

# CONSULTATION PAPER ON THE VIRTUAL FINANCIAL ASSETS RULES FOR VFA AGENTS

MFSA REF: 08-2018

ISSUED: 12 JULY 2018

CLOSING DATE: 31 JULY 2018

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

THESE PROPOSALS ARE NOT BINDING AND ARE SUBJECT TO CHANGES AND REVISIONS FOLLOWING REPRESENTATIONS RECEIVED FROM LICENCE HOLDERS AND OTHER INVOLVED PARTIES. IT IS IMPORTANT THAT PERSONS INVOLVED IN THE CONSULTATION BEAR THESE CONSIDERATIONS IN MIND.

## INTRODUCTION

Following the positive feedback received on the proposed introduction of a new legislative framework regulating Initial Coin Offerings ('ICOs') and the provision of certain services in relation to virtual currencies, the MFSA drafted and submitted to the Government the Virtual Financial Assets Act ('the Act'). The Act will come into force on such date as the Minister for Digital Economy may establish by notice in the Gazette.

On 4 July 2018, the MFSA published a [Consultation Paper on the Virtual Financial Assets Regulations to be issued under the Virtual Financial Assets Act](#) which presents a draft Legal Notice setting out regulations on: [i] exemptions; [ii] fees; [iii] control of assets; and [iv] administrative penalties and appeals ('the Virtual Financial Assets Regulations'). This consultation closes on 20 July 2018.

The Authority is now preparing the rules underlying and complementing the Act and the Virtual Financial Assets Regulations. The Rules will provide further detailed regulation applicable to operators in this field of financial services. The MFSA is proposing the introduction of a rulebook, titled the 'Virtual Financial Assets Rulebook', which will be subdivided into three chapters as follows:

- Chapter 1 | Virtual Financial Assets Rules for VFA Agents
- Chapter 2 | Virtual Financial Assets Rules for Issuers of Virtual Financial Assets
- Chapter 3 | Virtual Financial Assets Rules for VFA Service Providers

The scope of this Consultation is to obtain industry feedback in relation to Chapter 1 of the Virtual Financial Assets Rulebook, which is annexed to this paper.

The proposed Chapters 2 and 3 of the Virtual Financial Assets Rulebook will be issued for consultation in the coming weeks.

## CHAPTER 1 | VIRTUAL FINANCIAL ASSETS RULES FOR VFA AGENTS

Chapter 1 of the Virtual Financial Assets Rulebook shall apply to VFA Agents appointed in terms of the Act and applicants seeking registration as VFA Agents thereunder. It is being proposed that this Chapter is sub-divided into four titles which respectively set out: [i] the high level principles which VFA Agents must adhere to; [ii] the registration requirement and the respective registration process; [iii] the on-going obligations for the VFA Agents; and [iv] enforcement and sanctions in the event of misconduct by VFA Agents.

### 1. High level Principles

Title 1 requires VFA agents to act ethically, honestly, fairly and professionally, to cooperate fully with the competent authority and to provide it with any information it may require. VFA Agents are also required to make reference, and where applicable comply with, relevant laws, rules and regulations.

### 2. Registration Requirement and the respective Registration Process

Title 2 identifies the registration requirements for applicants wishing to be registered as VFA Agents under Article 7 or/and 14 of the Act, and the applicable registration process. The registration process consists of three phases – the preparatory phase, the pre-registration phase and the post-registration/ pre-commencement of business phase. The procedures for voluntary suspension, voluntary surrender, and revision of registration and the approval process for designated and appointed persons are also set out under this title.

### 3. On-going Obligations

The on-going obligations for VFA Agents are set out in Title 3 of this Chapter. These *inter alia* include, requirements in relation to insurance coverage, governance, outsourcing, procedures for reporting of breaches, obligations with respect to the on-boarding of clients, conduct of business obligations, the procedure to be followed where more than one VFA Agent is appointed and notification and approval requirements. Title 3 also sets out supplementary conditions for VFA Agents appointed in terms of Article 7 of the Act and supplementary conditions for VFA Agents appointed in terms of Article 14 of the Act, respectively.

### 4. Enforcement and Sanctions

Title 4 provides detail with regards to administrative penalties and sanctions. It *inter alia* provides the principles which guide the MFSA when imposing an administrative penalty and provides for aggravating and mitigating circumstances.

## CONCLUDING REMARKS

The consultation is open to the public from 12 July 2018 until the 31 July 2018. Interested parties are requested to submit their comments and feedback by email on [fintech@mfsa.com.mt](mailto:fintech@mfsa.com.mt) by not later than **31 July 2018**.

Communications Unit  
Malta Financial Services Authority  
MFSA Ref: 08-2018  
12 July 2018

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# VIRTUAL FINANCIAL ASSETS RULEBOOK

## CHAPTER 1 | VIRTUAL FINANCIAL ASSETS RULES FOR VFA AGENTS

ISSUED: XX MONTH 2018

APPLICABLE: XX MONTH 2018

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

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## Title 1 General Scope & High-level Principles

### *Section 1 Scope and Application*

- R1-1.1.1 This Chapter shall apply to VFA Agents appointed in terms of the Virtual Financial Assets Act ('the Act') and Applicants seeking Registration as VFA Agents under the Act, as applicable.
- R1-1.1.2 This Title outlines the high-level principles which should guide VFA Agents in the provision of their VFA activity in or from within Malta.
- R1-1.1.3 Title 2 of this Rulebook outlines the Registration requirements and the respective Registration process for VFA Agents.
- R1-1.1.4 Title 3 of this Rulebook outlines the ongoing obligations which VFA Agents must adhere to.
- R1-1.1.5 Title 4 of this Rulebook provides for enforcement and sanctions in the event of misconduct by VFA Agents.

### *Section 2 High Level Principles*

- R1-1.2.1 VFA Agents shall act in an ethical manner and in the best interest of Malta, taking into consideration investor protection, market integrity and financial soundness in carrying out their activity.
- R1-1.2.2 VFA Agents shall act honestly, fairly and professionally and shall comply with, the relevant provisions of the Act, the regulations issued thereunder, and these Rules, as well as with other relevant legal and regulatory requirements.
- R1-1.2.3 VFA Agents shall co-operate with the MFSA in an open and honest manner and shall provide the Authority with any information it may require.
- R1-1.2.4 In complying with R1-1.2.1, VFA Agents shall:
- i. make reference to, and where applicable comply with the applicable Maltese laws, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant body to assist the said persons in complying with their legal and regulatory obligations.
  - ii. cooperate in an open and honest manner with the MFSA and any other relevant regulatory authorities; and

- iii. take due account and, where applicable, comply with any relevant EU legislation as well as any Guidance Notes/Statements/Industry Best Practices which may be issued by international standard setting bodies.

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## **Title 2            Registration Requirements for VFA Agents**

### ***Section 1            General***

#### ***Sub-Section 1        Scope and Application***

R1-2.1.1.1            This Title identifies the Registration requirements for Applicants wishing to be registered as VFA Agents under Article 7 and/or Article 14 of the Act, and the applicable Registration process.

R1-2.1.1.2            This section sets out the Registration requirement for VFA Agents.

#### ***Sub-Section 2        Registration Requirement for VFA Agents***

R1-2.1.2.1            A person providing, or holding itself out as providing, and exercising the functions listed under Article 7 or Article 14 of the Act, whether in Malta or in another jurisdiction, without being registered with the MFSA shall be in breach of the Act.

R1-2.1.2.2            A person wishing to provide and exercise the functions listed under Article 7 or Article 14 of the Act, shall be required to register as a VFA Agent in accordance with this Title.

R1-2.1.2.3            An applicant shall propose two designate persons who shall be responsible for performing the activity of a VFA Agent under the Act as well as a Money Laundering Reporting Officer ('MLRO').

R1-2.1.2.4            A person wishing to be registered to provide and exercise the functions listed under Article 7 or Article 14 shall be a legal person established in Malta.

Provided that, where such legal person is not established in Malta, such person shall be eligible for Registration so long as it is established in a recognised jurisdiction, has a registered business office in Malta and at least two representatives who are resident in Malta.

Provided further that the representatives so appointed shall be a person who is authorised to carry on the profession of advocate, accountant or auditor.

R1-2.1.2.5            A VFA Agent shall be required to have an initial and on-going capital of EUR 50,000.

R1-2.1.2.6            A VFA Agent shall notify the Authority whether it has managed to obtain a Professional Indemnity Insurance following its efforts pursuant to R1-3.2.3.1

## **Section 2**                    **Registration as a VFA Agent**

### **Sub-Section 1**                **Scope and Application**

R1-2.2.1.1                    This Section stipulates the considerations taken into account by the Authority when assessing an application for the Registration of a VFA Agent, as well as the underlying considerations of the fitness and properness assessment.

### **Sub-Section 2**                **Authorisation Considerations**

R1-2.2.2.1                    When considering whether to register an Applicant, the Authority shall *inter alia*, have regard to:

- i.     the protection of investors and the general public;
- ii.    the protection of the reputation of Malta taking into account Malta's international commitments;
- iii.   the promotion of innovation, competition and choice; and
- iv.    the reputation and suitability of the Applicant and all other parties connected with the Applicant.

R1-2.2.2.2                    Pursuant to considerations outlined in R1-2.2.2.1, the Authority may register an Applicant as a VFA Agent, subject to the Applicant being a fit and proper person.

Provided that the Applicant complies with all the other application requirements determined under relevant provisions of the Act, as well as with the rules and regulations issued thereunder, as applicable.

R1-2.2.2.3                    The onus of providing sufficient assurance to the Authority that the person is a fit and proper person to provide the services of a VFA Agent concerned rests with the Applicant.

R1-2.2.2.4                    Notwithstanding Rule R1-2.2.2.3, the Authority shall, as part of the assessment process, avail itself of any additional information which may be available to it. Such information may include information which was not provided by the applicant.

### **Sub-Section 3**                **Fitness and Properness**

#### **R1-2.2.3.1**                    **General**

R1-2.2.3.1.1                    Applicants seeking Registration as VFA Agents shall be required to be fit and proper on a continuous basis.

- R1-2.2.3.1.2 Pursuant to R1-2.2.3.1.1, in assessing whether a person is a fit and proper person, the Authority shall require that all the following three criteria are satisfied:
- i. Integrity, as further specified in R1-2.2.3.2;
  - ii. Competence, as further specified in R1-2.2.3.3; and
  - iii. Solvency, as further specified in R1-2.2.3.4.
- R1-2.2.3.1.3 The fitness and properness assessment shall be applicable to the persons directing the VFA Agent's business, its senior management, its ultimate beneficial owners, MLRO and to the persons designated pursuant to R1-2.1.2.3.
- Provided that, for the purposes of this rule, 'Senior Manager' shall be interpreted as the person occupying the most senior role following that of Director. In the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.
- R1-2.2.3.2 *Integrity*
- R1-2.2.3.2.1 Applicants and proposed persons, as applicable, shall demonstrate and provide reasonable assurance to the satisfaction of the Authority that they are of good repute as well as of their intentions to act in an honest and trustworthy manner.
- R1-2.2.3.3 *Competence*
- R1-2.2.3.3.1 Applicants shall demonstrate and provide reasonable assurance to the satisfaction of the Authority, both collectively and individually, that it has an acceptable level of knowledge, professional expertise and experience and that adequate systems are in place for the provision of the services of a VFA Agent.
- R1-2.2.3.3.2 For purposes of this Rule, competence shall be interpreted as competence in terms of both the traditional financial services framework as well as the regulatory framework developed under the Act.
- R1-2.2.3.4 *Solvency*
- R1-2.2.3.4.1 The Applicant shall demonstrate and provide reasonable assurance, to the satisfaction of the Authority, that it is financially sound.

### ***Section 3***                    ***The Registration Processes***

#### ***Sub-Section 1***                ***Scope and Application***

R1-2.3.1.1                    This Section outlines the Registration process applicable to VFA Agents.

#### ***Sub-Section 2***                ***General***

R1-2.3.2.1                    Applicants or VFA Agents shall submit any notifications and/or Registration documents, as applicable, and in accordance with this Section, to the Authority via email through [fintech@mfsa.com.mt](mailto:fintech@mfsa.com.mt). Any documentation requested in original should be submitted to the Authority in writing.

R1-2.3.2.2                    The Authority and the officers and employees of the Authority, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of the Authority's functions under the MFSa Act, the VFA Act, or any other Act administered by the Authority, or otherwise in the exercise of their official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

R1-2.3.2.3                    The MFSa shall base its decision as to whether an Applicant has met the required standard, on the basis of the discussions, information provided by the proposed individual/s, and any other information that ought to have been disclosed by the proposed individual/s. The MFSa shall not be liable in damages for any acts or omissions on the part of the proposed individual.

#### ***Sub-Section 3***                ***The Registration Process for VFA Agents***

##### ***R1-2.3.3.1***                    ***General***

R1-2.3.3.1.1                    The Registration process consists of three phases, (i) phase one being the preparatory phase, (ii) phase two being the pre-Registration phase and (iii) phase three being the post-Registration/ pre-commencement of business phase.

##### ***R1-2.3.3.2***                    ***Preparatory Phase***

R1-2.3.3.2.1                    Applicants shall notify the Authority of their intentions, in writing, prior to the provision, or holding itself out as providing, the services of a VFA Agent in or from within Malta.

R1-2.3.3.2.2                    Pursuant to R1-2.3.3.2.1, the statement of intent shall include, a comprehensive written description of the proposed structure, and whether Registration is being sought to perform the activities of a VFA Agent as listed under Article 7 or Article 14 or both Articles 7 and 14 of the Act.



R1-2.3.3.2.3 The Authority, in receipt of the aforementioned statement of intent shall schedule a preliminary meeting with the applicant. Such a meeting is mandatory during this phase of the application process.

R1-2.3.3.2.4 The Applicant shall, by not later than 60 days from the date of the preliminary meeting, submit an application form with any supporting documentation as specified therein.

Provided that the Authority may, under exceptional circumstances, extend the aforementioned period should the Applicant provide for justifiable reasons for the said extension and specify that no material changes to the proposed application have been made since the preliminary meeting.

R1-2.3.3.2.5 Applicants shall also pay the applicable application fee, to the Authority, in accordance with the Virtual Financial Assets Regulations, when submitting the application form.

R1-2.3.3.2.6 The submission of the application shall be considered complete upon the verification that the respective application fees have been submitted to the Authority.

R1-2.3.3.2.7 The Authority shall not initiate the review of any application which:

- i. is not complete with all the required supporting documentation; or
- ii. has pending application fees.

R1-2.3.3.3 *Pre-Registration Phase*

R1-2.3.3.3.1 The Authority shall, upon submission of the complete application form, initiate the review of the application and the supporting documentation.

R1-2.3.3.3.2 The Applicant shall inform the Authority of any changes required to the application form as soon as possible.

R1-2.3.3.3.3 The Authority shall, following the review of the application and agreement of the Registration conditions with the Applicant, issue an 'in principle Registration', which shall be valid for a period of three months from the date of the issue thereof.

R1-2.3.3.3.4 Pursuant to R1-2.3.3.3.3, Applicants shall, during the three months:

- i. finalise any outstanding issues raised during the application process;
- ii. finalise any pre-Registration conditions as determined by the Authority in the in-principle Registration; and

- iii. submit the original copies of the final application form together with all supporting documentation.

R1-2.3.3.3.5 The Authority shall only register an applicant as a VFA Agent upon satisfaction of the requirements in R1-2.3.3.3.

R1-2.3.3.3.6 Once a VFA Agent is registered, the Authority shall issue a Registration certificate which shall be provided to the VFA Agent.

R1-2.3.3.4 *Post-Registration & Pre-Commencement of Business*

R1-2.3.3.4.1 Registered VFA Agents may be required to satisfy, within the set timeframes, a number of post-Registration matters, as determined by the Authority, prior to the commencement of business.

R1-2.3.3.4.2 The MFSA may vary or revoke any condition of a Registration as well as impose new conditions thereto.

R1-2.3.3.4.3 The Authority shall have the power to de-register a VFA Agent should he fail to satisfy the post-Registration matters within the timeframes stipulated by the Authority.

#### ***Sub-Section 4 Post Registration Requirements***

R1-2.3.4.1 *Revision of a Registration*

R1-2.3.4.1.1 VFA Agents wishing to amend their Registration, shall notify the Authority of their intentions to do so prior to effecting the change.

R1-2.3.4.1.2 The VFA Agent should also include within the aforementioned notification a comprehensive description of the proposed revision and, at least, the following documentation:

- i. the extracts of application form outlining the variation; and
- ii. a confirmation from the VFA Agent's governing body approving the changes.

R1-2.3.4.1.3 The Authority, in receipt of the aforementioned notification, may upon its discretion, schedule a mandatory preliminary meeting with the VFA Agent.

R1-2.3.4.1.4 The VFA Agent shall, by not later than 60 days of the notification under R1-2.3.4.1.1 or the date of the preliminary meeting under R1-2.3.4.1.3, as applicable, submit the revised application form with any supporting documentation as specified therein.

Provided that the Authority may, under exceptional circumstances, extend the aforementioned period should the VFA Agent provide justifiable reasons for the said extension and that no material changes to the revision have been made since the notification or the preliminary meeting, as applicable.

R1-2.3.4.1.5 VFA Agents shall also pay a nominal revision fee of EUR 500 when submitting the amended application form to the Authority.

Provided that should the VFA Agent wish to change his Registration to perform activities in terms of Article 7 and/or Article 14 and/or both Articles 7 and 14, the VFA Agent shall have to pay the full Application Fee in accordance with the Virtual Financial Assets Regulations.

R1-2.3.4.1.6 The submission of the revised application form shall be considered complete upon the verification that the respective revision fee has been submitted to the Authority.

R1-2.3.4.1.7 The Authority shall not initiate the review of applications which are not complete with all the required supporting documentation or which have pending application fees.

R1-2.3.4.1.8 The Authority shall, following the review of the proposed amendments and agreement of any new Registration conditions with the VFA Agent, where applicable, issue an 'in principle approval' for the issuance of the revised VFA Registration, which shall be valid for a period of three months from the date of the issue thereof.

R1-2.3.4.1.9 The Authority shall issue a revised VFA Registration Certificate to the VFA Agent, upon satisfaction of the requirements in this sub-section.

R1-2.3.4.2 *Change in Ultimate Beneficial Ownership of VFA Agents*

R1-2.3.4.2.1 A VFA Agent shall notify the Authority of any changes to its structure immediately upon becoming aware of such changes.

R1-2.3.4.2.2 Pursuant to R1-2.3.4.2.1, unitholders which exceed 10 per cent or more of the VFA Agent's share capital shall require approval from the Authority.

R1-2.3.4.2.3 Pursuant to R1-2.3.4.2.1, a VFA Agent shall also include within the aforementioned notification, the ultimate beneficial ownership of any party directly or indirectly controlling its share capital. The notification shall also clearly indicate the Unitholder/s which shall exceed 10 per cent or more of the VFA Agent's share capital following the proposed change in capital, as well as its Ultimate Beneficial Owner.

R1-2.3.4.2.4 Where the Authority's approval is required, the Authority shall approve the change in ultimate beneficial ownership subject that the latter satisfy the 'fitness and properness' assessment.

R1-2.3.4.3 *Other On-going Approvals and Notifications*

R1-2.3.4.3.1 The VFA Agent shall notify the MFSA in writing of:

- i. a change of address and any changes to contact details as soon as it becomes aware.
- ii. any proposed acquisitions or disposals of shares which fall within the disclosure provisions of the Act – immediately upon becoming aware of the proposed acquisition or disposal. It should be noted that MFSA has the right to object to such an acquisition.
- iii. any proposed material change to its business at least one month before the change is to take effect.
- iv. any evidence of fraud or dishonesty by a member of the VFA Agent's staff immediately upon becoming aware of the matter.
- v. a decision to make a material claim on its professional indemnity insurance or on any other insurance policy held in relation to the VFA Agent's business. The notification should be provided as soon as the decision is taken.
- vi. any actual or intended legal proceedings of a material nature by or against the VFA Agent immediately after the decision has been taken or on becoming aware of the matter.
- vii. any material changes in the information supplied to the MFSA – immediately upon becoming aware of the matter.
- viii. any other material information concerning the VFA Agent, its business or its staff in Malta or abroad – immediately upon becoming aware of the matter.
- ix. any breach of these Rules, the Act or regulations issued thereunder, as soon as the VFA Agent becomes aware of the breach.

Notwithstanding the above, the MFSA shall be notified where any other MFSA notification is required in terms of the Rules.

- R1-2.3.4.3.2 The VFA Agent shall obtain the written consent of the MFSA before:
- i. making a change to VFA Agent's registered name, business or trade name, where applicable.
  - ii. implementing material changes to its business, at least one month in advance.
  - iii. making any change to its capital or the rights of its unitholders.
  - iv. acquiring 10 per cent or more of the voting rights in another company.
  - v. agreeing to sell or merge the whole or any part of its undertaking.
  - vi. making application to a Regulator abroad to undertake any form of activity outside Malta.
  - vii. the appointment of a Director, MLRO, Designated Person or Senior Manager responsible for the business of the VFA Agent.
  - viii. the change in the responsibilities of a Director, Designated Person or Senior Manager, in advance.

Notwithstanding the above, the consent of the MFSA shall be required where any other MFSA approval is required in terms of the Rules.

- R1-2.3.4.3.3 For the purposes of this sub-section, 'Senior Manager' shall be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.

#### R1-2.3.4.4 *Fees*

- R1-2.3.4.4.1 The VFA Agent shall promptly pay all amounts due to the MFSA.

- R1-2.3.4.4.2 The Annual Supervisory Fee shall be payable by the VFA Agent on the day when the Registration certificate is issued and, and on every year thereafter.

### ***Sub-Section 5 Voluntary Suspension of VFA Registrations***

- R1-2.3.5.1 VFA Agents may request the Authority to voluntary suspend its Registration for a period of six months. VFA Agents are required to adhere to all applicable Rules during the period of suspension.

Provided that this Rule shall only apply if the VFA Agent does not have any Clients and will not on-board new Clients during the suspension period.

- R1-2.3.5.2 VFA Agents intending to voluntarily suspend their Registration should inform the MFSA of their intentions to do so immediately and as soon as they are aware.
- R1-2.3.5.3 Notwithstanding the notification submitted in accordance with R1-2.3.5.2, VFA Agents shall submit a formal request for the approval of the suspension to the MFSA. The request should also include a detailed justification as to why the suspension is required, and the efforts being made by the VFA Agent to continue its business.
- R1-2.3.5.4 The Authority shall proceed with the internal process to approve the voluntary suspension of the VFA Agent's Registration upon submission of the following documentation by the VFA Agent and any other documentation as determined appropriate by the Authority:
- i. A declaration by the VFA Agent confirming the intention to voluntarily suspend its Registration, subject to the Authority's approval and once the necessary formalities are finalised. A certified true copy of a resolution by the governing body confirming the same shall be forwarded to the Authority; and
  - ii. A declaration by the VFA Agent confirming that the VFA Agent does not have Clients and will not on-board new Clients during the suspension period. A certified true copy of a resolution by the governing body confirming the same shall be forwarded to the Authority.
- R1-2.3.5.5 In the event of a voluntary suspension being approved by the Authority, a public notice regarding the suspension of the Registration shall be published on the MFSA's website.
- R1-2.3.5.6 The VFA Agent may request the Authority for an extension of the suspension period subject that adequate and satisfactory justification is provided thereto. The request should also include a detailed justification as to why the suspension is required, and the efforts being made by the VFA Agent to continue with its business.
- R1-2.3.5.7 Notwithstanding the notification submitted in accordance with R1-2.3.5.6, the VFA Agent shall have to resubmit to the Authority a certified true copy of the documentation required under R1-2.3.5.4, with respect to the extended period requested.
- R1-2.3.5.8 Subject that the extension of the voluntary suspension of Registration is approved by the Authority, a public notice regarding such suspension of the Registration will be re-published on the MFSA's website.

## ***Sub-Section 6 Cessation of the business of a VFA Agent***

- R1-2.3.6.1 VFA Agents ceasing their business and thus intend to surrender their Registration should inform the MFSA of their intention to do so as soon as they are aware.
- R1-2.3.6.2 Notwithstanding the notification submitted in accordance with R1-2.3.6.1, VFA Agents shall have to submit a formal request to the MFSA for the approval of the surrender.
- R1-2.3.6.3 The Authority shall proceed with the internal process to approve the surrender upon submission of the following documentation by the VFA Agent and any other documentation, as determined appropriate by the Authority:
- i. A declaration by the VFA Agent confirming its intention to surrender its Registration, subject to the Authority's approval and once the necessary formalities are finalised. A certified true copy of the Directors'/ General Partners' Resolution confirming the same, shall be forwarded to the Authority;
  - ii. A confirmation that no litigation is pending which arises out of any event that occurred during the period of Registration of the VFA Agent;
  - iii. A declaration that there are no pending complaints against the VFA Agent; and
  - iv. A confirmation that the VFA Agent will remove from all letterheads, and any other stationery, any reference to being registered with the Authority; and
  - v. A confirmation that the VFA Agent has informed its auditor and insurer of its intention to surrender its Registration.
- R1-2.3.6.4 In addition to the documentation required under R1-2.3.6.3 VFA Agents shall also submit to the Authority the following:
- i. A confirmation that due notice has been given to the Clients of its intention to surrender its Registration;
  - ii. A confirmation from its auditors specifying the date by when all business and obligations related to its VFA activity have been settled.
- R1-2.3.6.5 Pursuant to R1-2.3.6.3 and R1-2.3.6.4, the Authority shall not proceed with the internal process to approve the surrender the of a Registration until the VFA Agent has paid all amounts due to the Authority in application and/ or supervisory fees, as applicable.

R1-2.3.6.6 The Authority may request the VFA Agent to delay the surrender of its Registration or winding-up of its business, should it at any stage of the surrender, or winding up process, determine that this is required in order to ensure investor protection and protection of market integrity.

R1-2.3.6.7 The Authority shall issue an in-principle approval of a deregistration subject to the return of the Registration certificate to the MFSA.

R1-2.3.6.8 Provided that a VFA Agent does not initiate the necessary arrangements to wind-up its business, a certified true copy of the Constitutional Document of the VFA Agent duly amended to remove all references to VFA activity from its memorandum and articles of association, including, where appropriate, a change in name, should be submitted to the Authority.

## ***Section 4 The Approval and Departure Processes for Designated and Appointed Persons***

### ***Sub-Section 1 Scope and Application***

R1-2.4.1.1 This Section shall apply to Applicants or VFA Agents proposing persons to be designated in terms of R1-2.1.2.3, as well as to such persons.

### ***Sub-Section 2 Approval and Departure Processes***

R1-2.4.2.1 There are two processes relating to designated and appointed persons, namely (i) the approval process and (ii) the departure process.

R1-2.4.2.2 Proposed persons shall submit any documentation to the Authority via email through [fintech@mfsa.com.mt](mailto:fintech@mfsa.com.mt). Any documentation requested in original should be submitted to the Authority in writing.

R1-2.4.2.3 The Authority and the officers and employees of the Authority, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of the Authority's functions under the MFSA Act, the VFA Act, or any other Act administered by the Authority, or otherwise in the exercise of their official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

R1-2.4.2.4 The MFSA shall use all the information provided by the proposed person, and any other information that ought to have been disclosed by the said person for the purposes of the processes referred to in R1-2.4.2.1. The MFSA shall not be liable in damages for any acts or omissions on the part of the proposed individual.



## ***Sub-Section 3      The Approval Process***

- R1-2.4.3.1      Proposed persons appointed or designated in relation to Applicants or VFA Agents, shall inform and apply for approval from the Authority prior to engaging in their proposed role.
- R1-2.4.3.2      The proposed person shall submit to the Authority, as part of the fitness and properness assessment identified in this Title, the online Personal Questionnaire Form. The Authority shall initiate the fitness and properness assessment upon submission of the complete form and support documentation as stipulated therein.
- R1-2.4.3.3      The Authority may also require further information from the proposed person. For purposes of this Rule, the MFSA may *inter alia* conduct interviews and request any supporting documentation it may deem necessary.
- R1-2.4.3.4      The Authority shall, as part of the assessment process, use information not provided by the person, *inter alia* including publicly available information. The Authority shall also make reference to the overall organisational structure of the Applicant or VFA Agent.
- R1-2.4.3.5      Provided that the proposed person is fit and proper, the Authority shall issue its in-principle approval to the appointment or designation of the person within the VFA Agent.
- Provided that the Authority may also require the appointed or designated person to fulfil certain conditions within set timeframes. These conditions shall be indicated in the letter of approval.
- R1-2.4.3.6      In order to complete approval process, the Authority shall request proposed persons to confirm in writing his/her understanding of the requirements and their acceptance of the responsibilities attached to the role of a VFA Agent.

## ***Sub-Section 4      Departure of Appointed Person***

- R1-2.4.4.1      Approved persons shall notify the Authority of their departure from the VFA Agent at the earliest and by not later than the effective resignation and/or departure date.
- R1-2.4.4.2      Pursuant to R1-2.4.4.2, the approved person shall also provide to the Authority together with the notification, the reason for their departure and a written confirmation that such departure was not a consequence of any regulatory implications or to provide relevant details of any such regulatory implications, as appropriate.
- R1-2.4.4.3      The VFA Agent shall also be obliged to notify the Authority at the earliest and by not later than the effective resignation and/or departure date.

R1-2.4.4.4

Pursuant to R1-2.4.4.3, the VFA Agent shall also provide to the Authority together with the notification, a written statement noting the reason/s for departure and the remedial measures being undertaken to satisfy the Registration conditions as applicable. The notification should be submitted to the Authority via email through [fintech@mfsa.com.mt](mailto:fintech@mfsa.com.mt). Any documentation requested in original should be submitted to the Authority in writing.

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## **Title 3            On-going obligations for VFA Agents**

### ***Section 1            Scope and Application***

R1-3.1.1            This Title provides the on-going obligations for VFA Agents registered under Article 7 and/or Article 14 of the Act,

### ***Section 2            On-going Obligations for VFA Agents***

#### ***Sub-section 1        General Requirements***

R1-3.2.1.1            A VFA Agent shall at all times have adequate business organisation, systems, experience and expertise to act as VFA Agent.

R1-3.2.1.2            The VFA Agent shall take reasonable steps to ensure continuity and regularity in the performance of the services of a VFA Agent. To this end, the VFA Agent shall employ appropriate and proportionate systems, resources and procedures.

R1-3.2.1.3            The VFA Agent shall maintain sufficient records to be able to demonstrate compliance with its obligations.

R1-3.2.1.4            The VFA Agent shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.

R1-3.2.1.5            The VFA Agent shall be required to satisfy the requirements of R1-2.1.2.4 and R1-2.1.2.5 at all times.

#### ***Sub-section 2        Governance***

R1-3.2.2.1            A VFA Agent's business shall be effectively directed or managed by at least two individuals in satisfaction of the 'dual control' principle. Such persons shall be of sufficiently good repute, possess sufficient knowledge and experience, commit sufficient time to perform their functions and be sufficiently experienced so as to ensure the sound and prudent management of the VFA Agent.

R1-3.2.2.2            The VFA Agent shall:

- i.    establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- ii.   ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

- iii. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the VFA Agent;
- iv. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- v. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the VFA Agent;
- vi. maintain adequate and orderly records of its business and internal organisation;
- vii. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging their particular function soundly, honestly and professionally.

For these purposes, the VFA Agent shall take into account the nature, scale and complexity of its business, and the nature and range of the activity being undertaken in the course of that business.

#### R1-3.2.2.3

Without prejudice to R1-3.2.2.2, the VFA Agent shall establish, implement and maintain:

- i. systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;
- ii. an adequate business continuity process. The business continuity policy shall be aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, or, where that is not possible, the timely recovery of such data and functions;
- iii. accounting policies and procedures that enable it to deliver in a timely manner to the MFSA upon request, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules; and
- iv. Due diligence systems and controls in order to enable it to conduct fitness and properness assessments on Clients.

#### R1-3.2.2.4

The VFA Agent shall have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining confidentiality of data at all times. For purposes of this Rule 'security' shall also include cyber security.

R1-3.2.2.5 The VFA Agent shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this sub-section and take appropriate measures to address any deficiencies.

***Sub-section 3 Insurance Requirement***

R1-3.2.3.1 The VFA Agent shall make every effort to take out and maintain full Professional Indemnity Insurance cover.

R1-3.2.3.2 Where applicable, the VFA Agent shall ensure that the Professional Indemnity Insurance, *inter alia*:

- i. covers any legal liability in consequence of any negligent act, error or omission in the conduct of the VFA Agent's business by the VFA Agent or any person employed by it or otherwise acting for it, including consultants under a contract for service with the VFA Agent;
- ii. covers legal defence costs which may arise in consequence of any negligent act, error or omission in the conduct of the VFA Agent's business by the VFA Agent or any person employed by it or otherwise acting for it, including consultants under a contract for service with the VFA Agent;
- iii. the cover applies to the whole territory of the European Union and extends to all other territories from, in or to which its Clients are providing VFA Services;
- iv. includes any dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the VFA Agent, or otherwise acting for it, including consultants under a contract for service with the VFA Agent
- v. covers libel, slander and defamation;
- vi. covers loss of and damage to documents and records belonging to the VFA Agent or which are in the care, custody or control of the VFA Agent or for which the VFA Agent is responsible; including also liability and costs and expenses incurred in replacing, restoring or reconstructing the documents or records; including also consequential loss resulting from the loss or damage to the documents or records;
- vii. covers any liability resulting from any breach of a provision of the Act, any breach of any regulations made under the Act, any breach of rules issued under the act, and any award resulting from any such breach; and

- viii. claims made after expiry of the policy where the circumstances giving rise to the claim were notified to the insurers during the period of the policy.

R1-3.2.3.3 The policy shall be governed by Maltese law.

R1-3.2.3.4 For the purposes of demonstrating to the satisfaction of the MFSA that the requirements in this Section are being complied with on an on-going basis, the VFA Agent shall, upon request by the MFSA, submit to the MFSA, a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Rules.

R1-3.2.3.5 A VFA Agent shall within two working days from the date it becomes aware of any of the circumstances specified in (i) to (vii) below, inform the MFSA in writing where:

- i. during the period of a policy, the VFA Agent has notified insurers of an incident which may give rise to a claim under the policy;
- ii. during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;
- iii. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this Section has not been taken out from the day on which the previous policy lapsed or was cancelled;
- iv. during the period of a policy, the terms or conditions are altered in any manner so that the policy no longer satisfies the requirements of this Section;
- v. the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy;
- vi. the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements of this Section;
- vii. during the period of a policy, the risks covered by the policy, or the conditions or terms relating thereto, are altered in any manner.

#### ***Sub-section 4 Other Insurance Coverage***

R1-3.2.4.1 VFA Agents shall be required to take out and maintain an insurance policy that covers loss of money or loss or damage to any other asset or property belonging to the VFA Agent or which is in the care, custody or control of the VFA Agent or for which the VFA Agent is responsible.

R1-3.2.4.2 The policy shall be governed by Maltese law.

## *Sub-section 5*

## *Outsourcing*

### R1-3.2.5.1

#### *General*

#### R1-3.2.5.1.1

A VFA Agent shall ensure, when relying on a third party for the performance of any operational function that it takes reasonable steps to avoid undue additional operational risk for the provision of continuous and satisfactory service to Clients and the performance of its services on a continuous and satisfactory basis.

#### R1-3.2.5.1.2

A VFA Agent shall ensure that the outsourcing of important operational functions is not be undertaken in such a way as to materially impair the quality of its internal control and the ability of the Authority to monitor the firm's compliance with all obligations.

#### R1-3.2.5.1.3

When the VFA Agent outsources any function, the VFA Agent shall remain fully responsible for discharging all of their obligations under these Rules and shall adequately manage the risks relating to such outsourcing arrangements at all times.

#### R1-3.2.5.1.4

The VFA Agent shall carry out an on-going assessment of the operational risks and the concentration risk associated with all its outsourcing arrangements. The VFA Agent shall notify the MFSA of any material developments.

#### R1-3.2.5.1.5

The ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with the VFA Agent.

#### R1-3.2.5.1.6

When the VFA Agent outsources any function, the VFA Agent shall ensure that the outsourcing arrangements do not result in the delegation of responsibility.

#### R1-3.2.5.1.7

The outsourcing of operational functions may not be undertaken in such a way as to materially impair:

- i. the ability of the MFSA to monitor the VFA Agent's compliance with all obligations;
- ii. the orderliness of the conduct of the outsourcing VFA Agent's business;
- iii. the quality of the VFA Agent's internal control;
- iv. the VFA Agent's ability to manage and monitor its business and activities;
- v. the ability of other internal governance bodies, such as the board of directors or the audit committee, to fulfil their oversight tasks in relation to the senior management;

#### R1-3.2.5.1.8

A VFA Agent shall inform the MFSA of any material outsourcing arrangements and shall make available on request all information necessary to enable the

Authority to supervise the compliance of the performance of the outsourced activities with the requirements of these Rules.

R1-3.2.5.1.9 A VFA Agent shall inform the MFSA of any material development affecting an outsourced activity and the manner by which it is proposing to rectify its position in order to fulfil its obligation to its customers.

R1-3.2.5.1.10 The MFSA may impose specific conditions on the VFA Agent for the outsourcing of any activities.

R1-3.2.5.2 *The Outsourcing Policy*

R1-3.2.5.2.1 A VFA Agent shall have a policy on its approach to outsourcing, including contingency plans, exit strategies as well as a general policy that covers all aspects of outsourcing, including non-material outsourcing, whether the outsourcing takes place within a corporate group or not.

R1-3.2.5.3 *The Outsourcing Contract*

R1-3.2.5.3.1 The VFA Agent shall ensure that any outsourcing arrangement is based on a formal, clear, written contract which establishes the respective rights and obligations of the VFA Agent and of the service provider.

## ***Sub-section 6 Procedures for the Reporting of Breaches***

R1-3.2.6.1 The VFA Agent shall develop and maintain appropriate procedures for employees to report breaches internally.

R1-3.2.6.2 VFA Agents shall also refer to and comply with the applicable provisions of the Protection of the Whistleblower Act.

## ***Sub-section 7 On-boarding of Clients***

R1-3.2.7.1 Prior to accepting to offer its services to any Client, a VFA Agent shall, in so far as it can determine, ensure that such person is a fit and proper person. For purposes of this Rule, the VFA agent shall ensure that the Client is of sufficient good standing and repute, has sufficient financial resources and that its board of administration has, collectively, sufficient knowledge, experience and expertise in the field of information technology, DLT and DLT assets, at all times.

R1-3.2.7.2 The VFA Agent shall submit to the MFSA, immediately upon his appointment by a Client, a written declaration that the requirements under R1-3.2.7.1 are satisfied:



Provided that where a VFA Agent considers a Client, or a prospective Client, not to be a fit and proper person, it shall immediately inform the MFSA explaining, in as much detail as possible, the reasons why it does not consider such person to be fit and proper.

R1-3.2.7.3 For the purposes of R1-3.2.7.2, the VFA Agent shall, prior to onboarding a Client, inform such Client of the VFA Agent's obligations under this Section and shall obtain the Client's consent to disclose the conclusions of any fitness and properness assessment conducted in terms of R1-3.2.7.1 to the MFSA.

R1-3.2.7.4 A copy of the fitness and properness assessment conducted in terms of R1-3.2.7.1 should be held at the registered address of the VFA Agent in Malta and made available to the MFSA upon request.

R1-3.2.7.5 The VFA Agent shall notify the MFSA in writing without delay of its removal, resignation or its intention to surrender its Registration, either confirming that its departure had no regulatory implications or providing relevant details, as appropriate. The VFA Agent shall also send a copy of such notification to its Clients.

## ***Sub-section 8 The Appointment of more than one VFA Agent***

R1-3.2.8.1 Where a Client appoints more than one VFA Agent, the Client shall establish how responsibility is to be allocated and inform the Authority, in writing, of the respective allocations so made.

R1-3.2.8.2 The appointment of more than one VFA Agent does not relieve any of the VFA Agents so appointed of any responsibilities and, or obligations under these Rules.

Provided that a VFA Agent shall solely be responsible for the matters allocated to him in accordance with R1-3.2.8.1.

## ***Sub-section 9 Conduct of Business Obligations***

R1-3.2.9.1 *General Conduct of Business Obligations*

R1-3.2.9.1.1 VFA Agents shall adopt appropriate and transparent reporting lines within its organisation in order to ensure that issues involving risks of non-compliance with conflicts of interest rules are given the necessary priority.

R1-3.2.9.1.2 A VFA Agent shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organisation of the VFA Agent and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients.

- R1-3.2.9.1.3 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the VFA Agent or certain persons connected to the VFA Agent or the group of which the VFA Agent forms part, or from the performance of services and activities, and the duty the VFA Agent owes to a Client; or between the differing interests of two or more of its Clients, to whom the VFA Agent owes in each case a duty.
- R1-3.2.9.1.4 A VFA Agent shall establish, implement and maintain an effective conflicts of interest policy set out in writing and which is appropriate to the size and organisation of the VFA Agent and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its Clients.
- R1-3.2.9.1.5 A VFA Agent shall keep and regularly update a record of the situations or service carried out by or on behalf of the VFA Agent in which a conflict of interest entailing a risk of damage to the interests of one or more Clients has arisen or, in the case of an ongoing service, may arise.
- R1-3.2.9.2 *Operational Independence Rules*
- R1-3.2.9.2.1 Where applicable, a VFA Agent shall take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their officials, employees, or any person directly or indirectly linked to them by control and their Clients or between the interests of one Client and another, including those caused by the receipt of inducements from third parties or by a VFA Agent's own remuneration and other incentive structures.
- R1-3.2.9.2.2 Where applicable, the VFA Agent shall define, oversee and be accountable for the implementation of governance arrangements that ensure effective and prudent management of the VFA Agent including the segregation of duties within that VFA Agent and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of Clients.
- R1-3.2.9.3 *Conflict of Interests Policy*
- R1-3.2.9.3.1 The conflicts of interest policy established in accordance with these rules shall be set out in writing and shall *inter alia* include the following:
- i. The identification of, with reference to the specific services and carried out by or on behalf of the VFA Agent, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more Clients; and

- ii. Procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of Clients.

R1-3.2.9.3.2 The VFA Agent shall assess and periodically review, at least annually, the conflicts of interest policy established in accordance these rules and shall take all appropriate measures to address any deficiencies.

R1-3.2.9.4 *Remuneration Policy Rules*

R1-3.2.9.4.1 A VFA Agent shall define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all the Clients. The remuneration policy should be periodically reviewed.

R1-3.2.9.4.2 In defining its remuneration policies, a VFA Agent shall *inter alia* ensure that:

- i. Clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the VFA Agent in the short, medium or long term; and
- ii. Remuneration policies and practices do not create a conflict of interest or incentive that may lead Relevant Persons to favour their own interests or the VFA Agent's interest to the potential detriment of Clients.

R1-3.2.9.4.3 A VFA Agent's remuneration policies and practices shall include and provide for the maintenance of measures enabling the VFA Agent to effectively identify where the VFA Agent fails to act in the best interests of the Client and to take remedial action.

R1-3.2.9.5 *Rules on Personal Transactions*

R1-3.2.9.5.1 A VFA agent shall establish, implement and maintain adequate arrangements which prevent any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information or to other confidential information relating to Clients or transactions with or for Clients by virtue of an activity carried out by him on behalf of the VFA Agent.

R1-3.2.9.5.2 VFA Agents shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

- i. that the person is prohibited from entering into it in terms of the Chapter V of the Act;
- ii. it involves the misuse or improper disclosure of confidential information; or

- iii. it conflicts or is likely to conflict with any obligation of the VFA Agent.

## **Section 3**      ***Supplementary Conditions for VFA Agents appointed in terms of Article 7 of the Act***

R1-3.3.1      A VFA Agent shall, on an ongoing basis, ensure that an Issuer is a fit and proper person in terms of R1-3.2.7.1.

R1-3.3.2      The VFA Agent shall ensure that the DLT assets in relation to which an application for Registration of a whitepaper is being made, in terms of Chapter 2 of these Rules, qualify as Virtual Financial Assets. In this respect, a VFA Agent is required to endorse an Issuer's determination as to whether a DLT asset qualifies as a Virtual Financial Asset, by notifying the MFSA that the Issuer's assessment is correct. In doing so, the VFA Agent shall list any assumptions it has made or any reservations it may have.

Provided that the MFSA shall not ordinarily make any determinations of its own with reference to a DLT asset's nature but shall rely on the determinations made by the Issuer and its VFA Agent; it should therefore be understood that in the event of disagreement between the VFA Agent and the Issuer, the matter shall be resolved between the said parties prior to a whitepaper's submission for Registration with the MFSA:

Provided further that the MFSA shall not be accepting any applications where the Issuer's determination has not been endorsed by its VFA Agent.

R1-3.3.3      Prior to notifying the MFSA pursuant to R1-3.3.2, the VFA Agent shall also satisfy itself that a Systems Auditor has prepared a report which covers all aspects of an issuer's technology arrangements, including *inter alia* cyber security.

R1-3.3.4      A VFA Agent shall ensure that the Issuer has provided investors with a roadmap which clearly establishes and sets out milestones for the Initial Virtual Financial Assets Offering.

R1-3.3.5      Pursuant to R1-3.3.4, the VFA Agent shall check whether the Issuer is meeting the milestones set out. In the event that these milestones are not being met, the VFA Agent shall inform the MFSA accordingly.

R1-3.3.6      Prior to the endorsement by the members of the Issuer's board of administration of the whitepaper in terms of Chapter 2 of this Rulebook, the VFA Agent shall satisfy itself that such members:

- i. can be relied upon to prepare and publish all information within their knowledge (or which it would be reasonable for them to obtain) that investors and their professional advisers would reasonably require and reasonably expect to find for the purpose of making an informed

assessment of the Virtual Financial Assets to which the whitepaper relates; and

- ii. have had explained to them (by a VFA Agent or other appropriate professional adviser) the nature of the responsibilities and obligations they will be undertaking as members of the Issuer's board of administration.

R1-3.3.7 The VFA Agent shall obtain written confirmation from the Issuer's Administrator/s that the Issuer has established procedures which provide a reasonable basis for them to make proper judgements as to the prospects and, where applicable, the financial position of the Issuer and, in each case, its Group, and be satisfied that this confirmation has been given after due and careful enquiry by the said Administrator/s.

R1-3.3.8 The VFA Agent shall obtain written confirmation from the Issuer that any profit forecast or estimates have been made after due and careful enquiry by the Issuer. The VFA Agent shall also ensure that such information is disclosed in the whitepaper.

R1-3.3.9 Where applicable, the VFA Agent shall further obtain written confirmation from the Issuer that the financial information published in that document has been properly extracted from the Issuer's accounting records and be satisfied that this confirmation has been given after due and careful enquiry by the Issuer.

R1-3.3.10 *Compliance Certificate*

R1-3.3.10.1 The VFA Agent shall be required to prepare and submit to the MFSA, on an annual basis, a Compliance Certificate in relation to the Issuer.

Provided that where there have been any breaches of the Act, the Regulations or these Rules, the VFA Agent is required to include a statement regarding such breaches in the Compliance Certificate.

R1-3.3.10.2 The Compliance Certificate should further include a confirmation that:

- i. all the local AML/CFT requirements have been satisfied, which confirmation should be obtained from the Issuer's MLRO; and
- ii. the Issuer's Innovative Technology Arrangement complies with any qualitative standards set and guidelines issued by the Malta Digital Innovation Authority applicable to the particular type of arrangement (irrespective of whether the said arrangement holds a certification or a ruling of eligibility under the Innovative Technology Arrangements and Services Act), which confirmation should be obtained from the Issuer's Systems Auditor.

R1-3.3.10.3

A copy of the Compliance Certificate prepared in terms of R1-3.3.10 should be held at the registered address of the VFA Agent in Malta and made available to the MFSA upon request.

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## Title 4 Enforcement and Sanctions

### Section 1 *Scope and Application*

R1-4.1.1 This Title provides detail with regards to administrative penalties and sanctions. It inter alia provides the principles which guide the MFSA when imposing an administrative penalty and provides for aggravating and mitigating circumstances in case of misconduct by VFA Agents registered under Article 7 and/or Article 14 of the Act.

### Section 2 *General*

R1-4.2.1 The VFA Agent shall at all times observe the Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against a VFA Agent which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

R1-4.2.2 Where a VFA Agent breaches or infringes a Rule, the MFSA may by virtue of the authority granted to it under Article 48 of the Act impose administrative penalties, without recourse to a court of law, up to a maximum of EUR 150,000.

R1-4.2.3 In determining whether to impose a penalty or other sanction, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may inter alia include:

- i. the repetition, frequency, gravity or duration of the infringement by the VFA Agent;
- ii. the degree of responsibility of the person responsible for the infringement;
- iii. the financial strength of the VFA Agent;
- iv. the profits gained or losses avoided by the VFA Agent by reason of the infringement, insofar as they can be determined;
- v. the losses for third parties caused by the infringement, insofar as they can be determined;
- vi. the level of cooperation of the VFA Agent with the Authority;

- vii. previous infringements by the VFA Agent and prior sanctions imposed by MFSA or other regulatory authorities on the same VFA Agent;
  - viii. the good faith, the degree of openness and diligence of the VFA Agent in the fulfilment of his obligations under the Act, relative regulations, Rules and Registration conditions or of decisions of the competent authority in this regard;
  - ix. any evidence of wilful deceit on the part of the VFA Agent or its officers; and
  - x. any potential systemic consequences of the infringement.
- R1-4.2.4 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the VFA Agent from its performance, unless the decision of the MFSA explicitly states the contrary.
- R1-4.2.5 These Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, VFA Agent will be considered as breaching the relevant Rule(s) and will be penalised accordingly.
- R1-4.2.6 Documents may be submitted in various ways. The date of receipt will be as follows:
- i. if it is sent by fax and/or email, the date of receipt recorded shall be the time stamp of the fax and/or email, respectively;
  - ii. if it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt;
  - iii. if it is delivered by hand, on the date such delivery was made and recorded by MFSA.
- R1-4.2.7 The MFSA will use its discretion to decide what action to take in respect of VFA Agents who do not submit documents by their due date, after taking into consideration the reasons (if any) put forward by the VFA Agent for the delay.
- R1-4.2.8 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.
- R1-4.2.9 A right of appeal to the Financial Services Tribunal is available to VFA Agents on whom penalties are imposed.



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