7.03 of Part BIII of these Rules and SLC 2.03 of this Appendix;

- (b) For the end of each quarter a detailed list of all AIFs which the Licence Holder manages.

Provided that in complying with SLC 4.04 above, the Licence Holder shall submit to the MFSA the information prescribed in Annex 5 to Appendix 13 to these Rules and shall further comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

- 4.05 A Licence Holder managing AIFs employing leverage on a substantial basis shall provide the MFSA with information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements.
- 4.06 The information provided pursuant to SLC 4.05 above shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the Licence Holder, and the amounts of leverage received from each of those sources for each of those AIFs.

Provided that in the case of third country AIFMs, the reporting obligations referred to in SLCs 4.05 to 4.06 shall be limited to the European AIFs managed by them and the third country AIFs marketed by them in Malta.

Provided further that in complying with SLCs 4.05 and 4.06 above, the Licence Holder shall submit to the MFSA the information prescribed in Annex 4 to this Appendix and shall further comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

- 4.07 Where necessary for the effective monitoring of systemic risk, the MFSA may require information in addition to that prescribed in this Appendix on a periodic as well as on an ad-hoc basis. The MFSA will inform ESMA about the additional information requirements.
- 4.08 In complying with SLCs 4.01 to 4.07 above, the Licence Holder shall also refer and comply with:
- a. the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to exemptions,

general operating conditions, depositaries, leverage, transparency and supervision; and

- b. the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD [ESMA/2013/1339 (revised)].