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Regarding the provisions quoted in the response below, as far as possible, hyperlinks to these provisions (in the respective language or, if available, in English) are set out in Document CESR/04-075 for each country.*

IMPORTANT NOTICE

In the interest of transparency and to inform interested parties, CESR has published the following (together the “Tables”):

- *the Correspondence Tables on the CESR Standards for Investor Protection (Ref. CESR/03-416b to 423b, CESR/03-134/Country);*
- *the Correspondence Tables on the CESR Standards for Alternative Trading Systems (Ref. CESR/03-415b, CESR/03-135/Country);*
- *the Synthesis Tables (Ref. CESR/03-427b and CESR/03-432b);*
- *the List of Alternative Trading Systems currently operating in Member States¹ (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

The Tables were produced by the Members of CESR¹ within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the CESR Standards for Investor Protection² and the CESR Standards for Alternative Trading Systems³ in Member States.

The Tables have no legal effect; they do not present any interpretation of, or definitive position on, existing law or regulation in any jurisdiction. The Tables should not be relied upon for any purpose other than the purpose for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the regulatory system of any Member State or as a defence in supervisory activities or enforcement proceedings; and they cannot be used to restrict competent authorities in taking regulatory or enforcement actions.

The information set out in the Tables is the response of each Member’s self-assessment. For this reason, the content of the Tables regarding a particular Member State has been prepared solely by the relevant Member on a best-efforts basis. (In a next step, the CESR Review Panel is going to conduct a common and collective peer exercise in reviewing the responses from all Members.) In case of discrepancy between the tables containing the responses from all CESR Members and the tables containing the individual responses from a particular CESR Member, the latter should be referred to.

The Tables provide a “snap shot” and will be up-dated on a regular basis to take account of regulatory developments in Member States. Therefore, they cannot be considered as fully finalised or definitive reflections of regulatory provisions in Member States. The Tables should also be read in light of current and future developments in the formulation of the proposed Directive on Markets in Financial Instruments (“ISD2”) and the future Level 2 implementing measures, and without prejudice to the position of any Member State in those developments.

For a more detailed account of the process, methodology and first, interim results, please see the “First Interim Report” by the Review Panel (Ref. CESR/03-414b).

¹ For reasons of simplicity, the term “Member” in this context refers to all participants in the Review Panel, i.e. CESR Members, CESR Observers, and the Polish securities regulators; this applies to the term “Member State” accordingly.

² “A European Regime of Investor Protection - The Harmonization of Conduct of Business Rules” (Ref. CESR/01-014d, April 2002) and “A European Regime of Investor Protection – The Professional and the Counterparty Regimes” (Ref. CESR/02-098b, July 2002).

³ Ref. CESR/02-086b, July 2002.

Correspondence Table on Standards for Investor Protection
(Ref. CESR/01-014d and CESR/02-098b)

MALTA

A. CONDUCT OF BUSINESS RULES FOR THE “RETAIL REGIME”

1. STANDARDS AND RULES OF GENERAL APPLICATION

The MFSA will consider the implementation of Standards/ Rules which are referred to in the correspondence tables and which are not yet catered for in local legislation or regulatory requirements within approximately eighteen months following Malta’s accession to the European Union on 1st May 2004. For the time being, the Authority has taken note of these Standards and Rules and is considering the manner in which to cater for their proper implementation in local legislation and regulations.

1.1 GENERAL

Standard /Rule	Implementing authority(ies)	Implementing measure ⁴	Comments
<i>1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.</i>	Malta Financial Services Authority (the MFSA)	In terms of Licence Condition (‘SLC’) 3.02 of Part CI of the Investment Services Guidelines ⁵ (‘ISG’) a person granted a licence under the Investment Services Act, 1994 ⁶ to provide investment services (‘Investment Firm’), is required to act honestly, fairly and with integrity – in the best interest of its customers and of the market.	

⁴ Any derogation to the application of the implementing measures should be mentioned.

⁵ Investment Services Guidelines (‘ISG’) include Standard Licence Conditions (‘SLCs’) and other general guidelines which are mandatory on Investment Firms or Investment Services Licence Holders (‘ISLHs’).

⁶ Investment Services Act, 1994 is the statutory basis for the licensing and regulation of Investment Firms in Malta

Standard /Rule	Implementing authority(ies)	Implementing measure ⁴	Comments
<i>2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.</i>	MFSA	SLC 3.07(I) of Part CI of the ISG SLC 10.01 of Part C I of the ISG	
<i>3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.</i>	MFSA		Not catered for in local legislation.
<i>4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.⁷</i>	MFSA	Sections 1.01 and 1.02 of Part D of the ISG	

⁷ This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.</i></p>	<p>MFSA</p>	<p>Licence Conditions 3.02 (b) and 14.03 of Part C I of the Investment Services Guidelines, require an investment firm:</p> <ul style="list-style-type: none"> (i) avoid conflicts of interest where this is possible and, where it is not ensuring – by way of disclosure, internal procedures or otherwise – that customers are treated fairly; (ii) avoid conflicts of interest when aggregating an order for a client with orders for other clients or with orders for its own account. 	<p>In practice, the internal procedures regarding the avoidance of conflicts of interests established by Licence Holders which do not deal on their own account, may or may not include the adoption of Chinese walls. However Licence Holders which deal on their own account must establish internal independence policies including Chinese walls.</p>
<p>7. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest, either in writing or by telephone and recorded by the firm and the customer has expressly agreed to engage in such business with the investment firm. Where possible, this disclosure must be given at the beginning of the customer relationship; otherwise it must be given prior to the customer entering into any relevant transaction.</p>	<p>MFSA</p>	<p>Vide reply to para (5) above. Moreover, SLC 3.03(k), 3.05 (c) and (d) in Part CI of the ISG</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer.</i></p>	MFSA	SLC 3.05 (c), (d) and SLC 8.07 (o) (v)(vi) of Part C I of the ISG	
<p>8. Where inducements are permitted an investment firm must act in the best interest of the customer and inform the customer at the beginning of the relationship, which may give rise to conflicts of interest between itself and its customers, about the investment firm's policy on inducements and at least once a year in writing of the relevant details of such inducements.</p>	MFSA		No additional requirements to those referred to above within this section.

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>9. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct.</i></p>	<p>MFSA</p>	<p>Response to St. 1 also refers.</p> <p>Furthermore, as the Regulator of investment services in Malta, the MFSA requires Investment Firms to adhere strictly to the requirements imposed under the law, the regulations and other rules in force. Every applicant for a licence will be asked (as part of the licensing process) to identify an individual (“the Compliance Officer”) who will be responsible for ensuring the Investment Firm’s adherence.</p> <p>In this regard the responsibilities of a Compliance Officer and the conditions attached to this role, are set out in Section 3.01 of Part A of the ISG.</p> <p>Before a Compliance Officer is appointed, the Investment must formally propose appointment to MFSA – after having conducted its own due diligence checks. MFSA will then write to the person proposed reminding that person of the nature of the role and asking that person to confirm (in writing) his/her understanding of the requirements and their acceptance of the responsibilities attached to the Compliance role.</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
11. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.	MFSA	Vide reply to St. 9 above	
12. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.	MFSA	<p>Vide reply to St. 9 above</p> <p>Additionally please also note that:</p> <ul style="list-style-type: none"> • SLC 1.11 of Part C I of the ISG requires an Investment Firm to submit a Certificate of Compliance, signed by an Officer of the Investment Firm to be submitted biannually. This documents details the extent to which the Investment Firm has complied with the Investment Services Act; the licence conditions and any recommendations or directives issued to the Investment Firm by the Malta Financial Services Authority. <i>Inter alia</i> it also provides details of any conditions which were breached by the Investment Firm during the period. • SLC 10.32 of Part C I of the ISG requires Investment Firms to include in their annual report to members of the company, a statement regarding breaches of SLCs and/or any regulatory sanctions which occurred during the reporting period. 	
13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.	MFSA	SLC 1.15 of Part C I of the ISG	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>14. The compliance function must: - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</p>	MFSA	Vide reply to St. 9 above.	
<p><i>10. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</i></p>	MFSA	Vide reply to R. 12 above. Additionally, at least on an annual basis, the MFSA conducts compliance visits at the offices of Investment Firms with purpose of verifying compliance with the various applicable rules and requirements. In this regard SLC 1.10 of Part CI of the ISG requires an Investment Firm to co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or any inspector acting on its behalf.	
<p>15. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>	MFSA	SLC 3.06 (h) of Part CI of the ISG	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>16. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</p>	<p>As above</p>	<p>SLC 3.07(I) requires an Investment Firm to set up a ‘Complaints Register’ within which the Investment Firm is to record every complaint and the action taken in its regard. Moreover in terms of Section (4) of Part C I of the Investment Services Guidelines of the ISG, an Investment Firm is required to process complaints.</p>	<p>Although there is no specific requirement stipulating that a firm must regularly verify whether complaints are adequately processed, the procedure stipulated by our guidelines regarding the processing of complaints obliges a firm to deal with complaints within specified time-frames.</p> <p>Furthermore, in practice, during regular compliance visits effected at our Licence Holders, checks are made as to whether that Licence Holder is regularly verifying whether complaints are adequately processed. If it is found that this is not the case, the firm is required to process complaints adequately.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> a) the rules and procedure to meet the obligation to protect data of a confidential nature; b) the rules and procedures for carrying out personal transactions involving financial instruments; c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements. 	MFSA	<p>SLC 3.07 of Part C I of the ISG</p> <p>Moreover, Section 9 of Part C I of the ISG prescribes rules relative to 'Staff Dealing'. In general an Investment Firm is responsible to ensure that staff dealing does not lead to abuse. The detailed staff dealing procedures prescribed by this section of the ISG have been attached as Appendix 2 to this document for ease of reference.</p>	<p>17(a) is not specifically provided for in the Investment Firm's regulatory requirements although Investment Firms are required to respect the confidentiality provisions laid out on Section 26 of the ISA, as well as the applicable requirements of the Data Protection Act.</p>

1.4. COLD CALLING ⁸

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>18. For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.</i>	MFSA		
19. Cold calls may only be made by persons employed by, or appointed as tied-agent ⁹ by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.	MFSA	<p>SLC 3.07 <i>inter alia</i> requires an Investment Firm to have proper procedures and controls to ensure that staff and representatives (including staff involved in cold calling):</p> <ul style="list-style-type: none"> (a) are adequately supervised and are not allowed to act beyond their levels of competence; (b) are aware of and comply with the applicable licence conditions in this regard. <p>In terms of the same licence condition, Investment Firms are also required to maintain adequate records of the training, experience and qualifications of staff and representatives, showing the categories of business each person is competent to conduct.</p>	It is to be noted that only persons employed by, or appointed as tied agent by an investment firm, are permitted to make cold calls – otherwise, people who are not employed with a licensed entity and who engage in cold calling are deemed as arranging a deal and seen as carrying out a licensable activity without the required licence.

⁸ These rules are without prejudice to any provisions of EU law governing the means whereby or conditions under which an investment firm or its tied-agent may initiate unsolicited contacts with a prospective customer.

⁹ This is without prejudice to the applicability of professional requirements, imposed at national level.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>20. An investment firm cold calling customers may do so only between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.</p>	<p>MFSA</p>	<p>SLC 3.07 (d) of Part C I of the ISG</p>	
<p>21. The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see par. 24) during which orders may not be executed.</p>	<p>MFSA</p>	<p>Vide reply to 20 above</p>	
<p>22. The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.</p>	<p>MFSA</p>	<p>Vide reply to 20 above Moreover, see SLC 3.07 (e)</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
23. An investment firm must not exert undue pressure on a potential customer during the course of a cold call and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.	MFSA	Vide replies to 20 / 21above	
24. During the period for which the customer benefits from a right of withdrawal from the contract (as determined by Article 4.a of the Distance Marketing Directive), an investment firm shall not execute any customer orders in respect of financial instruments under the contract.	MFSA		Not specifically catered for in local regulatory requirements for Investment Firms.

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>25. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i>	MFSA	In terms of SLC 3.05 of Part C I of the ISG, an investment firm is required to ensure that adequate disclosure of relevant material information to prospective and actual customers in a way which is fair, clear and not misleading.	
27. The firm must ensure that information provided to customers is clear and comprehensible. The content and purpose of the information should be easily understood and key items should be given due prominence. The method of presentation of the information must not disguise, diminish or obscure important warnings or statements.	MFSA	SLC 3.05 (b), (g) and (h) of Part C I of the ISG	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.</i>	MFSA	Vide reply to 27 above.	
28. In supplying information on a timely basis the investment firm must take into consideration: a) the urgency of the situation and b) the time necessary for a customer to absorb and react to the information provided and c) the terms of business agreed with the customer.	MFSA		Not catered for in local legislation.

2.2.) MARKETING COMMUNICATIONS ¹⁰

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.</i></p>	<p>MFSA</p>	<p>In compiling or approving an investment advertisement, an investment firm, SLC 5.05 (a) – (c) and SLC 5.06 (a) of Part C I of the ISG apply.</p>	
<p><i>30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.</i></p>	<p>MFSA</p>	<p>Vide reply to 29 above.</p>	

¹⁰ This is without prejudice of EU or national provision requiring authorisation and/or other requirements affecting the provision of marketing services.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
31. The information provided by an investment firm in a marketing communication must be consistent with the information it provides to its customers in the course of the provision of the investment services.	MFSA		There is no specific requirement that information provided in marketing communication must be consistent with information provided in the course of the provision of the investment services. However, the requirement exists that information contained in the marketing information should not be untrue or misleading.
32. Any marketing communication must contain at least the information about the investment firm defined in points a) and b) of paragraph 36. In case of a cross border marketing communication, the information provided must in addition state that information about the firm can also be obtained from or through the competent authority of the Member State where the customer resides.	MFSA	SLC 5.10 of Part C I of the ISG <i>inter alia</i> requires an Investment Firm to include the name and address of the Investment Firm in any advertisement, and if it is the case, confirmation that the firm is licensed by the MFSA.	Local legislation does not cater for a standard which would require a cross border marketing communication, to include a statement that information about the firm can also be obtained from or through the competent authority of the Member State where the customer resides.
33. An investment firm must not use the name of the competent authority in such a way that would indicate endorsement or approval of its services.	MFSA	In conducting its business an Investment Firm is required in terms of SLC 3.02 of PART C I of the ISG to act honestly, fairly and with integrity. <i>Inter alia</i> in this regard an Investment Firm is required to ensure that its Investment Services Licence is not presented as an opinion expressed by the MFSA on the merits of using the services of the Investment Firm.	
34. Where a marketing communication refers to a financial instrument or an investment service it must contain at least the information referred to in points a) and d) of paragraph 40.	MFSA	SLC 5.10 (e) and 5.22 of Part C I of the ISG	

2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.</i></p>	<p>MFSA</p>	<p>In conducting its business an investment firm is required in terms of SLC 3.03 of PART C I of the ISG to act with due skill, care and diligence – and in the best interest of its customers and of the market. In terms of the same SLC such action shall include: ensuring that customers and prospective customers are provided with adequate information on products sold or promoted by the investment firm See also SLC 3.05 (a) of PART CI of the ISG</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services:</p> <p>a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number;</p> <p>b) the fact that the investment firm is authorised and/or registered and the name of the competent authority that has authorised and/or registered it;</p> <p>c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities;</p>	<p>MFSA</p>	<p>In terms SLC 3.05 of Part C I of the ISG an Investment Firm is required to ensure the adequate disclosure of relevant material information to prospective and actual customers in a way which is fair, clear and not misleading. This shall include:</p> <p>to disclose the identity of the regulated entity and its regulator in all correspondence, advertisement and other documents;</p> <p>As above.</p> <p>to disclose that the Investment Firm is '<i>Licensed to conduct Investment Services business by the Malta Financial Services Authority.</i>'</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>d) the relevant compensation scheme(s);</p> <p>e) where such a procedure exists, a description of the mechanism(s) for settling disputes between the parties such as an out-of-court complaint and redress mechanism;</p>		<p>In terms of article 25 (1) of the Investor Compensation Scheme Regulations LN 6 of 2003, an Investment Firm is required to make available to actual and intending investors adequate and clear information concerning the applicability of the Scheme together such other particulars as may from time to time be specified by the MFSA in a manner and form specified by the MFSA.</p> <p>Article 20 of the Malta Financial Services Authority Act ('MFSA Act') provides for the appointment of a Consumer Complaints Manager.</p> <p>The function of the Consumer Complaints Manager to investigate complaints from private consumers arising out of or in connection with any financial services transaction, and to refer such cases as may be necessary or appropriate to the Supervisory Council for its consideration; provided that nothing in this subarticle shall be construed as giving a consumer a specific right to require the Consumer Complaints Manager to give him advice on any particular matter or to act on his behalf in any dispute with a licensed person before any court or tribunal, except to the extent, if any provided for by this or any other law.</p>	
<p>f) an outline of the firm's policies in relation to conflicts of interest and inducements;</p> <p>g) the languages in which the customer can communicate with the investment firm.</p>		<p>In terms of SLC 4.05 of Part C I of the ISG an investment firm must also inform the complainant that a complainant may refer the complaint to the MFSA if (s)he is not satisfied with the proposed remedial action.</p> <p>SLC 3.02 <i>inter alia</i> requires an investment firm to disclose any existing conflicts of interest to clients and prospective ones.</p> <p>Not catered for in local legislation.</p>	

2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>37. An investment firm must inform customers of the key features of investment services and financial instruments envisaged, according to the nature of such instruments and services.</i></p>	<p>MFSA</p>	<p>SLC 3.06 of Part C I of the ISG requires an Investment Firm to conduct its business with each customer by means of a written agreement which shall set out the basis on which its services are to be provided. <i>Inter alia</i> this document is required to include a statement disclosing the nature of the services to be provided by the Investment Firm, including where appropriate, the customer's investment objectives and any restrictions on investments or markets in which funds may be invested.</p> <p>Having said that, there are particular instances where a customer agreement is not required which include:</p> <ul style="list-style-type: none"> i. the issue of any tipsheet, broker's circular or other investment publication; ii. a contract entered into by the Manager of a Collective Investment Scheme as Principal to sell or purchase units in that Scheme; iii. advising on, dealing as Representative in, and arranging transactions in units in a Collective Investment Scheme or in an LLTCI where the customer's requirements are reasonably believed by the Investment Firm to be confined to Collective Investment Scheme units or an LLTCI, as long as there is no element of discretionary management by the Investment Firm; and iv. deals effected or arranged on behalf of an execution-only customer (where the customer is reasonably believed not to be relying on the Investment Firm to advise him or exercise any judgement on his behalf as to the transaction's suitability); Provided that the Investment Firm obtains the customer's written confirmation outlining the services being sought from the Investment Firm. <p>Notwithstanding the above instances, SLC 3.03(g) still applies – which requires that the Investment Firm shall act with due skill, care and diligence – and in the best interests of its customers and of the market. Such action shall include taking all reasonable steps to ensure that a Private Customer has sufficient information which he is able to understand to enable him to take informed investment decisions.</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum:</p> <p>a) a description of the main characteristics ¹¹ of the instrument/service, including the nature of the financial commitment, whether the instruments involved are traded on a regulated market or not and the risks involved;</p>	<p>MFSA</p>	<p>Please refer to the reply for (37) above. Additionally clauses (g) and (h) of SLC 3.05 of Part C I of the ISG</p>	

¹¹ If the customer envisages undertaking transactions in derivatives, the information provided must include an explanation of their characteristics (especially the leverage effect, the duration of the contract, the liquidity and volatility of the market), a description of their underlying parameters (e.g. equities/interest rates/currencies), and the method to be used to execute the customer's transactions (in particular, whether on a regulated market or not).

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service;</p> <p>c) arrangements for payment and performance;</p> <p>d) details on any cancellation rights or rights of reflection that may apply.</p>		<p>SLC 3.05 (f) and (i) of Part C I of the ISG</p> <p>In terms of SLC 3.06 of Part C I of the ISG an agreement with a Private Customer is required <i>inter alia</i> to detail (i) the way in which instructions may be given by the customer for a transaction; and (ii) arrangement for bringing the agreement to an end .</p>	
<p><i>38. An investment firm must communicate clearly and precisely to the customer all the charges relating to the services or instruments envisaged and how the charges are calculated.</i></p>	<p>MFSA</p>	<p>Vide reply to (40) (b) above.</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>41. The information to be disclosed to customers on commissions, charges and fees must contain:</p> <p>a) the basis or amount of the charges for transactions, products or services, detailing, where appropriate, the percentage or rate applicable, the frequency with which it is applied, any maximum or fixed minimum fees and, where the commission or fee must be paid in foreign currency, the currency involved;</p> <p>b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable.</p>	MFSA	Vide reply to (40) (b) above.	
<p>42. In order to give a fair and adequate description of the investment service or financial instrument, an investment firm must avoid accentuating the potential benefits of an investment service or financial instrument without also giving a fair indication of the risks.</p>	MFSA	Vide reply to (40) (a) above.	
<p>43. The fair and adequate description of a compound product must contain all the relevant characteristics of the composite instruments including, for example, the different services involved, the duration of the product, whether the instrument involves credit, the interest due, etc.</p>	MFSA	Vide reply to (40) (a) above.	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
44. The information on financial instruments and investment services must not state or imply that the performance of services or of the investment is guaranteed unless there is a legally enforceable arrangement to meet in full an investor's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the investor to make a fair assessment of the guarantee.	MFSA	SLC 3.05 of part CI of the ISG an Investment Firm is required to ensure the adequate disclosure of relevant material information to prospective and actual customers in a way which is fair, clear and not misleading. See also SLC 3.02 (e) of Part CI of the ISG and SLC 5.20.	
45. When information provided refers to a particular tax treatment the investment firm must advise the customer that the tax treatment depends on his personal situation and is subject to change and that he may wish to obtain independent tax advice.	MFSA	SLC 5.21 of Part C I of the ISG	
<i>39. If information provided by an investment firm refers either to the past performance or to a forecast of the future performance of a financial instrument or investment service, this information must be relevant to the instrument or service being promoted and the source of the information must be stated.</i>	MFSA	SLC 5.26 (a) – (c) of Part C I of the ISG	
46. If a reference to historical performance of investment services or financial instruments is made, it must be clearly expressed that the figures refer to the past, and that they may not constitute reliable guidance as to the performance of these services and instruments in the future.	MFSA	Vide replay to (39) above.	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <p>a) the reference period must be stated and must not be less than one year;</p> <p>b) where returns relate to more than one year, they must either be reduced to a compound annual rate or stated separately as annual returns;</p> <p>c) where a compound annual return is presented for more than one year, a reference period of five years must be used provided the relevant data are available. If the relevant data are not available over a reference period of five years (e.g. because the financial instrument or the investment portfolio has not existed for such a period), the returns may be measured from the issue date or the date on which the portfolio was established;</p>	MFSA	Ad a) – c) SLC 5.26 (g) – (i), (m) of Part C I of the ISG	
<p>d) Where a benchmark is used to compare returns, it must be identified and its reference period must be relevant, clear and sufficient to provide a fair and balanced indication of performance of the investment service or financial instrument being promoted;</p> <p>e) if the return figures are not denominated in local currency, the currency used must be stated and reference shall be made to the currency risk for the return in local currency;</p>		<p>SLC 5.26 (j) and (l), and 5.06 (j) of Part C I of the ISG</p> <p>SLC 5.29 (e) of Part C I of the ISG</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
f) the information for the comparison should be based on net performances or if it is based on gross performances commissions, fees or other charges have to be disclosed.		SLC 5.26 (d) of Part C I of the ISG	
48. The relevant provisions on actual returns shall apply to the method of calculating and presenting any future returns. Information on estimated future returns must state that these future returns are forecasts. Such forecasts must in turn be based on objective, realistic assumptions of investment returns.	MFSA		No projected returns are allowed in advertisements. SLC 5.26(f) states that Performance must not be based on simulated figures.
49. Any estimate, forecast or promise contained in the information on financial instruments and investment services must be clearly expressed, must state the assumptions on which it is based, must be relevant and must not mislead the customer.	MFSA	SLC 5.06(a) in Part CI of the ISG	
<p>50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must:</p> <p>a) be based either on data from attributed sources or disclosed assumptions;</p> <p>b) be presented in a fair and balanced way;</p> <p>c) take reasonable steps not to omit any fact that is material to the comparison.</p>	MFSA	<p>Ad a) Vide reply to 47 (d) above. Additionally SLC 5.26 (j) of Part C I of the ISG</p> <p>Ad b) SLC 5.26 (l) of Part C I of the ISG</p> <p>Ad c) Not catered for in local legislation.</p>	

2.5) RISK WARNINGS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>51. An investment firm must provide its customers with risk statements that warn of the risks associated with financial instruments and transactions having regard to the customer's knowledge, experience, investment objectives and risk profile.</i></p>	<p>MFSA</p>	<p>Vide reply to (40) (a) above.</p>	<p>In our opinion, the concept of “suitability of an investment to a customer” covers the knowledge, experience, investment objectives and risk profile of a client. In fact the Client Fact Find that advisors are required to complete gathers information about all of these aspects of a client situation. Furthermore, 3.03(c) also requires investment firms except when acting on an execution only basis, to take adequate steps to discover the personal and financial circumstances of:</p> <ul style="list-style-type: none"> • a Private Customer before making any recommendation as to the suitability of a transaction or service; or • a Private Customer or a non-Private Customer before processing a discretionary transaction on his behalf; <p>3.03(d) also requires an investment firm to take all reasonable steps to obtain sufficient financial and other information from each customer as is relevant to the services to be provided by the investment firm.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>53. An investment firm must provide its customers with risk warnings as appropriate. Instances where the type of instrument or transaction envisaged makes specific risk warnings necessary include:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market; - transactions in illiquid financial instruments; - leveraged transactions; - financial instruments subject to high volatility in normal market conditions; - securities repurchase agreements or securities lending agreements; - transactions which involve credit, margin payments or the deposit of collateral; - transactions involving foreign exchange risk. 	MFSA	<p>Vide reply to (40) (a) above. Additionally, SLC 3.06 (k) (l) and (m) of Part CI of the ISG SLC 5.13 of Part CI of the ISG</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>53. The investment firm must also, where necessary, inform the customer of risks associated with:</p> <p>a) clearing house protections (e.g. that although the performance of a transaction is sometimes ‘guaranteed’ by the exchange or clearing house this guarantee will not necessarily protect the customer in the event of default by the investment firm or another counterparty);</p> <p>b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position);</p> <p>c) insolvency (e.g. that in the event of default of an investment firm involved with the customer’s transaction, positions may be liquidated automatically and actual assets lodged as collateral may be irrecoverable).</p>	MFSA	Vide reply to (40) (a) above.	This requirement is catered for in local legislation by way of the provisions in SLC 3.05 (g) and (h) of Part C I of the ISG.
<p><i>52. Risk warnings must be given due prominence. They must not be concealed or masked in any way by the wording, design or format of the information provided.</i></p>	MFSA	SLC 5.29 of Part C I of the ISG	
<p>54. Risk warnings about derivatives must disclose that the instrument can be subject to sudden and sharp falls in value. Where the investor may not only lose his entire investment but may also be required to pay more later, he must also be warned about this fact and the possible obligation to provide extra funding.</p>	MFSA	Vide reply to (40) (a) above.	This requirement is catered for in local legislation by way of the provisions in SLC 3.05 (g) and (h) of Part C I of the ISG.

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</i>	MFSA	Vide reply to (40) (b) above.	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer¹², by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information:</p> <ul style="list-style-type: none"> a) the name of the firm; b) the name of the customer account; c) the time of execution, if available, or a statement that the time of execution will be supplied on request; d) date of execution; e) the type of transaction; e.g. buy, sell, subscription etc.; f) the market on which the transaction was carried out or the fact that it was carried out off-market; g) the financial instrument and the quantities involved in the transaction; h) the unit price applied and the total consideration; i) whether the customer's counterparty was the investment firm itself or any related party; j) the commissions and expenses charged; k) the time limit and procedure for the settlement of the transaction, e.g. details (name and number) of the bank account and securities account. <p>If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.</p>	<p>MFSA</p>	<p>SLC 8.06, 8.07 and 8.10 of Part C I of the ISG of Part C I of the ISG</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
59. The investment firm must notify the customer immediately if it refuses to accept or transmit an order. The firm must inform customers as soon as possible if it is unable to transmit their orders.	MFSA		Not catered for in local legislation.
<i>56. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.</i>	MFSA	SLC 3.05(k) of the ISG Furthermore, please note condition 7.01	
60. An investment firm must send to its customer at least once a year or as often as agreed with the customer a statement of all assets held in custody on behalf of each customer. The statement must also: a) identify assets which have been pledged to the firm or any third parties as collateral; b) identify assets which have been lent; c) clearly and consistently show movement of assets based on either trade date or settlement date.	MFSA	As above. Additionally, see SLC 8.03 of the ISG	SLC 3.05(k) does not elaborate on contents of the report to customers.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
		<ul style="list-style-type: none"> - particulars of which assets (if any) were at the closing date the subject of a loan to a third party and which (if any) were at that date charged to secure borrowings made on behalf of the portfolio, such assets remaining part of the portfolio notwithstanding any transfer of title; - the aggregate of any interest payments made or income received during the period of account in respect of loans or borrowings made during that period; - particulars of each transaction effected by the investment firm for the portfolio during the period of account; and - particulars of each payment to or from the client during the period; - if not previously advised in writing, a statement of the aggregate charges of the Licence Holder; - a statement of any remuneration received by the Licence Holder from a third party in respect of the transactions entered into, or any other services provided, for the portfolio; and 	
		If one or more pieces of the information set out above has been provided to the client already as part of any other document, a statement to this effect will suffice.	
<i>57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i>	MFSA		Not catered for in local legislation.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>61. Where an account includes uncovered open positions¹³, an investment firm must send to its customer a monthly statement, which includes the following:</p> <p>a) information about the options contract, e.g. market price, date of exercise, exercise price, as well as any incidental costs connected with the exercise;</p> <p>b) each payment made by the customer as a result of the margin requirements in respect of the open positions and the amount of the unrealised profit or loss attributable to open positions;</p> <p>c) the resulting profit or loss arising from positions closed during the period.</p>	MFSA		Not catered for in local legislation.

3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

3.1 INFORMATION FROM THE CUSTOMER

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>62. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation on the identity of the customer, as well as the identity and legal capacity of any representative of the customer. In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm</i></p> <p><i>a. to determine whether the investment services envisaged are appropriate for the customer¹⁴ and</i></p> <p><i>b. to meet any duties owing to the customer in respect of the services to be provided.</i></p>	MFSA	<p>SLC 3.03 (c), (d), (e), (f), (g) and (h)</p> <p>Moreover the applicable Money Laundering rules on ‘Identification Procedures’ also apply in this case. Reference should be made to the “Prevention of Money Laundering Guidance Notes for Investment Services and Life Assurance Business”.</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
63. The “know-your-customer” standard applies to each investment firm having a direct business relationship with the customer with respect to investment services. However, where two or more investment firms are involved in providing an investment service and each has a direct relationship with the customer, an investment firm may rely on the information received from another of such investment firms.		Vide reply to (62) above. Reference should be made to the “Prevention of Money Laundering Guidance Notes for Investment Services and Life Assurance Business”.	
64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.	MFSA	Clause 3 (1) (a) of the Prevention of Money Laundering Regulations, 2003 requires <i>inter alia</i> an Investment Firm not to form a business relationship with any person unless the said Investment Firm: (a) maintains the following procedures established in relation to that business: (i) identification procedures in accordance with the provisions of these regulations; (ii) record –keeping procedures in accordance with the provisions of these regulations; and (iii) internal reporting procedures.	
65. An investment firm must seek to obtain information on the customer’s knowledge and experience ¹⁵ in the investment field, his investment objectives and risk profile, ¹⁶ his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.	MFSA	Vide reply to (62) above.	
66. An investment firm shall be entitled to rely on the information provided by the customer, unless it is manifestly inaccurate or incomplete or the firm is aware that the information is inaccurate or incomplete. In this case paragraph 69 applies.	MFSA	SLC 3.04 of Part C I of the ISG	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
67. An investment firm must take reasonable care to keep the customer profile under review, also taking into consideration the development of the relationship between the investment firm and the customer. The customer must be advised that he should inform the investment firm of any major changes affecting his investment objectives, risk profile, financial situation/capacity, trading restrictions, or the identity or capacity of his representative. Should the firm become aware of a major change in the situation previously described by the customer, it must request additional information.	MFSA		Not catered for in local legislation.
68. An investment firm must draw up and implement appropriate written internal policies and procedures to keep and update all documents required for customer identification and profile, as well as records of customer addresses and telephone/fax numbers.	MFSA	SLC 3.03 SLC 3.07	
69. An investment firm must warn the customer that any refusal to supply information may adversely affect the ability of the investment firm to act in the best interest of the customer. If a customer refuses to supply information the investment firm must warn him in writing that this may adversely affect the ability of the investment firm to act in his best interest.	MFSA		There is no direct reference in Maltese Legislation which would cater for this requirement. However, in terms of SLC 3.04 Part C I of the ISG an investment firm is required <i>inter alia</i> to keep a note on file if a customer refuses to disclose to the Investment Firm all the necessary information. In this regard, the client should be required to endorse the said note.
70. The customer should not be invited not to provide information.	MFSA		Not catered for in local legislation.

3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER ¹⁷

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>72. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship, that this investment advice is suitable for him. The investment firm must communicate the reasons why the advice is considered to be in the best interest of the customers at the time the advice is given.</i></p>	<p>MFSA</p>	<p>Vide reply to (62) above.</p>	<p>However Maltese rules do not require an investment firm to communicate the reasons why the advice is considered to be in the best interest of the customers at the time the advice is given.</p>
<p><i>73. Before accepting an order an investment firm must take reasonable care to verify that the order is suitable for the customer in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship.</i></p>	<p>MFSA</p>	<p>Vide reply to 40 (a). Additionally, in terms of SLC 3.03 of Part C I of the ISG an investment firm is required to act with due skill, care and diligence – and in the best interest of its customers and of the market.</p>	
<p>75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable¹⁸ for the customer, it must advise the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning. The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>	<p>MFSA</p>		<p>No direct provision is made in Maltese Legislation to cater for this requirement. Nevertheless, in terms of SLC 3.03 of Part C I of the ISG an Investment Firm is required to act with due skill, care and diligence – and in the best interest of its customers and of the market and in doing so is required to keep a note in the client's file when acting on an execution only basis, that is processing a transaction in circumstances where the customer is reasonably believed not to be relying on the Investment Firm to advise him or exercise any judgement on his behalf as to the transaction's suitability. In terms of the same licence condition, this note should also be signed by the client.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
			Moreover SLC 3.03(e) states that the Investment Firm shall act with due skill, care and diligence – and in the best interests of its customers and of the market. Such action shall include, taking all reasonable steps to ensure that transactions are suitable for a customer, bearing in mind his objectives.
74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.	MFSA	Vide reply to (66) above.	
76. An investment firm may accept an order without having taken reasonable steps to verify the immediate availability of the funds (securities) necessary for carrying out the related purchase (sale) only if an adequate credit facility has been agreed on beforehand.	MFSA		Not catered for in local legislation.
77. Where the service to be provided is the pure transmission or execution of orders (either through a special distribution channel, in individual cases or generally) the customer must be made aware of this fact prior to the transaction taking place for the first time. On the basis of the information obtained from the customer on opening the account, the investment firm will define an appropriate service including investment parameters, i.e. types of instruments, types of transactions and types of orders, and inform the customer accordingly. Where the investment firm receives an order regarding a transaction, which is not in line with the defined investment parameters, it must warn the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning(s).	MFSA		Other than as described above, no additional directly relevant regulations are imposed.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.	MFSA		

4. CUSTOMER AGREEMENTS

4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>78. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties, a description of the services to be provided, and all other items of information necessary for the proper understanding and performance of the agreement.</i></p>	<p>MFSA</p>	<p>SLC 3.06 requires that:</p> <p>“An investment firm shall conduct its business with each customer by means of a written agreement which shall set out the basis on which its services are to be provided...” Q80(g) – SLC 3.06(b) requires the agreement to include: “in respect of any charges payable by the customer to the <i>Investment firm</i>: -</p> <ul style="list-style-type: none"> • the basis of calculation. In this regard the <i>Investment firm</i> shall give customers at least one month’s notice of any proposed increase in the charges; • the basis of payment (deduction or billing etc.). In this regard the <i>Investment firm</i> shall make no deduction from income or capital belonging to a customer in respect of its charges unless it has given notice to the customer; • the frequency of payment; and • whether or not any fees payable are supplementary to or abated by any remuneration receivable by the <i>Investment firm</i> in connection with transactions effected by the <i>Investment firm</i> with or for the customer;” <p>Q80(h) – SLC 3.06(c) requires the agreement to include “the fact that the <i>Investment firm</i> is regulated in the conduct of its Investment Services business by the MFSA;”</p> <p>Q80(j) – SLC3.06 (j) requires the agreement to include “arrangements for bringing the agreement to an end”.</p>	<p>No customer agreement is required for: -</p> <ol style="list-style-type: none"> i. the issue of any tipsheet, broker’s circular or other investment publication; ii. a contract entered into by the Manager of a Collective Investment Scheme as Principal to sell or purchase units in that Scheme; iii. advising on, dealing as Representative in, and arranging transactions in units in a Collective Investment Scheme or in an LLTCI where the customer’s requirements are reasonably believed by the <i>Investment firm</i> to be confined to Collective Investment Scheme units or an LLTCI, as long as there is no element of discretionary management by the <i>Investment firm</i>; and iv. deals effected or arranged on behalf of an execution-only customer (where the customer is reasonably believed not to be relying on the <i>Investment firm</i> to advise him or exercise any judgement on his behalf as to the transaction’s suitability); Provided that the <i>Investment firm</i> obtains the customer’s written confirmation outlining the services being sought from the <i>Investment firm</i>. 80(I) – There is no formal requirement in this regard. However, in practice the agreement would indicate

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>79. The customer agreement must be clear and easily understandable by the customer.</i></p>	<p>MFSA</p>	<p>SLC 3.06 SLC 9.01</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> a) the identity, postal address and telephone number of each of the parties; b) the names of any persons authorised to represent the customer for the purposes of the agreement, in particular the names of the natural persons authorised to represent the customer who is a legal entity; c) the investment firm's general terms of business for investment services and any particular terms agreed between the parties concerning, e.g. margin requirements or potential obligations where securities may be purchased on credit d) a general description of the investment services, including custody, offered by the investment firm and the types of financial instruments to which such services relate; 	<p>MFSA</p>	<p>SLC 3.06 (a) to (r)</p> <p>Q80(c) – SLC 3.06(d), (e), (f), (h), (i), (j). These relate to general terms of business. SLC 3.06 (l), (m), (n), (o), (p), (q), (r) relate to specific circumstances such as margin transactions, discretionary portfolio and high risk investments.</p> <p>Q80(d) – SLC 3.06 (a) requires that the agreement includes statements on “the nature of the services to be provided by the <i>Investment firm</i>, including, where appropriate, the customer’s investment objectives and any restrictions on investments or markets in which funds may be invested;”.</p> <p>Q80(e) – SLC 3.06 (d) requires details on the way in which instructions may be given by the customer for a transaction to be specified in the agreement.</p>	<p>Q80 a) & b) - While there are no formal requirements in this regard, such details are in practice included in the agreement.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>e) the types of orders and instructions that the customer may place with the investment firm, the medium/media for sending them (e.g. by telephone, E-mail or post) and the alternative medium to be used when normal media are unavailable;</p> <p>f) the information to be given by the investment firm to the customer regarding the performance of services including the medium/media for sending the information and the type, frequency and rapidity of the information to be given e.g. regarding order execution or portfolio evaluation;</p> <p>g) details of the investment firm's fees and prices for investment services, including information on how they are to be calculated, the frequency with which they are to be charged and the manner of payment;</p>		<p>Q80(f) – SLC 3.06 (o) / (p) require the agreement to include: “the frequency with which the customer is to be supplied with a statement of the money and the investments comprising the portfolio and a valuation thereof (this should be at least once every six months) and what the basis of valuation is to be;” and “if the agreement is to include a measure of portfolio performance, the basis on which that performance is to be measured;”</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<ul style="list-style-type: none"> h) the name of the competent authority which has authorised the investment firm; i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties; j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it; k) where such a procedure exists, a description of the mechanism for settling disputes between the parties such as an out-of-court complaint and redress mechanism; 			

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>l) the actions that the investment firm shall or may take in the event the customer does not honour his obligations (e. g. payment of money due to the investment firm), in particular whether the investment firm is allowed to dispose of any of the customer's assets, the timeframe for doing so and the information to be given to the customer in such circumstances;</p> <p><i>m)</i> the languages in which the customer can communicate with the investment firm.</p>			

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>81. Rather than containing all the above items itself, the contract may refer to other documents containing certain of them, e.g. the general terms of business, the types of investment services offered, the types of orders and information to be sent by the parties and the fee schedule, provided that all the contractual documents so referred to are provided to the customer prior to the signing of the contract.</p>	<p>MFSA</p>		<p>There is no specific condition in this regard. However, in practice it is accepted that certain information which is not included in the agreement per se is attached or provided to clients under separate form. For example, this is most commonly done in relation to charges, where a sheet specifying the <i>investment firm's</i> charges is usually attached to the agreement rather than details included in the agreement.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>82. Where a custody service related to the other services provided by the firm to the customer is provided, either directly by the investment firm party to the contract with the customer or indirectly by another investment firm, the contract must contain at least a brief indication of the rights and obligations of the parties, including the provisions relating to the exercise of voting rights attaching to the securities held.</p>	<p>MFSA</p>		<p>The rights and obligations are contained in Sections 6 and 7 of the ISG which relate to “Clients’ Money” and “Customers’ Assets” and the Investment Services Act (Control of Assets) Regulations, 1998.</p> <p>An exercise is currently being conducted with the aim to set up a standard set of disclosure requirements for the client agreement which would apply in the case of custody/ nominee services. The proposed rules would cater for areas like voting rights.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>83. The contract must state that any modification of the agreement by the investment firm, e.g. regarding fees, requires the prior notification of the customer, and the contract must provide a sufficient opportunity for the customer to terminate the agreement.</p>	<p>MFSA</p>	<p>With regards to charges, SLC 3.06 (b) requires <i>Investment firms</i> to give customers at least one month's advance notice of any proposed increase in fees. As to termination, SLC3.06(j) requires that the client agreement specifies "the arrangements for bringing the agreement to an end".</p>	<p>No specific requirement included regarding the modification of the agreement.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>84. A copy of the agreement signed by the customer (and any related contractual documents) must be kept by the investment firm for the duration of the customer relationship and for at least five years after the end of the relationship; a copy must be provided to the customer immediately after signing, and at any time subsequently on request.</p>	<p>MFSA</p>	<p>SLC 3.06 (h) SLC10.22</p>	<p>Although a customers' accounting records are required to be maintained for a minimum period of 10 years, there is no specific requirement regarding the retention of a copy of the client agreement form. There is also no specific requirement that a copy of the agreement must be provided to customer immediately after signing and at any time subsequently upon request.</p>

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>85. Prior to providing the services of reception/transmission and/or execution of orders involving derivatives, a customer agreement containing the relevant provisions of the basic customer agreement as well as certain additional provisions specific to trading in derivatives must be signed between the parties.</i></p>	<p>MFSA</p>	<p>SLC 3.06 specifies additional requirements in relation to certain instruments. In this regard, SLC 3.06 specifies that “Where the <i>Investment firm</i> has the power to make investments in higher risk investments on behalf of a Private Customer, the agreement shall specifically state that such transactions are permitted and shall set out the limits as to the categories of investment or as to the maximum financial commitment allowed. The agreement shall also contain the appropriate risk warnings.</p>	
		<p>Examples of such higher risk investments are:-</p> <ul style="list-style-type: none"> • warrants, options, futures, rights under contracts for differences; • other margined transactions; • investments which are not readily realisable; and the underwriting of instruments.” <p>In the case of margined transactions, SLC 3/06 also requires the following:</p> <p>k. “Where a <i>Investment firm</i> may effect margined transactions on behalf of a Private Customer, the agreement shall also include:</p> <p>l. a warning that the customer may, in certain circumstances, be required to provide additional money by way of margin;</p> <p>m. a statement of when deposit or margin (including the initial and variation margin) may be required and the <i>Investment firm’s</i> rights on failure to pay; also a warning that failure to meet margin calls may lead to closing-out without reference to the customer;</p> <p>a statement of the circumstances in which the <i>Investment firm</i> may close-out a position without reference to the customer.”</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain:</p> <ul style="list-style-type: none"> - the type(s) of instruments and transactions envisaged, - the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer, - the obligations of the customer with respect to the transactions envisaged, in particular his financial commitments toward the investment firm and the time allowed for honouring such commitments, - an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged. 	MFSA	Vide reply to St. 85.	Investment firms effecting transactions in derivatives also usually make use of documentation used by foreign brokers for such purposes. This is done in view that the local investment firms would usually effect the transactions through the foreign broker and not directly themselves.
<p>87. The contract must mention the types of transactions envisaged, in particular whether the customer intends to undertake transactions giving rise to contingent liabilities, the types of instruments envisaged, in particular whether they are traded on a regulated market or not, and it must refer to the documentation on such instruments provided by the investment firm to the customer for information purposes.</p>	MFSA	Vide reply to Q86. SLC 3.06 also requires that "Where the <i>Investment firm</i> may effect contracts in respect of investments which are not readily realisable, the customer agreement shall contain a warning that there is no recognised market for such investments and that it may be difficult to deal in, value, or obtain information about such investments."	
<p>88. The contract must provide for the immediate confirmation of derivatives transactions and the immediate notice to the customer of his payment obligations as they arise, as well as the procedures to be used for such confirmation and notice.</p>	MFSA		No specific rule in this regard. The ISG contains a general section relating to the dispatch and contents of contract notes. The section however does not specifically cater for contract notes in relation to derivative instruments.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
89. The contract, or the documentation referred to in the contract, must provide adequate information on any margin requirements or similar obligations, regardless of the source of such rules and requirements, e.g. an exchange or clearing house, or the investment firm itself. This document must indicate how margin will be calculated and charged, the assets (cash, securities, etc.) accepted as margin, the frequency of margin calls and the timetable for the delivery or payment of margin by the customer to the investment firm. The contract must require immediate notification to the customer of any change in margin rules.	MFSA	Vide reply to Q86.	
90. The warning given to the customer should reflect the transactions envisaged, in particular where potential losses may exceed the amounts invested, as well as the experience, knowledge and financial situation/capacity of the customer or type of customer involved, and should be given due prominence in the contract.	MFSA	SLC 3.06 requires the disclosure of the appropriate risk warnings in the client agreement form.	

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>91. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.</i>	MFSA	SLC 3.03 (a)/ (b)	
93. An investment firm must ensure that, prior to their transmission for execution, orders given by customers are clear and precise and include the following: a) the name of the customer and of any person acting on his behalf, b) the date and time of the order, c) the financial instrument to be traded, d) the size of the order, e) the nature of the order, e.g., subscription, buy, sell, exercise etc., f) any other relevant details and particular instructions from the customer for the order to be properly transmitted and executed, e.g. limit orders, validity period and market of execution; g) the account for which the order has to be executed.	MFSA		Not catered for in local rules. Such details would be in practice requested by the investment firm in order for this to be in a position to execute instructions in a prompt and timely fashion.
94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	MFSA	SLC 8.06	
95. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.	MFSA		Not catered for in local rules.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
96. Before transmitting orders on behalf of several beneficiaries on an aggregated basis, an investment firm must pre-assign such orders in order to ensure that they can identify and match the orders with the relevant customer at any time.	MFSA		Not specifically catered for in local rules. However, SLC 14.03 states that « The <i>Investment firm</i> may aggregate an order for a client with orders for other clients or with orders for its own account, provided that such aggregation does not operate to the disadvantage of any of the clients whose orders have been aggregated, and does not create a conflict of interest. » SLC3.02 (k) also requires the following: « allocating investments fairly, on a timely basis and without discrimination. The <i>Investment firm's</i> allocation should be made last unless its participation results in a better deal for all; »
97. An investment firm must transmit orders promptly and sequentially and must take all reasonable care to transmit orders in a way to facilitate their best execution, taking into account all relevant details of the process of transmission, e.g. the size and characteristics of the order.	MFSA	Vide reply to St. 91	
<i>92. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.</i>	MFSA	SLC 3.02(j) / SLC 3.07(c).	
98. An investment firm must take all reasonable steps to refrain from transmitting orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").	MFSA	Vide reply to St. 92. Also note SLC 9.05	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	MFSA		No specific requirement apart from SLC3.02(k)
100. An investment firm may transmit orders for its own account and for its customers account on an aggregated basis when it is clearly in accordance with the best interest of the customer and provided that the best execution standard is respected.	MFSA	SLC 14.03 SLC 3.02(m)	
101. In the case of orders in connection with public offers of securities, an investment firm may transmit such orders provided that they offer the relevant prospectus to the customer or informs the customer where it is available.	MFSA	SLCs 3.03 (g)/ (h) In our opinion, the above conditions clearly require a firm to provide a customer with sufficient information to enable them to take informed investment decisions – which information precedes an investment order.	The Companies Act (Section 89) requires a public offer of securities to issue an offering document (prospectus). This would need be provided or made available to the public prior to investing.

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>102. <i>An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.</i></p>	<p>MFSA</p>	<p>SLC 3.03(b)</p>	<p>SLC 3.03(b) is however general and does not cater for relevant markets.</p>
<p>104. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.</p>	<p>MFSA</p>	<p>SLC 3.02(m) SLC 3.06(i) also requires that the client agreement shall specify whether the <i>Investment firm</i> may act as a Principal in a transaction with the customer. A contract note should specify whether the <i>Investment firm</i> acted as principal. See SLC 8.07 (o)</p>	
<p>105. An investment firm must take all reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter (“front running”).</p>	<p>MFSA</p>	<p>SLC 3.02(j) / (k) / SLC 3.07(c) SLC3.07(c) – Vide reply to St. 92.</p>	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i></p>	As above		<p>No specific requirement apart from SLC 3.03 which requires that: “<i>The Investment firm</i> shall act with due skill, care and diligence – and in the best interests of its customers and of the market. Such action shall include: a. executing instructions and decisions in a prompt and timely fashion and, to the extent possible, in the order in which they are received;”</p>
<p>106. An investment firm must execute orders promptly and sequentially, unless the characteristics of the order and/or prevailing market conditions make this impossible or require otherwise in the interest of the customer.</p>	As above	Vide reply to St.91	
<p>107. Customer orders may be matched internally only if such offsetting is clearly in accordance with the best interest of the customers involved and provided that the best execution standard is respected.</p>	As above	SLC 3.03(b)/ 3.02(m)	
<p>108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.</p>	As above		Not specifically catered for.
<p>109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.</p>	As above	SLC 8.07(o)	
<p>110. An investment firm must inform customers of relevant risks or impediments for the proper execution of the orders. If, due to market conditions, or for any other reason, an order cannot be executed according to the instructions given by the customer, an investment firm must ensure that the customer is duly informed as soon as possible.</p>	As above	SLC 3.05(g)/ (h)/ (i)	

5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>	As above	SLC 3.02 (k)/ SLC 3.03(a)/ SLC 10.20/10.21	
113. An investment firm must record the essential elements of transactions, including those carried out for its own account, immediately after their execution. An investment firm must record in an analogous manner the orders they give and the transactions they carry out for the purpose of remedying errors made in recording, transmitting or executing orders.	As above	SLC10.06/ 10.20	
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	As above		No specific rules on this area. However, see also SLC 10.21
<i>112. Where orders for own and customer accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.</i>	As above	SLC 3.02 (j)/ (k)	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>115. Where an order has been executed in several tranches, the investment firm must inform the customer about the price of execution of each tranche, unless the customer requests an average price. If customer orders have been aggregated and such an aggregated order has been partially executed, the investment firm must allocate the related trade on a proportional basis, unless the firm has a different allocation policy and the customers involved have been informed accordingly prior to the execution. An investment firm must have procedures in place to prevent that reallocation of principal transactions executed along with customers transactions on an aggregated basis give unfair preference to the investment firm or to any of its customers for whom it deals.</p>	<p>As above</p>		<p>Not specifically catered for. SLC 8.07(e) only requires a contract note to contain “the date and, either the time of the transaction or a statement that the time of the transaction will be supplied on request. Where a series of transactions is treated as one transaction, the contract note need not state the time of the transaction or that a statement of it is available upon request - but must state the weighted average price paid in all of the transactions in the series;”</p>

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

6.1. CUSTOMER AGREEMENTS FOR DISCRETIONARY PORTFOLIO MANAGEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>116. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.</i>	As above	SLC 3.06 of Part C I of the ISG	A Private Customer is defined in the ISG as “a customer who is an individual and who is not acting in the course of carrying on investment business and who has not clearly elected to be treated as a non-Private Customer”.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain:</p> <ul style="list-style-type: none"> a) the management objective(s) and any specific constraints on discretionary management, b) the types of financial instruments that may be included within the portfolio and the types of transactions that may be carried out in such instruments, including any related limits. <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> c) without prejudice of paragraph 121, the benchmark against which performance will be compared, d) the basis on which the instruments are to be assessed at the date of valuation, e) details regarding the delegation of the management function where this is permitted. 	As above	<ul style="list-style-type: none"> a) SLC3.06(a) and (n) of Part CI of the ISG b) SLC3.06(a) of Part CI of the ISG c) SLC 3.06(p) of Part C I of the ISG d) SLC 3.06(o) e) Not specifically catered for in local rules. 	<p>Re (e). However, Section 1 of Part D of the ISG contains general principles which must be observed by investment firms when outsourcing any of its functions. It is made clear that responsibility for the outsourced (delegated) functions remains with the investment firm concerned.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>119. The contract must indicate the objectives and the level of risk agreed upon, and any particular constraints on discretionary management resulting from the customer's personal circumstances as referred to in paragraph 62 or his request to exclude certain types of investments (certain business sectors for example).</p>	<p>As above</p>	<p>SLC 3.06(a) of Part C I of the ISG SLC 3.05(g) of Part C I of the ISG</p>	<p>This SLC does not specifically require the inclusion of the level of risk agreed upon, however, in terms of SLC 3.04 of Part C I of the ISG, prior to providing any service involving the provision of investment advice or discretionary portfolio management for a customer, the investment firm must obtain and record the personal and financial information necessary to make appropriate recommendations/ investment decisions to/for the client. A Client Fact Find should be used for these purposes. Appendix 12 to the ISG contains a Pro Forma Client Fact Find which may be used by investment firms.</p>
<p>120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm's discretionary authority regarding these instruments and transactions:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market, - illiquid or highly volatile financial instruments, - leveraged transactions, - securities repurchase agreements or securities lending agreements, - transactions involving credit, margin payments or deposit of collateral, - transactions involving foreign exchange risk. 	<p>As above</p>	<p>SLC3.06 (k),(l) and (m) of Part CI of the ISG SLC 3.06(r) of the ISG</p> <p>Furthermore, the investment firm may effect contracts in respect of investments which are not readily realizable, the customer agreement shall contain a warning that there is no recognised market for such investments and that it may be difficult to deal in, value or obtain information about such investments.</p> <p>In terms of SLC 3.06, where the investment firm has the power to make investments in higher risk investments on behalf of a Private Customer, the agreement shall specifically state that such transactions are permitted and shall set out the limits as to the categories of investment or as to the maximum financial commitment allowed. The agreement shall also contain appropriate risk warnings. Examples of high risk investments include, warrants, options futures, rights under contracts for differences, margined transactions, investments which are not readily realizable and underwriting.</p>	<p>Although there is no specific mention of:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market - securities repurchase agreements - transactions involving foreign exchange risk. <p>The list of high risk instruments is provided by way of example and is merely indicative and not exclusive. , does require that contracts for investments in high risk instruments need to contain appropriate risk warnings.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
121. For information purposes with respect to the customer, the contract must indicate an appropriate benchmark, based on financial indicators produced by third parties and in common use, that is consistent with management objectives and against which the future results are to be compared. Where it is not feasible to establish such a benchmark in view of specific customer objectives, this must be stated clearly in the contract and an alternative measure of performance must be indicated.	As above	There is no requirement for a benchmark to be set for comparative purposes. However, SLC 3.06(p) stipulates that if the agreement is to include a measure of portfolio performance, the basis on which that performance is to be measured must be included in the agreement.	
122. The contract must state whether the financial instruments are to be valued at bid/ask or offer or mid-market price, including any relevant currency exchange rates, and, where relevant, by reference to indicators such as yield curves or other pricing models or the methodology to be used to value unlisted equities.	As above	There are no specific requirements as to the method of valuation of the client's portfolio.	However, SLC 3.06 of Part C I of the ISG requires the basis on which the valuation of the client's portfolio is to be made, to be disclosed in the agreement.
123. The contract must define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio as stated in the most recent periodic report (after neutralisation of any contributions or withdrawals). The contract must set a percentage threshold and a time period to warn the customer accordingly.	As above	Not reflected in local rules	
124. If the contract provides for a variable management fee based on the performance of the management service, the method of calculation must be clearly defined in the contract.	As above	No specific reference is made to performance fees in the ISG. However, SLC 3.06(b) in Part C I requires the contract to include the basis of calculation and payment (and the frequency thereof) of any fees payable by the client to the investment firm for services rendered.	Although the above condition is not specific, however it captures the requirement of this standard as it requires the disclosure of <u>any</u> fee.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>125. The contract must provide:</p> <ul style="list-style-type: none"> - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties. <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>	As above	<ul style="list-style-type: none"> - In terms of SLC 3.06(j) of Part C I of the ISG, the agreement must include arrangements for bringing the arrangement to an end. - These requirements are not reflected in our rules 	There is no specific reference to termination with immediate effect.
<p><i>117. Where the conditions for delegating management of the portfolio are met and the contract allows the investment firm to delegate this function, the contract must state that the delegator retains full responsibility for the protection of the customer's interests.</i></p>	As above	Section 1 of Part D of the ISG contains general principles which must be observed by investment firms when outsourcing any of its functions. It is made clear that responsibility for the outsourced (delegated) functions remains with the investment firm concerned	However, there is no specific requirement for this to be included in the customer agreement.
<p>126. If an investment firm is mandated to delegate management of any or all of the customer's assets, this must be stated in the contract and adequate information must be supplied in this regard, both to the customer and to the competent authority. The contract must also provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.</p>	As above	There is no such specific requirement in local rules.	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>127. An investment firm may delegate the portfolio management function to another investment firm only if such delegatee firm is authorised in its home country to provide portfolio management services on an individual basis and is qualified and capable of undertaking the function in question. The mandate shall not prevent the effectiveness of supervision over the delegator, and in particular, it must not prevent the delegator from acting in the best interests of its customers. In no case the investment firm may delegate its functions to the extent that it becomes a letter box entity. Furthermore, it may so delegate to a non-EEA investment firm so authorised in its home country only if an appropriate formal arrangement between regulators enables them to exchange material information concerning both cross-border delegations and the delegatee.</p>	<p>As above</p>	<p>No specific reference in local rules</p>	<p>However, the outsourcing principles referred to in Section 1 of Part D of the ISG would apply. These place certain responsibilities on the firm outsourcing any of its services, including responsibility to ensure the outsourced function is carried out at a proper standard and that the service-provider is competent to provide the service in question. Moreover, the delegator retains responsibility for the functions delegated.</p> <p>MFSA is currently in the process of drafting Passporting Regulations and Guidelines which implement the relative requirements of the Investment Services Directive of the EU. Once finalised, these guidelines will come into force upon accession to the EU.</p> <p>These draft Regulations provide for the procedure whereby investment firms based in EU and EEA Member States can provide investment services, including discretionary portfolio management, in Malta under the freedom to provide services in terms of the Investment Services Directive.</p>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> a) must be revocable with immediate effect by the delegator; b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement; c) must be in conformity with the indications contained in the customer agreement with the delegator; d) must require, where the execution of transactions is not subject to the prior consent of the delegator, the delegatee to observe the investment guidelines, including investment allocation criteria, laid down from time to time by the delegator; e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee; f) must provide for the delegator to receive a continuous flow of information on the transactions carried out by the delegatee permitting it to monitor effectively at any time the activity of the delegatee and to reconstruct the assets under management belonging to each customer of the delegator. 	As above	Not reflected in local legislation.	As indicated above, Section 1 of Part D of the ISG provides general guidelines for outsourcing of any the investment firm's functions to third parties.

6.2 PERIODIC INFORMATION

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>129. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.</i>	As above	SLC 3.05(j) of Part C I of the ISG SLC 8.02 of Part C I of the ISG	
130. Periodic statements for portfolio management customers must contain: a) a statement of the contents and valuation of the portfolio, including details of each investment held, its market value and the performance of the portfolio and the cash balance, at the beginning and at the end of the reporting period; b) a management report on the strategy implemented (to be provided at least yearly); c) the total amount of fees and charges incurred during the period and an indication of their nature; d) information on any remuneration received from a third party and details of its calculation basis; e) the total amount of dividends, interest and other payments received during the period.	As above	a) SLC 8.03(a) and (b) of Part C I of the Investment Services Guidelines b) This is not required by local regulations. c) SLC 8.03(f) of Part CI of the ISG d) As above e) SLC 8.03(e) (f)	
131. If the basis for valuing any of the assets in the portfolio has changed with respect to the methods described in the portfolio management agreement, these changes must be indicated in the statement along with their impact on profits and/or losses.		SLC 8.03(c) of Part CI of the ISG	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
132. Periodic statements must include full information on any remuneration received by the investment firm or the manager from a third party that is attributable to services performed for the customer by the manager of the portfolio.		See reply to St. 130 (d) above	
133. In case the customer has elected – in derogation to rule 58 - not to receive information on each transaction in due course carried out by the portfolio manager, the periodic statement containing details of each transaction must be provided at least every three months. Where the details of each transaction are notified after each transaction to the customer, the periodic statement may be provided only every six months.		In terms of SLC 3.05(j) of Part C I of the ISG, a periodic statement must be issued to clients on a six monthly basis.	Local rules do not distinguish between a situation where the investor is advised of each and every transaction and where the customer has agreed with the investment firm that confirmations need not be supplied for every transaction.
134. Where the contract authorises a leveraged portfolio, the customer must receive a periodic statement at least once a month, including an assessment of the risks.		This is not reflected in local rules.	

6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>135. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.</i>	As above	SLC 3.02(b) of Part C I of the ISG SLC 3.02(m)	There is no reference in local rules to the provision for the strict separation of functions within the investment firm and its group. In the local context, most of investment firms providing portfolio management services are small companies which do not form part of a group.
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.	As above	This is not reflected in local rules	
<i>136. An investment firm must define investment strategies for its portfolio management services and carry out transactions in accordance with such strategies, taking into account the terms of the customer agreement.</i>	As above	SLC3.03(d) (e) and (f) The above would imply that local investment firms are bound to define investment strategies for each individual customer.	
139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.	As above	This is not reflected in local rules.	
<i>137. The transactions carried out by the portfolio manager, both individually and as a whole, must be exclusively motivated by the interests of the customer and in accordance with agreed management objectives.</i>	As above	SLC 3.02 of Part I of the ISG Moreover, SLC 3.03 requires the investment firm to act with due skill, care and diligence – and in the best interests of the customers and of the market. In particular , in terms of SLC 3.03(e) the investment firm is bound to take all reasonable steps to ensure that transactions are suitable for a customer, bearing in mind his objectives.	

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> a) orders issued are immediately recorded by the firm; b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible; c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts. 	As above	<ul style="list-style-type: none"> (a) SLC 10.21 Part C1 of the ISG, (b) SLC 3.03(a), SLC 10.21(b) (c) SLC 10.21 (c) 	<p>Our rules do not make reference to “immediate” recording of orders by the investment firm.</p> <p>However, the ISG do not impose a time limit within which the records relating to the customers’ accounts should be updated following the execution of an order.</p>

B. CONDUCT OF BUSINESS RULES FOR THE “PROFESSIONAL REGIME”

1. STANDARDS OF GENERAL APPLICATION

1.1 GENERAL

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.</i></p>	<p>MFSA</p>	<p>In terms of SLC 3.02 of Part C1 of the ISG, a Licence Holder (Investment Firm) is required to act honestly, fairly and with integrity - in the best interests of its customers and of the market. This SLC, also specifies what is expected of Licence Holders in this regard – including <i>inter alia</i>, avoidance of misrepresentations to customers; avoidance of conflicts of interests; avoidance of unreasonable charges; avoidance of churning of customers’ portfolios; conducting transactions on arm’s length basis.</p>	
<p><i>2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.</i></p>		<p>SLC 3.07(l) of Part C1 of the ISG requires an Investment Firm to organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls in respect of its own business and its customers’ affairs to ensure compliance with regulatory requirements and to enable it to be effectively prepared to manage, reduce and mitigate the risks to which it is exposed, including, <i>inter alia</i>,</p> <ul style="list-style-type: none"> • making provision for the protection of customers in the event of the interruption or cessation of the whole or part of the Investment Firm’s business due to internal or external environmental factors, including technical or human failure. For this purpose, the Licence Holder shall have an appropriate Disaster Recovery and Business Continuity Plan which is regularly tested and updated 	
<p><i>3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.</i></p>			<p>No such requirement is imposed on Investment Firms.</p>

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.¹⁹.</i></p>	<p>MFSA</p>	<p>Part D of the ISG deals with outsourcing of activities by Investment Firms:</p> <p>SLC 1.01.</p> <p>SLC 1.02</p>	<p>There is no specific requirement ensuring that the Investment Firm must ensure that the service provider to whom it outsourced the activity will be able to perform the functions reliably, professionally and in the best interest of its customers. Rather this requirement seems to be satisfied indirectly given that the Investment Firm – which is obliged to act reliably, professionally and in the best interest of its customers - is required to ensure that the “outsourced function is carried out at a proper standard and that the integrity of the Investment Firms own systems and controls is not prejudiced”.</p>

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, the conflict of interest must be disclosed to the customer.</p>	<p>MFSA</p>	<p>Part C1 of the Investment Services Guidelines repeatedly requires an Investment Firm to identify and prevent or manage – either by way of internal procedures or disclosure - conflicts of interest between itself and its customers. 3.02 (b) 3.07(c) 8.07(l)</p>	<p>No specific reference is made to conflicts of interests between customers.</p>
<p>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer on his request.</p>	<p>MFSA</p>	<p>Part C1 of the ISG imposes various disclosure requirements of commission payments, in terms of the following Licence Conditions: 8.07 (j), (o)[i-ii] SLC 8.09</p>	<p>‘Inducements’ is taken to mean ‘commissions’. No requirement is imposed specifically stipulating that Investment Firms, its Board, Directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. The ISG rather focus one the disclosure of commission payments.</p>

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>7. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct..</i></p>	MFSA	<p>SLC 3.01 in part A of the ISG Part C1 of the ISG, SLC 3.07 (b), (c [v – viii])</p>	
<p><i>8. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</i></p>	MFSA	SLC 1.09 of Part C1 of the ISG	
<p><i>9. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</i></p>	MFSA	<p>Section 3.01 in Part A of the ISG SLC 1.08(h) in Part C1 of the ISG</p>	<p>There is no specific requirement that an Investment Firm is required to provide full access to all relevant information to Compliance Officers to enable them to perform their duties.</p>
<p><i>10. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</i></p>	MFSA	SLC 1.11 in Part C1 of the ISG	<p>There is no obligation on the Compliance Officer to report the results of its monitoring to internal or external auditors.</p>

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>11. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</i></p>	MFSA	SLC 1.15 in Part C1 of the ISG	The Investment Firm is required to report a breach of any of its SLCs. The assessment of the seriousness of the breach is then left in the hands of the Competent Authority i.e. the MFSA.
<p><i>12. The compliance function must:</i></p> <ul style="list-style-type: none"> - <i>regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services;</i> - <i>provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</i> 	MFSA	Section 3.01 (1) – (4) in Part A of the ISG	The requirements imposed on the Compliance Officer do not specifically require the verification of the adequacy of policies and procedures or the provision of advisory assistance and support to the various business areas of the Investment Firm to ensure compliance with the regulations. However, as can be seen from the adjacent column, the Compliance Officer is required to ensure that all staff of the Investment Firm are familiar with the applicable conditions.
<p><i>13. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</i></p>	MFSA	<p>The following SLCs in Part C1 of the ISG refer:</p> <p>10.20 10.21 (a) – (d) 10.22</p>	No Condition regarding tape recording of orders is imposed.

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>14. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</i></p>	<p>MFSA</p>	<p>SLC 3.07(i) in Part C1 of the ISG Section 4 in Part C1 of the ISG</p>	<p>Although there is no specific requirement stipulating that a firm must regularly verify whether complaints are adequately processed, the procedure stipulated by our guidelines regarding the processing of complaints obliges a firm to deal with complaints within specified time-frames.</p> <p>Furthermore, in practice, during regular compliance visits effected at our Licence Holders, checks are made as to whether that Licence Holder is regularly verifying whether complaints are adequately processed. If it is found that this is not the case, the firm is required to process complaints adequately.</p>

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>15. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</i></p> <p><i>a) The rules and procedure to meet the obligation to protect data of a confidential nature;</i></p> <p><i>b) the rules and procedures for carrying out personal transactions involving financial instruments;</i></p> <p><i>c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information;</i></p> <p><i>d) the investment firm's policy on conflicts of interest and inducements.</i></p>	<p>MFSA</p>	<p>The following SLCs in Part C1 of the ISG refer:</p> <p>a) no such requirement appears to be applicable.</p> <p>b) SLC 3.07(c) – please see details in the reply to St. 7 above. Section 9 in Part C1 of the ISG also refers.</p> <p>c) SLC 3.02(b), SLC 9.05 in Section 9 in Part C1 of the ISG</p> <p>d) SLC 3.02(b) – details above refer. There is no specific condition which requires an Investment Firm to establish a policy regarding inducements. However, there are various SLCs that regulate the payment of charges and commissions – please see reply to St. 6 above.</p>	<p>No reference is made to tied-agents.</p>

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>16. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i>	MFSA	SLC 3.03 (g)&(h) in Part C1 of the ISG SLC 3.05 requires that the Investment Firm shall ensure the adequate disclosure of relevant material information to prospective and actual customers in a way which is fair, clear and not misleading. Further details of disclosure are required.	
<i>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</i>	MFSA	The following SLCs in Part C1 of the ISG refer: 5.06 5.07	
<i>18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order</i>	MFSA	The following SLCs in Part C1 of the ISG refer: 3.05(i) 8.06	
<i>19. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.</i>	MFSA	In terms of SLC 3.05 in Part C1 of the ISG, the Investment Firm is required to report to customers, at least once every six months, on Clients' Money and Customers' Assets held on their behalf; Furthermore, SLC 8.02 and 8.03 stipulate periodic reporting requirements on Investment Firms in cases where the latter is managing portfolios of clients. In addition, condition 7.01 which requires a Licence Holder to accept responsibility for all Customers' Assets which are in its possession or control. The Licence Holder shall ensure that in respect of all assets belonging to customers, including Instruments and documents evidencing title to Instruments, adequate arrangements are maintained to ensure that they are properly recorded, identified, segregated and controlled, so that they and the customers' interests in them are safeguarded.	
<i>20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i>	MFSA	See St. 19	No difference is made between covered or uncovered positions as far as reporting of position to clients is concerned.

3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>21. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation of the identity of the customer, as well as the identity and legal capacity of any representative of the customer. In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm a) to determine whether the investment services envisaged are appropriate for the customer and b) to meet any duties owing to the customer in respect of the services to be provided.</i></p>	<p>MFSA</p>	<p>The following SLCs in Part C1 of the ISG refer: 3.02(a) 3.04</p> <p>The Prevention of Money Laundering Guidance Notes (‘PMLGN’) also require identification of clients, specifying also the type of documentation that need to be obtained by Investment Firms in ascertaining the identity of the client. Part D, regulations 1, 2, 4, 5, 6, 7 and 8 of the PMLGN refer.</p> <p>As far as ensuring suitability of investments to prospective clients, the following SLCs in Part C1 of the ISG refer: 3.03(c) – (f), and 3.05 (g)</p> <p>See also 3.03(a),(b), (g) – (j) of Part C1 of the ISG</p>	<p>No reference is made to verification of the identity and legal capacity of any representative of the customer.</p>
<p><i>22. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information from the customer relationship, that this investment advice is suitable for him.</i></p>	<p>MFSA</p>	<p>See SLCs 3.02(a), 3.03(c-e) and 3.04 above.</p>	

4. CUSTOMER AGREEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
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Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>23. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties.</i></p>	<p>MFSA</p>	<p>In terms of SLC 3.06 in part C1 of the ISG, an Investment Firm shall conduct its business with each customer by means of a written agreement which shall set out the basis on which its services are to be provided. The agreement shall be written in clear and plain language. The agreement shall not remove from the customer any rights which he would have had if the agreement had not existed. Unless the agreement specifies to the contrary, the customer will be deemed to be a Private Customer. Where the agreement states that the customer is not to be treated as a Private Customer the agreement shall also state that the level of protection afforded to the customer is lower than that offered to a Private Customer.</p> <p>However, no customer agreement is required for:-</p> <ul style="list-style-type: none"> i. the issue of any tipsheet, broker's circular or other investment publication; ii. contract entered into by the Manager of a Collective Investment Scheme as Principal to sell or purchase units in that Scheme; iii. advising on, dealing as Representative on, and arranging transactions in units in a Collective Investment Scheme or in an LLTCI where the customer's requirements are reasonably believed by the Licence Holder to be confined to Collective Investment Scheme units or an LLTCI, as long as there is no element of discretionary management by the Investment Firm; and iv. deals effected or arranged on behalf of execution-only customer (where the customer is reasonably believed not to be relying on the Investment Firm to advise him to or exercise any judgement on his behalf as to the transaction's suitability); Provided that the Investment Firm obtains the customer's written confirmation outlining the services being sought from the Investment Firm. <p>SLC 3.06 also specifies the contents of the Customer Agreement.</p>	<p>Customer agreements are not required in certain instances as specified in adjacent column.</p>

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>24. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.</i>	MFSA	The following SLCs in part C1 of the ISG refer: 3.03 (c) (b) (j)	
<i>25. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.</i>	MFSA	The following SLCs in Part C1 of the ISG refer: 3.02 (j), (k), (m) 3.05 (c) - (e) a. 3.07(c) The Investment Firm have procedures to ensure that its staff conduct business openly, fairly, in compliance with rules and regulations, avoiding conflicts of interest and avoiding any undisclosed or improper benefit to staff. This SLC also requires Investment Firms to establish procedures to be followed by staff dealing on their own account. Section 9 of the ISG also refers in this regard.	

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i></p>	<p>MFSA</p>	<p>3.05 The Licence Holder shall ensure the adequate disclosure of relevant material information to prospective and actual customers in a way which is fair, clear and not misleading. This shall include: i. unless there are good reasons not to do so, reporting fully, accurately and promptly to customers the details of transactions undertaken on their behalf;</p> <p>8.06 10.20</p>	
<p><i>27. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.</i></p>		<p>No requirements are imposed in this regard.</p>	

5.2) EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>28. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.</i></p>	<p>MFSA</p>	<p>3.03(a), (b), (f) Part C1 of the ISG</p>	<p>No criteria regarding the ‘acceptability’ of markets are specified. Furthermore, there is no requirement that Investment Firms must be able to demonstrate to the customer that a transaction was traded in another trading venue, in accordance with his best interest. Rather, SLC 3.05(l) in Part C1 of the ISG merely states that before introducing a Private Customer to an investment business outside Malta, making the customer aware that such business will not be covered by the Investment Services Act, 1994, and advising such customer of the need to familiarise himself/herself about the system of investment services regulation in that jurisdiction.</p>
<p><i>29. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.</i></p>	<p>MFSA</p>	<p>The following SLCs in Part C1 of the ISG refer: 3.02(m) 3.03(b) 3.06(i) An agreement with a Private Customer must include statements as to whether the Investment Firm may act as a Principal in a transaction with the customer 8.07 (f) (o)</p>	<p>The condition does not specifically require the Investment Firm to disclose to a client that it will be acting as a Principal beforehand. Rather, it requires the Investment Firm to disclose this fact in the Customer Agreement – which is generally signed before the transaction is effected. However, a Customer Agreement is not required in all circumstances (question 23 refers) – which means that there may be instances where an Investment Firm may be effecting execution only order on behalf of clients as a Principal and a Customer Agreement is not available.</p>

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>	MFSA	SLC 3.03(i) in Part C1 of the ISG	
<i>31. An investment firm takes reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter (“front running”).</i>	MFSA	The following SLCs in Part C1 of the ISG refer: 3.02(j), (k)	

5.3) POST- EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>32. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i></p>	<p>MFSA</p>	<p><i>SLC 3.03(a), 3.05(i), 8.06, 10.20 in Part C1 of the ISG</i></p>	
<p><i>33. Where orders for own and customers accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.</i></p>	<p>MFSA</p>	<p>SLC 3.02(k), 14.04 in Part C1 of the ISG</p>	

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>34. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.</i></p>	<p>MFSA</p>	<p>The SLC 3.06 in Part C1 of the ISG requires that a written customer agreement is entered into with clients, particularly when discretionary portfolio management services are provided by an Investment Firm. Furthermore, this SLC specifies the contents of the Customer Agreement, requiring additional disclosure to be included specific to the provision of portfolio management services.</p>	
<p><i>35. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.</i></p>			<p>No specific requirements for the separation of the management function within the Investment Firm and its group exist. However, various conditions regarding the management of potential conflicts of interest apply – please see replies to St. 5, 15, 33, 35 above.</p>
<p><i>36. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.</i></p>		<p>The following SLCs in Part C1 of the ISG refer: 3.05(j) The Investment Firm shall account to customers, in general at least once every six months or as otherwise agreed with the customer, on the performance of a portfolio the Investment Firm is managing; (for further details relating to such periodic statements please refer to SLC 8.02 to 8.04); 8.02 Periodic Statements on the performance of a customer's portfolio which the Investment Firm is managing – required in terms of SLC 3.05(j) – should be sent to the client within 25 business days after the date to which it is drawn up. 8.03 specifies the contents to be included in the Periodic Statement referred to in 8.02. 8.04</p>	

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</i></p> <ul style="list-style-type: none"> <i>a) orders issued are immediately recorded by the firm;</i> <i>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</i> <i>c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts.</i> 		SLCs 8.06a, 3.03a in Part C1 of the ISG	

C. CORE STANDARDS FOR THE “COUNTERPARTY RELATIONSHIP”

1. THE “COUNTERPARTY RELATIONSHIP”

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>A « counterparty relationship » is typical of market participants directly active in the financial market for proprietary trading. It is characterised by the absence of a “client relationship” (i.e. without any provision of service). In particular, it covers the following situations:</p>			<p>There are no rules regulating Counterparty relationship trading.</p>
<ul style="list-style-type: none"> - transactions executed in regulated markets or other organised trading venues (which do not give rise to any provision of investment service to the customer) between any member admitted to trade in these markets; - transactions executed directly (over-the-counter) between investment firms and credit institutions, authorised to provide the service of dealing, and dealing either as principal or as agent; - transactions executed directly (over-the-counter) between investment firms or credit institutions and other authorised or regulated financial intermediaries, including non-ISD firms, such as commodity dealers, insurance companies, [collective investment schemes and management companies of such schemes, pension funds and management companies of such funds]. 			<p>There are no rules regulating Counterparty relationship trading.</p>

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>CESR Members are free to allow companies to be treated as “counterparties” and to define the appropriate quantitative thresholds. In case of cross-border business, if the company is located in a jurisdiction where the “counterparty regime” is not applicable to companies, the professional regime will apply to that relationship.</p>			<p>There are no rules regulating Counterparty relationship trading.</p>
<p>Transactions entered into by these entities and effected through the offices of an authorised intermediary would be, by default, subject to the « professional regime ». Only those transactions undertaken by these entities for which they are direct “counterparties” and for which a specific choice to enter into a “counterparty relationship” has been made, are liable to operate subject to such a regime.</p>			<p>There are no rules regulating Counterparty relationship trading.</p>
<p>The entities meeting one of the above mentioned criteria and willing to enter into a « counterparty relationship » have to reciprocally confirm in the contract that the transaction is executed under a « counterparty relationship ». This confirmation may be given in master agreements, where applicable to a series of transactions of the same nature.</p>			<p>There are no rules regulating Counterparty relationship trading.</p>

1. THE “COUNTERPARTY REGIME”

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>The firm must at all times act honestly, fairly and professionally in accordance with the integrity of the market.</i>			There are no rules regulating Counterparty relationship trading.
<i>The firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities.</i>			There are no rules regulating Counterparty relationship trading.
<i>The firm must establish an independent compliance function, aimed at ensuring that its directors, partners, employees and agents behave in accordance with the integrity of the market.</i>			There are no rules regulating Counterparty relationship trading.
<i>Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.</i>			There are no rules regulating Counterparty relationship trading.
<i>The firm must be able to demonstrate that it has not acted in breach of standards of market integrity and that its organisation, policies and procedures facilitate such compliance.</i>			There are no rules regulating Counterparty relationship trading.
<i>The firm must keep records of all transactions executed for a period of five years.</i>			There are no rules regulating Counterparty relationship trading.
<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>			There are no rules regulating Counterparty relationship trading.

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>The information provided in a marketing communications must be clear and not misleading.</i>			There are no rules regulating Counterparty relationship trading.

D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

Professional investors are those who may be deemed to possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur.

1. CATEGORIES OF INVESTORS WHO ARE CONSIDERED TO BE PROFESSIONALS

Standard	Implementing authority(ies)	Implementing measure	Comments
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Standard	Implementing authority(ies)	Implementing measure	Comments
<p>10. a) Entities which are required to be authorised or regulated to operate in the financial markets.</p> <p>The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a European Directive, entities authorised or regulated by a Member State without reference to a European Directive, and entities authorised or regulated by a non-Member State:</p> <ul style="list-style-type: none"> • Credit institutions • Investment firms • Other authorised or regulated financial institutions • Insurance companies • Collective investment schemes and management companies of such schemes • Pension funds and management companies of such funds <p>Commodity dealers.</p>	<p>As above</p>	<p>The Glossary to the ISG includes a definition of a Non-Private customer as follows: “a term which is generally used to describe those who may be deemed to possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur. The following should be regarded as Non-Private Customers: i. entities authorised or regulated to operate in financial markets. Examples include: a. credit institutions/banks b. financial institutions c. investment services providers d. insurance companies e. collective investment schemes”</p>	<p>The definition makes no specific reference to pensions funds and their managers and commodity dealers because, currently, there are no such entities in Malta.</p> <p>Under local legislation (“the Investment Services Act, 1994) management companies require an investment services licence. Accordingly, for the purposes of the definition of non-Private customers in the ISG, management companies are considered to be investment services providers.</p>

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>b) Large companies (20) and other institutional investors:</p> <ul style="list-style-type: none"> • large companies and partnerships meeting two of the following size requirements on a company basis: • balance sheet total : EUR 20.000.000, • net turnover : EUR 40.000.000, • own funds: EUR 2.000.000. • Other institutional investors whose corporate purpose is to invest in financial instruments. 	As above	<p>The definition of Non-Private Customers in the Glossary of the ISG also states that: “the following categories of investors may be treated as non-Private Customers, upon request subject to the applicable criteria being satisfied:</p> <ul style="list-style-type: none"> (i) large and institutional investors, consisting of: <ul style="list-style-type: none"> a. large companies and partnerships which satisfy at least two of the following criteria: <ul style="list-style-type: none"> - balance sheet total of EUR12.5m - net turnover or EUR 25m - average number of employees of 250 b. entities whose securities are traded on a regulated market; c. public sector bodies; d. institutional investors whose corporate purpose is to invest in financial instruments 	Limits appear to be in line with previous FEFSI requirements.
National and regional governments, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.	AS above	The definition of Non-Private Customers in the Glossary of the ISG also includes: National governments, central banks; international and supranational institutions/ organizations (e.g. IMF; ECB; World Bank)	

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>11. The entities mentioned in §10 are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the customer of an investment firm is a company or a partnership referred to in §10, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be professional investor, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.</p>	As above	<p>SLC 3.01 of Part C1 of the ISG states that “A customer shall be treated as a Private Customer unless he has clearly elected not to be.”</p> <p>SLC 3.06 of Part C 1 of the ISG, which relates to the customer agreement also states, <i>inter alia</i>, that “Unless the agreement specifies to the contrary, the customer will be deemed to be a private customer.”</p> <p>This implies that the presumption is that all the clients of an investment firm are private clients (unsophisticated/ non-professional investors) and that it is the client himself which must request to be treated as a Non-Private Customer by the investment firm. Accordingly, the option rests with the client and the investment firm is not in a position to decide to treat some of its clients as Non-Private Customers without the latter’s specific request.</p>	<p>There is no specific requirement for the investment firm to inform the customer that he can request a variation of the terms of the agreement in order to secure a higher protection.</p>
<p>12. It is the responsibility of the client considered to be a professional investor to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.</p>	As above	<p>See reply to St. 11 above.</p> <p>The client should not elect to be considered as a Non-Private customer by the investment firm if it deems itself to be unable to properly assess or manage the risks involved.</p>	
<p>13. This higher level of protection will be provided when an investor who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. 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.</p>	As above	<p>See reply to St. 11 above.</p> <p>Moreover, SLC 3.06 of Part CI of the Investment Services Guidelines, states that where the agreement states that the customer is not to be treated as a Private Customer, the agreement shall also state that the level of protection afforded to the customer is lower than that offered to a Private Customer.</p>	

2. CATEGORIES OF INVESTORS WHO MAY BE TREATED AS PROFESSIONALS ON REQUEST

2.1. IDENTIFICATION CRITERIA

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies ⁽²¹⁾ and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules. Investment firms should therefore be allowed to treat any of the above investors as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These investors should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in §10.</p>	<p>As above</p>	<p>In terms of SLC 3.01 (b) of Part CI of the ISG, before accepting an instruction from a customer to be treated as a non-Private Customer, the investment firm shall gather such information, concerning the customer so as to reasonably believe that the customer has sufficient experience and understanding to make it appropriate to treat him as a non-Private Customer. For this purpose, the investment firm shall have regard to the definition of non-Private Customer in the Glossary to the ISG.</p> <p>Also refer to our answer to St. 10(b) above – Definition of Non-Private Customer</p>	<p>There is no distinction between the level of expertise and market knowledge possessed by the persons indicated in question 10 and other persons opting to be considered as non-Private clients.</p>
<p>15. Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.</p> <p>The fitness test applied to managers and directors of entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.</p>	<p>As above</p>	<p>See answer to St. 14 above and to St. 16 below.</p> <p>The MFSA carries out a fit and proper test in respect of persons within the investment firm who are authorised to provide portfolio management services and to provide investment advice. The competence of such persons forms part of the fit and proper test and MFSA must be satisfied of the competence of the person concerned prior to the issue of its authorisation to provide the services mentioned above.</p>	

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:</p> <ul style="list-style-type: none"> • The investor has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters; • The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro; <p>The investor 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.</p>		<p>The definition of Non-Private Customers in the Glossary of the ISG also states that: The following may be treated as non-Private Customers upon request, subject to the applicable criteria being satisfied:</p> <p>(ii) other investors – private individual investors having the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved. At least two of the following criteria need to be satisfied for a client to be considered as a professional investor under this category:</p> <ol style="list-style-type: none"> a. the investor has carried out investment transactions in significant size at a certain frequency; b. the size of the investor's portfolio exceeds EUR 0.5m c. the investor has certain relevant work experience (for example, has worked in the financial sector for at least one year in a professional position). 	

2.2. PROCEDURE

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:</p> <p>a) they must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product;</p> <p>b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;</p>	As above	<p>a) In terms of SLC 3.01 of Part C I of the ISG, a customer shall be treated as a Private Customer unless he has clearly elected not to be. Furthermore, SLC 3.06 which relates to the customer agreement also requires that where the agreement states that the customer is to be treated as a private customer, the agreement shall also state the level of protection afforded to the customer is lower than that afforded to a Private customer</p> <p>b) In terms of SLC 3.01 (a) of Part CI of the ISG, before accepting an instruction from a customer to be treated as a non-Private customer, the investment firm shall warn the customer in writing that the level of protection offered to him will be lower than that offered to a Private Customer.</p>	
<p>c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.</p>		<p>c) Not catered for in our rules.</p>	
<p>18. Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional investor meets the relevant requirements stated in Section II.1 above. However, if investors have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this paper.</p>		<p>See answers to question 14 and 16 above.</p>	

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>19. Firms must implement appropriate written internal policies and procedures to categorise investors.</p> <p>Professional investors are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the investor no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.</p>		<p>This is not specifically catered for in local rules. However, please refer to our reply to St. 14.</p>	