

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

PART B: STANDARD LICENCE CONDITIONS

Part B II: Professional Investor Funds targeting Qualifying Investors

APPLICABILITY OF REGULATION (EU) NO 345/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 APRIL 2013 ON EUROPEAN VENTURE CAPITAL FUNDS AND OF REGULATION (EU) NO 346/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 APRIL ON EUROPEAN SOCIAL ENTREPRENEURSHIP FUNDS

Where the Scheme is established as:

- [I] a European Venture Capital Fund in terms of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds; or
- [II] a European Social Entrepreneurship Fund in terms of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds;

it shall refer to and comply with the applicable provisions of the aforementioned Regulations as well as the SLCs prescribed in this Rulebook.

In the case of conflict between these Rules and the provisions prescribed in the aforementioned EU Regulations, the provisions of the latter shall prevail.

- 1.1 Apart from the conditions listed in this section, where the Scheme is established in the form of a limited partnership or an investment company, it shall also be subject to the supplementary conditions for Schemes established as limited partnerships or as Investment Companies – as applicable – set out in Appendix I. In the case of umbrella Schemes, reference to “the Scheme” shall be construed, where applicable, as reference to the Sub-Funds of the Scheme.
- 1.2 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme.

- 1.3 Apart from being constituted as a PIF, the Scheme shall not carry out any activity for which a Licence is required, unless prior approval is obtained from the MFSA. The MFSA may in such circumstances, request such additional information and impose such additional conditions it deems appropriate.
- 1.4 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any Licence Condition or to impose any new conditions.

Manager

- 1.5 The Scheme shall appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme:

Provided that where a third party Manager is not appointed, the supplementary conditions applicable to Self-Managed Schemes set out in SLCs 4.2 to 4.15 of Appendix I shall apply in lieu of SLCs 1.6 and 1.7 below;

Provided further that PIFs which are self-managed and which qualify for the *de minimis* exemption prescribed therein shall also be subject to SLC 4.1 of Appendix 1.

- 1.6 The Manager shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Manager. The Scheme shall be required to satisfy the MFSA that the proposed Manager meets the above requirements.
- 1.7 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Manager to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Administrator

- 1.8 The Scheme may appoint an Administrator. Where an Administrator is not appointed, the Manager shall be responsible for the Administration function.
- 1.9 The Administrator shall have the business organisation, systems,

experience and expertise deemed necessary by the MFSA for it to act as Administrator. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above requirements.

- 1.10 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Investment Adviser

- 1.11 The Scheme may appoint an Investment Adviser. The Investment Adviser shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Adviser. The Scheme shall satisfy the MFSA that the proposed Adviser meets the above requirements.
- 1.12 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Investment Adviser to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Custodian

- 1.13 The assets of the Scheme shall be subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the Offering Document and shall be subject to MFSA approval.
- 1.14 The Custodian, where appointed, shall be:
- i. an entity providing the services of a Custodian in terms of a Category 4a or a Category 4b Investment Services Licence issued under the Investment Services Act, 1994; or
 - ii. an entity constituted in a Member State or EEA State and operating from a Member State or EEA State other than Malta, providing the services of Custodian or Prime Broker to collective investment schemes; or

- iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian or Prime Broker to collective investment schemes where the MFSA is satisfied that such entity is of sufficient standing and repute and having the business organization, systems, experience and expertise deemed necessary for it to act as Custodian.
- 1.15 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement any party to act in the capacity of Custodian or Prime Broker to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.
- 1.16 Where appointed, the Custodian or Prime Broker shall be separate and independent from the Manager and shall act independently and solely in the interests of the unit holders. Any facts, relationships, arrangements, or circumstances which may at any stage bring that independence into question shall be declared to the MFSA as soon as the Scheme becomes aware of any such matter.
- 1.17 Where appointed, the Custodian shall ensure compliance with the provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations, 2016.

Local Representative

- 1.18 Where the Scheme's service providers are all based outside Malta and where the Scheme has not appointed a local resident Director (in the case of a Scheme set up as an investment company, or a local General Partner (in the case of a Scheme set up as a limited partnership), or a local Trustee (in the case of a Scheme set up as a unit trust or a common contractual fund), it shall be required to appoint a Local Representative.
- 1.19 The Local Representative shall be based in Malta and shall carry out the following functions:
- i. act as point of liaison between the MFSA and the Scheme;
 - ii. receive any instructions from the MFSA;
 - iii. provide any information to the MFSA as may be requested by the MFSA from time to time;

iv. act as the Scheme's Money Laundering Reporting Officer.

The Local Representative may also act as the Scheme's Compliance Officer.

1.20 The Local Representative should have access to all records regarding the Scheme in order to be in a position to provide any documents or respond to any queries that the MFSA may have, as the need arises.

1.21 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Local Representative to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

Compliance Officer

1.22 Responsibility for the Scheme's compliance with its licence conditions rests with the Board of Directors in the case of a Scheme set up as an investment company; with the General Partner(s) in the case of a Scheme set up as a limited partnership; or with the Manager in the case of a Scheme set up as a unit trust or a common contractual fund.

1.23 The Scheme shall at all times have a Compliance Officer.

1.24 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer in advance. The request for consent of the appointment or replacement of a Compliance Officer, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule C to Part A of these Rules and by a Competency Form, in the form set out in Schedule D to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

1.25 The Scheme shall notify the MFSA of the resignation or removal of its Compliance Officer upon becoming aware of the proposed resignation or removal. The Scheme shall also request the Compliance Officer to confirm to the MFSA that his 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 Scheme's notification of departure.

1.26 The Scheme shall request its Compliance Officer to prepare a “Compliance Report” at least on a six monthly basis, which in the case of a Scheme taking the form of:

- an investment company, should be presented to the Board of Directors;
- a limited partnership, should be presented to the General Partner;
or
- a unit trust or a common contractual fund, should be presented to the Manager and the Trustee.

The “Compliance Report” should indicate any:

- i. breaches of the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. material compliance issues during the period covered by the Compliance Report.

The “Compliance Report” should also include a confirmation that all the local Prevention of Money Laundering requirements have been satisfied. This confirmation should be obtained from the Scheme’s Money Laundering Reporting Officer.

1.27 A copy of the “Compliance Report” should be held in Malta at the registered office of the Scheme and made available to the MFSA during Compliance Visits.

Prevention of Money Laundering

1.28 Responsibility for the Scheme’s compliance with its Prevention of Money Laundering obligations rests with the Board of Directors in the case of a Scheme set up as an investment company; with the General Partner(s) in the case of a Scheme set up as a limited partnership; or with the Manager in the case of a Scheme set up as a unit trust or a common contractual fund.

- 1.29 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.30 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer in advance. The request for consent of the appointment or replacement of a MLRO, shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule C to Part A of these Rules and by a Competency Form, in the form set out in Schedule D to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 1.31 The Scheme shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal. The Scheme shall also request the MLRO to confirm to MFSA that his 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 Scheme’s notification of departure.

Auditor

- 1.32 The Scheme shall appoint an auditor approved by the MFSA. The Scheme 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.
- 1.33 The Scheme shall make available to its auditor, the information and explanations he/ she needs to discharge his/ her responsibilities as an auditor and in order to meet the MFSA's requirements.
- 1.34 The Scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his/ her firm is:
- i. a director, partner, qualifying shareholder, officer, representative or employee of the Scheme;
 - ii. a partner of, or in the employment of, any person in (a) above;
 - iii. a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above;

- iv. a person who is not otherwise independent of the Scheme; or
- v. a person disqualified by the MFSA from acting as an auditor of a Scheme.

For this purpose an auditor shall not be regarded as an officer or an employee of the Scheme solely by reason of being auditor of that Scheme.

1.35 The Scheme 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 Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

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

- i. to provide such information or verification to the MFSA as the MFSA may request;
- ii. to afford another auditor all such assistance as he/ she may require;
- iii. to vacate his/ her office if he/ she becomes disqualified to act as auditor for any reason;
- iv. if he/ she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his/ her ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he/ she considers should be brought to the attention of the MFSA;
- v. in accordance with section 18 of the Act, to report immediately to the MFSA any fact or decision of which he/ she becomes aware in his/ her capacity as auditor of the Scheme which:
 - is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
 - constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme in or under the Act;
 - relates to any other matter which has been prescribed.

- 1.37 If at any time the Scheme 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 Scheme.
- 1.38 In respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.

Investment Objectives, Policies and Restrictions

- 1.39 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. In addition, where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in Appendix I. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The Manager or the Scheme shall not be bound to comply with the principle of risk spreading.
- 1.40 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.41 Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.
- 1.42 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:
- i. if one or more of the Scheme's investment restrictions are at any time contravened for reasons beyond the control of the Manager or the Scheme, the Manager or the Scheme must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unit-holders and, in any event, within the

period of six months beginning on the date of discovery of the contravention of such restriction(s).

The above is aimed at addressing circumstances which may arise following acquisition of the Scheme's assets and include market price movements of the Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the Manager and the Scheme to comply with the Scheme's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

- ii. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a licence condition and will therefore not be subject to MFSA's notification requirements. However, where the contravention is not remedied by the Manager or Scheme within the maximum six month period stipulated in (i) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply.

Cross Sub-Fund Investments

1.43 A sub-fund may invest in units of one or more sub-funds within the same scheme, subject to this being permitted in the constitutional documents and the Offering Memorandum of the said Scheme and subject to the following:

- (a) the investment company should in its memorandum of association elect to have the assets and liabilities of each sub-fund comprised in that company treated as a patrimony separate from the assets and liabilities of each other sub-fund of such company in terms of Regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;
- (b) the sub-fund is allowed to invest up to 50% of its assets into any sub-fund within the same scheme;
- (c) the target sub-fund/s may not themselves invest in the sub-fund which is to invest in the target sub-fund/s;
- (d) in order to avoid duplication of fees, where the manager of the sub-fund and the manager of the target sub-fund is the same or (in the case of different managers) where one manager is an affiliate of the other, only one set of management (excl. performance fees),

subscription and/or redemption fees applies between the sub-fund and the target sub-fund, provided that this restriction shall apply only in respect of and to the extent (up to the portion) of the investment of the sub-fund in the target sub-fund;

- (e) for the purposes of ensuring compliance with any applicable capital requirements, cross-investments will be counted once;
- (f) any voting rights acquired by the sub-fund from the acquisition of the units in the target sub-fund shall be disappplied as appropriate.

Offering Document

- 1.44 The Scheme shall publish an Offering Document, which shall be dated and the essential elements of which shall be kept up to date. The Offering Document shall be offered to investors free of charge before they become committed to investing.
- 1.45 The Offering Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in Appendix II.
- 1.46 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.47 The Offering Document and any amendments thereto shall be sent to and agreed with the MFSA before publication. The Scheme must submit a copy of its approval of the Offering Document, when this is submitted for MFSA's approval.

Constitutional Document

- 1.48 Any changes to the Constitutional Document of the Scheme must be approved by the MFSA in advance of implementation.

Promotion

- 1.49 The Manager and/or any appointed intermediary may only promote the Scheme to Qualifying Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available

for investment by the general public but is only available for investors satisfying the applicable Qualifying Investor criteria set out in the Scheme's Offering Document. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Qualifying Investors.

- 1.50 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.
- 1.51 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.
- 1.52 All publicity comprising an invitation to purchase Units in the Scheme shall be approved by the Compliance Officer. All promotional material issued by the Scheme shall indicate that an Offering Document exists and the places where it, and any documents updating it, may be obtained.

Amended 1st
November,
2007

Minimum Entry Levels

- 1.53 The minimum investment which the Scheme may accept is EUR75,000 or USD75,000. Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR75,000 or USD75,000 unless this is the result of a fall in the net asset value. In the case of an umbrella Scheme where each of the Sub-Funds is set up as a Professional Investor Fund, the EUR75,000 or USD75,000 threshold may apply on a per scheme basis rather than on a per Sub-Fund basis.

Qualifying Investor Declaration Forms

- 1.54 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as "Qualifying Investors" and that they have read and understood the risk warnings in the Offering Document. In the case of joint holders, all holders should individually qualify as "Qualifying Investors". The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary.
- 1.55 Copies of the Qualifying Investor Declaration Forms and records evidencing compliance with the local Prevention of Money Laundering requirements should be held in Malta at the registered office of the

Scheme and should be available for inspection by the MFSA during compliance visits.

Side Letters

- 1.56 Side letters to be entered into by the Scheme must be circulated and approved by the Board of Directors (in the case of a Scheme set up as an investment company) / General Partner(s) (in the case of a Scheme set up as a limited partnership)/ Manager (in the case of a Scheme set up as a unit trust or a common contractual fund) of the Scheme prior to issue.
- 1.57 Side letters issued by the Scheme should be retained in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

Foreign Currency Lending

- 1.58 The Scheme 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).
- 1.59 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.
- 1.60 When the Scheme 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 report. Any foreign currency lending activity shall be indicated as a percentage of the scheme's total NAV. A Scheme which has not carried out any foreign currency lending during the period under review is not required to submit a 'nil' return.

Distributions of Income

- 1.61 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering Document.

General

- 1.62 The Scheme – or the Manager or Administrator on its behalf – shall submit copies of the Scheme’s annual audited financial statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request. The half-yearly (if any) and annual reports shall be published and provided to investors in the Scheme, and submitted to the MFSA within two and six months respectively of the end of the period concerned.

The Scheme shall also submit to the MFSA, on the following email address: fundreporting@mfsa.com.mt, any statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations.

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

- 1.63 The Scheme shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Scheme on the day the Licence is first issued, and thereafter annually within one week from the anniversary of that date.
- 1.64 The Scheme shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of, the MFSA and inform it promptly of any relevant information. The Scheme shall supply the MFSA with such information as the MFSA may require.
- 1.65 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.66 The Scheme shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements, and other documents. Wording similar to the following shall be used: “*Licensed by the MFSA as a Professional Investor Fund available to Qualifying Investors*”.
- 1.67 The Scheme shall comply with the applicable laws and regulations relating to the Prevention of Money Laundering.
- 1.68 The MFSA shall not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.

- 1.69 A request for a variation of the Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 1.70 The MFSA shall be informed of any material information concerning the Scheme, its management or its operation, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing of:
- i. any evidence of fraud or dishonesty by an official of the Scheme immediately upon becoming aware of the matter;
 - ii. any actual or intended legal proceedings of a material nature by or against the Scheme immediately the decision has been taken or on becoming aware of the matter;
 - iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.
- 1.71 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document or Constitutional Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.
- 1.72 The Scheme shall not be required to make public the issue and redemption prices of its Units. However, these must be made available to unit-holders upon request.
- 1.73 If dealings in the Units are suspended, the Scheme – or the Manager or Administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension.
- 1.74 The Scheme, its Manger or Administrator on its behalf shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. 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 two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.
- 1.75 In the event of a winding-up, the Scheme must give MFSA at least two weeks notice of this intention. The prior approval of the MFSA shall be

obtained for the approach to be adopted. If requested to do so by the MFSA, the Scheme, shall do all in its power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA.

- 1.76 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.
- 1.77 The Scheme shall at all times monitor the regulatory status of the fund manager. In the event that the fund manager is no longer a de minimis fund manager, the Scheme must ensure that it becomes compliant with the requirements prescribed in the AIFM Directive as outlined in Appendix 6 to these Rules.