

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART BI: STANDARD LICENCE CONDITIONS APPLICABLE TO INVESTMENT SERVICES LICENCE HOLDERS WHICH QUALIFY AS MiFID FIRMS

Introduction

Note: Part BI of the Investment Services Rules for Investment Services Providers applies 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 Custodians.

1 General Requirements

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

If, for any reason the Licence Holder is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason/s for such a delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Licence in accordance with the relevant provisions of the Act.

1.02 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.

1.03 Where a Standard Licence Condition 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.

1.04 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 and sufficiently experienced so as to ensure the sound and prudent management of the Licence Holder.

Moreover, the Licence Holder shall take reasonable steps to ensure continuity and

regularity in the performance of Investment and Ancillary Services. To this end, the Licence Holder shall employ appropriate and proportionate systems, resources and procedures.

- 1.05 By way of derogation from the requirements of SLC 1.04, where a Licence Holder is a natural person or a legal person managed by a single natural person, it shall provide, to the satisfaction of MFSA, alternative arrangements which ensure that it is soundly and prudently managed.
- 1.06 The Licence Holder shall notify the MFSA in writing of:
- a. a change in the Licence Holder's name or business name (if different) at least one month in advance of the change being made.
 - b. a change of address: at least one month in advance.
 - c. the departure of a Director or Senior Manager: within 14 days of the departure. The Licence Holder shall also request the Director or Senior Manager to confirm to MFSA that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Licence Holder's notification of departure.
 - d. 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.
 - e. 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.
 - f. 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 requirements:
 - i. credit institutions licensed in terms of the Banking Act, 1994; or
 - ii. financial institutions licensed in terms of the Financial Institutions Act, 1994.
 - g. any proposed material change to its business (whether that business constitutes 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).

- h. any evidence of fraud or dishonesty by a member of the Licence Holder's staff immediately upon becoming aware of the matter.
- i. a decision to make a material claim on any insurance policy held in relation to the Licence Holder's Investment Services business. Notification should be provided as soon as the decision is taken.
- j. 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.
- k. 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 Appendix 9, between the Licence Holder and any other person.
- l. 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.
- m. the relevant details required in terms of SLC 2.133 of these Rules pertaining to any introducers which may be appointed by the Licence Holder.
- n. 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.
- o. any other material information concerning the Licence Holder, its business or its staff in Malta or abroad – immediately upon becoming aware of the matter.

1.07 The Licence Holder shall obtain the written consent of the MFSA before:

- a. making any change to its share capital or the rights of its shareholders.
- b. establishing a branch in Malta or abroad.
- c. acquiring 10 per cent or more of the voting share capital of another company.
- d. taking any steps to cease its Investment Services business.
- e. agreeing to sell or merge the whole or any part of its undertaking.
- f. making application to a Regulator abroad to undertake any form of licensable

activity outside Malta.

- g. 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 SLC 1.22(b) 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. In the case of a proposed Compliance Officer and/or Money Laundering Reporting Officer and Risk Manager where applicable, the request shall also be accompanied by the Competency Form set out in Schedule I to Part A of these Rules.

Where the person proposed had within the previous five years submitted a PQ to the MFSA, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto. This confirmation is to be countersigned by an authorised official of the Licence Holder, confirming that he/she has seen the said PQ.

For the purposes of the above and (h) below, '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.

- h. 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).

- i. any persons, whether Directors, Senior Managers or other employees are

engaged in any of the following activities:

- Portfolio or fund management;
- Investment advice.

The request for authorisation shall include 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 also complete Sections 4, 5, 6 and 7 of the Application for an Investment Services Licence (Schedule A1 to these Rules).

- 1.08 The Licence Holder shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Investment Services Licence and as required by SLCs 2.83 to 2.85.
- 1.09 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.
- 1.10 Where, in the event of a dispute between a Licence Holder and a customer, it can be shown that unsuccessful efforts have been made to resolve the dispute, the MFSA may encourage the parties to submit the matter to arbitration. In such circumstances, the parties must in advance and in writing agree to:
- a. make all the necessary arrangements at their own cost;
 - b. appoint as Arbitrator(s), person(s) mutually acceptable; and
 - c. be bound by the decision of the Arbitrator(s) as if such decision was a judgment of the Court.

Alternatively, the matter may have to be referred to the Courts.

- 1.11 The Licence Holder shall pay promptly all amounts due to the MFSA.
- 1.12 The Annual Supervisory Fee shall be payable by the Licence Holder on the day the Licence is first issued and, and thereafter upon submission of the annual audited financial statements.
- 1.13 The Licence Holder shall notify the MFSA of any breach of the conditions of the Licence as soon as the Licence Holder becomes aware of the breach.
- 1.14 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 of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests

of customers.

- 1.15 A request for a variation of a Licence by the Licence Holder shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons therefore.
- 1.16 A Licence Holder which is a sole trader or a small business shall make arrangements to ensure that customers' interests are safeguarded in the event of death, incapacity, sickness, holidays or other absence of the licensee.

General Organisational Requirements

- 1.17 The Licence Holder shall:
- a. establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
 - b. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
 - c. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder;
 - d. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
 - e. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Licence Holder;
 - f. maintain adequate and orderly records of its business and internal organisation;
 - g. 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.

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.

- 1.18 The Licence Holder shall establish, implement and maintain:
- a. 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;

- b. an adequate business continuity policy 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;
 - c. 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.
- 1.19 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 SLCs 1.17 and 1.18 above and take appropriate measures to address any deficiencies.

Where relevant, the Licence Holder shall also comply with the Guidelines issued by ESMA on “Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities”. These Guidelines are available from the ESMA Website at the following link:
http://www.esma.europa.eu/system/files/esma_2012_122_en.pdf

Compliance

- 1.20 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, in particular the Prevention of Money Laundering Act, 1994, the Prevention of Financial Markets Abuse Act, 2005, and Regulations issued thereunder, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

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

- 1.21 The Licence Holder shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- a. 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 SLC 1.20, and the actions taken to address any deficiencies in the Licence

Holder's compliance with its obligations;

- b. 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.

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

- a. the compliance function shall have the necessary authority, resources, expertise and access to all relevant information;
- b. 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;
- c. the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor;
- d. 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.

However, MFSA may exempt a Licence Holder from the requirements of points (c) or (d) 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 effective.

Moreover, with respect to (b) above, 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 SLC 1.07 (g) in this regard.

In complying with SLCs 1.20 to 1.22, the Licence Holder is expected to take into account the Guidelines as issued by ESMA on certain aspects of the MiFID compliance function requirements. These Guidelines may be downloaded from ESMA's website: <http://www.esma.europa.eu/system/files/2012-388.pdf>

It should be noted that these Guidelines are also available in Maltese version and can be accessed from the following link: http://www.esma.europa.eu/system/files/2012-388_mt.pdf

Risk Management

SLCs 1.23 and 1.24 shall not apply to Category 2 and Category 3 Licence Holders. Section 1A (SLCs 1.41 – 1.53) shall apply instead.

- 1.23 The Licence Holder shall take the following actions with a view to managing its risks:
- a. establish, implement and maintain adequate risk management policies and procedures, which identify risks relating to the Licence Holder's activities, processes and systems, and where appropriate, set the level of risk tolerated by the Licence Holder;
 - b. 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;
 - c. monitor the following:
 - i. the adequacy and effectiveness of the Licence Holder's risk management policies and procedures
 - ii. the level of compliance by the Licence Holder and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b) above; and
 - iii. 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.
- 1.24 The Licence Holder is required to establish and maintain a risk management function that operates independently the following tasks:
- a. the implementation of the policy and procedures referred to in SLC1.23; and
 - b. the provision of reports and advice to senior management in accordance with SLC 1.26.

However, the MFSA may allow the Licence Holder to establish and maintain a risk management function which does not operate independently, if the Licence Holder, satisfies the MFSA that the establishment and maintenance of an independent 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.

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 SLC 1.23 satisfy the requirements thereof and are consistently effective.

Responsibility of Senior Management

1.25 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.

1.26 The Licence Holder shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on the matters covered by SLCs 1.20 to 1.24, or 1.20 to 1.22 and 1.41 to 1.53, as applicable and SLC 1.28 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

1.27 The Licence Holder shall ensure that the supervisory function, if any, receives on a regular basis (at least annually) written reports on the same matters.

For the purposes of this Section, “supervisory function” means the function within a Licence Holder responsible for the supervision of its senior management.

Internal Audit

1.28 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 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:

- a. 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;
- b. to issue recommendations based on the result of work carried out in accordance with point (a);
- c. to verify compliance with those recommendations;

- d. to report in relation to internal audit matters in accordance with SLC1.26.

Enforcement

- 1.29 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 the Licence Holder which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties. Appendix 5 to these Rules refers to the factors which the MFSA takes into account when imposing administrative penalties and includes – for indicative purposes - non-exhaustive details of the penalties applicable for breaches of certain Licence Conditions and for late submission of documents and licence fees.

1A Supplementary Requirements for Category 2 and Category 3 Licence Holders

Establishment of Management Body

1.30 The Licence Holder shall ensure that members of the Management Body shall at all times be of sufficiently good repute and possess sufficient collective knowledge, skills and experience 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.

1.31 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 and possess sufficient knowledge, skills and experience to perform their duties, taking into account the specific role of a financial holding company or mixed financial holding company.

1.32 The Licence Holder shall ensure that all members of the Management Body shall commit sufficient time to perform their functions.

1.33 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.

1.34 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:

- a. one executive directorship with two non-executive directorships;
- b. four non-executive directorships.

For the purposes of the above paragraph, the following shall count as a single directorship:

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

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

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

Provided that without prejudice to the limitations specified above the MFSA may authorise members of the Management Body to hold one additional non-executive directorship.

- 1.35 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.
- 1.36 The Licence Holder and its nomination committee, if 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.
- 1.37 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.

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

- a. 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;
- b. 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;
- c. the Management Body must oversee the process of disclosure and communications;
- d. the Management Body must be responsible for providing effective oversight of senior management;

- e. 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.
- f. 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.

Nomination Committees

1.38 Licence Holders which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a nomination committee composed of members of the Management Body who do not perform any executive function in the Licence holder concerned.

The nomination committee shall:-

- a. 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.

Furthermore, the nomination committee shall decide on a target for the representation of the under represented gender in the Management Body and prepare a policy on how to increase the number of the under represented gender in the Management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435 (2)(c) of the CRR;

- b. 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;
- c. 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;
- d. periodically review the policy of the Management Body for selection and appointment of senior management and make recommendations to the Management Body;

- e. 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;
- f. 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.

Implementation of Recovery Plans and Resolution Plans

- 1.39 The Licence Holder shall develop and maintain a recovery plan for the restoration of its financial situation following a significant deterioration thereof. Such plan should be proportionate to, *inter alia*, 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.
- 1.40 The Licence Holder shall cooperate closely with the resolution authority 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.

Risk Management and Remuneration Policies

SLCs 1.41 to 1.53 shall apply to Category 2 and Category 3 Licence Holders instead of SLC 1.23 and 1.24 of Section 1.

- 1.41 The Licence Holder shall take the following actions with a view to managing its risks:
- a. 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;
 - b. 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;

- c. monitor the following:
 - i. the adequacy and effectiveness of the Licence Holder's risk management policies and procedures;
 - ii. the level of compliance by the Licence Holder and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b) above; and
 - iii. 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.

1.42 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:

- a. the implementation of the policy and procedures referred to in SLC 1.41;
- b. the provision of reports and advice to senior management;
- c. the development of the Licence Holders's risk strategy and participation in all material risk management decisions;
- d. 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.

1.43 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.

1.44 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 satisfies 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.

- 1.45 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 SLC 1.41 satisfy the requirements thereof and are consistently effective.

Risk Committee

- 1.46 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.

The risk committee shall:-

- a. 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;
- b. 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;
- c. without prejudice to the remuneration committee referred to in Part A, Section F sub-section (d) of Appendix 10 examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timings of earnings.

Combined Risk/Audit Committee

- 1.47 The MFSA may allow a Licence Holder which is not considered significant as referred to in SLC 1.46 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.

Consideration of Risk

- 1.48 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.

- 1.49 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.
- 1.50 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.
- 1.51 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.
- 1.52 The Licence Holder shall comply with the provisions of Appendix 10 in establishing its risk management function and remuneration policies.
- 1.53 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.

Procedures for Reporting of Breaches

- 1.54 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:
 - a. appropriate protection for employees who report breaches committed within the Licence Holder against retaliation, discrimination or other types of unfair treatment;
 - b. 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;

- c. 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.

Significant Licence Holder

This section (SLC1.55 to SLC 1.58) of these Rules shall not apply to credit institutions which are also Licence Holders.

- 1.55 For the purpose of SLCs 1.34¹, 1.38² and 1.46³, a Licence Holder is 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**.
- 1.56 The Licence Holder shall regularly assess, whether at any time, it becomes a significant Licence Holder in terms of SLC 1.55 and shall notify the MFSA regarding any change of status as soon as practicable thereafter.
- 1.57 The MFSA may, on a case by case basis, exempt a significant Licence Holder from the requirements of SLCs 1.34, 1.38 and 1.46 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.
- 1.58 The MFSA may on a case by case basis, treat a Licence Holder as significant notwithstanding that it does not exceed the thresholds referred to in SLC 1.55 above, if in the opinion of the MFSA the application of some or all of the rules applicable to significant firms including provisions of the CRR would be appropriate to that Licence Holder.

¹ SLC 1.34 refers to limit on directorships.

² SLC 1.38 refers to the establishment of a nomination committee.

³ SLC 1.46 refers to the establishment of a risk committee.

On the other hand, if a Licence Holder exceeds one or more of the thresholds referred to in SLC 1.55 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.

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.

2 Conduct of Business Obligations

General

2.01 When providing Investment Services to clients, a Licence Holder shall act honestly, fairly and professionally in accordance with the best interests of its clients and shall comply with the relevant provisions of the Act, the Regulations issued thereunder, these Rules as well as with other relevant legal and regulatory requirements, in particular those set out in the Prevention of Money Laundering Act, 1994, and the Prevention of Financial Markets Abuse Act, 2005 and Regulations issued thereunder. The Licence Holder is also expected to take due account of any relevant 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.

In complying with Section 2 of Conduct of Business obligations, the Licence Holder shall take into account the [Guidelines as issued by ESMA on remuneration policies and practices \(MiFID\)](#). It should be noted that these Guidelines are also available in [Maltese version](#).

2.02 The Licence Holder shall not be regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or Ancillary Service to the client, it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, other than the following:

- a. a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;
- b. a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
 - i. the existence, nature and amount of the fee, commission or benefit, or where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant Investment or Ancillary Service. The essential terms of the arrangements relating to the fee, commission or non-monetary benefit may be disclosed in summary form, provided that the Licence Holder undertakes to disclose further details at the request of the client and provided that it honours that undertaking;
 - ii. the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant Investment or Ancillary Service to the client and not impair compliance with the Licence Holder's duty to act in the best interests of the client;

- c. proper fees which enable or are necessary for the provision of Investment Services such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the Licence Holder's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

Client Classification

- 2.03 Before providing an Investment Service, the Licence Holder shall classify the client or potential client to whom the service is to be offered as a Professional Client, Retail Client or an Eligible Counterparty in terms of the Glossary to these Rules and the following Rules.

Moreover, the Licence Holder shall notify new clients and existing clients which it has newly categorised, of their categorisation as a Retail Client, a Professional Client or Eligible Counterparty.

- 2.04 The Licence Holder shall implement appropriate written internal policies and procedures to categorise clients. Professional Clients are responsible for keeping the Licence Holder informed about any change, which could affect their current categorisation. Should the Licence Holder become aware however that the client no longer fulfils the initial conditions, which made him/her eligible for a professional treatment, the Licence Holder must take appropriate action.
- 2.05 The Licence Holder shall inform clients in a durable medium about any right that a client has to request a different categorisation and about any limitations to the level of client protection it would entail.
- 2.06 The Licence Holder may, either on its own initiative or at the request of the client concerned:
- a. treat as a professional or Retail Client, a client that might otherwise be classified as an Eligible Counterparty;
 - b. treat as a Retail Client, a client that is considered as a Professional Client as defined in the Glossary to these Rules.
- 2.07 Where a client would ordinarily fall within the definition of a Professional Client, it may still elect to be treated as a Retail Client and the Licence Holder may agree to provide a higher level of protection. In this case, the Licence Holder must:
- a. warn the client, prior to any provision of services, that, on the basis of the information available to it, the client is deemed to be a Professional Client, and will be treated as such unless Licence Holder and the client agree otherwise;

- b. inform the client that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

Although it is the responsibility of the client, considered to be a Professional Client, to ask for a higher level of protection when he/she deems he/she is unable to properly assess or manage the risks involved, such higher level of protection will only be provided on the basis of a written agreement with the Licence Holder to the effect that the client shall not be treated as a Professional Client for the purposes of the applicable Conduct of Business Rules. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

- 2.08 The Licence Holder shall treat clients which do not fall under the definition of a Professional Client in terms of the Glossary to these Rules, including public sector bodies and private individual investors, as Retail Clients, unless they have clearly elected not to be so treated. Such an option would mean that the client has chosen to waive some of the protections afforded by the Conduct of Business Rules and the Licence Holder shall only uphold such a request provided the relevant criteria and procedure mentioned below in SLC 2.09 to 2.12 are fulfilled.
- 2.09 Such clients referred to in SLC 2.08 which have opted not to be treated as Retail Clients, should not be presumed to possess market knowledge and experience comparable to that of the categories mentioned in the definition of Professional Clients. Any waiver of the protection afforded by the standard Conduct of Business Rules shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the Licence Holder, gives reasonable assurance, in the light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and of understanding the risks involved.
- 2.10 In the course of the above assessment required in terms of SLC 2.09, as a minimum, two of the following criteria should be satisfied:
 - a. the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter of the previous four quarters;
 - b. The size of the client's Instrument portfolio, defined as including cash deposits and Instruments exceeds EUR 500 000;
 - c. The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.
- 2.11 Clients referred to in SLC 2.08, may waive the benefit of the Conduct of Business

Rules only where the following procedure is followed:

- a. they must state in writing to the Licence Holder that they wish to be treated as a Professional Client, either generally or in respect of a particular Investment Service or transaction or type of transaction or product
 - b. the Licence Holder must give them a clear written warning of the protections and investor compensation rights they may lose
 - c. they must state in writing in a separate document from the contract, that they are aware of the consequences of losing such protections.
- 2.12 Before deciding to accept any request for waiver, the Licence Holder is required to take all reasonable steps to ensure that the client requesting to be treated as a Professional Client meets the relevant requirements stated in SLC 2.10 above. However, if clients have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with the Licence Holder should be affected by any new procedures adopted under these Rules.

Client Profile Requirements

Assessment of Suitability and Appropriateness

- 2.13 When providing investment advice or portfolio management services, the Licence Holder shall obtain the necessary information, in accordance with SLCs 2.16 to 2.20 and SLC 2.22 to 2.24 regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the Licence Holder to recommend to or, in the case of portfolio management, to effect for the client or potential client, the Investment Services and Instruments that are suitable for him.
- 2.14 When providing Investment Services other than investment advice or portfolio management services, the Licence Holder shall ask the client or potential client to provide information in accordance with SLCs 2.21 and SLC 2.22 to 2.24 regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the Licence Holder to assess whether the Investment Service or product envisaged is appropriate for the client.

In case the Licence Holder considers, on the basis of the information received under the above paragraph, that the product or service is not appropriate to the client or potential client, the Licence Holder shall warn the client or potential client. This warning may be provided in a standardised format.

In case where the client or potential client elects not to provide the information referred in this SLC or where he provides insufficient information regarding his knowledge and experience, the Licence Holder shall warn the client or potential client that such a decision will not allow the Licence Holder to determine whether the service or product envisaged is appropriate for him. This warning may be provided in standardised format.

- 2.15 In cases where an Investment Service is offered as part of a financial product which is already subject to other provisions of Community legislation or common European standards related to credit institutions and consumer credits with respect to risk assessment of clients and/or information requirements, this service shall not be additionally subject to the obligations set out in this Section.

Assessment of Suitability

- 2.16 The Licence Holder shall obtain from clients or potential clients, such information as is necessary for the Licence Holder to understand the essential facts about the client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

- a. it meets the investment objectives of the client in question;
- b. it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;
- c. it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

- 2.17 Where a Licence Holder provides an Investment Service to a Professional Client, it shall be entitled to assume that, in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of SLC 2.16.

Where that Investment Service consists in the provision of investment advice to a Professional Client, the Licence Holder shall be entitled to assume for the purposes of SLC 2.16 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

- 2.18 The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets investments and real property, and his regular financial commitments.

- 2.19 The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile and the purposes of the investment.
- 2.20 Where, when providing the Investment Service of investment advice or portfolio management, a Licence Holder does not obtain the information required under SLC 2.13, the Licence Holder shall refrain from providing the above mentioned services to the client or potential client.

In complying with SLCs 2.13 to 2.24, the Licence Holder is expected to take into account the Guidelines as issued by ESMA on certain aspects of the MiFID suitability requirements. These Guidelines may be downloaded from ESMA's website: <http://www.esma.europa.eu/system/files/2012-387.pdf>

It should be noted that these Guidelines are also available in Maltese version and can be accessed from the following link: http://www.esma.europa.eu/system/files/2012-387_mt.pdf

Assessment of Appropriateness

- 2.21 When assessing whether an Investment Service, other than investment advice or portfolio management, is appropriate for a client, the Licence Holder shall be required to determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or Investment Service offered or demanded.

For these purposes, a Licence Holder shall be entitled to assume that a Professional Client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular Investment Services or transactions, or types of transaction or product, for which the client is classified as a Professional Client.

Provisions Common to the Assessment of Suitability and Appropriateness

- 2.22 Information regarding the client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:
- a. the types of service, transaction and Instrument with which the client is familiar;
 - b. the nature, volume, frequency of the client's transactions in Instruments and the period over which they have been carried out;

- c. the level of education, profession or relevant former profession of the client or potential client.
- 2.23 A Licence Holder shall not encourage a client or potential client not to provide information required for the purposes of SLCs 2.13 and 2.14.
- 2.24 A Licence Holder shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Exemption from the Appropriateness Test

- 2.25 When providing Investment Services that only consist of the execution and/or reception and transmission of client orders with or without Ancillary Services, the Licence Holder need not obtain the information referred to in SLC 2.14 above where all of the following conditions are met:
- a. the above services relate to shares admitted to trading on a regulated market or in an equivalent third country market, money market Instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex Instruments. A market established in a country which is not an EU or EEA Member State shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established in terms of the MIFID;
 - b. the service is provided at the initiative of the client or potential client;
 - c. the client or potential client has been clearly informed that in the provision of this service the Licence Holder is not required to assess the suitability of the Instrument or service provided or offered and that therefore, he does not benefit from the corresponding protection of the relevant Conduct of Business Rules. This warning may be provided in standardised format;
 - d. the Licence Holder complies with its obligations relating to the management of conflicts of interests as set out in SLC 2.94 to 2.100 below.
- 2.26 An Instrument which is not specified in SLC 2.25(a) above shall be considered as non-complex if it satisfies the following criteria:
- a. It does not fall under paragraph (c) of the definition of “transferable securities” in the Glossary to these Rules or under paragraphs (4) to (10) of the Second Schedule to the Act;
 - b. there are frequent opportunities to dispose of, redeem, or otherwise realise that

Instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

- c. it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the Instrument;
- d. adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average Retail Client to make an informed judgment as to whether to enter into a transaction in that Instrument.

Client Disclosure Requirements

2.27 The Licence Holder shall provide appropriate information, in a comprehensible form to its clients or potential clients such that they are reasonably able to understand the nature and risks of the Investment Service to be provided by the Licence Holder and of the specific type of Instrument that is being offered, and consequently to take investment decisions on an informed basis. This information may be provided in standardized format and should include details about:

- a. the Licence Holder and its services.
- b. Instruments and proposed investment strategies. This should include appropriate guidance on and warnings of the risks associated with investments in those Instruments or in respect of particular investment strategies;
- c. execution venues;
- d. costs and associated charges.

2.28 The Licence Holder shall provide Retail Clients or potential Retail Clients with the following general information, where relevant:

- a. the name and address of the Licence Holder, and the contact details necessary to enable clients to communicate effectively with the Licence Holder;
- b. the languages in which the client may communicate with the Licence Holder, and receive documents and other information from the Licence Holder;
- c. the methods of communication to be used between the Licence Holder and the client including, where relevant, those for the sending and reception of orders;
- d. a statement of the fact that the Licence Holder is licensed by the MFSA, together with the address of the MFSA;

- e. the nature, frequency and timing of the reports on the performance of the service to be provided by the Licence Holder to the client in accordance with SLC 2.40;
 - f. if the Licence Holder holds client Instruments or client money, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the Licence Holder by virtue of its activities in a Member State;
 - g. a description, which may be provided in summary form, of the conflicts of interest policy maintained by the Licence Holder in according with SLC 2.98 to 2.100;
 - h. at any time that the client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in SLC 2.115 are satisfied.
- 2.29 When providing the services of portfolio management, the Licence Holder shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and types of Instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the Licence Holder's performance.
- 2.30 The following information shall also be provided, where applicable, in addition to that required under SLC 2.28 to Retail Clients or potential Retail Clients by the Licence Holder proposing to provide portfolio management services:
- a. information on the method and frequency of valuation of the Instruments in the client portfolio;
 - b. details of any delegation of the discretionary management of all or part of the Instruments or money in the client's portfolio;
 - c. a specification of any benchmark against which the performance of the client portfolio will be compared;
 - d. the types of Instrument that may be included in the client's portfolio and types of transaction that may be carried out in such Instruments, including any limits;
 - e. the management objectives, the level of risk to be reflected in the Licence Holder's exercise of discretion, and any specific constraints on that discretion.

- 2.31 The Licence Holder shall, in good time before a Retail Client or potential Retail Client is bound by any agreement for the provision of Investment Services or Ancillary Services or before the provision of those services whichever is the earlier, to provide that client or potential client with the following information:
- a. the terms of any such agreement;
 - b. the information required in SLC 2.28 to 2.30 relating to that agreement or to those Investment or Ancillary Services.
- 2.32 The Licence Holder, shall, in good time before the provision of Investment Services or Ancillary Services to Retail Clients or potential Retail Clients, provide the information required under SLCs 2.28 to 2.30 and SLCs 3.10 to 3.22.
- 2.33 The Licence Holder shall provide Professional Clients with the information referred to in SLCs 3.19 to 3.20 in good time before the provision of the service concerned.
- 2.34 The information referred to in SLCs 2.31 to 2.33 shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions in SLC 2.115 are satisfied.
- 2.35 By way of exception from SLCs 2.31 and 2.32, the Licence Holder may, in the following circumstances provide the information required under SLC 2.31 to a Retail Client immediately after that client is bound by any agreement for the provision of Investment Services or Ancillary Services, and the information required under SLC 2.32 immediately after starting to provide the service:
- a. the Licence Holder was unable to comply with the time-limits specified in SLCs 2.31 and 2.32 because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the Licence Holder from providing the information required in the aforementioned SLCs;
 - b. in any case where Article 3(3) of Directive 2002/65/EC on the distance marketing of consumer financial services does not otherwise apply, the Licence Holder complies with the requirement in relation to the retail investor or potential retail investor, as if that client or potential client were a “consumer” and the Licence Holder were a “supplier” within the meaning of that Directive.
- 2.36 The Licence Holder shall notify a client in good time about any material change to the information provided under SLCs 2.28 to 2.30 and 3.10 to 3.22 which is relevant to the service being provided to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

- 2.37 The Licence Holder shall ensure that information contained in a marketing communication, is consistent with any information the Licence Holder provides to clients in the course of carrying on Investment or Ancillary Services.

Retail Client Agreement

- 2.38 The Licence Holder shall establish a record that includes the document or documents agreed between it and the client and which set out the rights and obligations of the parties, and the other terms on which the Licence Holder will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.
- 2.39 The Licence Holder which provides an Investment Service other than investment advice to a new Retail Client, shall enter into a written basic agreement with the client, in paper or another durable medium, setting out the essential rights and obligations of the Licence Holder and the client.

The rights and duties of the parties to the agreement may be incorporated by reference to other documents or legal texts.

Client Reporting

General

- 2.40 The client must receive from the Licence Holder, adequate reports on the service provided to him. These reports shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

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

- 2.41 Where a Licence Holder has carried out an order, other than for portfolio management, on behalf of a client, it is required to take the following action in respect of that order:
- a. it must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;
 - b. in the case of a Retail Client, it must send the client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the Licence Holder from a third party, no later than the first business day following receipt of the confirmation from the third party;

Point (b) shall not apply where the confirmation would contain the same information

as a confirmation that is to be promptly dispatched to the Retail Client by another person.

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

- 2.42 In addition to the requirements set out above, the Licence Holder shall supply the client, on request, with information about the status of his order.
- 2.43 In the case of orders for a Retail Client relating to units or shares in a collective investment scheme which are executed periodically, the Licence Holder shall either take the action specified in point (b) of SLC 2.41 or provide the Retail Client, at least once every six months, with the information listed in SLC 2.44 in respect of those transactions.
- 2.44 The notice referred to in point (b) of SLC 2.41 shall include such of the following information as is applicable, and where relevant, in accordance with Table 1 of Annex I to the Commission Regulation:
- a. the reporting Licence Holder's identification;
 - b. the name or designation of the client;
 - c. the trading day;
 - d. the trading time;
 - e. the type of the order;
 - f. the venue identification;
 - g. the Instrument identification;
 - h. the buy/sell indicator;
 - i. the nature of the order if other than buy/sell;
 - j. the quantity;
 - k. the unit price;
 - l. the total consideration;

- m. a total sum of the commissions and expenses charged and, where the Retail Client so requests, an itemised breakdown;
- n. the client's responsibilities in relation to the settlement of the transaction including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;
- o. if the client's counterparty was the Licence Holder itself or any person in the Licence Holder's group or another client of the Licence Holder, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of (k) above, where the order is executed in tranches, the Licence Holder may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the Licence Holder shall supply the Retail Client with information about the price of each tranche upon request.

- 2.45 The Licence Holder may provide the client with the information referred to in SLC 2.44 using standard codes if it also provides an explanation of the codes used.

Reporting Obligations in Respect of Portfolio Management Services

- 2.46 The Licence Holder which provides the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.
- 2.47 In the case of Retail Clients, the periodic statement required above shall include wherever relevant, the following information:
- a. the name of the Licence Holder;
 - b. the name or other designation of the Retail Client's account;
 - c. a statement of the contents and the valuation of the portfolio, including details of each Instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and the end of the reporting period, and the performance of the portfolio during the reporting period;
 - d. the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including where relevant, a statement that a more detailed breakdown will be provided on request;

- e. a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the Licence Holder and the client;
- f. the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;
- g. information about other corporate actions giving rights in relation to Instruments held in the portfolio;
- h. for each transaction executed during the period, the information referred in SLC 2.44 where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case SLC 2.49 shall apply.

2.48 In the case of Retail Clients, the periodic statement referred to in SLC 2.46 shall be provided once every six months, except in the following cases:

- a. where the client so requests, the periodic statement must be provided every 3 months;
- b. in cases where SLC 2.49 applies, the periodic statement must be provided at least once every 12 months;
- c. where the agreement between a Licence Holder and a Retail Client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The Licence Holder shall inform Retail Clients that they have the right to make requests for the purposes of point (a).

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

2.49 The Licence Holder shall, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

Where the client concerned is a Retail Client, the Licence Holder must send him a notice confirming the transaction and containing the information referred to in SLC 2.44 no later than the first business day following that execution or, if the

confirmation is received by the Licence Holder from third party, no later than the first business day following sub-paragraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the Retail Client by another person.

Additional Reporting Obligations for Portfolio Management or Contingent Liability Transactions.

- 2.50 Where a Licence Holder provides portfolio management transactions for Retail Clients or operates Retail Client accounts that include an uncovered open position in a contingent liability transaction, it is also required to report to the Retail Client any losses exceeding any predetermined threshold, agreed between the Licence Holder and the client, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

Statement of Client Instruments or Client Money

- 2.51 A Licence Holder that holds client Instruments or client money is required to send at least once a year, to each client for whom it holds Instruments or money, a statement in a durable medium of those Instruments or money unless such a statement has been provided in any other periodic statement.

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

- 2.52 The statement of client assets referred to above, shall include the following information:
- a. details of all the Instruments or money held by the Licence Holder for the client at the end of the period covered by the statement;
 - b. the extent to which any client Instruments or client money have been the subject of securities financing transactions;
 - c. the extent of any benefit that has accrued to the clients by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued.

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

- 2.53 A Licence Holder which holds Instruments or money and which carries out the service of portfolio management for a client may include the statement of client assets referred to in SLC 2.52, in the periodic statement it provides to that client pursuant to SLC 2.46.

Best Execution Requirements

General

- 2.54 The Licence Holder shall take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client, the Licence Holder shall execute the order following the specific instruction.
- 2.55 The Licence Holder shall establish and implement effective arrangements for complying with SLC 2.54. In particular, the Licence Holder shall establish and implement an order execution policy to allow it to obtain, for its client orders, the best possible result in accordance with SLC 2.54.
- 2.56 The order execution policy shall include in respect of each class of Instruments, information on the different venues where the Licence Holder executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the Licence Holder to obtain on a consistent basis the best possible result for the execution of client orders.

The Licence Holder shall provide appropriate information to its clients on its order execution policy and shall obtain the prior consent of its clients to the execution policy.

Where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or a MTF, the Licence Holder shall, in particular, inform its clients about this possibility. The Licence Holder shall obtain the prior express consent of its clients before proceeding to execute their orders outside a regulated market or an MTF. The Licence Holder may obtain this consent either in the form of a general agreement or in respect of individual transactions.

- 2.57 The Licence Holder shall monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether it needs to make changes to its execution arrangements. The Licence Holder shall notify clients of any material changes to its

order execution arrangements or execution policy.

- 2.58 The Licence Holder shall be able to demonstrate to its clients, at their request, that it has executed their orders in accordance with the Licence Holder's execution policy.

Best Execution Criteria

- 2.59 When executing client orders, the Licence Holder shall take into account the following criteria for determining the relative importance of the factors referred to in SLC 2.54:

- a. the characteristics of the client including the categorisation of the client as retail or professional;
- b. the characteristics of the client order;
- c. the characteristics of Instruments that are the subject of that order;
- d. the characteristics of the execution venues to which that order can be directed.

For the purpose of this SLC and SLCs 2.70 and 2.71, "execution venue" means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

- 2.60 A Licence Holder would satisfy its obligation under SLC 2.54 to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of the order following specific instructions from a client relating to the order or the specific aspect of the order.
- 2.61 Where a Licence Holder executes an order on behalf of a Retail Client, the best possible result shall be determined in terms of the total consideration, representing the price of the Instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering best execution where there is more than one competing venue to execute an order for an Instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the Licence Holder's order execution policy that is capable of executing that order, the Licence Holder's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

- 2.62 The Licence Holder shall not structure or charge its commission in such a way as to discriminate unfairly between execution venues.

Special Provisions Applicable to a Licence Holder Carrying Out Portfolio Management Services and Reception and Transmission of Orders.

- 2.63 When providing the service of portfolio management, the Licence Holder shall act in accordance with the best interests of its clients when placing orders with other entities for execution that result from decisions by the Licence Holder to deal in Instruments on behalf of its clients.
- 2.64 When providing the services of transmission and reception of orders (arranging deals), the Licence Holder shall comply with the obligation to act in accordance with the best interests of its clients when transmitting client orders, to other entities for execution.
- 2.65 In complying with SLCs 2.63 and 2.64 above, the Licence Holder shall comply with the requirements of SLC 2.66 to SLC 2.69.
- 2.66 The Licence Holder shall take all reasonable steps to obtain the best possible result for its clients taking into account the factors referred to in SLC 2.54. The relative importance of these factors shall be determined by reference to the criteria set out in SLC 2.59 and, for Retail Clients, to the requirement under SLC 2.61.

A Licence Holder satisfies its obligations under SLC 2.63 or SLC 2.64, and is not required to take the steps mentioned in this Licence Condition, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

- 2.67 The Licence Holder shall establish and implement a policy to enable it to comply with the obligation in SLC 2.66. The policy shall identify, in respect of each class of Instruments, the entities with which the orders are placed or to which the Licence Holder transmits orders for execution. The entities identified must have execution arrangements that enable the Licence Holder to comply with its obligations under SLCs 2.63 to 2.69 when it places or transmits orders to that entity for execution.

The Licence Holder shall provide appropriate information to its clients on the policy established in accordance with this SLC.

- 2.68 The Licence Holder shall monitor on a regular basis the effectiveness of the policy established in accordance with SLC 2.67 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies

In addition, the Licence Holder shall review the policy annually. Such a review shall also be carried out whenever a material change occurs that affects the Licence

Holder's ability to continue to obtain the best possible result for its clients.

- 2.69 SLCs 2.63 to 2.68 shall not apply when the Licence Holder that provides the service of portfolio management and/or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, SLCs 2.54 to 2.58 shall apply.

Execution Policy

- 2.70 The Licence Holder shall review annually the execution policy established pursuant to SLC 2.55 as well as its order execution arrangements.

Such a review shall also be carried out whenever a material change occurs that affects the Licence Holder's ability to continue to obtain the best possible result of the execution of its clients orders on a consistent basis using the venues included in its execution policy.

- 2.71 The Licence Holder shall provide Retail Clients with the following details on their execution policy in good time prior to the provision of the service:
- a. an account of the relative importance the Licence Holder assigns, in accordance with the criteria specified in SLC 2.59, to the factors referred to in SLC 2.54, or the process by which the Licence Holder determines the relative importance of those factors;
 - b. a list of the execution venues on which the Licence Holder places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;
 - c. a clear and prominent warning that any specific instructions from a client may prevent the Licence Holder from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;

This information shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in SLC 2.115 are satisfied.

Client Order Handling Rules

General

- 2.72 The Licence Holder which is licensed to execute orders on behalf of clients (deal as agent) shall implement procedures and arrangements which provide for the prompt,

fair and expeditious execution of client orders, relative to other client orders or the trading interests of the Licence Holder. These procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the Licence Holder.

- 2.73 In the case of a client limit order in respect of shares admitted to trading on a regulated market which are not immediately executed under prevailing market conditions, the Licence Holder is, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants.

The Licence Holder is deemed to comply with this requirement by transmitting the client limit order to a regulated market and/or MTF. MFSA may waive the obligation to make public a limit order that is large in scale compared with normal market size as determined in terms of the Financial Markets Act (Transparency) Regulations, 2007.

- 2.74 When carrying out client orders, the Licence Holder shall satisfy the following conditions:
- a. it must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;
 - b. it must carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make it impracticable, or the interests of the client require otherwise;
 - c. it must inform a Retail Client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

- 2.75 Where a Licence Holder is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client Instruments or client money received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

- 2.76 A Licence Holder shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Aggregation and Allocation of Orders

- 2.77 A Licence Holder shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

- a. it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of a client whose order is to be aggregated;
- b. it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
- c. an order allocation policy must be established and effectively implemented, provided in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

2.78 Where a Licence Holder aggregates an order with one or more other client orders and the aggregated order is partially executed, it is expected to allocate the related trades in accordance with its order allocation policy.

Aggregation and Allocation of Transactions for Own Account

2.79 The Licence Holder which aggregates transactions for own account and with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.

2.80 Where a Licence Holder aggregates a client order with a transaction for own account and the aggregated order is partially executed, the Licence Holder is expected to allocate the related trades to the client in priority to itself.

However, if the Licence Holder is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in SLC 2.77(c).

2.81 The Licence Holder shall, as part of the order allocation policy referred to in SLC 2.77(c), put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

Transactions Executed with Eligible Counterparties

2.82 A Licence Holder authorised to execute orders on behalf of clients and/or deal on its own account and/or to receive and transmit orders, may bring about or enter into transactions with Eligible Counterparties without being obliged to comply with the obligations under these Rules which fall under the following sub-sections, of the Conduct of Business Obligations: 'General', 'Client Profile Requirements', 'Client Disclosure Requirements', 'Client Reporting', 'Best Execution Requirements' and

SLC 2.72 in respect of ‘Client Order Handling’ – in respect to those transactions or in respect of any Ancillary Service directly related to those transactions.

Record Keeping

2.83 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 under these Rules, and in particular to ascertain that the Licence Holder has complied with all obligations with respect to clients or potential clients. In this regard, MFSA reserves the right to require a Licence Holder to record telephone conversations and/or electronic communications involving client orders.

In complying with this SLC, the Licence Holder shall refer to articles 7 and 8 of the Commission Regulation.

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.

A summary of the records which the Licence Holder is expected to retain for the purposes of this SLC are found in Appendix 7 to these Rules.

2.84 The Licence Holder shall retain all the records required under these Rules and the Commission Regulation for a period of at least 5 years.

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.

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.

2.85 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:

a. MFSA must be able to access them readily and to reconstitute each key stage

of the processing of each transaction;

- b. it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
- c. it must not be possible for the records otherwise to be manipulated or altered.

Safeguarding of Client Assets

Note: The Licence Holder holding or controlling Client Assets shall be required to comply with the SLCs in this Section in addition to the relevant provisions of the Investment Services Act (Control of Assets) Regulations, 1998 as amended.

For the purposes of these Rules, the term “Client Assets” shall mean Instruments and money belonging to the client.

General

2.86 For the purposes of safeguarding client’s rights in relation to Instruments and money belonging to them which are held or controlled by the Licence Holder, the latter shall comply with the following requirements:

- a. they must keep such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for another client, and from their own assets;
- b. they must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the Instruments and money held for clients;
- c. they must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held;
- d. they must take the necessary steps to ensure that any client Instruments deposited with a third party, in accordance with SLCs 2.87 to 2.89 are identifiable from the Instruments belonging to the Licence Holder and from the Instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;
- e. they must take the necessary steps to ensure that the client money deposited in accordance with SLC 2.90 to 2.91 with a central bank, an EEA credit institution or a bank authorized in a third country or a qualifying money market

fund, are held in an account or accounts identified separately from any accounts used to hold money belonging to the Licence Holder;

- f. they must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

Depositing Client Instruments

- 2.87 A Licence Holder is permitted to deposit Instruments held by it on behalf of its clients into an account or accounts opened with a third party provided that the Licence Holder exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those Instruments.

In particular, the Licence Holder shall take into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of those Instruments that could diversely affect clients' rights.

- 2.88 If the safekeeping of Instruments for the account of another person is subject to specific regulation and supervision in a jurisdiction where a Licence Holder proposes to deposit client Instruments with a third party, the Licence Holder shall not deposit those Instruments in that jurisdiction with a third party which is not subject to such regulation and supervision.
- 2.89 The Licence Holder shall not deposit Instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of Instruments for the account of another person unless one of the following conditions are met:
- a. the nature of the Instruments or of the Investment Services connected with those Instruments requires them to be deposited with a third party in that third country;
 - b. where the Instruments are held on behalf of a Professional Client, that client requests the Licence Holder to deposit them with a third party in that third country.

Depositing Client Money

- 2.90 Licence Holder, on receiving any client money, shall promptly place that money into one or more accounts opened with any of the following:
- a. a central bank;

- b. a credit institution authorised in accordance with Directive 2006/48/EC;
- c. a bank authorised in a third country;
- d. a qualifying money market fund.

Point (a) above shall not apply to a credit institution authorised under Directive 2006/48/EC in relation to deposits within the meaning of that Directive held by that institution.

- 2.91 Where the Licence Holder does not deposit client money with a central bank, it shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the money is placed and of the arrangements for the holding of that money.

In particular, the Licence Holder shall take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights as well as any legal or regulatory requirements or market practices related to the holding of client money that could adversely affect client's rights.

Clients shall have the right to oppose the placement of their money in a qualifying money market fund.

Use of Clients' Instruments

- 2.92 A Licence Holder shall not enter into arrangements for securities financing transactions in respect of Instruments which it holds on behalf of a client, or otherwise use such Instruments for its own account or the account of another client of the Licence Holder, unless the following conditions are met:

- a. the client must have given his prior express consent to the use of the Instruments on specified terms, as evidenced, in the case of a Retail Client, by his signature or equivalent alternative mechanism;
- b. the use of that client's Instrument must be restricted to the specific terms to which the client consents.

- 2.93 The Licence Holder shall not enter into arrangements for securities financing transactions in respect of Instruments which are held on behalf of a client in a Nominee account maintained by a third party, or otherwise use Instruments held in such an account for their own account or for the account of another client unless, in addition to the conditions set out in SLC 2.92, at least one of the following conditions are met:

- a. each client whose Instruments are held together in a Nominee account must have given prior express consent in accordance with point (a) of SLC 2.92;
- b. the Licence Holder must have in place systems and controls which ensure that only Instruments belonging to clients who have given prior express consent in accordance with point (a) of SLC 2.92 are so used.

The records of the Licence Holder shall include details of the client on whose instructions the use of the Instruments has been effected, as well as the number of Instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

Conflicts of Interest

General

- 2.94 The Licence Holder shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in this Section from adversely affecting the interests of its clients.
- 2.95 The Licence Holder shall take all steps to identify conflicts of interests between themselves, including their managers, employees or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and Ancillary Services, or combinations thereof.
- 2.96 Where the organisational or administrative arrangements made by the Licence Holder in accordance with SLC 2.94 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the Licence Holder shall clearly disclose the nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

Such disclosure shall be made in a durable medium and shall include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the Investment or Ancillary Service in the context of which the conflict of interest arises.

In complying with the conflicts of interest requirements, the Licence holder shall take into account the [Guidelines as issued by ESMA on remuneration policies and practices \(MiFID\)](#). It should be noted that these Guidelines are also available in [Maltese version](#).

- 2.97 For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and Ancillary Services or a combination thereof and whose existence may damage the interests of a client, the Licence Holder shall take into account, by way of minimum criteria, the question of whether itself or a relevant person, or a person directly or indirectly linked by control to the Licence Holder, is in any of the following situations, whether as a result of providing Investment or Ancillary Services or investment activities or otherwise:
- a. the Licence Holder or that person is likely to make a financial gain, or avoid a financial loss at the expense of the client;
 - b. the Licence Holder or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
 - c. the Licence Holder or that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the client;
 - d. the Licence Holder or that person carries on the same business as the client;
 - e. the Licence Holder or that person receives or will receive from a person other than the client, an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Conflicts of Interest Policy

- 2.98 The Licence Holder shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the Licence Holder and the nature, scale and complexity of its business.

Where the Licence Holder is a member of a group, the policy must also take into account any circumstances, of which the Licence Holder is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

- 2.99 The conflicts of interest policy established in accordance with SLC 2.98, shall include the following content:
- a. it must identify, with reference to the specific Investment Services and activities and Ancillary Services carried out by or on behalf of the Licence Holder, the circumstances which constituted or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

- b. it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

2.100 The procedures and measures provided for in SLC 2.99(b) are to be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in SLC 2.99(a), carry on those activities at a level of independence appropriate to the size and activities of the Licence Holder and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

For the purposes of SLC 2.99(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the Licence Holder to ensure the requisite degree of independence:

- a. effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
- b. the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the Licence Holder;
- c. the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d. measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out Investment or Ancillary Services or activities;
- e. measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate Investment or Ancillary Services or activities where such involvement may impair the proper management of conflicts of interests.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, the Licence Holder shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Record Keeping

2.101 A Licence Holder shall keep and regularly update a record of the kinds of Investment

or Ancillary Service or investment activity carried out by or on behalf of the Licence Holder in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Staff Dealing

General

2.102 A Licence Holder shall establish adequate policies and procedures sufficient to ensure compliance of the Licence Holder, including its managers and employees, with its obligations under these Rules as well as appropriate rules governing personal transactions by such persons.

Personal Transactions

2.103 A Licence Holder shall establish, implement and maintain adequate arrangements aimed at preventing the activities listed in (a) to (c) below in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 2(1) of the Prevention of Financial Markets Abuse Act, 2005 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the Licence Holder:

- a. entering into a transaction which meets at least one of the following criteria:
 - i. that person is prohibited from entering into it under the Prevention of Financial Markets Abuse Act, 2005;
 - ii. it involves the misuse of improper disclosure of that confidential information;
 - iii. it conflicts or is likely to conflict with an obligation of the Licence Holder under these Rules.
- b. advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in Instruments which, if a personal transaction of the relevant person, would be covered by point (a) above or by SLC 2.112 (a) or (b) or SLC 2.76.
- c. Without prejudice to Article 6(2) of the Prevention of Financial Markets Abuse Act, 2005, disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure, that other person will or would be likely to take either of the

following steps:

- i. to enter into a transaction in Instruments which, if a personal transaction of the relevant person, would be covered by point (a) above or SLC 2.112 (a) or (b) or SLC 2.76;
- ii. to advise or procure another person to enter into such a transaction.

2.104 The arrangements required under SLC 2.103 must be designed in particular to ensure that:

- a. each relevant person covered by SLC 2.103 is aware of the restrictions on personal transactions, and of the measures established by the Licence Holder in connection with personal transactions and disclosure, in accordance with SLC 2.103;
- b. the Licence Holder is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the Licence Holder to identify such transactions;

In the case of outsourcing arrangements, the Licence Holder must ensure that the Licence Holder to which the activity is outsourced, maintains a record of personal transactions entered into by any relevant person and provides that information to the Licence Holder promptly on request;

- c. a record is kept of the personal transaction notified to the Licence Holder or identified by it, including any authorisation or prohibition in connection with such a transaction.

2.105 SLC 2.103 and SLC 2.104 shall not apply to the following kinds of personal transactions:

- a. personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
- b. personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the UCITS Directive or are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected, are not involved in the management of that undertaking.

Provision of Services Through the Medium of Another Licence Holder

- 2.106 A Licence Holder receiving an instruction to perform Investment or Ancillary Services on behalf of a client through the medium of another investment firm shall be able to rely on client information transmitted by the latter. The investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.
- 2.107 The Licence Holder which receives an instruction to undertake services on behalf of a client through the medium of another investment firm, shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm. The investment firm which mediates the instructions will remain responsible for the appropriateness for the client of the recommendations or advice provided.
- 2.108 The Licence Holder which receives client instructions or orders through the medium of another Licence Holder shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of these Rules.

Conduct of Business Rules for a Licence Holder Producing and Disseminating Investment Research

- 2.109 For the purposes of this Section, “investment research” means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several Instruments or the issuers of Instruments, including any opinion as to the present or future value or price of such Instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:
- a. it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
 - b. if the recommendation in question were made by a Licence Holder to a client, it would not constitute the provision of investment advice for the purposes of the Act.
- 2.110 A recommendation of the type covered by Regulation 2(1) of the Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005 (Legal Notice 106 of 2005), but relating to Instruments as defined in the Act, that does not meet the conditions set out in SLC2.109, shall be treated as a marketing communication for the purposes of these Rules, and any Licence Holder which produces or disseminates the recommendation shall ensure that it is clearly identified as such.

Additionally, the Licence Holder shall ensure that any such recommendation

contains a clear and prominent statement that (or, in the case of an oral recommendation to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

- 2.111 A Licence Holder which produces, or arranges for the production of investment research that is intended or likely to be subsequently disseminated to clients of the Licence Holder or to the public, under its own responsibility or that of a member in its group (if the Licence Holder is a member of a group), shall ensure that the implementation of all the measures set out in SLC 2.100 in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.
- 2.112 The Licence Holder which is covered under SLC 2.111 shall have in place arrangements designed to ensure that the following conditions are satisfied:
- a. financial analysts and other relevant persons must not undertake personal transactions or trade other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the Licence Holder, in Instruments to which investment research relates, or in any related Instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;
 - b. in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in Instruments to which the investment research relates, or in any related Instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the Licence Holder's legal or compliance function;
 - c. the Licence Holder itself, financial analysts and other relevant persons involved in the production of investment research must not accept inducements from those with a material interest in the subject matter of the investment research;
 - d. the Licence Holder itself, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;
 - e. issuers, relevant persons other than financial analysts, and any other persons

must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the Licence Holder's legal obligations, if the draft includes a recommendation or a target price.

For the purposes of this SLC, "related Instrument" means an Instrument the price of which is closely affected by price movements in another Instrument which is the subject of investment research, and includes a derivative on that other Instrument.

2.113 The Licence Holder which disseminates investment research produced by another person to the public or to clients shall be exempted from complying with the requirements of SLC 2.112 if the following criteria are met:

- a. the person that produces the investment research is not a member of the group to which the Licence Holder belongs;
- b. the Licence Holder does not substantially alter the recommendations within the investment research;
- c. the Licence Holder does not present the investment research as having been produced by it;
- d. the Licence Holder verifies that the producer of the research is subject to requirements equivalent to the requirements under these Rules in relation to the production of that research, or has established a policy setting such requirements.

Conditions Applicable to the Provision of Information

2.114 Where, for the purposes of these Rules, information is required to be provided in a durable medium, the Licence Holder may provide that information in a durable medium other than on paper only if:

- a. the provision of that information in that medium is appropriate to the context in which the business between the Licence Holder and the client is, or is to be, carried on; and
- b. the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

2.115 Where the Licence Holder provides the information it is bound to provide in terms of these Rules to a client, by means of a website and that information is not addressed personally to the client, the following conditions shall be satisfied:

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

2.116 For the purposes of SLCs 2.114 and 2.115, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Licence Holder and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an email address for the purposes of the carrying on of that business shall be treated as such evidence.

Complaints Handling

2.117 The Licence Holder is required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from Retail Clients or potential Retail Clients, and to keep a record of each complaint and the measures taken for its resolution. The Licence Holder is also required to inform complainants that they may refer their complaint to the MFSA if they are not satisfied with the manner in which it has been handled by the Licence Holder.

In complying with this SLC, the Licence Holder shall also comply with Appendix 16 to these Rules.

Provisions Applicable to a Licence Holder whose Staff Promote and Sell Investment Products

Note: *For the purposes of the following SLCs, reference to 'promote and sell' should be interpreted as the practice whereby the Licence Holder's staff explain the features of a particular product to a client or prospective client without actually providing investment advice with respect to that product, such that it is the client who ultimately decides for himself/herself whether to invest in the particular product or not.*

2.118 The Licence Holder may allow its staff to promote and sell investment products subject to:

- a. appropriate internal controls and internal compliance checks being in place to ensure that:
 - i. no investment recommendations are made or investment advice is provided by staff members who are not authorized to provide advice in terms of SLC 1.07(i);
 - ii. the relevant Rules on disclosure to clients particularly SLC 2.27, 2.28, 2.37, 3.10 to 3.14 and 3.22 and SLC 2.119 below are observed by staff members promoting and selling investment products provided that for the purposes of SLC 3.10, all clients may be treated as retail and staff need not carry out a client classification exercise in terms of SLC 2.03 prior to explaining the features of an investment product. Such client classification exercise should be made once a client decides to submit an order for execution with respect to the investment product being promoted.
 - iii. an appropriateness test as per SLC 2.14 is carried out by staff members before receiving and transmitting any orders for investment in the products concerned unless all the conditions indicated in SLC 2.25 are met
- b. staff being required to follow documented procedures which should be drawn up by the Licence Holder to ensure that its staff promoting and selling investment products are aware of the relevant procedures, including regulatory requirements they are to follow when promoting and selling investment products.

2.119 Staff involved in the promotion and sale of investment products must also clearly disclose to clients:

- a. that they are only in a position to offer information on one or a limited range of investment products; that the information provided does not constitute investment advice and that should clients require advice, they will be referred to an authorized advisor. Except for non-face-to-face communications with clients, this disclosure should be provided in writing and be countersigned by the client;
- b. any connections which the Licence Holder may have with the product provider; and

- c. the nature of the Licence Holder's interest in promoting and selling the particular products, taking account of the relevant requirements of SLC 2.02.
- 2.120 The Licence Holder must, at all times, maintain adequate records pertaining to staff who are not authorized advisors but who provide information to clients and who promote and sell investment products. Such records should include:
- a. an up-dated list of the names of staff members who are authorized by the Licence Holder to promote and sell investment products, together with details of the training provided to such persons as per SLC 2.122 below;
 - b. evidence of internal compliance checks undertaken by the Licence Holder; and
 - c. details of any disciplinary action taken against staff involved in the selling and promoting of investment products.
- 2.121 The records referred to in SLC 2.120 above should be available for inspection by MFSA officials during Compliance Visits.
- 2.122 The details of training provided to the Licence Holder's staff which the Licence Holder must retain in terms of SLC 2.120 (a) include:
- a. a description of the training provided, including details of the course content;
 - b. details of the identity and experience of the trainer/s; and
 - c. a declaration that the trainer is satisfied that the persons who attended the training have achieved a standard of competence that indicates that they are capable of clearly explaining the features of the product in question.

Provisions Applicable to a Licence Holder Appointing Tied Agents

Note: *For the purposes of these Rules reference to tied agents shall also include persons employed by a legal person which is registered as a tied agent of a Licence Holder, in terms the Investment Services (Tied Agents) Regulations, 2007 (hereinafter referred to as "the Regulations") and which are directly involved in carrying out tied agency activities.*

These Rules are additional and without prejudice to the obligations of the Licence Holder set out in the Regulations.

- 2.123 A Licence Holder may appoint a tied agent which is:
- a. established in Malta , provided that such tied agent is registered by the MFSA
or

- b. established in an EU or EEA Member State provided that such tied agent is either:
 - i. registered as a tied agent in such EU or EEA Member State or
 - ii. registered in Malta if the EU or EEA Member State in which such tied agent is established does not provide for the registration of tied agents within its jurisdiction.

2.124 The responsibility for the control and monitoring of the activities of tied agents rests with the senior management of the Licence Holder. In this regard, the Licence Holder shall ensure that the tied agents it appoints:

- a. report to it on a regular basis with respect to the activities carried out by the tied agent;
- b. pass on to the Licence Holder all the necessary documentation for processing and/or record keeping purposes, promptly;
- c. continue to satisfy the registration requirements and the eligibility criteria referred in Part A of these Rules on an on-going basis;
- d. do not hold or control clients' money or assets;
- e. comply with the requirements of the Investment Services Rules which are relevant to the activities they carry out on behalf of the Licence Holder. Particular attention should be given by the Licence Holder to ensuring compliance, by the tied agent, with the relevant requirements in this Section entitled "Conduct of Business Obligations" and in Section 3 entitled "Disclosure Requirements for Information to Clients, including Marketing Communications".

2.125 The Licence Holder shall ensure that the tied agents it appoints, shall, where appropriate make a prior appointment to call clients or potential clients. Unsolicited or unarranged calls shall be made between 9.00 a.m. and 7.00 p.m. Monday to Friday (excluding public holidays) and Saturday from 9.00 a.m. to 5.00 p.m., unless otherwise requested by an existing or potential client.

2.126 The Licence Holder shall look into any concerns that may arise at any time regarding its tied agents' fit and proper status and take the necessary action. The necessary action may include, for example, increased monitoring or, if appropriate, suspension or termination of the appointment. In all cases, the Licence Holder should report any concerns it may have in this regard, to the MFSA, without delay.

2.127 The Licence Holder shall take reasonable steps to ensure that each of its tied agents:

- a. carry on only those activities which are permissible in terms of the definition of “tied agent” in regulation 2 of the Regulations and provided such activities are in line with the terms of the terms of the tied agent’s appointment by the Licence Holder.
 - b. carries on the activity for which the Licence Holder has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the tied agent’s other business, irrespective of whether such other business is regulated or not.
- 2.128 The Licence Holder will be held responsible for any breaches of the Rules committed by any of the tied agents it appoints.
- 2.129 When carrying out tied agent activities from a place of business or from any other place accessible to the public, the Licence Holder shall require the tied agent to display in a prominent position in that place, or in a part thereof to which the public has access, the certificate of registration or an official copy thereof issued by the Authority.
- 2.130 The Licence Holder shall maintain all records, including those relating to the “Know Your Client” procedures and evidence that the tied agent has carried out the necessary suitability and/or appropriateness tests in terms of SLCs 2.23 to 2.26, pertaining to the activities performed by the tied agents on the Licence Holder’s behalf, as are necessary to demonstrate compliance by the tied agent with the relevant provision of these Rules. Such records shall be made available to MFSA officials during Compliance Visits.
- 2.131 The Licence Holder shall ensure that its tied agents:
- a. do not act as such for other Licence Holders and
 - b. are not involved in any activities which may give rise to a conflict of interest which could be detrimental to the Licence Holder’s clients
- 2.132 The Licence Holder is to inform the MFSA of any decision to terminate a tied agent’s appointment and shall confirm whether such a decision was taken due to any issues of a regulatory nature or concern.

Provisions Applicable to a Licence Holder Appointing Introducers

- 2.133 The MFSA is to be advised by the Licence Holder of the names and addresses of the Introducers.
- 2.134 The Licence Holder is responsible for “Know Your Customer” checks and cannot rely on the Introducer’s opinion.

- 2.135 The Introducer is bound by confidentiality as to the means and resources of the customer if s(he) is made aware of them.
- 2.136 In no circumstances can the Introducer give investment advice, promote a certain product or undertake any Investment Services licensable activity.
- 2.137 The Introducer will not be permitted to pass on any documentation, promoting any particular product or service on behalf of the Licence Holder, to the client/ or to assist the client in the completion of any relevant documentation.
- 2.138 The Introducer will not be permitted to receive any funds from clients or give any commitments on behalf of the Licence Holder.
- 2.139 The Introducer's involvement will be limited to arranging a meeting between the Licence Holder and the customer, but can also attend the meeting if required.
- 2.140 The Introducer should not hold himself out to the general public as acting as Introducer and should not actively promote its "introducing services".
- 2.141 Charges which the client/ investor will incur should not differ irrespective of whether the client approached the Licence Holder direct or through an Introducer.
- 2.142 Subject to SLC 2.143, any person authorised under the Insurance Business Act, 1998 or registered or enrolled under the Insurance Intermediaries Act, 2006 ("the IIA") cannot act as an Introducer.
- 2.143 Tied Insurance Intermediaries are permitted to act as introducers for Investment Services Licence Holders wholly owned by companies authorised under the Insurance Business Act, provided that such tied insurance intermediaries are enrolled in the Tied Insurance Intermediaries List on behalf the insurance company which also owns the Investment Services Licence Holder.
- 2.144 A record is to be retained, for inspection by the MFSA's Compliance Officers, of commissions paid to each introducer.
- 2.145 Introducers may only act as such for one Licence Holder.

3 Disclosure Requirements for Information to Clients, including Marketing Communications

General

3.01 All information, including marketing communications addressed by the Licence Holder to clients or potential clients shall be fair, clear and not misleading by complying with the conditions set out below. Marketing communications (which include ‘investment advertisements’ as defined in Article 2(1) of the Act) shall:

- i. be clearly identifiable as such.
- ii. be considered to be fair, clear and not misleading if they comply with the conditions set out in SLC 3.02 - 3.09.

For the avoidance of doubt the following are not subject to the rules contained in SLCs 3.02 – 3.23 but are still subject to the requirements of this SLC, requiring them to be “fair clear and not misleading”:

- a. marketing communications which falls within the definition of “advertorial” as defined in the Glossary to these Rules; and
- b. marketing communications which consist only of one or more of the following: the name of the Licence Holder, a logo or other image associated with the Licence Holder, a contact point, a reference to the types of Investment Services offered by the Licence Holder or to its fees and commissions.

3.01A The Licence Holder shall ensure that appropriate records of all issued and/or approved marketing communications are maintained and made available for inspection by the MFSA within 24 hours of its request, for not less than five years from the date of publication or broadcast. Such records should include:

- a. the name of the individual who approved the communications;
- b. the date of approval of the information;
- c. the publication/s in which the marketing communication was included; and
- d. evidence to support any statement made in the information and which is not a statement of fact.

Marketing Information and Other Information for Retail Clients and Potential Retail Clients

3.02 The Licence Holder shall ensure that all information it addresses to, or disseminates

in such a way that it is likely to be received by Retail Clients or potential Retail Clients, including marketing communications, satisfies the following conditions. It shall:

- a. include the name of the Licence Holder;
- b. be accurate, and in particular shall not emphasise any potential benefits of an Investment Service or Instrument without also giving a fair and prominent indication of any relevant risks;
- c. be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- d. not disguise, diminish or obscure important items, statements or warnings.

3.03 Where the information compares Investment or Ancillary Services, Instruments, or persons providing Investment or Ancillary Services, the following conditions shall be satisfied:

- a. the comparison must be meaningful and presented in a fair and balanced way;
- b. the sources of the information used for the comparison must be specified;
- c. the key facts and assumptions used to make the comparison must be included.

3.04 Where the information contains an indication of past performance of an Instrument, a financial index or an Investment Service, the following conditions shall be satisfied:

- a. that indication must not be the most prominent feature of the communication;
- b. the information must include appropriate performance information which covers the immediately preceding 5 years, or the whole period for which the Instrument has been offered, the financial index has been established, or the Investment Service has been provided if less than 5 years, or such longer period as the Licence Holder may decide, and in
- c. every case that performance information must be based on complete 12 month periods;
- d. the reference period and the source of information must be clearly stated;
- e. the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

- f. where the indication relies on figures denominated in a currency other than that of the country in which the Retail Client or potential Retail Client is resident, the currency must be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
 - g. where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.
- 3.05 Where the information relates to future performance, the following conditions shall be satisfied:
- a. the information must not be based on or refer to simulated past performance ;
 - b. it must be based on reasonable assumptions supported by objective dated;
 - c. where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed;
 - d. it must contain a prominent warning that such forecasts are not a reliable indicator of future performance.
- 3.06 Where the information includes or refers to simulated past performance, it must relate to an Instrument or a financial index, and the following conditions shall be satisfied:
- a. the simulated past performance must be based on the actual past performance of one or more Instruments or financial indices which are the same as, or underlie, the Instrument concerned;
 - b. in respect of the actual past performance referred in point (a), the conditions set out in points (a) to (c), (e) and (f) of SLC 3.04 must be complied with;
 - c. the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.
- 3.07 Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client may be subject to change in the future.
- 3.08 The information shall not use the name of the MFSA or other competent Authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the Licence Holder.
- 3.09 Where a marketing communication contains an offer or invitation of the following

nature and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred in SLCs 2.28 to 2.30 and SLC 3.10 to 3.22 as is relevant to the offer or invitation:

- a. an offer to enter into an agreement in relation to an Instrument or Investment Service or Ancillary Service with any person who responds to the communication;
- b. an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to an Instrument or Investment Service or Ancillary Service.

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

Information About Instruments

- 3.10 The Licence Holder shall provide clients or potential clients with a general description of the nature and risks of Instruments, taking into account, in particular, the client's categorisation as either a Retail Client or a Professional Client. That description must explain the nature of the specific type of Instrument concerned, as well as the risks particular to that specific type of Instrument in sufficient detail to enable the client to take investment decisions on an informed basis.
- 3.11 The description of risks shall include, where relevant to the specific type of Instrument concerned and the status and level of knowledge of the client, the following elements:
 - a. the risks associated with that type of Instrument including an explanation of leverage and its effects and the risk of losing the entire investment;
 - b. the volatility of the price of such Instruments and any limitations on the available market for such Instruments;
 - c. the fact that an investor might assume as a result of transactions in such Instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring Instruments;
 - d. any margin requirements or similar obligations, applicable to Instruments of that type.
- 3.12 If a Licence Holder provides a Retail Client or potential Retail Client with information about an Instrument that is the subject of a current offer to the public and

a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC (“the Prospectus Directive”), that Licence Holder shall inform the client or potential client where that prospectus is made available to the public.

- 3.13 Where the risks associated with an Instrument composed of two or more different Instruments or services are likely to be greater than the risks associated with any of the components, the Licence Holder shall provide an adequate description of the components of that Instrument and the way in which its interaction increases the risks.
- 3.14 In the case of Instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the Retail Client or potential Retail Client to make a fair assessment of the guarantee.

Disclosure Requirements Applicable to a Licence Holder Holding or Controlling Client Assets

- 3.15 Where the Licence Holder holds or controls Instruments or money belonging to Retail Clients, the Licence Holder shall provide those Retail Clients or potential Retail Clients with the information specified in SLCs 3.16 to 3.21 as is relevant.
- 3.16 The Licence Holder shall inform the Retail Client or potential Retail Client where the Instrument or money of that client may be held by a third party on behalf of the Licence Holder and of the responsibility of the Licence Holder for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.
- 3.17 Where Instruments of the Retail Client or potential Retail Client may, be held in a Nominee account by a third party, the Licence Holder shall inform the client of this fact and shall provide a prominent warning of the resulting risks.
- 3.18 The Licence Holder shall inform the Retail Client or potential Retail Client where it is not possible for client Instruments held with a third party to be separately identifiable from the proprietary Instruments of that third party or of the Licence Holder and shall provide a prominent warning of the resulting risks.
- 3.19 The Licence Holder shall inform the client or potential client where accounts that contain Instruments or money belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those Instruments or money may differ accordingly.
- 3.20 A Licence Holder shall inform the client about the existence and the terms of any security interest or lien which the Licence Holder has or may have over the client’s

Instruments or money, or any right of set-off it holds in relation to those Instruments or money. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those Instruments or money.

- 3.21 A Licence Holder, before entering into securities financing transactions in relation to Instruments held by it on behalf of a Retail Client, or otherwise to use such Instruments for its own account or on the account of another client, shall in good time before the use of those Instruments provide the Retail Client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the Licence Holder with respect to the use of those Instruments, including the terms for their restitution, and on the risks involved.

Information about Costs and Associated Charges.

- 3.22 The Licence Holder shall provide its Retail Clients with information on costs and associated charges that includes such of the following elements as are relevant:
- a. the total price to be paid by the client in connection with the Instrument or the Investment Service or Ancillary Service, including all related fees, commission, charges and expenses, and all taxes applicable via the Licence Holder or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. Commissions charged by the Licence Holder shall be itemised separately in every case;
 - b. where any part of the total price referred to in point (a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
 - c. notice of the possibility that other costs, including taxes, related to transactions in connection with the Instrument or the Investment Service may arise for the client that are not paid via the Licence Holder or imposed by it;
 - d. the arrangements for payment or other performance.

Key Investor Information Document

- 3.23 Licence Holders selling or advising clients on potential investments in UCITS, shall provide them with a KII. The KII shall be provided to investors free of charge.

4 Outsourcing

General

- 4.01 A Licence Holder shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the MFSA to monitor the Licence Holder's compliance with all obligations.
- 4.02 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.
- 4.03 Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of SLC 4.02:
- a. 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;
 - b. the purchase of standardised services, including market information services and the provision of price feeds.

Conditions for Outsourcing Critical or Important Operational Functions or Investment Services or Activities.

- 4.04 When the Licence Holder outsources critical or important operational functions or any Investment Services or activities, the Licence Holder remain fully responsible for discharging all of their obligations under these Rules and are required to comply, in particular with the following conditions:
- a. the outsourcing must not result in the delegation by senior management of its responsibility;
 - b. the relationship and obligations of the Licence Holder towards its clients under these Rules must not be altered;

- c. the compliance with the Licence Holder's applicable licence conditions must not be undermined;
- d. none of the other conditions subject to which the Licence Holder was granted a licence must be removed or modified.

4.05 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.

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

- a. 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;
- b. 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;
- c. the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
- d. 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;
- e. 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;
- f. 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;
- g. 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;
- h. the service provider must cooperate with the MFSA in connection with the outsourced activities;

- i. 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;
 - j. the service provider must protect any confidential information relating to the Licence Holder and its clients;
 - k. 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.
- 4.06 The respective rights and obligations of the Licence Holder and of the service provider must be clearly allocated and set out in a written agreement.
- 4.07 Where the Licence Holder and the service provider are members of the same group, the Licence Holder may, 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.
- 4.08 The Licence Holder shall make available to the MFSA, on request, all information necessary to enable the MFSA to supervise the compliance of the performance of the outsourced activities with the requirements of these Rules.

Service Providers Located in Third Countries.

- 4.09 In addition to the requirements of SLCs 4.04 to 4.08, 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:
- a. the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;
 - b. there must be an appropriate cooperation agreement between the MFSA and the supervisory Authority of the service provider.
- 4.10 When one or both of the conditions referred to in SLC 4.09 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 MFSA about the outsourcing arrangement and the MFSA does not object to that arrangement within a reasonable time following receipt of that notification.
- 4.11 The Licence Holder shall still be required to comply with the requirements of SLCs 4.04 to 4.08.

5 Supplementary Conditions for Operators of Multilateral Trading Systems

- 5.01 The operator of an MTF shall establish transparent and non-discretionary rules and procedures for fair and orderly trading and shall establish objective criteria for the efficient execution of orders.
- 5.02 The operator of an MTF shall:
- a. establish transparent rules regarding the criteria for determining the Instruments that can be traded under its systems; and
 - b. where applicable, provide or ensure that there is access to sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of Instruments traded.
- 5.03 SLCs 2.02 to 2.81 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. Provided that members of or participants in the MTF shall comply with the obligations provided for in the above-mentioned SLCs with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.
- 5.04 The operator of an MTF 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 Licence Holders, credit institutions authorised under Directive 2000/12/EC and other persons who:
- a. are fit and proper;
 - b. have a sufficient level of trading ability and competence;
 - c. have, where applicable, adequate organisational arrangements; and
 - d. 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.
- 5.05 The operator of an MTF shall:
- a. clearly inform its users of their respective responsibilities for the settlement of the transactions executed on that facility;
 - b. have in place the necessary arrangements to facilitate the efficient settlement of

the transactions concluded under the systems of the MTF.

- 5.06 Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer, the MTF shall not make such issuers subject to any obligation relating to initial, ongoing or ad hoc financial disclosure.
- 5.07 The operator of an MTF shall comply immediately with any instruction from the MFSA to suspend or remove an Instrument from trading.

Compliance Arrangements

- 5.08 The operator of an MTF shall:
- a. establish and maintain effective arrangements and procedures, relevant to the MTF, for the regular monitoring of the compliance by its users with its rules;
 - b. monitor the transactions undertaken by its users under their systems in order to identify breaches of its rules, disorderly trading conditions or conduct that may involve market abuse.
- 5.09 The operator of an MTF shall:
- a. notify the MFSA of any significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse;
 - b. supply the relevant information without delay to the MFSA for the investigation and prosecution of market abuse and shall provide the MFSA with full assistance in investigating and prosecuting market abuse occurring on or through its systems.

Pre-trade transparency requirements for MTFs

- 5.10 The operator of an MTF shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through its systems in respect of shares admitted to trading on a regulated market. This information shall be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.
- 5.11 Depending on the market model or the type and size of orders in the cases defined in the Commission Regulation, the MFSA may waive the obligation for the operator of an MTF to make public the information referred to in SLC 5.10. In particular, the MFSA may waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Such waiver may be granted by the MFSA following a written request from the MTF

operator to the MFSA which request should include relevant details as necessary.

- 5.12 In complying with the provisions of this Section of these rules the operators of an MTF shall also comply with the applicable provisions of the Commission Regulation.

Post-trade transparency requirements for MTFs

- 5.13 The operator of an MTF shall make public the price, volume and time of the transactions executed under its systems in respect of shares which are admitted to trading on a regulated market. The details of all such transactions shall be made public, on a reasonable commercial basis, as close to real-time as possible. Provided that this SLC shall not apply to details of trades executed on an MTF that are made public under the systems of a regulated market.

- 5.14 The MFSA may authorise, subject to the applicable provisions of the Commission Regulation, the operator of an MTF to provide for deferred publication of the details of transactions based on their type or size. In particular, the MFSA may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares.

MTFs shall obtain the MFSA's prior approval to proposed arrangements for deferred trade-publication. These arrangements shall be clearly disclosed to market participants and the investing public.

- 5.15 In complying with the provisions of this Section of the Rules the operator of an MTF shall also comply with the applicable provisions of the Commission Regulation.

Transaction Reporting

- 5.16 An MTF shall submit to the MFSA a daily report of all the transactions carried out in Instruments which are traded on the MTF ('the Transaction Report'). Such a Transaction Report shall contain the information as specified from time to time by the MFSA and shall be submitted in the format specified by the MFSA. Transaction Reports are to be submitted by the MTF to reach the Authority by the end of the business day following that on which the said trades were executed. The MTF will immediately notify the Authority in writing of any circumstance which prevents it from complying with this requirement.

Provisions regarding central counterparty, clearing and settlement arrangements in respect of MTFs

- 5.17 The operator of an MTF may enter into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades

concluded by market participants under their systems.

Provided that the MFSA may oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State where this is demonstrably necessary in order to maintain the orderly functioning of that MTF and taking into account the conditions for settlement systems established in Article 34(2) of the MIFID.

6 Supplementary Conditions for a Licence Holder which Qualifies as Systematic Internaliser and for a Licence Holder which execute Off-Market Deals

6.01 Systematic internalisers in shares shall publish a firm quote in those shares admitted to trading on a regulated market for which they are systematic internalisers and for which there is a liquid market. In the case of shares for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request.

Provided that the provisions of this Section of the Rules shall be applicable to systematic internalisers when dealing for sizes up to standard market size. Systematic internalisers that only deal in sizes above standard market size shall not be subject to the provisions of this Section.

6.02 Systematic internalisers may decide the size or sizes at which they will quote. For a particular share, each quote shall include a firm bid and/or offer price or prices for a size or sizes which could be up to standard market size for the class of shares to which the share belongs. The price or prices shall be updated regularly by the systematic internaliser and shall also reflect the prevailing market conditions for that share.

6.03 Shares shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that share. The standard market size for each class of shares shall be a size representative of the arithmetic average value of the orders executed in the market for the shares included in each class of shares.

Provided that the market for each share shall be comprised of all orders executed in the European Union in respect of that share excluding those large in scale compared to normal market size for that share.

6.04 Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours.

Provided that they shall be entitled to update their quotes at any time. Provided further that, under exceptional market conditions, to withdraw their quotes.

6.05 Quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

6.06 Systematic internalisers shall, in complying with the SLCs 2.54 to 2.71 execute the orders they receive from their Retail Clients in relation to the shares for which they are systematic internalisers at the quoted prices at the time of reception of the order

6.07 Systematic internalisers shall execute the orders they receive from their Professional Clients in relation to the shares for which they are systematic internalisers at the quoted price at the time of reception of the order. This notwithstanding, they may

execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.

- 6.08 Systematic internalisers may execute orders they receive from their Professional Clients at prices different than their quoted ones without having to comply with SLC 6.07 in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.
- 6.09 Where a systematic internaliser who quotes only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions of SLCs 6.07 and 6.08.
- 6.10 Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with SLCs 2.72 to 2.81 except where otherwise permitted under the conditions of SLCs 6.07 and 6.08.
- 6.11 Systematic internalisers may decide, on the basis of their commercial policy and in an objective non-discriminatory way, the investors to whom they give access to their quotes. To that end, there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.
- 6.12 In order to limit the risk of being exposed to multiple transactions from the same client, systematic internalisers may limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. Systematic Internalisers may also in a non-discriminatory way, and in accordance with SLCs 2.72 to 2.81, limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.
- 6.13 The Licence Holder which, either on own account or on behalf of clients, concludes off-market deals, shall make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public as close to real-time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

Provided that where the off-market deal is in Instruments traded on a Regulated Market authorised in terms of article 4 the of Financial Markets Act, 1990, the

Licence Holder shall be deemed as having complied with this SLC if it satisfies the requirements set in the Financial Markets Act (Off-Market Deals) Regulations, 2007.

Provided further that the MFSA, subject to the applicable provisions of the Commission Regulation, may authorise the Licence Holder to provide for deferred publication of the details of transactions based on their type or size. In particular, the MFSA may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that shares or those classes of shares. The Licence Holder shall obtain the MFSA's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the investing public.

- 6.14 In complying with the provisions of this Section of the Rules, the Licence Holder shall also refer and comply with the applicable provisions of the Commission Regulation.

General

7 Financial Resources Requirements, Accounting and Record Keeping

This section applies to Category 1 Licence Holders only. Section 7A (SLCs 7.29 to 7.83 inclusive) shall apply to Category 2 and 3 Licence Holders instead.

- 7.01 The Licence Holder shall at all times maintain own funds equal to or in excess of its capital resources requirement. This shall constitute the Licence Holder's Financial Resources Requirement.
- 7.02 The meaning of own funds and the capital resources requirement applicable to Category 1 Licence Holders, as well as the methodology for calculating such a Licence Holder's satisfaction of its Financial Resources Requirement, are set out in Appendix 1A.
- 7.03 The Licence Holder shall comply with any further financial resources requirements set by the MFSA. If the MFSA so determines, the Licence Holder will be given due notice in writing of the additional financial resources requirements which shall be applied.
- 7.04 The Licence Holder shall immediately advise the MFSA if at any time it is in breach of its Financial Resources Requirement. In this case, the MFSA may, if the circumstances justify it, allow the Licence Holder a limited period within which to restore its financial resources to the required level.
- 7.04A The Licence Holder shall ensure compliance with this section of the Investment Services Rules for Investment Services Providers and Appendix 1A to these Rules

Professional Indemnity Insurance Requirement

- 7.05 The Licence Holder shall take out and maintain such insurance cover as it considers appropriate. The following mandatory requirements shall however apply to:

A Category 1b Licence Holder having chosen the option to maintain professional indemnity insurance (instead of the option to comply with the financial resources and reporting requirements applicable to Category 1a Licence Holders) shall take out and maintain professional indemnity insurance to provide at least the minimum level of protection set out in Section 1 of Appendix 6 of these Rules.

A Category 1b Licence Holder subject to the professional indemnity insurance requirement shall submit a copy of its policy to the MFSA for approval.

For the purposes of demonstrating to the satisfaction of the MFSA that the requirements in this SLC 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.

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

- a. during the currency of a policy, the Licence Holder has notified insurers of an incident which may give rise to a claim under the policy;
- b. during the currency of a policy, the insurer has cancelled the policy or has notified its intention of doing so;
- c. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of Appendix 6 has not been taken out from the day on which the previous policy lapsed or was cancelled;
- d. during the currency of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of Appendix 6;
- e. the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy;
- f. 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 Appendix 6;
- g. during the currency of a policy, the risks covered by the policy, or the conditions or terms relating thereto, are altered in any manner.

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

Accounting / Record Keeping

- 7.06 The Licence Holder shall maintain proper accounting records to show and explain the Licence Holder's own transactions, assets and liabilities.
- 7.07 The accounting records shall:
- a. disclose with reasonable accuracy, at all times, the financial position of the Licence Holder; and
 - b. enable the financial statements required by the MFSA to be prepared within the time limits specified in the conditions of the Investment Services Licence.

- 7.08 In particular, the financial records shall contain:
- a. entries from day to day of all sums of money received and expended and the matters to which they relate;
 - b. a record of all income and expenses, explaining their nature;
 - c. a record of all assets and liabilities, including any guarantees, contingent liabilities or other financial commitments; and
 - d. entries from day to day of all transactions on the Licence Holder's own account.
- 7.09 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.
- 7.10 The Licence Holder shall agree with the MFSA its Accounting Reference Date (financial year end).

Reporting Requirements

- 7.11 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,
- The Licence Holder shall in each year prepare an Annual Financial Return in the form set out in Appendix 2 signed by the proprietor where the Licence Holder is a sole trader, or otherwise by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Licence Holder is expected to provide a certified true copy of such Board Resolution to the MFSA.
- 7.12 The Annual Financial Return shall be submitted to the MFSA within one month of the Accounting Reference Date. In addition, the Annual Audited Financial Return shall be submitted to the MFSA within four months of the Accounting Reference Date.
- 7.13 Audited annual financial statements prepared in accordance with International Financial Reporting Standards, together with a copy of the auditors' management letter and the auditors' report required by SLC 7.25, shall be submitted to the MFSA within four months of the Accounting Reference Date.
- 7.14 In addition to the Annual Financial Return and the audited annual financial statements, a Category 1 Licence Holder shall prepare an Interim Financial Return, in the form set out in Appendix 2, at a date six months after the Accounting Reference Date. In the

event of a change to the Accounting Reference Date, the date for the preparation of the Interim Financial Return shall be agreed with the MFSA.

- 7.15 The Interim Financial Return shall be submitted to the MFSA within one month of the date up to which it has been prepared. It shall be signed by the proprietor where the Licence Holder is a sole trader, or otherwise by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Licence Holder is expected to provide a certified true copy of such Board Resolution to the MFSA.
- 7.16 The Licence Holder shall prepare and submit such additional financial returns as the MFSA may require.
- 7.17 The Licence Holder shall be responsible for the correct compilation of the Financial Returns. The nature and content of the financial returns shall be as follows:
- a. they shall be in the form set out in Appendix 2;
 - b. they shall be in agreement with the underlying accounting records;
 - c. 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 amounts in respect of items representing assets or income which 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.
 - d. information to be included in the financial returns shall be prepared in accordance with International Financial Reporting Standards;
 - e. investments shall be included in the balance sheet at valuations arrived at in accordance with the provisions of International Financial Reporting Standards;
 - f. financial returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;
 - g. where the Annual Financial Return has been submitted before the relevant audited annual financial statements have been produced it shall be updated to reflect the information in the audited financial statements and submitted to the MFSA together with the audited annual financial statements;
 - h. in the case of an individual or individuals in partnership or association, financial returns 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.

- 7.18 The Licence Holder shall notify the MFSA immediately it becomes aware:
- a. that it is in breach of the requirements in respect of financial resources, records, reporting or procedures and controls;
 - b. that it will be unable to submit an Annual or Interim Financial Return on the due date.

The notice shall give reasons and shall explain what action is being taken to rectify matters.

- 7.19 The Licence Holder shall notify the MFSA immediately if:
- a. it is notified that its auditor intends to qualify the audit report;
 - b. it becomes aware of actual or intended legal proceedings against it;
 - c. it decides to claim on a professional indemnity or other policy relating to its Investment Services business;
 - d. 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.

Audit

- 7.20 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.

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.

- 7.21 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:
- a. a director, partner, qualifying shareholder, officer, representative or employee of the Licence Holder;
 - b. a partner of, or in the employment of, any person in (a) above;
 - c. a spouse, civil partner, parent, step-parent, child, step-child or other close relative

of any person in (a) above;

- d. a person who is not otherwise independent of the Licence Holder;
- e. person disqualified by the MFSA from acting as an auditor of a Licence Holder.

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.

7.22 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).

7.23 The letter of engagement shall include terms requiring the auditor:

- a. to provide such information or verification to the MFSA as the MFSA may request;
- b. to afford another auditor all such assistance as he may require;
- c. to vacate his office if he becomes disqualified to act as auditor for any reason;
- d. if he resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he considers should be brought to the attention of the MFSA;
- e. in accordance with article 18 of the Act, to report immediately to the MFSA and the Management Body of the Licence Holder where indicated, any fact or decision of which he becomes aware in his capacity as auditor of the Licence Holder which:
 - i. is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Licence Holder; or
 - ii. 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;
 - iii. gravely impairs the ability of the Licence Holder to continue as a going concern; or

- iv. relates to any other matter which has been prescribed.
 - f. in accordance with article 18 of the Act, to report to the MFSA and the Management Body of the Licence Holder where indicated, any facts or decision as specified in (e) above of any person having close links, as defined in Appendix 9, 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.
- 7.24 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.
- 7.25 In respect of each annual accounting period, the Licence Holder shall require its auditor to prepare a management letter in accordance with International Standards on Auditing. The auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion:
- a. the Annual Financial Return together with the audited annual financial statements are in agreement with the Licence Holder's accounting records;
 - b. the Annual Financial Return has been prepared in accordance with the MFSA's requirements and is consistent with the audited annual financial statements;
 - c. the Licence Holder's Financial Resources have been properly calculated in accordance with the MFSA's requirements and exceed the Licence Holder's Financial Resources Requirement as at the Accounting Reference Date;
 - d. proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the period covered by the Annual Financial Return;
 - e.
 - i. the Licence Holder has maintained throughout the period covered by the Annual Financial Return, systems adequate to safeguard Customers' Assets and Clients' Money; or
 - ii. based on review procedures performed, nothing has come to the auditor's attention that causes the auditor to believe that the Licence Holder held Customers' Assets or Clients' Money during the period covered by the Annual Financial Return.
 - f. all information and explanations necessary for the purpose of the audit have been obtained.
- 7.26 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.

- 7.27 The Licence Holder in receipt of a management letter from its auditor which contains recommendations to remedy any weaknesses 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.
- 7.28 The Licence Holder is required to include in the Directors' Report (which should form part of the annual report to members of the company), a statement regarding breaches of SLCs or other regulatory requirements which occurred during the reporting period, and which were subject to an administrative penalty or other regulatory sanction.

Where there have been no breaches, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of the breach(es) committed and regulatory sanction imposed.

7A Capital Resources Requirements, Accounting and Record Keeping

Conditions for Category 2 and Category 3 Licence Holders which are subject to the CRD and the CRR.

7.29 The Licence Holder shall at all times maintain own funds at least equal to its Capital Resources Requirement. The own funds of the Licence Holder may not fall below the amount of initial capital required at the time of its authorisation.

Provided that a Licence Holder which is a credit institution licensed in terms of the Banking Act, 1994 or a branch established in Malta of a credit institution authorised in a 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 Maltsee credit institutions, is not subject to the above-mentioned own funds and capital resources requirement and need not prepare and submit any Interim or Annual COREP Return referred to in the SLCs which follow.

7.30 The Capital Resources Requirement applicable to the different categories of Licence Holders is set out in Appendix 1B.

7.31 The Licence Holder shall ensure compliance with this section of the Investment Services Rules for Investment Services Providers and Appendices 1B and 3 to these Rules as applicable.

Insurance Requirement

7.32 The Licence Holder shall take out and maintain such insurance cover as it considers appropriate. Licence Holders shall be required to maintain insurance policies of the class and type as set out in Section 2 of Appendix 6 to these Rules (unless otherwise agreed with the MFSA).

Accounting / Record Keeping

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

7.34 The accounting records shall:

- a. disclose with reasonable accuracy, at all times, the financial position of the Licence Holder; and
- b. enable the financial statements required by the MFSA to be prepared within the time limits specified in the conditions of the Investment Services Licence.

7.35 In particular, the financial records shall contain:

- a. entries from day to day of all sums of money received and expended and the matters to which they relate;
- b. a record of all income and expenses, explaining their nature;
- c. a record of all assets and liabilities, including any guarantees, contingent liabilities or other financial commitments; and
- d. entries from day to day of all transactions on the Licence Holder's own account.

7.36 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.

7.37 The Licence Holder shall agree with the MFSA its Accounting Reference Date (financial year end).

Customers' Accounting Records

7.38 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.

7.39 The records shall:

- a. record all purchases and sales of Customers' Assets processed by the Licence Holder;
- b. record all receipts and payments of money belonging to customers which arise from transactions processed by the Licence Holder;
- c. 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;
- d. 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.

7.40 Customers' accounting records shall be retained 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.

- 7.41 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.

Reporting Requirements

- 7.42 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.
- 7.43 The Licence Holder shall complete the automated COREP Return referred to in this section, in accordance with the relevant guidance provided in Appendix 1B.
- 7.44 The Licence Holder shall in each year prepare an automated Annual COREP Return (“ACR”) in the form set out in Appendix 2 signed by the proprietor where the Licence Holder is a sole trader, or otherwise by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Licence Holder is expected to provide a certified true copy of such Board Resolution to the MFSA.
- 7.45 The ACR shall be submitted to the MFSA within 42 days of the Accounting Reference Date. In addition, the automated Annual Audited COREP Return (“AACR”) shall be submitted to the MFSA without undue delay and by not later than four months of the Accounting Reference Date.
- 7.46 Audited annual financial statements prepared in accordance with International Financial Reporting Standards, together with a copy of the auditors’ management letter and the auditors’ report required by SLC 7.57 shall be submitted to the MFSA without undue delay and by not later than four months of the Accounting Reference Date.

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 supported by an auditor’s 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.

- 7.47 In addition to the ACR and audited annual financial statements, Licence Holders shall prepare an automated Interim COREP Return (“ICR”), in the form set out in Appendix 2, at dates three, six and nine months after the Accounting Reference Date.

The first ICR should cover the three months immediately following the Accounting Reference Date, the second ICR should cover the six months immediately following the Accounting Reference Date and the third ICR 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 ICRs shall be agreed with the MFSA.

- 7.48 The ICR shall be submitted to the MFSA within 42 days of the date from which it has been prepared. It shall be signed by the proprietor where the Licence Holder is a sole trader, or otherwise by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Licence Holder is expected to provide a certified true copy of such Board Resolution to the MFSA.
- 7.49 The Licence Holder shall be responsible for the correct compilation of the COREP Returns. The nature and content of the COREP returns shall be as follows:
- a. they shall be in the form set out in Appendix 2;
 - b. they shall be in agreement with the underlying accounting records;
 - c. 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:
 - i. 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
 - ii. balances representing clients' money and/ or assets held/ controlled by the Licence Holder must not form part of the Licence Holder's Balance Sheet;
 - d. information to be included in the COREP returns shall be prepared in accordance with International Financial Reporting Standards;
 - e. investments shall be included in the balance sheet at valuations arrived at in accordance with the provisions of International Financial Reporting Standards;
 - f. COREP returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;
 - g. where the ACR has been submitted before the relevant audited annual financial statements have been produced it shall be updated to reflect the information in the audited financial statements and submitted to the MFSA together with the audited annual financial statements without undue delay and by not later than

four months of the Accounting Reference Date;

- h. in the case of an individual or individuals in partnership or association, COREP returns 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.

7.50 The Licence Holder shall notify the MFSA immediately it becomes aware:

- a. that it is in breach of the requirements in respect of its Capital Resources Requirement, records, reporting or procedures and controls;
- b. that it will be unable to submit an ACR or an ICR on the due date or to submit the AACR and the audited annual financial statements without undue delay and by not later than four months of the Accounting Reference Date.

The notice shall give reasons and shall explain what action is being taken to rectify matters.

7.51 The Licence Holder shall notify the MFSA immediately if:

- a. it is notified that its auditor intends to qualify the audit report;
- b. it becomes aware of actual or intended legal proceedings against it;
- c. it decides to claim on its insurance policy relating to its Investment Services business;
- d. 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.

Audit

7.52 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.

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.

7.53 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:

- a. a director, partner, qualifying shareholder, officer, representative or employee of the Licence Holder;
- b. a partner of, or in the employment of, any person in (a) above;
- c. a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- d. a person who is not otherwise independent of the Licence Holder;
- e. person disqualified by the MFSA from acting as an auditor of a Licence Holder.

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.

7.54 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).

7.55 The letter of engagement shall include terms requiring the auditor:

- a. to provide such information or verification to the MFSA as the MFSA may request;
- b. to afford another auditor all such assistance as he may require;
- c. to vacate his office if he becomes disqualified to act as auditor for any reason;
- d. if he resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he considers should be brought to the attention of the MFSA;
- e. in accordance with article 18 of the Act, to 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:
 - i. is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Licence Holder; or

- ii. 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;
 - iii. gravely impairs the ability of the Licence Holder to continue as a going concern; or
 - iv. relates to any other matter which has been prescribed.
- f. in accordance with article 18 of the Act, to 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 Appendix 9, 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.

7.56 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.

7.57 In respect of each annual accounting period, the Licence Holder shall require its auditor to prepare a management letter in accordance with International Standards on Auditing. The auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion:

- a. the ACR together with the audited annual financial statements are in agreement with the Licence Holder's accounting records;
- b. the ACR has been prepared in accordance with the requirements of the CRR and the Implementing Technical Standards on supervisory reporting as may be issued by the European Commission from time to time, and is consistent with the audited annual financial statements;
- c. the Licence Holder's Capital Resources Requirement has been properly calculated in accordance with the CRR and the Implementing Technical Standards on supervisory reporting as may be issued by the European Commission from time to time, and satisfy the Licence Holder's Capital Resources Requirement as at the Accounting Reference Date;
- d. proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the period covered by the ACR;

- e.
 - i. the Licence Holder has maintained throughout the period covered by the ACR, systems adequate to safeguard Customers' Assets and Clients' Money; or
 - ii. based on review procedures performed, nothing has come to the auditor's attention that causes the auditor to believe that the Licence Holder held Customers' Assets or Clients' Money during the period covered by the ACR.
- f. all information and explanations necessary for the purpose of the audit have been obtained.

7.58 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.

7.59 The Licence Holder in receipt of a management letter from its auditor which contains recommendations to remedy any weaknesses 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.

7.60 The Licence Holder is required to include in the Directors' Report (which should form part of the annual report to members of the company), a statement regarding breaches of SLCs or other regulatory requirements which occurred during the reporting period, and which were subject to an administrative penalty or other regulatory sanction.

Where there have been no breaches, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of the breach(es) committed and the regulatory sanction/s imposed.

Requirements relating to the application of the Investor Compensation Scheme Regulations ("the Regulations") Issued in Terms of the Act

7.61 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.

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.

- 7.62 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.
- 7.63 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:
- a. a prolonged and recurrent material deficit of the Licence Holder's Capital Resources Requirement, where the MFSA is of the opinion that the shareholders are unable to financially support the Licence Holder; or
 - b. the MFSA is informed of a voluntary winding up of the Licence Holder; or
 - c. the MFSA has received a complaint from one or more investors to the extent that the Licence Holder was unable to fulfill its obligations arising from claims by such investor(s).

Requirements relating to Licence Holders which form part of a Consolidated Group

- 7.64 The Licence Holder shall, by not later than the end of one month from its Accounting Reference Date, assess whether it forms part of a Consolidated Group as defined in the Glossary, and provide the MFSA with an explanation to this effect.
- 7.65 Where the Licence Holder considers that it forms part of a Consolidated Group, it shall in turn request its auditor's confirmation in this regard. The Licence Holder's auditor shall, in its annual report made in terms of SLC 7.57, provide the MFSA with a confirmation as to whether:
- a. the Licence Holder forms part of a Consolidated Group as defined in the Glossary to these Rules; and
 - b. the Consolidated Group satisfies the Capital Resources Requirement on a consolidated basis.
- 7.66 The Licence Holder which forms part of a Consolidated Group shall ensure that the

Consolidated Group maintains at all times consolidated own funds which are at least equal to the Capital Resources Requirement on a consolidated basis. The consolidated own funds of the Licence Holder may not fall below the amount of initial capital required at the time of authorisation on a consolidated basis.

- 7.67 The Licence Holder which forms part of a Consolidated Group shall prepare an automated Annual Consolidated COREP Return “ACCR” in the form set out in Appendix 2 to these Rules. This shall be signed by at least two directors or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Licence Holder is expected to provide a certified true copy of such Board Resolution to the MFSA. The ACCR shall be submitted to the MFSA within 42 days of the Accounting Reference Date.
- 7.68 In addition to the ACCR, the Licence Holder which forms part of a Consolidated Group shall, at a date, three, six and nine months after the Accounting Reference Date, prepare an automated Interim Consolidated COREP Return “ICCR”. The ICCR shall be submitted to the MFSA within 42 days of the date from which it has been prepared. In the event of a change in the Accounting Reference Date, the date for the preparation of the ICCR shall be agreed with the MFSA.
- 7.69 Licence Holders which are members of a Consolidated Group shall be required to comply with the provisions of SLCs 1.30 to 1.53 inclusive, SLCs 7.78 to 7.83 inclusive, and the provisions of Appendices 3, 4, and 10 on a consolidated or a sub-consolidated basis to ensure that their arrangements, processes and mechanisms required by the aforementioned SLCs are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

In particular, Licence Holders shall ensure that parent undertakings and subsidiaries implement such arrangements, processes and mechanisms in their subsidiaries which are not subject to the CRD. Such 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.

Provided that where any of the abovementioned subsidiaries is established in a third country, the obligations arising out of this SLC, shall not apply if the Licence Holder demonstrates to the MFSA that the application of the abovementioned SLCs is unlawful under the laws of the third country where the subsidiaries are established.

Risk Management and the Internal Capital Adequacy Assessment Process

This section (SLC 7.70 to SLC 7.77) of these Rules shall not apply to credit institutions which are also Licence Holders.

- 7.70 In terms of SLC 1.41, a Licence Holder is *inter alia* required to have in place a risk management process to:

- a. identify the risks to which the Licence Holder is/could be exposed; and
- b. manage those risks, in the light of the level of risk tolerance set by the Licence Holder.

In addition to the above, 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 Internal Capital Adequacy Assessment Process.

The Licence Holder shall, on yearly basis, review its Risk Management and Internal Capital Adequacy Assessment Process ('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.

In preparing, reviewing and updating its RMICAAP, a Licence Holder shall refer to the Appendix 10 on Risk Management and Internal Capital Adequacy Assessment for Investment Services Licence Holders,

- 7.71 As at the 31st January of every calendar year, the Licence Holder shall confirm to the MFSA 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 concerned. Such confirmation shall be signed by two directors of the Licence Holder.
- 7.72 The Licence Holder may from time to time be requested by the MFSA to submit an RMICAAP Report, outlining the arrangements, strategies, processes and mechanisms implemented by the Licence Holder to comply with SLC 7.70. The report shall *inter alia* indicate:
- a. the risks to which the Licence Holder is/could be exposed; and
 - b. the manner in which the Licence Holder is managing/intends to manage these risks.

Such report shall be signed by two directors of the Licence Holder.

- 7.73 Taking into account the technical criteria set out in Appendix 10 on Risk Management and Internal Capital Adequacy Assessment for Investment Services Licence Holders, the MFSA shall review the RMICAAP Report submitted by a Licence Holder in terms of SLC 7.72 and evaluate the extent to which the Licence Holder has arrangements, strategies, processes and mechanisms in place which ensure a sound management and

coverage of all material risks.

- 7.74 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 this section on an individual basis.

Licence Holders which are members of a Consolidated group shall be required to comply with the obligations of this section on a consolidated or sub-consolidated basis.

- 7.75 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 this section as supplemented by the provisions of Appendix 10, on a consolidated basis.

- 7.76 Where the Licence Holder is a member of a Consolidated Group which comprises also other investment firms authorised in other Member States and which are controlled by a parent financial holding company or a parent mixed financial holding company in a Member State, SLC 7.75 shall apply only to the Licence Holder where the MFSA is the consolidating supervisor in terms of Regulation 3 of the Supervisory Consolidation Regulations, 2014.

- 7.77 Where the Licence Holder is a subsidiary member of a Consolidated Group and either:

- a. 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;
- b. 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;

the Licence Holder shall comply with the requirements set out in SLCs in this section on a sub-consolidated basis.

Regulatory Disclosure by Licence Holders

This section (SLC7.78 to SLC 7.83) of these Rules shall not apply to credit institutions which are also Licence Holders.

- 7.78 The Licence Holder shall publicly disclose all the information stipulated in Appendix 4. The Licence Holder shall disclose all further information referred to in Part Eight of the CRR, as amended by the applicable transitional provisions set out in Part Ten of

the CRR, once a year.

- 7.79 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.
- 7.80 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.
- 7.81 For the purposes of complying with the Pillar 3 regulatory disclosure requirements, Licence Holders shall make reference to:
- a. articles 431 to 455 and 492 of the CRR;
 - b. the relevant Technical Standards on regulatory disclosure issued by the European Commission from time to time; and
 - c. the Guidelines which the EBA may issue on this matter from time to time.
- 7.82 Where the Licence Holder intends to withhold regulatory disclosure in terms of Article 432 of the CRR, it shall:
- a. request its Compliance Officer to prepare a Compliance Report indicating the reasons for non-disclosure and confirming that the said non-disclosure is permitted by the above mentioned Article; and
 - b. in its regulatory disclosure state the fact that the information required to be disclosed has not been disclosed and the reason for non-disclosure, in accordance with paragraph 3 of article 432 of the CRR.
- 7.83 Where the Licence Holder maintains a website, it shall disclose the manner in which it complies with the corporate governance requirements referred to in SLCs 1.30 -1.38 and SLCs 1.41 – 1.54 inclusive herein and the reporting requirements referred to in SLC 7.80 and Section 2.3 of Appendix 4 and the remuneration provisions detailed in Appendix 10.

8 Transaction Reporting

8.01 The Licence Holder which executes transactions in any Reportable Instrument shall report the details of such transactions to the MFSA. This obligation shall apply whether or not such transactions were carried out on a regulated market. For the avoidance of doubt, such reporting requirement does not apply to the following categories of Investment Services Licence Holders:

- i. Licence Holders who merely “receive and transmit orders” by transmitting client’s orders to a third party for execution, and who therefore do not actually execute transactions for clients themselves (i.e. they do not deal as agent);
- ii. Category 1a, 1b, or 4 Investment Services Licence Holders;
- iii. Where the Licence Holder is already subject to a transaction reporting requirement by a Regulated Market or an MTF, in respect of the trade and/or where the Regulated Market or MTF has been entrusted by the MFSA to act as reporting channel;
- iv. Where the Licence Holder has a branch in another Member State and carries out the transaction through the said branch on a Regulated Market or MTF in another EU or EEA Member State (“its host State”).

Reference to Appendix 8 of these Rules should be made. This contains guidance as to:

- a. the applicability of the reporting requirement in different scenarios;
- b. the information which such transaction reports shall contain; and
- c. the system through which such transaction reports shall be made.

8.02 Transaction Reports shall be submitted as soon as practicable after the execution of the trade as and in any event not later than the close of the following working day. The Licence Holder must notify the MFSA in writing and without delay, of any circumstances which prevent a transaction report being made within the period specified above. This obligation shall apply whether or not such transactions were carried out on a regulated market.

8.03 The Licence Holder shall report such details relating to off-exchange trades which it may execute on behalf of or with clients in relation to Instruments listed and traded on a regulated market or an MTF, as the Regulated Market or MTF may request.

8.04 The Licence Holder shall 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 clients. 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 Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purposes of money laundering.

- 8.05 In complying with the provisions of this Section of the Investment Services Rules, the Licence Holder shall also refer and comply with the applicable provisions of Chapter III of the Commission Regulation.

9 Conditions applicable to Licence Holders engaging in foreign currency lending

- 9.01 The Licence Holder shall, in as far as these may be applicable to any foreign currency lending which it may carry out, abide by the high level principles on foreign currency lending as outlined in [MFSA Rule 1 of 2012](#) on foreign currency lending which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1).
- 9.02 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.
- 9.03 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.
- 9.04 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