



**COLLECTIVE INVESTMENT SCHEMES ACT 2008**

**AUTHORISED COLLECTIVE INVESTMENT SCHEMES  
REGULATIONS 2010**

*Approved by Tynwald* 2010

*Coming into operation* 2010

The Financial Supervision Commission, after consulting the Treasury, makes these Regulations under section 24 of the Collective Investment Schemes Act 2008<sup>(a)</sup>.

**1. Title**

These Regulations are the Authorised Collective Investment Schemes Regulations 2010.

**2. Commencement**

These Regulations come into operation on [date] 2010.

**3. Interpretation**

In these Regulations –

**“accounting reference date”** means the date stated in the most recently published offering document as the date on which the scheme’s annual accounting period is to end.

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<sup>(a)</sup> 2008 c.7

**“accumulation unit”** means a unit in a scheme in which the income is not distributed to the holder, but instead a sum equivalent to the income is transferred to the capital property attributable to the holder’s units;

**“the Act”** means the Collective Investment Schemes Act 2008;

**“affected person”** includes:

- (a) the manager;
- (b) the trustee;
- (c) the fiduciary custodian;
- (d) any investment adviser;
- (e) any fund administrator;
- (f) the open-ended investment company; and
- (g) any associate of (a) to (f) above.

**“alternative debenture”** has the meaning given in article 77A (Alternative finance investment bonds) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 of Parliament<sup>(b)</sup>;

**“annual accounting period”** is calculated in accordance with paragraph 110(2);

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**“annual income allocation date”** means the date in the calendar year specified in the documents constituting the scheme and the offering document as the date on or before which allocations of income in respect of each annual accounting period are to be made;

**“appropriate auditor”** is a person that is qualified for appointment as auditor of a company under sections 14 to 14H of the Companies Act 1982<sup>(c)</sup>, and –

- (a) has a permanent place of business on the Island;
- (b) is covered by Professional Indemnity insurance of at least £20 million;
- (c) is independent of the scheme, having regard to auditing standards and the code of ethics of the body of accountants of which he is a member;

**“approved bank”** means –

- (1) a person in respect of which a financial services licence issued under the Financial Services Act 2008<sup>(d)</sup> is in force which permits the carrying on of the regulated activity of deposit taking; and

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<sup>(b)</sup> SI 2001/544

<sup>(c)</sup> 1982 c.2

<sup>(d)</sup> 2008 c.8

- (2) any person who is authorised under the law of a member state to carry on a business which is a banking business for the purposes of that member state's law; or
- (3) a firm authorised to carry on a banking or deposit-taking business under the law of any other country or territory which is acceptable to the Commission;

**“associate”** means –

- (1) In relation to a director, controller or person exercising significant influence, who is an individual) -
  - (a) that individual's spouse, civil partner or child (together "the individual's family");
  - (b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme or an employees' share scheme which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;
  - (c) any company in whose equity securities the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
    - (i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
    - (ii) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters.

For the purpose of paragraph (c), if more than one director of the listed company, its parent undertaking or any of its subsidiary undertakings is interested in the equity securities of another company, then the interests of those directors and their associates will be aggregated when determining whether that company is an associate of the director.

- (2) In relation to a controller or person exercising significant influence, which is a company:
  - (a) any other company which is its subsidiary undertaking or parent undertaking or fellow subsidiary undertaking of the parent undertaking;
  - (b) any company whose directors are accustomed to act in accordance with the substantial shareholder's or person exercising significant influence's, directions or instructions;

- (c) any company in the capital of which the substantial shareholder or person exercising significant influence and any other company under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (1)(c)(i) or (ii) of this definition.
- (3) in relation to a person ("A"):
  - (a) an affiliated company of A;
  - (b) an appointed representative of A, or a tied agent of A, or of any affiliated company of A;
  - (c) any other person whose business or domestic relationship with A or his associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties.

**"base currency"** means the currency specified in the documents constituting the scheme and the offering document as the base currency of the scheme;

**"BCD credit institution"** means a credit institution that has its registered office (or, if it has no registered office, its head office) in an EEA State, excluding an institution to which the Banking Consolidation Directive does not apply under article 2 of that Directive;

**"business day"** in relation to anything done or to be done in any part of the Island, means any day other than a Saturday, a Sunday or a day which is a bank holiday under the Bank Holidays Act 1989<sup>(e)</sup> and, in relation to anything done or to be done by reference to a market outside the Island means any day on which that market is normally open for business;

**"cancellation"** in relation to a unit, means the repurchase thereof;

**"cancellation price"** means the price for each unit payable by the trustee on the cancellation of units;

**"capital account"** means an account relating to the capital property of the scheme;

**"capital property"** means:

- (a) in the case of a unit trust scheme, all the property for the time being held on trust on behalf of the scheme excluding income property and any

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<sup>(e)</sup> 1989 c.5

amount for the time being standing to the credit of the distribution account; and

- (b) in the case of an open-ended investment company scheme, all the property of the company other than any part of such property which is attributable to shares which are not units excluding income property and any amount for the time being standing to the credit of the distribution account;

**“cash”** includes foreign currency;

**“close out”** in relation to a transaction entered into for the scheme, means the entry, for account of the scheme, into a further transaction under which the obligation to deliver or receive which arises or may, at the option of the other party to the transaction, arise under the original transaction is offset by an equivalent and opposite obligation or right to receive or deliver;

**“collateral”** means any form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from a transaction;

**“commencement date”** means the date on which these Regulations come into operation;

**“the Commission”** means the Financial Supervision Commission;

**“the company”**, in relation to an open-ended investment company scheme, means the company which constitutes that scheme;

**“contract for differences”** has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2009<sup>(f)</sup>;

**“cover”** means any or all of the property or the expected property of the scheme which is used to discharge the obligations of a particular transaction;

**“creation”** in relation to a unit in an open-ended investment company scheme, means the allotment thereof by the company;

**“creation price”** means the price for each unit payable by the manager to the trustee on the creation of units;

**“dealing day”** means the period in each business day (or in each day when the manager or operator is open for business) during which the manager or

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<sup>(f)</sup> SD 738/09

operator keeps his premises or any of them open to the public or otherwise publicly available for business of any kind;

**“dealing period”** means the period between one valuation point and the next;

**“dedicated”** means that the scheme has as its sole objective the enablement of participants to participate in or receive:

- (a) profits or income arising from the acquisition, holding, management or disposal of investments or assets of the relevant description; or
- (b) sums paid out of profits or income in (a); or
- (c) other benefits where expressly permitted under these Regulations;

**“deposit”** has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2009;

**“derivative”** means an option, or a future or a contract for differences. An investment is not a derivative if it is a transferable security;

**“distribution account”** means the account known by that name and opened and maintained in accordance with paragraph 110(1), (3) and (4);

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**“efficient portfolio management”** means techniques and instruments which relate to transferable securities and approved money-market instruments and which fulfil the following criteria:

- (a) they are economically appropriate in that they are realised in a cost effective way;
- (b) they are entered into for one or more of the following specific aims:
  - (i) reduction of risk;
  - (ii) reduction of cost;
  - (iii) generation of additional capital or income for the scheme with a risk level which is consistent with the risk profile of the scheme and these Regulations.

**“eligible institution”** means –

- (a) a BCD credit institution authorised by an EEA State regulator;
- (b) a MIFID investment firm authorised by an EEA regulator;
- (c) a firm which holds a licence to conduct the relevant activity under section 7 of the Financial Services Act 2008;

**“eligible investment trust”** means an investment trust which:

- (a) at the date of the authorisation of the feeder fund, the property of the investment trust included net assets worth at least £25 million (or, if the base currency of the feeder fund is not sterling, the equivalent in that base currency); and
- (b) the trustee of the feeder fund is reasonably satisfied that a least 70% of the income of the investment trust received during either or both of:
  - (i) the last completed accounting period;
  - (ii) the first half of the current accounting period;
 consisted of income derived from eligible securities;
- (c) (apart from transactions for efficient portfolio management purposes) the property of the investment trust cannot be invested in derivatives;
- (d) not more than 5% of the property of the investment trust consists of warrants;
- (e) not more than 5% of the property of the investment trust consists of transferable securities issued by any one issuer, except that the figure of 5% may be regarded as 15% in respect of up to 30% in value of the investment trust where:
  - (i) the feeder fund owns not more than 20% of the shares (or of any class of shares) in or of the debentures (or of any class of debentures) of the investment trust;
  - (ii) the borrowing of the investment trust does not exceed 50% of the market value of the shares of the trust at the mid value share price for the time being;
  - (iii) the shares in (or debentures of) the investment trust are regularly offered for purchase and sale by at least three market makers who are recognised or registered as members of an eligible securities market; and
  - (iv) the investment trust has no limit on its duration;

**“existing scheme”** means a scheme which, on the commencement date, is authorised under Schedule 1 of the Act;

**“extraordinary resolution”** means a resolution proposed and passed at a meeting of holders duly convened and held in accordance with paragraphs 108 to 110 and carried, whether on a show of hands or on a poll, by a majority consisting of 75% of the total number of votes cast for and against such resolution;

**“FAIF”** means a fund of alternative investment funds;

**“forward price”** means a price calculated by reference to the valuation point next following the manager’s agreement to sell or, as the case may be, to repurchase the units in question;

**“fund of alternative investment funds”** means a non-UCITS type scheme whose documents constituting the scheme contains the statement in paragraph 6(3) in Appendix 1 that it is a fund of alternative investment funds;

**“future”** has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2009;

**“Government and other public securities”** means investments falling within Part 1 of Schedule 2 to the Regulated Activities Order 2009 which are issued by or on behalf of:

- (a) the Government of the Island, or of a member state;
- (b) a local authority in the Island or in any member state;
- (c) the Government of any country or territory; or
- (d) an international organisation the members of which include a member state,

and includes investments which would fall within Part 1 of Schedule 2 to the Regulated Activities Order 2009 if that Part extended to investments guaranteed by the Government of the Island;

**“half-yearly accounting period”** has the meaning given by paragraph 110(2);

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**“historic price”** means a price calculated by reference to the valuation point immediately preceding the manager’s agreement to sell or, as the case may be, to repurchase the units in question;

**“income account”** means an account relating to the income property of the scheme;

**“income equalisation”** means a capital sum which shall be included in an annual or interim allocation of income in respect of each unit created, issued or sold during the accounting period which is the manager’s best estimate of the amount of income included in the creation price or the creation price by reference to which the issue or selling price of that unit was determined;

**“income property”** means all sums, including income equalisation, deemed by the manager, after consultation with the appropriate auditor, to be in the nature of income received or receivable in respect of the property of the scheme but excluding any amount for the time being standing to the credit of the distribution account;

**“initial offer”** means an offer for sale of units in a scheme, otherwise than on a unitisation, where all or part of the consideration paid to the trustee for the

units is to be used to acquire the first property (other than that consideration) to be held on the trusts of the scheme;

**“initial price”** means such amount as may be agreed by the trustee and manager, as being the maximum amount, inclusive of the manager’s preliminary charge, if any, which may be paid by a potential holder to the manager for units on an initial offer;

**“interim accounting period”** has the meaning given to it in paragraph 105(3);

**“interim income allocation date”**, in relation to an interim accounting period, means the date in the calendar year specified in the documents constituting the scheme and the offering document as the date on or before which allocations of income in respect of that interim accounting period are required or authorised to be made or, if the documents constituting the scheme and the offering document allow, the date determined for that purpose by the manager;

**“issue”** means, in relation to units, the sale of units by the manager as a principal;

**“large deal”** means a transaction or series of transactions in any one dealing period by any person to buy, sell or exchange units at a total value of £15,000 or for all or any specified purposes, and such greater sum as may be specified in the offering document;

**“marketing”** in relation to units in a collective investment scheme and a particular country means:

- (a) issuing or causing to be issued in that country advertisements inviting persons to become or offer to become participants in that scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in that scheme; or
- (b) advising or procuring any person in that country to become a participant in that scheme;

**“member state”** means a member state of the European Union or of the European Economic Area;

**“MiFID”** means the European Parliament and Council Directive on markets in financial instruments<sup>(g)</sup>;

**“MiFID investment firm”** means a firm to which MiFID applies;

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<sup>(g)</sup> No.2004/39/EC

**“near cash”** means money, deposits or investments which fall within any of the following –

- (a) money deposited with an approved bank which is in:
  - (i) a current account; or
  - (ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding seven days’ interest calculated at ordinary commercial rates;
- (b) certificates of deposit issued by a approved bank if immediately redeemable at the option of the holder;
- (c) Government and other public securities, if redeemable at the option of the holder or bound to be redeemed within two years;
- (d) a bill of exchange issued by any Government or body which is the issuer of a Government and other public security; and
- (e) deposits with a local authority of a kind which fall within paragraph 9 of Part II of the First Schedule to the Trustee Investments Act 1961, an Act of Parliament, and equivalent deposits with any local authority in a member state, if the money can be withdrawn immediately and without payment of a penalty as described at (a) above;
- (f) investments of a kind described in paragraphs 1 and 2 of Schedule 1 to the Trustee Investments Act 1961 of Parliament<sup>(h)</sup>, and equivalent investments which are issued or guaranteed by any Government of a country or territory;

**“option”** has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2009;

**“the property of the scheme”** means the capital property and the income property;

**“protected cell company”** means a protected cell company as defined by the Protected Cell Companies Act 2004<sup>(i)</sup>;

**“purchase”** in relation to an option means acquiring the right to exercise the option;

**“registrar”** means the person who maintains the register;

**“sale”** in relation to units, means the sale of units by the manager as a principal;

**“sale price”** means the manager’s price for issue under paragraph 105(6);

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<sup>(h)</sup> 1961 c.62

<sup>(i)</sup> 2004.c1

**“scheme”** means a unit trust scheme or an open-ended investment company scheme authorised under Schedule 1 to the Act;

**“UCITS Directive”** means the European Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities<sup>(i)</sup> as amended;

**“UK scheme”** means a collective investment scheme authorised under section 243 of the Financial Services and Markets Act 2000 of Parliament<sup>(k)</sup> (“FSMA 2000”) or under regulation 14 of the Open-Ended Investment Companies Regulations 2001 of the UK<sup>(l)</sup>, or recognised under section 264, 270 or 272 of the FSMA 2000;

**“umbrella fund”** means a scheme which provides for such pooling as is mentioned in section 1(3) of Part 1 of the Act in relation to separate parts of the property of the scheme and holders in which are entitle to exchange rights in one part for rights in another;

**“underwrite”** in relation to an option means the granting of the option;

**“unitisation”**, in relation to a scheme, means arrangements under which:

- (a) the whole or part of the property of a body corporate or a collective investment scheme is transferred so as to become part of the property of the scheme; and
- (b) the holders of shares in that body corporate or units in that collective investment scheme become holders of units in the scheme;

**“valuation point”** means the time by reference to which a valuation is carried out for the purposes of paragraph 105(3);

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**“warrant”** means any investment falling within paragraph (d) of the definition of “investment” in Part 1 of Schedule 2 to the Regulated Activities Order 2009 and any other transferable security (not being paid or partly paid security) which is akin to such an investment in that it involves a down payment by the then holder and the right later on to surrender the instruments and to pay additional money to obtain a further transferable security.

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<sup>(i)</sup> No 85/611/EEC

<sup>(k)</sup> 2000 c.8

<sup>(l)</sup> SI 2001/1228

4. In these Regulations any reference to a written notice or to written instructions shall be taken to be a reference to a notice or instructions given in any legible form provided that a printed copy of the notice or instructions can be made.

5. Where an amount in sterling is referred to in these Regulations reference to that amount shall, in an appropriate case, be taken to be a reference to its equivalent in a foreign currency, at a rate determine by the trustee to be fair.

**6. Application of the Schedule**

All authorised collective investment schemes must comply with the Schedule to these Regulations.

**7. Categories of scheme**

An authorised scheme must be either a UCITS type scheme or a non-UCITS type scheme.

**8. Revocation of 2005 Regulations and Transitional Provisions**

The Financial Supervision (Authorised Collective Investment Schemes) Regulations 2005<sup>(m)</sup> (“the 2005 Regulations”) and the Collective Investment Schemes (Authorised Schemes) (Alternate Investment and Borrowing Powers) Regulations 2009<sup>(n)</sup> (“the 2009 Regulations”) are revoked with the coming into effect of these Regulations. On their revocation, references to the 2005 Regulations or 2009 Regulations should be construed as references to these Regulations (“the 2010 Regulations”).

The provisions of the 2010 Regulations shall apply to all collective investment schemes authorised by the Financial Supervision Commission under Schedule 1 of the Collective Investment Schemes Act 2008. Schemes authorised after the date of the coming into effect of these Regulations must comply with immediate effect. Schemes authorised prior to the coming into effect of these Regulations must comply within six months of the date of the coming into effect of the Regulations (“the effective date”).

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<sup>(m)</sup> SD 836/05

<sup>(n)</sup> SD 336/09

MADE [date] 2010

Chairman

Commissioner

## Regulation 6

### SCHEDULE

#### Part 1

##### INTRODUCTION

#### 1 Application of Schedule

This Schedule applies to authorised schemes that have made the election set out in subparagraph (1) of paragraph 2.

#### 2 Types of scheme

(1) An election made under this paragraph must specify that the scheme is one of the following types -

(a) a UCITS type scheme; or

(b) a non-UCITS type scheme [including a non-UCITS type scheme operating as a fund of alternative investment funds \(FAIF\)](#).

(2) Any such election must be contained in the offering document of the authorised scheme.

#### Part 2

##### AUTHORISED SCHEME APPLICATIONS

#### 3 Application

An application for an authorisation order in respect of an authorised scheme making an election under subparagraph (1) of paragraph 2 must be made in accordance with the provisions of the Act.

#### Part 3

##### CONSTITUTION

#### 4 Application of Part 3

This Part applies to -

- (a) a manager of a scheme;
- (b) the governing body;
- (c) a trustee or fiduciary custodian; and
- (d) an open-ended investment company

whether the scheme is a UCITS type scheme or a non-UCITS type scheme, except that paragraph 7 applies only to a scheme which has elected to be a UCITS type scheme.

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## 5 **Relationship between the documents constituting the scheme and this Schedule**

- (1) The documents constituting the scheme must not contain any provision that -
  - (a) conflicts with any provision in this Schedule;
  - (b) is unfairly prejudicial to the interests of participants generally or to participants in any class of units.
- (2) Any power conferred by this Schedule on the manager, the governing body, the trustee or fiduciary custodian, whether in a sole or joint capacity, is subject to any restriction in the documents constituting the scheme.

## 6 **Matters which must be included in the documents constituting the scheme**

The statements and provisions required by Appendix 1 (Table: contents of the documents constituting the scheme) must be included in the documents constituting the scheme, where appropriate.

## 7 **UCITS type schemes**

In relation to a UCITS type scheme the documents constituting the scheme may not be amended in such a way that it ceases to be a UCITS type scheme.

## 8 **Units**

### (1) **Application of paragraph 8**

This paragraph applies to a manager, an open-ended investment company, a trustee and a fiduciary custodian.

**(2) Currency class units: requirements**

For a currency class unit -

- (a) the currency of the class concerned must not be the base currency (or, in the case of a sub-fund which, in accordance with a statement in the offering document, is to be valued in some other currency, the currency of the class may be in the base currency, but must not be in that other currency);
- (b) the price must be expressed in the currency of the class concerned;
- (c) any distribution must be paid in the currency of the class concerned; and
- (d) statements of amounts of money or values included in statements and in tax certificates must be given in the currency of the class concerned (whether or not also given in the base currency).

**(3) Rights of unit classes**

- (a) If any class of units in a scheme has different rights from another class of units in that scheme, the documents constituting the scheme must provide how the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class must be calculated.
- (b) For a scheme which is not an umbrella, the documents constituting the scheme must not provide for any class of units in respect of which -
  - (i) the extent of the rights to participate in the capital property, income property or distribution account would be determined differently from the extent of the corresponding rights for any other class of units; or
  - (ii) payments or accumulation of income or capital would differ in source or form from those of any other class of units.
- (c) For a scheme which is an umbrella, the provisions in subparagraph (b)(i) apply to classes of units in respect of each sub-fund as if each sub-fund were a separate scheme.
- (d) Subparagraphs (b) and (c) do not prohibit a difference between the rights attached to one class of units and to another class of units that relates solely to -

- (i) the accumulation of income by way of periodical credit to capital rather than distribution; or
- (ii) charges and expenses that may be taken out of the scheme property or payable by the participants; or
- (iii) the currency in which prices or values are expressed or payments made; or
- (iv) the use of derivatives and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a class of units and either the base currency of the scheme or any currency in which all or part of the scheme property is denominated or valued (in this subparagraph referred to as a “class hedging transaction”).

**(4) Hedging of unit classes**

A class hedging transaction must -

- (a) be undertaken in accordance with the requirements of Part 5 (Investment and borrowing powers); and
- (b) (for the purposes of valuing scheme property and calculating the price of units in accordance with Part 6 (Valuation and pricing) be attributed only to the class of units for which it is undertaken.

**(5) Sub-division and consolidation of units**

- (a) The manager of a scheme may, unless expressly forbidden to do so by the documents constituting the scheme, determine that -
  - (i) each unit of any class is to be subdivided into two or more units; or
  - (ii) units of any class are to be consolidated.
- (b) The manager must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each participant (or the first named of joint participants) of any sub-division or consolidation under subparagraph (a).

**(6) Guarantees and capital protection**

If there is any arrangement intended to result in a particular capital or income return from a holding of units in a scheme, or any investment objective of giving protection to the capital value of, or income return from, such a holding -

- (a) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:
  - (i) participants and the manager, trustee or fiduciary custodian; or
  - (ii) participants intended and not intended to benefit from the arrangement; and
- (b) where, in accordance with any statement required by Appendix 2 (Table: contents of the offering document), action is required by the participants to obtain the benefit of any guarantee, the manager must provide reasonable notice in writing to participants before such action is required.

**Part 4**

**INVESTOR RELATIONS**

**9 Application**

This Part applies to -

- (a) a manager of a scheme;
- (b) the governing body;
- (c) a trustee or fiduciary custodian; and
- (d) an open-ended investment company.

**10 Pre-sale notifications**

**(1) Application**

This paragraph applies to a manager, an open-ended investment company and the governing body.

**(2) Publishing the offering document**

- (a) The offering document must be drawn up in English and published as a document by the manager and, for an open-ended investment company, it must be approved by the governing body;
- (b) both the manager and the governing body must ensure that the offering document -
  - (i) contains the information required by Appendix 2 (Table: contents of the offering document);
  - (ii) does not contain any provision which is unfairly prejudicial to the interests of participants generally or to participants in any class of units;
  - (iii) does not contain any provision that conflicts with any provision in this Schedule; and
  - (iv) are kept up-to-date and that material or significant revisions are made to it, immediately.

**(3) Availability of offering document and financial statements**

- (a) An open-ended investment company or the manager of a unit trust scheme must -
  - (i) supply a copy of the scheme's most recent offering document drawn up and published in accordance with subparagraph (2), (Publishing the offering document) free of charge to any person on request; and
  - (ii) file a copy of the scheme's original offering document, together with all revisions thereto, with the Commission.

Requirements in these Regulations are in addition to those under other legislation, including companies legislation, and compliance with other legislation will not of itself satisfy the requirements in these Regulations.

- (b) An open-ended investment company or the manager of a unit trust scheme which is intending to market units in the territory of an EEA State must -
  - (i) ensure that the following documents are available -

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- (A) the offering document;
  - (B) the documents constituting the scheme; and
  - (C) the latest annual and half-yearly financial statements of the scheme;
- (ii) supply copies of the most recent version of the documents in subparagraph (i) to any purchaser of units free of charge on request, and Deleted: (i)
  - (iii) file copies of the most recent version of the documents in subparagraph (i) with the trustee or fiduciary custodian. Deleted: (i)
- (c) A manager must, upon the request of a participant in either a UCITS or non-UCITS type scheme that it manages, provide information supplementary to the offering document of that scheme relating to -
- (i) the quantitative limits applying to the risk management of that scheme;
  - (ii) the methods used in relation to subparagraph (i); and Deleted: (i)
  - (iii) any recent development of the risk and yields of the main categories of investment.
- (4) False or misleading offering document**
- (a) Both the manager and the governing body -
    - (i) must ensure that the offering document of the scheme does not contain any untrue or misleading statement or omit any matter required by the provisions in this Schedule to be included in it; and
    - (ii) is liable to pay compensation to any person who has acquired any units in the scheme and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this subparagraph.
  - (b) Neither the manager nor the governing body are in breach of subparagraph (a)(i) and liable to pay compensation under subparagraph (a)(ii) if, at the time when the offering document was made available to the public, they had taken reasonable care to

determine that the statement was true and not misleading, or that the omission was appropriate, and that -

- (i) they continued to take such reasonable care until the time of the relevant acquisition of units in the scheme; or
  - (ii) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or
  - (iii) they had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
  - (iv) the person who acquired the units was not materially influenced or affected by that statement or omission in making the decision to invest.
- (c) Neither the manager nor the governing body are in breach of subparagraph (a)(i) and liable to pay compensation under subparagraph (a)(ii) if -
- (i) before the acquisition a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the units in question; or
  - (ii) they took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the units were acquired.
- (d) The manager and governing body are not liable to pay compensation under subparagraph (a)(ii) if the person who acquired the units knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.
- (e) For the purposes of this paragraph a revised offering document will be treated as a different offering document from the original one.
- (f) References in this paragraph to the acquisition of units include references to contracting to acquire them.

## 11 Approvals and notifications

### (1) Application

Subparagraph ~~(2)~~, applies to the manager of a scheme.

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- (2) Any changes or alterations to be made to an authorised scheme shall be carried out in accordance with Schedule 1 of the Act.

## 12 Meetings of participants and service of notices

### (1) Application

Subparagraphs ~~(1)~~ to ~~(13)~~, apply to a manager, a trustee or fiduciary custodian and the governing body.

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### (2) General meetings

- (a) The manager, the trustee, fiduciary custodian or the governing body may convene a general meeting of participants at any time.
- (b) The participants may request the convening of a general meeting by a requisition which must -
- (i) state the objects of the meeting;
  - (ii) be dated;
  - (iii) be signed by participants who, at that date, are registered as the participants of units representing not less than one-tenth in value (or such lower proportion stated in the documents constituting the scheme) of all of the units then in issue; and
  - (iv) be deposited at the head office of the open-ended investment company or with the trustee.
- (c) The manager, the trustee, fiduciary custodian or the governing body of an open-ended investment company must on receipt of a requisition that complies with subparagraph (b), immediately convene a general meeting of the scheme for a date no later than eight weeks after receipt of the requisition.

### (3) Class meetings

Subparagraphs ~~(1)~~ to ~~(13)~~, apply unless the context otherwise requires, to class meetings by reference to the units of the class concerned and the participants and prices of such units.

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**(4) Special meaning of participant**

- (a) Unless a unit in the scheme is a participating security, in Part 12 “participants” means participants as at a cut-off date selected by the manager which is a reasonable time before notices of the relevant meeting are sent out.
- (b) If any unit in the scheme is a participating security, a registered participant of such a unit is entitled to receive a notice of a meeting or a notice of an adjourned meeting under paragraph (5), if entered on the register at the close of business on a day to be determined by the manager, which must not be more than 21 days before the notices of the meeting are sent out.
- (c) For the purposes of subparagraph (b), in subparagraphs (6) to (11) “participants” in relation to those units means the persons entered on the register at a time to be determined by the manager and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting.

**(5) Notice of general meetings**

- (a) Where the manager, the trustee, fiduciary custodian or the governing body of an open-ended investment company decide to convene a general meeting of participants -
  - (i) each participant must be given at least 14 days written notice, inclusive of the date on which the notice is first served and the day of the meeting; and
  - (ii) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the trustee or fiduciary custodian.
- (b) The accidental omission to give notice to, or the non-receipt of notice by, any participant does not invalidate the proceedings at any meeting.
- (c) Notice of an adjourned meeting of participants must be given to each participant, stating that while two participants present in person or proxy are required to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with subparagraph (6)(c), should two such participants not be present after a reasonable time of convening of the meeting.

- (d) Subparagraph (a)(i) does not apply to the notice of an adjourned meeting.

**(6) Quorum**

- (a) The quorum required to conduct business at a meeting of participants is two participants, present in person or by proxy.
- (b) If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting -
  - (i) if convened on the requisition of participants, must be dissolved; and
  - (ii) in any other case, must stand adjourned to -
    - (A) a day and time which is seven or more days after the day and time of the meeting; and
    - (B) a place to be appointed by the chairman.
- (c) If, at an adjourned meeting under subparagraph (b)(ii), a quorum is not present after a reasonable time from the time for the meeting, one person entitled to be counted in a quorum present at the meeting shall constitute a quorum.

**(7) Resolutions**

- (a) Except where an extraordinary resolution is specifically required or permitted, any resolution of participants is passed by a simple majority of the votes validly cast at a general meeting of participants.
- (b) In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.
- (c) Where a resolution (including an extraordinary resolution) is required to conduct business at a meeting of participants and every participant is prohibited under subparagraph (8)(b)(iv) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the trustee to the process, instead be passed with the written consent of participants representing 50% or more, or for an extraordinary resolution 75% or more, of the units of the scheme in issue.

(8) **Voting rights**

- (a) On a show of hands every participant who is present in person has one vote.
- (b) On a poll -
  - (i) votes may be given either personally or by proxy or in another manner permitted by the documents constituting the scheme;
  - (ii) the voting rights for each unit must be the proportion of the voting rights attached to all of the units in issue that the price of the unit bears to the aggregate price or prices of all of the units in issue:
    - (A) if any unit is a participating security, at the time determined under subparagraph [\(4\)\(b\)](#); Deleted: (4)(b)
    - (B) otherwise at the date specified in subparagraph [\(4\)\(a\)](#); Deleted: (4)(a)  
and
    - (C) a participant need not use all his votes or cast all his votes in the same way.
  - (iii) For joint participants, the vote of the most senior who votes, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint participants. For this purpose seniority must be determined by the order in which the names stand in the register of participants.
  - (iv) Neither the governing body of the open-ended investment company nor the manager can be counted in the quorum of, and neither the governing body nor the manager nor any of their associates may vote at, any meeting of the scheme.
  - (v) The prohibition in subparagraph [\(iv\)](#), does not apply to any units held on behalf of, or jointly with, a person who, if himself the registered participant, would be entitled to vote and from whom the governing body, the manager or its associate have received voting instructions. Deleted: (iv)
  - (vi) For the purpose of this subparagraph, units held, or treated as held, by the manager or the governing body of the open-ended investment company, must not, except as mentioned in subparagraph [\(v\)](#), be regarded as being in issue. Deleted: (v)

**(9) Right to demand a poll**

- (a) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by -
  - (i) the chairman;
  - (ii) at least two participants; or
  - (iii) the trustee.
- (b) Unless a poll is demanded in accordance with subparagraph (a), a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.

**(10) Proxies**

- (a) A participant may appoint another person to attend a general meeting and vote in his place.
- (b) Unless the documents constituting the scheme provides otherwise, a participant may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.
- (c) Every notice calling a meeting of a scheme must contain a reasonably prominent statement that a participant entitled to attend and vote may appoint a proxy.
- (d) For the appointment to be effective, any document relating to the appointment of a proxy must not be required to be received by the open-ended investment company or any other person more than 48 hours before the meeting or adjourned meeting

**(11) Chairman, adjournment and minutes**

- (a) A meeting of participants must have a chairman, nominated -
  - (i) in the case of a unit trust scheme, by the trustee;
  - (ii) in the case of an open-ended investment company, by the governing body or, if no such nomination is made, by the fiduciary custodian.

- (b) If the chairman is not present after a reasonable time from the time for the meeting, the participants present must choose one of them to be chairman.
- (c) The chairman -
  - (i) may, with the consent of any meeting of participants at which a quorum is present; and
  - (ii) must, if so directed by the meeting; adjourn the meeting from time to time and from place to place.
- (d) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
- (e) The manager must ensure that -
  - (i) minutes of all resolutions and proceedings at every meeting of participants are made and kept; and
  - (ii) any minute made in subparagraph (i) is signed by the chairman of the meeting of participants.
- (f) Any minute referred to in subparagraph (e)(ii) is conclusive evidence of the matters stated in it.

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## (12) Notices to participants

- (a) Where this Schedule requires any notice or document to be served upon a participant, it is duly served for units held by a registered participant, if it is -
  - (i) sent by post to or left at the participant's address as appearing in the register; or
  - (ii) sent by using an electronic medium in accordance with subparagraph (13).
- (b) Any notice or document served by post is deemed to have been served on the second business day following the day on which it is posted.
- (c) Any document left at a registered address or delivered other than by post is deemed to have been served on that day.

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**(13) Other notices**

- (a) Any document or notice to be served on or information to be given to, any person, including the Commission, must be in legible form.
- (b) For the purposes of this subparagraph, any form is legible form which -
  - (i) is consistent with the open-ended investment company's, the directors', the manager's, the trustee's or the fiduciary custodian's knowledge of how the recipient of the document wishes or expects to receive the document;
  - (ii) is capable of being provided in hard copy by the manager, the trustee, the fiduciary custodian or the governing body ;
  - (iii) enables the recipient to know or record the time of receipt; and
  - (iv) is reasonable in the context.
- (c) In this Schedule, any requirement that a document be signed may be satisfied by an electronic signature or electronic evidence of assent.
- (d) In relation to a unit trust scheme, where transfer of title to units is to be effected on the authority of an electronic communication, the manager must take reasonable steps to ensure that any electronic communication purporting to be made by the participant or his agent is in fact made by that person.

**13 Reports and Accounts**

**(1) Application**

Paragraph [13](#), applies to a manager, a trustee and the governing body.

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**(2) Preparation of long and abbreviated financial statements**

- (a) The manager must for each annual accounting period and half-yearly accounting period, prepare abbreviated financial statements and financial statements for a scheme.
- (b) For a scheme which is an umbrella, the manager must prepare abbreviated financial statements for each sub-fund but this is not necessary for the umbrella as a whole.

- (c) Where the first annual accounting period of a scheme is less than 12 months, a half-yearly report need not be prepared.

14 **Contents of abbreviated financial statements**

- (1) The abbreviated financial statements for a scheme, or for a scheme which is an umbrella, its sub-fund, must contain for the relevant period -
  - (a) the name of the scheme or sub-fund, its stated investment objectives and policy for achieving those objectives, a brief assessment of its risk profile and the name and address of the manager;
  - (b) a review of the scheme or sub-fund's investment activities and investment performance during the period;
  - (c) a performance record consistent with paragraph 18 (Comparative table) so as to enable a participant to put into context the results of the investment activities of the scheme during the period;
  - (d) sufficient information to enable participants to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period;
  - (e) any other significant information which would reasonably enable participants to make an informed judgement on the activities of the scheme or sub-fund during the period and the results of those activities at the end of the period; and
  - (f) a statement that the latest financial statements is available on request.
- (2) The manager must take reasonable steps to ensure that the abbreviated financial statements is structured and written in such a way that it can be easily understood by the average investor.
- (3) The abbreviated financial statements must form a separate stand-alone document which must not include any extraneous material.
- (4) The inclusion in a single document of the abbreviated financial statements of more than one of a manager's schemes with the same accounting periods, or of more than one sub-fund in an umbrella, is not a contravention of paragraph (3) if each such report is discrete and easily identifiable.

- (5) The manager must ensure that the information given in the abbreviated financial statements is consistent with the financial statements for the relevant accounting period prepared under paragraph 15 (Contents of the annual financial statements) or paragraph 16 (Contents of the half-yearly financial statements).

15 **Contents of the annual financial statements**

- (1) An annual financial statements on a scheme, other than a scheme which is an umbrella, must contain -
- (a) the full accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;
  - (b) the report of the manager in accordance with paragraph 17 (Manager's report);
  - (c) the comparative table in accordance with paragraph 18 (Comparative table);
  - (d) the report of the trustee or fiduciary custodian in accordance with paragraph 20 (Report of the trustee or fiduciary custodian); and
  - (e) the report of the appropriate auditor in accordance with paragraph 21 (Report of the appropriate auditor).
- (2) An annual financial statements on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain -
- (a) for each sub-fund -
    - (i) the full accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;
    - (ii) the report of the manager in accordance with paragraph [17](#), Deleted: 17 (Manager's report);
    - (iii) the comparative table in accordance with paragraph [18](#), Deleted: 18 (Comparative table);
  - (b) the aggregation of the accounts required by paragraph (a)(i) for each sub-fund;
  - (c) the report of the trustee or fiduciary custodian in accordance with paragraph 20 (Report of the trustee or fiduciary custodian); and

- (d) the report of the appropriate auditor in accordance with paragraph 21 (Report of the appropriate auditor).
- (3) The governing body or the manager of a unit trust scheme must ensure that the accounts referred to in subparagraphs (1)(a), (2)(a) and (4)(a) give a true and fair view of the net income and the net gains and the losses on the scheme property of the scheme, or, in the case of subparagraphs (2)(a) and (4)(a), the sub-fund, for the annual accounting period in question and the financial position of the scheme or sub-fund as at the end of that period.
- (4) The manager of a scheme which is an umbrella may, in addition to complying with subparagraph (2), prepare a further annual financial statements for any one or more individual sub-funds of the scheme, in which case it must contain -
- (a) in relation to the sub-fund -
    - (i) the full accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;
    - (ii) the report of the manager in accordance with paragraph [17](#), Deleted: 17  
(Manager's report);
    - (iii) the comparative table in accordance with paragraph [18](#), Deleted: 18  
(Comparative table);
  - (b) the report of the trustee or fiduciary custodian in accordance with paragraph 20 (Report of the trustee or fiduciary custodian); and
  - (c) the report of the appropriate auditor in accordance with paragraph 20 (Report of the appropriate auditor).

**16 Contents of the half-yearly financial statements**

- (1) A half-yearly financial statements on a scheme, other than for a scheme which is an umbrella, must contain -
- (a) the full accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP; and
  - (b) the report of the manager in accordance with paragraph 17 (Manager's report).

- (2) A half-yearly financial statements on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain -
- (a) for each sub-fund -
    - (i) the full accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP; and
    - (ii) the report of the manager in accordance with paragraph [17](#), (Manager's report); and
  - (b) the aggregation of the accounts in subparagraph (a)(i) for each sub-fund.
- (3) The manager of a scheme which is an umbrella may, in addition to complying with subparagraph (2), prepare further half-yearly financial statements for any one or more individual sub-funds of the scheme. Such reports must contain the full accounts and the report of the manager that would be required by subparagraph (1) if the sub-fund were a separate scheme.

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#### 17 **Manager's report**

The matters set out in subparagraphs [17\(a\)](#) to [\(l\)](#) must be included in any manager's report, except where otherwise indicated -

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- (a) the names and addresses of -
  - (i) the manager;
  - (ii) the trustee or fiduciary custodian;
  - (iii) the registrar;
  - (iv) any investment adviser and/or asset manager;
  - (v) the appropriate auditor; and
  - (vi) for a scheme which invests in immovables, the standing independent valuer;
- (b) (for an open-ended investment company), the governing body;
- (c) a statement of the authorised status of the scheme;

- (d) (for an open-ended investment company) a statement that the participants of the open-ended investment company are not liable for the debts of the open-ended investment company;
- (e) the investment objectives of the scheme;
- (f) the policy for achieving those objectives;
- (g) a review of the investment activities during the period to which the report relates;
- (h) particulars of any changes in accordance with paragraph 11(2) made since the date of the last report;
- (i) any other information which would enable participants to make an informed judgement on the development of the activities of the scheme during this period and the results of those activities as at the end of that period;
- (j) for a report on an umbrella prepared in accordance with paragraphs 15(2) or 16(2) -
  - (i) for an open-ended investment company, that is not a protected cell company, a statement to the effect that, as a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the open-ended investment company;
  - (ii) for an open-ended investment company that is a protected cell company, a statement to the effect that its sub-funds are segregated portfolios of assets and that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge the liabilities of or claims against the umbrella or any of its other sub-funds and shall not be available for such purpose; and
  - (iii) information required by subparagraphs ~~(a)~~ to ~~(i)~~ must be given for each sub-fund, if it would vary from that given in respect of the umbrella as a whole;
- (k) for a UCITS type scheme which invests a substantial proportion of its assets in other schemes, a statement as to the maximum proportion of management fees charged to the scheme itself and to other schemes in which that scheme invests; and

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- (l) for a report on an individual sub-fund of a scheme which is an umbrella prepared in accordance with paragraphs 15(4) or 16(3) -
  - (i) (for an open-ended investment company) a statement corresponding to that required by paragraph ~~(j)(i)~~, making it clear that if the liability relates to another sub-fund of the umbrella, the shortfall or any part of it might have to be met out of the assets of the sub-fund to which the report relates; and
  - (ii) a statement that the latest financial statements prepared for the umbrella as a whole is available on request.

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## 18 Comparative table

The comparative table required by paragraph ~~15(1)(c)~~, (Contents of the annual financial statements) must set out -

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- (a) a performance record over the last five calendar years, or if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing -
  - (i) the highest and the lowest price of a unit of each class in issue during each of those years; and
  - (ii) the net income distributed (or, for accumulation units, allocated) for a unit of each class in issue during each of those years, taking account of any sub-division or consolidation of units that occurred during that period;
- (b) as at the end of each of the last three annual accounting periods (or all of the scheme's annual accounting periods, if less than three) -
  - (i) the total net asset value of the scheme property at the end of each of those years;
  - (ii) the net asset value per unit of each class; and
  - (iii) (A) (for a report of the governing body of an open-ended investment company) the number of units of each class in issue; or  
(B) (for a report of the manager of a unit trust scheme) the number of units of each class in existence or treated as in existence; and
- (c) if, in the period covered by the table -

- (i) the scheme has been the subject of any event (such as a scheme of arrangement) having a material effect on the size of the scheme, but excluding any issue or cancellation of units for cash; or
- (ii) there have been changes in the investment objectives of the scheme;
- (iii) an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

19 **Report of the trustee or fiduciary custodian**

- (1) The trustee or fiduciary custodian must make an annual report to participants which must be included in the annual report.
- (2) The annual report must contain -
  - (a) a description, which may be in summary form, of the duties of the trustee under subparagraph (4) of paragraph 108, (General duties of the trustee) and in respect of the safekeeping of the scheme property; and
  - (b) a statement whether, in any material respect -
    - (i) the issue, sale, redemption and cancellation, and calculation of the price of the units and the application of the scheme's income, have not been carried out in accordance with the provisions in this schedule and, where applicable, the Act and the documents constituting the scheme; and
    - (ii) the investment and borrowing powers and restrictions applicable to the scheme have been exceeded.

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20 **Report of the appropriate auditor**

The manager must ensure that the report of the appropriate auditor to the participants must include a statement -

- (a) whether, in the appropriate auditor's opinion, the accounts have been properly prepared in accordance with the IMA SORP, the provisions in this Schedule, and the documents constituting the scheme;
- (b) whether, in the appropriate auditor's opinion, the accounts give a true and fair view of the net income and the net gains or losses of the scheme property of the scheme (or, as the case may be, the scheme property attributable to the sub-fund) for the annual accounting period in

question and the financial position of the scheme or sub-fund as at the end of that period;

- (c) whether the appropriate auditor is of the opinion that proper accounting records for the scheme (or, as the case may be, sub-fund) have not been kept or whether the accounts are not in agreement with those records;
- (d) whether the appropriate auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and
- (e) whether the appropriate auditor is of the opinion that the information given in the report of the directors or in the report of the manager for that period is consistent with the accounts.

## 21 **Provision of abbreviated financial statements**

- (1) The manager must, within four months after the end of each annual accounting period and within two months after the end of each half-yearly accounting period, respectively provide free of charge the abbreviated financial statements in accordance with subparagraph (2).
- (2) The manager must send a copy of the report -
  - (a) to each participant (or to the first named of joint participants) entered in or entitled to be entered in the register at the close of business on the last day of the relevant accounting period; and
  - (b) to any other person free of charge on request.
- (3) Participants in a scheme which is an umbrella must be provided with a report relating to the particular sub-fund in which they hold units subject to providing the financial statements on the umbrella on request in accordance with subparagraph (2)(a) paragraph 22.

## 22 **Publication and availability of annual and half-yearly financial statements**

- (1) The manager must, within four months after the end of each annual accounting period and two months after the end of each half-yearly accounting period respectively, make available and publish the financial statements prepared in accordance with subparagraphs 15(1) to (3) of paragraph 15 (Contents of the annual financial statements) and 16(1) and (2) of paragraph 16 (Contents of the half-yearly financial statements).
- (2) The reports referred to in subparagraph (1) must -

- (a) be supplied free of charge to any person on request;
- (b) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified;
- (c) for a UCITS type scheme, be available for inspection by the public at a place designated by the manager in each EEA State in which units in the scheme are marketed, in English and in at least one of that other EEA State's official languages; and
- (d) be sent to the Commission.

## **Part 5**

### **INVESTMENT AND BORROWING POWERS**

#### **23 Treatment of obligations**

- (1) Where a requirement in this Part allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this Part, it must be assumed that the maximum possible liability of the authorised scheme under any other of those requirements has also to be provided for.
- (2) Where a provision of this Part permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered -
  - (a) it must be assumed that in applying any of those requirements, the authorised scheme must also simultaneously satisfy any other obligation relating to cover; and
  - (b) no element of cover must be used more than once.

#### **24 General investment powers and limits for a UCITS type scheme**

Paragraphs 25 to 74 apply to a manager and a trustee or fiduciary custodian of a UCITS type scheme in accordance with the table below.

Paragraph(s)	Manager of an Authorised Scheme	Trustee or fiduciary custodian of an Authorised Scheme
<del>25 to 34</del>	Yes	-
<del>35</del>	Yes	-
<del>35(2)(a) and (b)</del>	Yes	-
<del>35(2)(c)</del>	-	Yes
<del>35(3)</del>	Yes	-
<del>36 to 38</del>	Yes	-
<del>39 to 48</del>	Yes	Yes
<del>49</del>	Yes	-
<del>50</del>	Yes	-
<del>50(3) to (5)</del>	Yes	Yes
<del>51</del>	Yes	-
<del>52</del>	Yes	-
<del>53</del>	Yes	-
<del>54 to 57</del>	Yes	-

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**25 Prudent spread of risk**

- (1) The manager of a scheme must ensure that, taking account of the investment objectives and policy of the scheme as stated in the most recently published offering document, the scheme property of the scheme aims to provide a prudent spread of risk.
- (2) The rules in this paragraph relating to spread of investments do not apply until the expiry of a period of 6 months after the date on which the authorisation order, in respect of the scheme, takes effect or on which the initial offer commenced, if later, provided that subparagraph (1) is complied with during such period.

**26 Investment powers: general**

Scheme property must be invested only in accordance with the relevant provisions in paragraphs 25 to 74 that are applicable to that scheme and up to

any maximum limit so stated, but, the documents constituting the scheme may further restrict –

- (a) the kind of property in which the scheme property may be invested;
- (b) the proportion of the capital property of the scheme which may be invested in assets of any description;
- (c) the descriptions of transactions permitted; and
- (d) the borrowing powers of the scheme.

27 **Valuation**

(1) In this Part, the value of the scheme property of a scheme means the net value determined in accordance with paragraph [105](#) (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.

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(2) When valuing the scheme property for the purposes of this Schedule –

- (a) the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of paragraph [105](#);
- (b) initial outlay is to be regarded as remaining part of the scheme property; and
- (c) if the manager, having taken reasonable care, determines that the scheme will become entitled to any unrealised profit which has been made on account of a transaction in derivatives, that prospective entitlement is to be regarded as part of the scheme property.

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(3) When valuing the scheme property the cancellation basis of valuation referred to in subparagraph (2)(b) of paragraph [105](#) (Valuation) is to be applied.

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28 **Scheme property: general**

Scheme property must, except where otherwise provided in this Schedule, consist only of any or all of –

- (a) transferable securities;

- (b) units in collective investment schemes permitted under paragraph 41 (investment in collective investment schemes);
- (c) approved money-market instruments permitted under paragraph 33 (approved money-market instruments);
- (d) derivatives and forward transactions permitted under paragraph 46 (permitted transactions (derivatives and forwards));
- (e) deposits permitted under paragraph 52 (investment in deposits); and
- (f) (for an open ended investment company) movable and immovable property that is necessary for the direct pursuit of the open ended investment company's business.

## 29 Transferable securities

- (1) A transferable security is an investment which is any of the following –
  - (a) a share;
  - (b) a debenture;
  - [\(c\) an alternative debenture;](#)
  - [\(d\) a government and public security;](#)
  - [\(e\) a warrant;](#) or
  - [\(f\) a certificate representing certain securities.](#)
- (2) An investment is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- (3) In applying subparagraph (2) to an investment which is issued by a body corporate, and which is a share or a debenture, the need for any consent on the part of the body corporate or any members or debenture holders of it may be ignored.
- (4) An investment is not a transferable security unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the investment.

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**Investment in transferable securities**

- (1) A UCITS type scheme may invest in a transferable security only to the extent that the transferable security fulfils the following criteria -
  - (a) the potential loss which the UCITS type scheme may incur with respect to holding the transferable security is limited to the amount paid for it;
  - (b) its liquidity does not compromise the ability of the manager to comply with its obligation to redeem units at the request of any qualifying participant;
  - (c) reliable valuation is available for it as follows -
    - (i) in the case of a transferable security admitted to or dealt in on an eligible market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
    - (ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is a valuation on a periodic basis which is derived from information from the issuer of the transferable security or from competent investment research;
  - (d) appropriate information is available for it as follows -
    - (i) in the case of a transferable security admitted to or dealt in on an eligible market, where there is regular, accurate and comprehensive information available to the market on the transferable security or, where relevant, on the portfolio of the transferable security;
    - (ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is regular and accurate information available to the manager on the transferable security or, where relevant, on the portfolio of the transferable security;
  - (e) it is negotiable; and
  - (f) its risks are adequately captured by the risk management process of the manager.

- (2) Unless there is information available to the manager that would lead to a different determination, a transferable security which is admitted to or dealt in on an eligible market shall be presumed -
  - (a) not to compromise the ability of the manager to comply with its obligation to redeem units at the request of any qualifying participant; and
  - (b) to be negotiable.

31 **Closed end funds constituting transferable securities**

A unit in a closed end fund shall be taken to be a transferable security for the purposes of investment by a UCITS type scheme, provided it fulfils the criteria for transferable securities set out in paragraph 30 (investment in transferable securities), and either -

- (1) where the closed end fund is constituted as an investment company or a unit trust scheme -
  - (a) it is subject to corporate governance mechanisms applied to companies; and
  - (b) where another person carries out asset management activity on its behalf, that person is subject to national regulation for the purpose of investor protection; or
- (2) where the closed end fund is constituted under the law of contract -
  - (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
  - (b) it is managed by a person who is subject to national regulation for the purpose of investor protection.

32 **Transferable securities linked to other assets**

- (1) A UCITS type scheme may invest in any other investment which shall be taken to be a transferable security for the purposes of investment by a UCITS type scheme provided the investment -
  - (a) fulfils the criteria for transferable securities set out in paragraph 30 (investment in transferable securities); and
  - (b) is backed by or linked to the performance of other assets, which may differ from those in which a UCITS type scheme can invest.

- (2) Where an investment in subparagraph (1) contains an embedded derivative component (see subparagraph (3) of paragraph 45 (derivatives: general)), the requirements of this section with respect to derivatives and forwards will apply to that component.

### 33 **Approved money market instruments**

- (1) An approved money-market instrument is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.
- (2) A money-market instrument shall be regarded as normally dealt in on the money market if it -
  - (a) has a maturity at issuance of up to and including 397 days;
  - (b) has a residual maturity of up to and including 397 days;
  - (c) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or
  - (d) has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in subparagraphs (1) or (2) or is subject to yield adjustments as set out in subparagraph (3).
- (3) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the manager to redeem units at the request of any qualifying participant.
- (4) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available -
  - (a) enabling the manager to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
  - (b) based either on market data or on valuation models including systems based on amortised costs.
- (5) A money-market instrument that is normally dealt in on the money market and is admitted to or dealt in on an eligible market shall be presumed to be liquid and have a value which can be accurately

determined at any time unless there is information available to the manager that would lead to a different determination.

34 **Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market**

- (1) Transferable securities and approved money-market instruments held within a UCITS type scheme must be -
  - (a) admitted to or dealt in on an eligible market within subparagraph (1)(a) of paragraph 35 (Eligible markets: requirements); or
  - (b) dealt in on an eligible market within subparagraph (1)(b) paragraph 35 (Eligible markets: requirements); or
  - (c) admitted to or dealt in on an eligible market within subparagraph (2) of paragraph 35 (Eligible markets: requirements); or
  - (d) for an approved money-market instrument not admitted to or dealt in on an eligible market, within subparagraph (1) of paragraph 36 (money market instruments with a regulated issuer); or
  - (e) recently issued transferable securities, provided that -
    - (i) the terms of issue include an undertaking that application will be made to be admitted to an eligible market; and
    - (ii) such admission is secured within a year of issue.
- (2) However, a UCITS type scheme may invest no more than 10% of the scheme property in transferable securities and approved money-market instruments other than those referred to in subparagraph (1).

35 **Eligible markets: requirements**

- (1) A market is eligible for the purposes of this Part if it is -
  - (a) a regulated market;
  - (b) a market in an EEA State which is regulated, operates regularly and is open to the public; or
  - (c) any market within subparagraph (2).
- (2) A market not falling within subparagraph (1)(a) and (b) is eligible for the purposes of this Schedule if -

- (a) the manager, after consultation with and notification to the trustee or fiduciary custodian, decides that market is appropriate for investment of, or dealing in, the scheme property;
  - (b) the market is included in a list in the offering document; and
  - (c) the trustee or fiduciary custodian has taken reasonable care to determine that –
    - (i) adequate custody arrangements can be provided for the investment dealt in on that market; and
    - (ii) all reasonable steps have been taken by the manager in deciding whether that market is eligible.
- (3) In subparagraph (2)(a) a market must not be considered appropriate unless it -
- (a) is regulated;
  - (b) operates regularly;
  - (c) is recognised as a market or exchange or as a self-regulating organisation by an overseas regulator;
  - (d) is open to the public;
  - (e) is adequately liquid; and
  - (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

**36 Money market instruments with a regulated issuer**

- (1) (In addition to instruments admitted to or dealt in on an eligible market) a UCITS type scheme may invest in an approved money-market instrument provided it fulfils the following requirements -
  - (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
  - (b) the instrument is issued or guaranteed in accordance with paragraph 37 (issuers and guarantors of money-market instruments).

- (2) The issue or the issuer of a money-market instrument, other than one dealt in on an eligible market, shall be regarded as regulated for the purpose of protecting investors and savings if -
- (a) the instrument is an approved money-market instrument;
  - (b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with paragraph 38 (appropriate information for money-market instruments); and
  - (c) the instrument is freely transferable.

37 **Issuers and guarantors of money-market instruments**

- (1) A UCITS type scheme may invest in an approved money-market instrument if it is -
- (a) issued or guaranteed by any one of the following:
    - (i) a central authority of an EEA State or, if the EEA State is a federal state, one of the members making up the federation;
    - (ii) a regional or local authority of an EEA State;
    - (iii) the European Central Bank or a central bank of an EEA State;
    - (iv) the European Union or the European Investment Bank;
    - (v) a non-EEA State or, in the case of a federal state, one of the members making up the federation;
    - (vi) a public international body to which one or more EEA States belong; or
  - (b) issued by a body, any securities of which are dealt in on an eligible market; or
  - (c) issued or guaranteed by an establishment which is -
    - (i) subject to prudential supervision in accordance with criteria defined by Community law; or
    - (ii) subject to and complies with prudential rules considered by the FSA to be at least as stringent as those laid down by Community law.

- (2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria -
- (a) it is located in the European Economic Area;
  - (b) it is located in an OECD country belonging to the Group of Ten;
  - (c) it has at least investment grade rating;
  - (d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

38 **Appropriate information for money-market instruments**

- (1) In the case of an approved money-market instrument within subparagraph (1)(b) of paragraph 37 or which is issued by an authority within subparagraph (1)(a)(ii) of paragraph 37 or a public international body within subparagraph (1)(a)(vi) of paragraph 37 but is not guaranteed by a central authority within subparagraph (1)(a)(i) of paragraph 37, the following information must be available -
- (a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;
  - (b) updates of that information on a regular basis and whenever a significant event occurs; and
  - (c) available and reliable statistics on the issue or the issuance programme.
- (2) In the case of an approved money-market instrument issued or guaranteed by an establishment within subparagraph (1)(c) of paragraph 37, the following information must be available -
- (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;
  - (b) updates of that information on a regular basis and whenever a significant event occurs; and

- (c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.
- (3) In the case of an approved money-market instrument -
- (a) within subparagraphs (1)(a)(i), (iv) or (v) of paragraph 37; or
  - (b) which is issued by an authority within subparagraph (1)(a)(ii) of paragraph 37 or a public international body within subparagraph (1)(a)(vi) of paragraph 37 and is guaranteed by a central authority within subparagraph (1)(a)(i) of paragraph 37;

information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

39 **Spread: general**

- (1) This paragraph does not apply to government and public securities.
- (2) For the purposes of this paragraph, companies included in the same group in accordance with international accounting standards, are regarded as a single body.
- (3) Not more than 20% in value of the scheme property is to consist of deposits with a single body.
- (4) Not more than 5% in value of the scheme property is to consist of transferable securities or approved money-market instruments issued by any single body.
- (5) The limit of 5% in subparagraph (4) is raised to 10% in respect of up to 40% in value of the scheme property. Covered bonds need not be taken into account for the purpose of applying the limit of 40%.
- (6) The limit of 5% in (4) is raised to 25% in value of the scheme property in respect of covered bonds, provided that when a UCITS type scheme invests more than 5% in covered bonds issued by a single body, the total value of covered bonds held must not exceed 80% in value of the scheme property.
- (7) In applying subparagraphs (4) and (5), certificates representing certain securities are to be treated as equivalent to the underlying security.

- (8) The exposure to any one counterparty in an OTC derivative transaction must not exceed 5% in value of the scheme property; this limit being raised to 10% where the counterparty is an approved bank.
- (9) Not more than 20% in value of the scheme property is to consist of transferable securities and approved money-market instruments issued by the same group (as referred to in subparagraph (2)).
- (10) Not more than 20% in value of the scheme is to consist of the units of any one collective investment scheme.
- (11) In applying the limits in subparagraphs (3), (4), (5), (7) ) and (8), and subject to (6) not more than 20% in value of the scheme property is to consist of any combination of two or more of the following –
  - (a) transferable securities (including covered bonds) or approved money-market instruments issued by; or
  - (b) deposits made with; or
  - (c) exposures from OTC derivatives transactions made with, a single body.
- (12) For the purpose of calculating the limits in subparagraphs (8) and (11), the exposure in respect of an OTC derivative may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in subparagraph (13).
- (13) The conditions referred to in subparagraph (12) are that the collateral –
  - (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
  - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
  - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
  - (d) can be fully enforced by the scheme at any time.
- (14) For the purpose of calculating the limits in subparagraphs (8) and (11), OTC derivative positions with the same counterparty may be netted provided that the netting procedures –

- (a) comply with the conditions set out in Section 3/ Part 7 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the Banking Consolidation Directive; and
  - (b) are based on legally binding agreements.
- (15) In applying this paragraph, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions –
- (a) it is backed by an appropriate performance guarantee; and
  - (b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.

40 **Spread: government and public securities**

- (1) This paragraph applies to government and public securities ("such securities").
- (2) Where no more than 35% in value of the scheme property is invested in such securities issued by any one body, there is no limit on the amount which may be invested in such securities or in any one issue.
- (3) An authorised scheme may invest more than 35% in value of the scheme property in such securities issued by any one body provided that –
  - (a) the manager has before any such investment is made consulted with the trustee or fiduciary custodian and as a result considers that the issuer of such securities is one which is appropriate in accordance with the investment objectives of the authorised scheme;
  - (b) no more than 30% in value of the scheme property consists of such securities of any one issue;
  - (c) the scheme property includes such securities issued by that or another issuer, of at least six different issues; and
  - (d) the disclosures in subparagraph (4) have been made.
- (4) Where it is intended that subparagraph (3) may apply, the documents constituting the scheme, and the most recently published offering document, must prominently state –

- (a) the fact that more than 35% of the scheme property is or may be invested in such securities issued by one issuer; and
  - (b) the names of the individual states, the local authorities or public international bodies issuing such securities in which the authorised scheme may invest over 35% of its assets.
- (5) In this paragraph in relation to such securities –
- (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
  - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.
- (6) Notwithstanding paragraph 39 (spread: general) and subject to subparagraphs (2) and (3), in applying the 20% limit in subparagraph (10) of paragraph 39 with respect to a single body, government and public securities issued by that body shall be taken into account.

#### 41 Investment in collective investment schemes

- (1) A UCITS type scheme must not invest in units in a collective investment scheme ("second scheme") unless the second scheme satisfies all of the following conditions, and provided that no more than 30% of the value of the UCITS type scheme is invested in second schemes within subparagraph (2)(b) to ~~(2)(e)~~.
- (2) The second scheme must –
- (a) satisfy the conditions necessary for it to enjoy the rights conferred by the UCITS Directive; or
  - (b) be recognised under the provisions of section 270 of the Financial Services and Markets Act 2000 of Parliament (schemes authorised in designated countries or territories); or
  - (c) be authorised as a non-UCITS scheme under Schedule 2 of the Collective Investment Schemes Act 2008; or
  - (d) be authorised as a non-UCITS retail scheme by the UK Financial Services Authority (provided the requirements of article 19(1)(e) of the UCITS Directive are met); or
  - (e) be authorised in another EEA State (provided the requirements of article 19(1)(e) of the UCITS Directive are met); or

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- (f) be authorised by the competent authority of an OECD country (other than another EEA State) which has:
- (i) signed the IOSCO Multilateral Memorandum of Understanding; and
  - (ii) approved the scheme's management company, rules and trustee/custody arrangements.
- (3) The second scheme must comply, where relevant, with paragraph 42 (investment in associated collective investment schemes) and paragraph 43 (investment in other group schemes).
- (4) The second scheme must have terms which prohibit more than 10% in value of the scheme property consisting of units in collective investment schemes.
- (5) Where the second scheme is an umbrella fund, the provisions in subparagraphs (3) and (4) and paragraph 36 (spread: general) apply to each sub-fund as if it were a separate scheme.

#### 42 **Investment in associated collective investment schemes**

A UCITS type scheme must not invest in or dispose of units in another collective investment scheme (the second scheme) if the second scheme is managed or operated by the manager of the investing UCITS type scheme or an associate of that manager, unless –

- (a) the offering document of the investing UCITS type scheme clearly states that the property of that investing scheme may include such units; and
- (b) paragraph 43 (investment in other group schemes) is complied with.

#### 43 **Investment in other group schemes**

- (1) Where –
- (a) an investment or disposal is made under paragraph 42 (investment in associated collective investment schemes); and
  - (b) there is a charge in respect of such investment or disposal,
- the manager of the UCITS type scheme making the investment or disposal must pay the UCITS type scheme the amounts referred to in

subparagraphs (2) or (3) within four business days following the date of the agreement to invest or dispose.

- (2) When an investment is made, the amount referred to in subparagraph (1)(a) is either –
  - (a) any amount by which the consideration paid by the UCITS type scheme for the units in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the units been newly issued or sold by it; or
  - (b) if such price cannot be ascertained by the manager of the authorised scheme, the maximum amount of any charge permitted to be made by the seller of units in the second scheme.
- (3) When a disposal is made, the amount referred to in subparagraph (1)(1)(a) is any charge made for the account of the manager or governing body of the second scheme or an associate of any of them in respect of the disposal.
- (4) In this paragraph -
  - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of units in the second scheme, which is applied for the benefit of the second scheme and is, or is like, a dilution levy or SDRT provision made in accordance with the Regulations is to be treated as part of the price of the units and not as part of any charge; and
  - (b) any charge made in respect of an exchange of units in one sub-fund or separate part of the second scheme for units in another sub-fund or separate part of that scheme is to be included as part of the consideration paid for the units.

#### 44 **Investment in nil and partly paid securities**

A transferable security or an approved money-market instrument on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the UCITS type scheme, at the time when payment is required, without contravening the rules in this part.

**Derivatives: general**

- (1) A transaction in derivatives or a forward transaction must not be effected for a UCITS type scheme unless –
  - (a) the transaction is of a kind specified in paragraph 46 (permitted transactions (derivatives and forwards)); and
  - (b) the transaction is covered, as required by paragraph 59 (cover for transactions in derivatives and forward transactions).
- (2) Where a UCITS type scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in paragraph 36 (spread: general) and paragraph 40 (spread: government and public securities) save as provided in subparagraph (4) of paragraph 40(4).
- (3) Where a transferable security or approved money-market instrument embeds a derivative, this must be taken into account for the purposes of complying with this paragraph.
- (4) A transferable security or an approved money-market instrument –
  - (a) will embed a derivative if it contains a component which fulfils the following criteria –
    - (i) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or approved money-market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone derivative;
    - (ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
    - (iii) it has a significant impact on the risk profile and pricing of the transferable security or approved money-market instrument;
  - (b) does not embed a derivative where it contains a component which is contractually transferable independently of the transferable security or the approved money-market instrument. That component shall be deemed to be a separate instrument.

- (5) Where a scheme invests in an index based derivative, provided the relevant index falls within paragraph 57 (relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of paragraph 36 (money market instruments with a regulated issuer) and paragraph 40 (spread: general).
- (6) The relaxation in subparagraph (4) is subject to the manager taking account of paragraph 25 (prudent spread of risk).

46 **Permitted transactions (derivatives and forwards)**

- (1) A transaction in a derivative must –
  - (a) be in an approved derivative; or
  - (b) be one which complies with paragraph 50 (OTC transactions in derivatives).
- (2) The underlying of a transaction in a derivative must consist of any one or more of the following to which the scheme is dedicated –
  - (a) transferable securities permitted under subparagraph (1)(a) to (c) of paragraph 34 and subparagraph (1)(e) of paragraph 34 (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market);
  - (b) approved money-market instruments permitted under subparagraph (1)(a) to (d) of paragraph 34 (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market);
  - (c) deposits permitted under paragraph 52 (investment in deposits);
  - (d) derivatives permitted under this paragraph;
  - (e) collective investment scheme units permitted under paragraph 41 (investment in collective investment schemes);
  - (f) financial indices which satisfy the criteria set out in paragraph 47 (financial indices underlying derivatives);
  - (g) interest rates;
  - (h) foreign exchange rates; and
  - (i) currencies.

- (3) A transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
- (4) A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the documents constituting the scheme and the most recently published offering document.
- (5) A transaction in a derivative must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more transferable securities, approved money-market instruments, units in collective investment schemes or derivatives provided that a sale is not to be considered as uncovered if the conditions in paragraph 49 (requirement to cover sales) are satisfied.
- (6) Any forward transaction must be made with an eligible institution or an approved bank.
- (7) A derivative includes an instrument which fulfils the following criteria -
  - (a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
  - (b) it does not result in the delivery or the transfer of assets other than those referred to in paragraph 28 (scheme property: general) including cash;
  - (c) in the case of an OTC derivative, it complies with the requirements in paragraph 50 (OTC transactions in derivatives);
  - (d) its risks are adequately captured by the risk management process of the fund manager, and by its internal control mechanisms in the case of risks of asymmetry of information between the fund manager and the counterparty to the derivative, resulting from potential access of the counterparty to non-public information on persons whose assets are used as the underlying by that derivative.

47 **Financial indices underlying derivatives**

- (1) The financial indices referred to in subparagraph (2)(f) of paragraph 46 are those which satisfy the following criteria -
  - (a) the index is sufficiently diversified;
  - (b) the index represents an adequate benchmark for the market to which it refers; and

- (c) the index is published in an appropriate manner.
- (2) A financial index is sufficiently diversified if -
- (a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
  - (b) where it is composed of assets in which a UCITS type scheme is permitted to invest, its composition is at least diversified in accordance with the requirements with respect to spread and concentration set out in this section; and
  - (c) where it is composed of assets in which a UCITS type scheme cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
- (3) A financial index represents an adequate benchmark for the market to which it refers if -
- (a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;
  - (b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and
  - (c) the underlyings are sufficiently liquid, allowing users to replicate it if necessary.
- (4) A financial index is published in an appropriate manner if -
- (a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and
  - (b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.
- (5) Where the composition of underlyings of a transaction in a derivative does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with

respect to other underlyings pursuant to subparagraph (2) of paragraph 46 (permitted transactions: derivatives and forwards, be regarded as a combination of those underlyings.

**48 Transactions for the purchase of property**

A derivative or forward transaction which will or could lead to the delivery of property for the account of the UCITS type scheme may be entered into only if -

- (a) that property can be held for the account of the UCITS type scheme; and
- (b) the manager having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the requirements of these Regulations.

**49 Requirement to cover sales**

- (1) No agreement by or on behalf of a UCITS type scheme to dispose of property or rights may be made unless –
  - (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the UCITS type scheme by delivery of property or the assignment of rights; and
  - (b) the property and rights at (a) are owned by the UCITS type scheme at the time of the agreement.
- (2) Subparagraph (1) does not apply to a deposit.
- (3) Subparagraph (1) does not apply where –
  - (a) the risks of the underlying financial instrument of a derivative can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
  - (b) the manager or the trustee or fiduciary custodian has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes –
    - (i) cash;
    - (ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or

(iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

(4) In the asset classes referred to in subparagraph (3), an asset may be considered as liquid where the instrument can be converted into cash in no more than 7 business days at a price closely corresponding to the current valuation of the financial instrument on its own market.

## 50 OTC transactions in derivatives

(1) A transaction in an OTC derivative under subparagraph (b) of paragraph 46 (Permitted transactions (derivatives and forwards)) must be with an approved counterparty.

(2) A counterparty to a transaction in derivatives is not treated as an approved counterparty under subparagraph (1) unless the counterparty is –

(a) an eligible institution or an approved bank; or

(b) a person whose licence (including any requirements or limitations), or whose Home State authorisation, permits it to enter into the transaction as principal off-exchange, and

the transaction is on approved terms under subparagraph 3.

(3) The terms of the transaction in derivatives are only treated as being on approved terms under subparagraph (2) where the manager –

(a) carries out at least daily reliable and verifiable valuation in respect of that transaction corresponding to its fair value and which does not rely only on market quotations by the counterparty; and

(b) can enter into one or more further transactions to sell, liquidate or close out that transaction at any time, at its fair value.

(4) Capable of reliable valuation; a transaction in derivatives is only capable of reliable valuation only if the manager having taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy -

(a) on the basis of an up-to-date market value which the manager and the trustee or fiduciary custodian have agreed is reliable; or

- (b) if the value referred to in (a) is not available, on the basis of a pricing model which the manager and the trustee or fiduciary custodian have agreed uses an adequate recognised methodology; and
- (5) subject to verifiable valuation; a transaction in derivatives is subject to verifiable valuation only if, throughout the life of the derivative (if the transaction is entered into) verification of the valuation is carried out by -
- (a) an appropriate third party which is independent from the counterparty of the derivative, at an adequate frequency and in such a way that the manager is able to check it; or
  - (b) a department within the manager which is independent from the department in charge of managing the scheme property and which is adequately equipped for such a purpose.
- (6) For the purposes of subparagraph (2), “fair value” is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.
- (7) In respect of its obligations under subparagraph (4)(a)(i) of paragraph 103, the trustee or fiduciary custodian must take reasonable care to ensure that the manager has systems and controls that are adequate to ensure compliance with subparagraphs (1) to (4).

51 **Risk management process**

- (1) A manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme's positions and their contribution to the overall risk profile of the scheme.
- (2) The following details of the risk management process must be notified by the manager to the Commission in advance of the use of the process as required by subparagraph (1) –
  - (a) the methods for estimating risks in derivative and forward transactions; and
  - (b) the types of derivatives and forwards to be used within the scheme together with their underlying risks and any relevant quantitative limits.

- (3) The manager must notify the Commission in advance of any material alteration to the details in subparagraph (2)(a) or (b).

52 **Investment in deposits**

A UCITS type scheme may invest in deposits only if the deposit –

- (a) is with a banking institution;
- (b) is –
  - (i) repayable on demand; or
  - (ii) has the right to be withdrawn; and
- (c) matures in no more than 12 months.

53 **Significant influence for managers of authorised schemes**

- (1) A manager must not acquire, or cause to be acquired, for a scheme of which it is the manager, transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the body corporate if –
  - (a) immediately before the acquisition, the aggregate of any such securities held for that scheme, taken together with any such securities already held for other schemes of which it is also the manager, gives the manager power significantly to influence the conduct of business of that body corporate; or
  - (b) the acquisition gives the manager that power.
- (2) For the purpose of subparagraph (1), a manager is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held for all the schemes of which it is the manager, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

54 **Concentration**

A UCITS type scheme –

- (1) must not acquire transferable securities (other than debt securities) which –

- (a) do not carry a right to vote on any matter at a general meeting of the body corporate that issued them; and
  - (b) represent more than 10% of those securities issued by that body corporate;
- (2) must not acquire more than 10% of the debt securities issued by any single body;
  - (3) must not acquire more than 25% of the units in a collective investment scheme;
  - (4) must not acquire more than 10% of the approved money-market instruments issued by any single body; and
  - (5) need not comply with the limits in subparagraphs (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant investment cannot be calculated.

**55 UCITS type schemes that are umbrella funds**

- (1) In relation to a UCITS type scheme which is an umbrella fund, the provisions in paragraphs 25 to 74 apply to each sub-fund as they would for an authorised scheme, except the following paragraphs which apply at the level of the umbrella fund only –
  - (a) paragraph 53 (significant influence for managers of authorised schemes); and
  - (b) paragraph 54 (concentration).
- (2) A sub-fund must not invest in another sub-fund of the same umbrella fund.

**56 Schemes replicating an index**

- (1) Notwithstanding paragraph 39 (Spread: general) a UCITS type scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the investment policy of that scheme as stated in the most recently published offering document is to replicate the composition of a relevant index which satisfies the criteria specified in paragraph 57 (relevant indices).
- (2) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets

of that index, including the use of techniques and instruments permitted for the purpose of efficient portfolio management.

- (3) The limit in subparagraph (1) can be raised for a particular UCITS type scheme up to 35% in value of the scheme property, but only in respect of one body and where justified by exceptional market conditions.

## 57 **Relevant indices**

- (1) The indices referred to in paragraph 56 (schemes replicating an index) are those which satisfy the following criteria -
  - (a) the composition is sufficiently diversified;
  - (b) the index represents an adequate benchmark for the market to which it refers; and
  - (c) the index is published in an appropriate manner.
- (2) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.
- (3) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if -
  - (a) it is accessible to the public;
  - (b) the index provider is independent from the index-replicating UCITS type scheme; this does not preclude index providers and the UCITS type scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.

## 58 **Derivatives exposure**

Paragraphs 59 to 61 apply to a manager of a UCITS type scheme.

## 59 **Cover for transactions in derivatives and forward transactions**

- (1) A transaction in derivatives or forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be

committed by another person, is covered globally under subparagraph (2).

- (2) Exposure is covered globally if adequate cover from within the scheme property is available to meet the scheme's total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk, and the time available to liquidate any positions.
- (3) Cash not yet received into the scheme property but due to be received within one month is available as cover for the purposes of subparagraph (2).
- (4) Property which is the subject of a transaction under paragraphs 63 to 66 (Stock lending) is only available for cover if the manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.
- (5) The global exposure relating to derivatives held in a UCITS type scheme may not exceed the net value of the scheme property (in line with Article 2(1) of the European Commission Recommendation 2004/383/EC).

## 60 **Borrowing**

- (1) Cash obtained from borrowing, and borrowing which the manager reasonably regards an eligible institution or a banking institution to be committed to provide, is not available for cover under paragraph 59 (Cover for transactions in derivatives and forward transactions), except if subparagraph (2) applies.
- (2) Where, for the purposes of this paragraph the trustee or fiduciary custodian for the account of the scheme on the instructions of the manager –
  - (a) borrows an amount of currency from an eligible institution or a banking institution; and
  - (b) keeps an amount in another currency, at least equal to the borrowing for the time being in subparagraph (a), on deposit with the lender (or his or her agent or nominee);

then this paragraph applies as if the borrowed currency, and not the deposited currency, were part of the scheme property.

61 **Continuing nature of limits and requirements**

- (1) A manager must, (as frequently as necessary), re-calculate the amount of cover required in respect of derivatives and forward positions already in existence under this paragraph.
- (2) Derivatives and rights under forward transactions may be retained in the scheme property only so long as they remain covered globally under paragraph ~~59~~ (cover for transactions in derivatives and forward transactions).

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62 **Application**

Paragraphs 63 to 66 apply to the trustee or fiduciary custodian and manager of a UCITS type scheme or a non-UCITS type scheme.

63 **Stock lending: general**

A scheme may only enter into a stock lending arrangement or repo contract in accordance with the requirements in paragraphs 63 to 66 if it reasonably appears to the manager to be appropriate to do so with a view to generating additional income for the scheme with an acceptable degree of risk.

64 **Stock lending: requirements**

- (1) A scheme, or the trustee or fiduciary custodian at the request of the manager, may enter into a repo contract, or a stock lending arrangement, but only if –
  - (a) all the terms of the agreement under which securities are to be reacquired by the trustee or fiduciary custodian are in a form which is acceptable to the trustee or fiduciary custodian and are in accordance with good market practice;
  - (b) the counterparty is –
    - (i) an authorised person; or
    - (ii) a person authorised by a Home State regulator; or
    - (iii) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
    - (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to OTC

derivatives by at least one of the following federal banking supervisory authorities of the United States of America:

- (A) the Office of the Comptroller of the Currency;
  - (B) the Federal Deposit Insurance Corporation;
  - (C) the Board of Governors of the Federal Reserve System;  
and
  - (D) the Office of Thrift Supervision; and
- (c) collateral is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the collateral is -
- (i) acceptable to the trustee or fiduciary custodian;
  - (ii) adequate; and
  - (iii) sufficiently immediate.
- (2) The counterparty for the purpose of sub paragraph(1) is the person who is obliged under the agreement referred to in subparagraph (1)(a) to transfer to the trustee or fiduciary custodian the securities transferred by the trustee or fiduciary custodian under the stock lending arrangement or securities of the same kind.
- (3) Subparagraph (1)(c) does not apply to a stock lending transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

65 **Treatment of collateral**

- (1) Collateral is adequate for the purposes of this paragraph only if it is -
- (a) transferred to the trustee or fiduciary custodian or its agent;
  - (b) at least equal in value, at the time of the transfer to the trustee or fiduciary custodian, to the value of the securities transferred by the trustee or fiduciary custodian; and
  - (c) in the form of one or more of -
    - (i) cash;
    - (ii) a certificate of deposit;

- (iii) a letter of credit;
  - (iv) a readily realisable security;
  - (v) commercial paper with no embedded derivative content; or
  - (vi) a qualifying money market fund.
- (2) Where the collateral is invested in units in a qualifying money market fund managed or operated by the manager of the investing scheme or an associate of that manager, the conditions in paragraph [43](#) (investment in other group schemes) must be complied with whether or not the investing scheme is a UCITS type scheme or a non-UCITS type scheme.
- (3) Collateral is sufficiently immediate for the purposes of this paragraph if –
- (a) it is transferred before or at the time of the transfer of the securities by the trustee or fiduciary custodian; or
  - (b) the trustee or fiduciary custodian takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the day of the transfer.
- (4) The trustee or fiduciary custodian must ensure that the value of the collateral at all times is at least equal to the value of the securities transferred by the trustee or fiduciary custodian.
- (5) The duty in subparagraph (4) may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired where the trustee or fiduciary custodian takes reasonable care to determine that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.
- (6) Any agreement for transfer at a future date of securities or of collateral (or of the equivalent of either) under this paragraph may be regarded, for the purposes of valuation under paragraph [105](#) (Valuation and pricing) or this Part, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the scheme.
- (7) Collateral transferred to the trustee or fiduciary custodian is part of the scheme property for the purposes of these Regulations, except in the following respects –

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- (a) it does not fall to be included in any valuation for the purposes of paragraph 105 (Valuation and pricing) or this Part, because it is offset under subparagraph (6) by an obligation to transfer; and
  - (b) it does not count as scheme property for any purpose of this Schedule other than this paragraph.
- (8) Subparagraphs (6) and (7)(a) do not apply to any valuation of collateral itself for the purposes of this paragraph.

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**66 Limitation by value**

There is no limit on the value of the scheme property which may be the subject of repo contracts or stock lending transactions within this paragraph.

**67 Cash and near cash**

Paragraphs 68 to 74 apply to a manager and a trustee or fiduciary custodian of a UCITS type scheme in accordance with the following table of application.

Paragraph(s)	Manager	Trustee or fiduciary custodian
68	Yes	-
<u>69</u> (1) to (3)	-	Yes
<u>69</u> (4) and (5)	Yes	-
<u>69</u> (6)	-	Yes
<u>69</u> (7)	Yes	Yes
<u>69</u> (8)	-	-
<u>70</u> (1) to (3)	Yes	-
<u>71</u> (1) and (2)	Yes	Yes
<u>71</u> (3)	-	-
<u>72</u> (1) to (3)	Yes	Yes
<u>72</u> (4)	Yes	Yes
<u>73</u>	-	Yes
<u>74</u>	-	Yes

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**Cash and near cash**

- (1) Cash and near cash must not be retained in the scheme property except to the extent that this may reasonably be regarded as necessary in order to enable -
  - (a) the pursuit of the scheme's investment objectives;
  - (b) redemption of units;
  - (c) efficient management of the scheme in accordance with its investment objectives; or
  - (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the scheme.
- (2) During the period of the initial offer the scheme property may consist of cash and near cash without limitation.

**General power to borrow**

- (1) The trustee or fiduciary custodian (on the instructions of the manager) may, in accordance with this paragraph and paragraph [70](#) (borrowing limits), borrow money for the use of the scheme on terms that the borrowing is to be repayable out of the scheme property.
- (2) Subparagraph (1) is subject to the obligation of the scheme to comply with any restriction in the documents constituting the scheme.
- (3) The trustee or fiduciary custodian may borrow under subparagraph (1) only from an eligible institution or a banking institution.
- (4) The manager must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the manager must have regard in particular to -
  - (a) the duration of any period of borrowing; and
  - (b) the number of occasions on which resort is had to borrowing in any period.
- (5) In addition to complying with subparagraph (4), the manager must ensure that no period of borrowing exceeds 3 months, whether in respect of any specific sum or at all, without the prior consent of the trustee or fiduciary custodian.

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- (6) The trustee or fiduciary custodian may only give its consent as required under subparagraph (5) on such conditions as appear to the trustee or fiduciary custodian appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
- (7) This paragraph does not apply to "back to back" borrowing under subparagraph (2) of paragraph [70](#) (borrowing).
- (8) A scheme must not issue any debenture unless it acknowledges or creates a borrowing that complies with subparagraphs (1) to (6).

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## 70 **Borrowing limits**

- (1) The manager must ensure that the authorised scheme's borrowing does not, on any day, exceed 10% of the value of the scheme property.
- (2) This paragraph does not apply to "back to back" borrowing under subparagraph (2) of paragraph [60](#) (borrowing).
- (3) In this paragraph, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of derivatives) designed to achieve a temporary injection of money into the scheme property in the expectation that the sum will be repaid.

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## 71 **Restrictions on lending of money**

- (1) None of the money in the scheme property of a scheme may be lent and, for the purposes of this prohibition, money is lent by a scheme if it is paid to a person ("the payee") on the basis that it should be repaid, whether or not by the payee.
- (2) Acquiring a debenture is not lending for the purposes of subparagraph (1); nor is the placing of money on deposit or in a current account.
- (3) Subparagraph (1) does not prevent a scheme from providing an officer of the scheme with funds to meet expenditure to be incurred by him for the purposes of the scheme (or for the purposes of enabling him properly to perform his duties as an officer of the scheme) or from doing anything to enable an officer to avoid incurring such expenditure.

## 72 **Restrictions on lending of property other than money**

- (1) The scheme property of a scheme other than money must not be lent by way of deposit or otherwise.

- (2) Transactions permitted by Paragraphs 63 to 66 (Stock lending) are not to be regarded as lending for the purposes of subparagraph (1).
- (3) The scheme property must not be mortgaged.
- (4) Where transactions in derivatives or forward transactions are under for the account of the scheme in accordance with any of the requirements in paragraphs 68 to 74, nothing in this paragraph prevents the trustee or fiduciary custodian at the request of the manager, from -
  - (a) lending, depositing, pledging or charging scheme property for margin requirements; or
  - (b) transferring scheme property under the terms of an agreement in relation to margin requirements, provided that the manager reasonably considers that both the agreement and the margin arrangements made under it (including in relation to the level of margin) provide appropriate protection to participants.

**73 General power to accept or underwrite placings**

- (1) Any power in this Schedule to invest in transferable securities may be used for the purpose of entering into transactions to which this paragraph applies, subject to compliance with any restriction in the documents constituting the scheme.
- (2) This paragraph applies to any agreement or understanding which –
  - (a) is an underwriting or sub-underwriting agreement; or
  - (b) contemplates that securities will or may be issued or subscribed for or acquired for the account of the scheme.
- (3) Subparagraph (2) does not apply to –
  - (a) an option; or
  - (b) a purchase of a transferable security which confers a right to -:
    - (i) subscribe for or acquire a transferable security; or
    - (ii) convert one transferable security into another.
- (4) The exposure of an authorised scheme to agreements and understandings within subparagraph (2) must, on any day, be –

(a) covered under paragraph 59 (cover for transactions in derivatives and forward transactions); and

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(b) such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this Schedule.

#### 74 Guarantees and indemnities

- (1) A trustee or fiduciary custodian for the account of a scheme must not provide any guarantee or indemnity in respect of the obligation of any person.
- (2) None of the scheme property of a scheme may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any person.
- (3) Subparagraphs (1) and (2) do not apply to –
  - (a) any indemnity or guarantee given for margin requirements where the derivatives or forward transactions are being used in accordance with the requirements in this Schedule; and
  - (b) for an open-ended investment company –
    - (i) an indemnity against any liability incurred by an officer of the scheme in defending any proceedings (whether civil or criminal) in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application relating to proceedings for negligence, default, breach of duty or breach of trust or proceedings against the fiduciary custodian for failure to exercise due care and diligence in the discharge of his or her functions in respect of the scheme in respect of which relief is granted to him or her by the court;
    - (ii) an indemnity given to the fiduciary custodian against any liability incurred by it as a consequence of the safekeeping of any of the scheme property by it or by anyone retained by it to assist it to perform its function of the safekeeping of the scheme property; and
    - (iii) an indemnity given to a person winding up a scheme if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that scheme becomes the

first property of the company and the holders of units in that scheme become the first participants in the company; and

- (c) for a unit trust scheme, an indemnity given to a person winding up a body corporate or other scheme in circumstances where those assets are becoming part of the scheme property by way of a unitisation.

**75 Investment powers and borrowing limits for non-UCITS type schemes**

- (1) Paragraphs 76 to 97 apply to the manager and the trustee or fiduciary custodian of a non-UCITS type scheme.
- (2) Where paragraphs 76 to 97 contains a reference to a paragraph in any other of part of this Part, these requirements and any requirements to which they refer or any relevant guidance should be read as if any reference to a UCITS type scheme is to a non-UCITS type scheme.

**76 Prudent spread of risk**

- (1) A manager must ensure that, taking account of the investment objectives and policy of the non-UCITS type scheme as stated in its most recently published offering document, the scheme property of the non-UCITS type scheme aims to provide a prudent spread of risk.
- (2) Subject to subparagraphs (3) and (4), the requirements in paragraphs 76 to 97 relating to spread of investments, including immovables, do not apply until 12 months after the later of -
  - (a) the date when the authorisation order in respect of the non-UCITS type scheme takes effect; and
  - (b) the date the initial offer commenced;provided that subparagraph (1) is complied with during such period.
- (3) Subject to subparagraph (3), the limits in paragraph 92 do not apply until 24 months after the later of:
  - (a) the date when the authorisation order in respect of the non-UCITS type scheme takes effect; and
  - (b) the date the initial offer commenced;provided that subparagraph (4) is complied with during such period.

- (4) The limit in subparagraph (8) of paragraph 92 relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the authorisation order in respect of the non-UCITS type scheme takes effect and the date the initial offer period commenced.

77

**Investment powers: general**

- (1) The scheme property of a non-UCITS type scheme may, subject to the requirements in paragraphs 76 to 97, comprise any assets or investments to which it is dedicated.
- (2) The scheme property must be invested only in accordance with the relevant provisions in this paragraph that are applicable to that non-UCITS type scheme and within any upper limit specified in this paragraph.
- (3) The documents constituting the scheme may restrict the investment powers of a scheme further than the relevant restrictions in this paragraph.
- (4) The scheme property may only, except where otherwise provided in the requirements in paragraphs 76 to 97, consist of any one or more of –
  - (a) transferable securities;
  - (b) money-market instruments;
  - (c) units in collective investment schemes permitted under paragraph 41 (investment in collective investment schemes);
  - (d) derivatives and forward transactions permitted under paragraph 46 (permitted transactions (derivatives and forwards));
  - (e) deposits permitted under paragraph 52 (investment in deposits);
  - (f) immovables permitted under paragraph 90 (investment in property) and paragraph 92 (investment limits for immovables); and
  - (g) gold up to a limit of 10% in value of the scheme property.

78 **Transferable securities and money-market instruments**

- (1) Transferable securities and money-market instruments held within a non-UCITS type scheme must –
  - (a) be admitted to or dealt in on an eligible market within paragraph 35 (eligible markets: requirements); or
  - (b) be approved money-market instruments not admitted to or dealt in on an eligible market which satisfy the requirements for investment by a UCITS type scheme set out in paragraphs 36 to 38; or
- (2) subject to a limit of 20% in value of the scheme property be –
  - (a) transferable securities which are not approved securities; or
  - (b) money-market instruments which are liquid and have a value which can be determined accurately at any time.
- (3) Transferable securities held within a non-UCITS type scheme must also satisfy the criteria in paragraphs 30, 31 and 32.

79 **Valuation**

In paragraphs 76 to 97 the value of the scheme property means the value of the scheme property determined in accordance with paragraph 27 (Valuation).

80 **Spread: general**

- (1) This requirement does not apply in respect of government and public securities.
- (2) Not more than 20% in value of the scheme property is to consist of deposits with a single body.
- (3) Not more than 10% in value of the scheme property is to consist of transferable securities or money-market instruments issued by any single body subject to paragraph 56 (schemes replicating an index).
- (4) The limit of 10% in (3) is raised to 25% in value of the scheme property in respect of covered bonds.
- (5) In applying subparagraph (3) certificates representing certain securities are to be treated as equivalent to the underlying security.

- (6) The exposure to any one counterparty in an OTC derivative transaction must not exceed 10% in value of the scheme.
- (7) Except for a feeder fund, not more than 35% in value of the scheme is to consist of the units of any one scheme.
- (8) For the purpose of calculating the limit in subparagraph (6), the exposure in respect of an OTC derivative may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in subparagraph (9).
- (9) The conditions referred to in subparagraph (8) are that the collateral –
  - (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
  - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
  - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
  - (d) can be fully enforced by the non-UCITS type scheme at any time.
- (10) For the purpose of calculating the limit in subparagraph (7), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:
  - (a) comply with the conditions set out in Section 3 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the Banking Consolidation Directive; and
  - (b) are based on legally binding agreements.
- (11) In applying this paragraph, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions -
  - (a) it is backed by an appropriate performance guarantee; and
  - (b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.
- (12) For the purposes of this paragraph a single body is –

- (a) in relation to transferable securities and money market instruments, the person by whom they are issued; and
- (b) in relation to deposits, the person with whom they are placed.

81 **Spread: government and public securities**

- (1) This paragraph applies in respect of government and public securities.
- (2) The requirements in paragraph 40 (spread: government and public securities) apply to investment in government and public securities by a non-UCITS type scheme, except for subparagraph (4) of paragraph 40 which will apply to such a scheme only to the extent that it concerns the most recently published offering document of the scheme .

82 **Investment in nil and partly paid securities**

A non-UCITS type scheme must not invest in nil and partly paid securities unless the investment complies with the conditions in paragraph 44 (investment in nil and partly paid securities).

83 **Investment in collective investment schemes**

- (1) A non-UCITS type scheme must not invest in units in a collective investment scheme (second scheme) unless the second scheme meets each of the requirements at subparagraphs (2) to (6)
- (2) The second scheme must –
  - (a) satisfy the conditions necessary for it to enjoy the rights conferred by the UCITS Directive;
  - (b) be recognised under the provisions of section 270 of the United Kingdom Financial Services and Markets Act 2000 (an Act of Parliament) (schemes authorised in designated countries or territories);
  - (c) [be authorised as a non-UCITS scheme under Schedule 2 of the Collective Investment Schemes Act 2008; or](#)
  - (d) be authorised as a non-UCITS retail scheme by the UK Financial Services Authority (provided the requirements of article 19(1)(e) of the UCITS Directive are met);

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- (e) be authorised in a EEA State other than the United Kingdom (provided the requirements of article 19(1)(e) of the UCITS Directive are met);
  - (f) be authorised under Schedule 1 or recognised under Schedule 4 of the Act.
  - (g) be a scheme where the investment and borrowing powers are the same or more restrictive than those of a non-UCITS type scheme; or
  - (h) be a scheme not falling within (a) to (f) and in respect of which no more than 20% in value of the scheme property (including any transferable securities which are not approved securities) is invested.
- (3) The second scheme must operate on the principle of the prudent spread of risk.
  - (4) The second scheme must be prohibited from having more than 15% in value of the property of that scheme consisting of units in collective investment scheme.
  - (5) The participants in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price –
    - (a) related to the net value of the property to which the units relate; and
    - (b) determined in accordance with the scheme.
  - (6) Where the second scheme is an umbrella fund, the provisions in subparagraphs (3) to (5) and paragraph 80 (spread: general) apply to each sub-fund as if it were a separate scheme.

**84 Investment in associated collective investment schemes**

Units in a scheme do not fall within paragraph 53 if that scheme is managed or operated by the manager of the investing non-UCITS type scheme or by an associate of that manager, unless -

- (a) the offering document of the investing scheme clearly states that the property of that investing fund may include such units; and
- (b) the conditions in paragraph 43 (investment in other group schemes) are complied with.

85 **Derivatives: general**

- (1) A transaction in derivatives or a forward transaction must not be effected for a non-UCITS type scheme unless the transaction is –
  - (a) of a kind specified in paragraph 86 (permitted transactions (derivatives and forwards)); and
  - (b) covered, as required by paragraph 59 (cover for transactions in derivatives and forward transactions).
- (2) Where a scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in paragraph 80 (spread: general) and paragraph 81 (spread: government and public securities) except as provided in subparagraph (4).
- (3) Where a transferable security or money-market instrument embeds a derivative, this must be taken into account for the purposes of calculating any limit in this paragraph.
- (4) Where a scheme invests in an index-based derivative, provided the relevant index falls within paragraph 96 (schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of paragraph 80 (spread: general) and paragraph 81 (spread: government and public securities).
- (5) The relaxation in subparagraph (4) is subject to the manager taking account of paragraph 76 (prudent spread of risk).

86 **Permitted transactions (derivatives and forwards)**

- (1) A transaction in a derivative must be within paragraph 46(1) (permitted transactions (derivatives and forwards)) and –
  - (a) the underlying must be within paragraph 77 (investment powers: general) or subparagraphs (2)(f) to (i) of paragraph 46; and
  - (b) the exposure to the underlying must not exceed the limits in paragraph 80 (spread: general) and paragraph 81 (spread: government and public securities).
- (2) A transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.

- (3) A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the documents constituting the scheme and the most recently published offering document.
- (4) A transaction in a derivative must not be effected if the intended effect is to create the potential for an uncovered sale of –
  - (a) transferable securities;
  - (b) money-market instruments;
  - (c) units in collective investment schemes; or
  - (d) derivatives.
- (5) Any forward transaction must be made with an eligible institution or a banking institution.
- (6) The manager must ensure compliance with paragraph 61 (continuing nature of limits and requirements).

**87 Transactions for the purchase or disposal of property**

The requirements of paragraph 49 (requirement to cover sales) apply to non-UCITS type schemes in the same manner as to UCITS type schemes.

**88 OTC transactions in derivatives**

Any transaction in an OTC derivative under paragraph 86 (permitted transactions (derivatives and forwards)) must comply with the requirements of paragraph 50 (OTC transactions in derivatives).

**89 Risk management**

A manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme's positions and their contribution to the overall risk profile of the scheme.

**90 Investment in property**

- (1) Any investment in land or a building held within the scheme property of a non-UCITS type scheme must be an immovable within subparagraphs (2) to (5).
- (2) An immovable must –

- (a) be situated in a country or territory identified in the offering document for the purpose of this paragraph; and
  - (b) if situated in –
    - (i) the Isle of Man, England and Wales or Northern Ireland, be a freehold or leasehold interest; or
    - (ii) Scotland, be any interest or estate in or over land or heritable right including a long lease; or
  - (c) if not situated in the jurisdictions referred to in subparagraph (b)(i) or (ii), be equivalent to any of the interests in subparagraph (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the scheme and provides as good a title as any of the interests in subparagraph (b)(i) or (ii).
- (3) The manager must have taken reasonable care to determine that the title to the immovable is a good marketable title.
- (4) The manager must –
- (a) have received a report from an appropriate valuer which –
    - (i) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
    - (ii) states that in the appropriate valuer's opinion the immovable would, if acquired by the scheme, be capable of being disposed of reasonably quickly at that valuation; or
  - (b) have received a report from an appropriate valuer as required by subparagraph (4)(a)(i) and stating that –
    - (i) the immovable is adjacent to or in the vicinity of another immovable included in the scheme property or is another legal interest as defined in subparagraph (2)(b) or (c) in an immovable which is already included in the scheme property; and
    - (ii) in the opinion of the appropriate valuer, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.

- (5) An immovable must –
  - (a) be bought or be agreed by enforceable contract to be bought within 6 months after receipt of the report of the appropriate valuer under subparagraph (4);
  - (b) not be bought, if it is apparent to the manager that the report in (a) could no longer reasonably be relied upon; and
  - (c) not be bought at more than 105% of the valuation for the relevant immovable in the report in subparagraph (4).
- (6) Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.
- (7) An appropriate valuer must be a person who –
  - (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
  - (b) is qualified to be a standing independent valuer of a non-UCITS type scheme or is considered by the scheme's standing independent valuer to hold an equivalent qualification;
  - (c) is independent of the scheme, each of the directors (where the scheme is an open-ended investment company), the trustee or fiduciary custodian and the manager; and
  - (d) has not engaged himself or herself or any of his or her associates in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

91 **Investment in overseas property through an intermediate holding vehicle**

- (1) An overseas immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of participants are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an overseas immovable shall be treated for the purposes of this part as if it were a direct investment in that immovable.
- (2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local

legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

92 **Investment limits for immovables**

- (1) The following limits apply in respect of immovables held as part of scheme property of a scheme.
- (2) Not more than 15% in value of the scheme property is to consist of any one immovable.
- (3) In subparagraph (2), immovables within subparagraph (4)(b) of paragraph 90 (investment in property) must be regarded as one immovable.
- (4) The figure of 15% in subparagraph (2) may be increased to 25% once the immovable has been included in the scheme property in compliance with subparagraph (1).
- (5) The income receivable from any one group in any accounting period must not be attributable to immovables comprising -
  - (a) more than 25%; or
  - (b) in the case of a government or public body more than 35%;of the value of the scheme property.
- (6) Not more than 20% in value of the scheme property is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value in subparagraph (4) of paragraph 90 (on the assumption the immovable is not mortgaged).
- (7) The aggregate value of -
  - (a) mortgages secured on immovables under subparagraph (6);
  - (b) borrowing of the scheme under subparagraph (e) of paragraph 95; and
  - (c) any transferable securities that are not approved securities,must not at any time exceed 20% of the value of the scheme property.
- (8) Not more than 50% in value of the scheme property is to consist of immovables which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment.

- (9) No option may be granted to a third party to buy any immovable comprised in the scheme property unless the value of the relevant immovable does not exceed 20% of the value of the scheme property together with, where appropriate, the value of investments in –
- (a) unregulated collective investment schemes; and
  - (b) any transferable securities which are not approved securities.

93 **Standing independent valuer and valuation**

- (1) The following requirements apply in relation to the appointment of a valuer -
- (a) the manager must ensure that any immovables in the scheme property are valued by an appropriate valuer (standing independent valuer) appointed by the manager; and
  - (b) the appointment must be made with the approval of the trustee or fiduciary custodian or trustee or fiduciary custodian at the outset and upon any vacancy.
- (2) The standing independent valuer in subparagraph (1) must be independent of the scheme, the directors (where applicable), the manager and the trustee or fiduciary custodian.
- (3) The following requirements apply in relation to the functions of the standing independent valuer –
- (a) the manager must ensure that the standing independent valuer values all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
  - (b) for the purposes of subparagraph (a) any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;
  - (c) the manager must ensure that the standing independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;
  - (d) if either the manager or the trustee or fiduciary custodian becomes aware of any matters that appear likely to –

- (i) affect the outcome of a valuation of an immovable; or
- (ii) cause the valuer to decide to value under subparagraph (a) instead of under subparagraph(c);

it must immediately inform the standing independent valuer of that matter;

- (e) the manager must use its best endeavours to ensure that any other affected person reports to the standing independent valuer immediately upon that person becoming aware of any matter within subparagraph (d); and
- (f) any valuation by the standing independent valuer must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but subject to paragraph [105](#) (Valuation and pricing).

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(4) in relation to an immovable –

- (a) any valuation under paragraph [105](#) has effect, until the next valuation under that requirement, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the scheme property unless it reasonably appears to the manager to be legally enforceable.

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#### 94 **Stock lending**

A non-UCITS type scheme may undertake stock lending in accordance with paragraphs 63 to 66.

#### 95 **Cash, borrowing, lending and other provisions**

The following paragraphs in this Schedule apply to a non-UCITS type scheme –

- (a) paragraph 29 (transferable securities);
- (b) paragraph 67 (application) including table of application;
- (c) paragraph 68 (cash and near cash);

- (d) paragraph 69, subparagraphs (1) to (3) and (8) (general power to borrow);
- (e) paragraph 70, subparagraphs (1) and (2) (borrowing limits);
- (f) paragraph 71 (restrictions on lending of money) ;
- (g) paragraph 72, subparagraphs (1), (2) and (4) (restrictions on lending of property other than money);
- (h) paragraph 73 (general power to accept or underwrite placings); and
- (i) paragraph 74 (guarantees and indemnities).

96 **Schemes replicating an index**

- (1) A non-UCITS type scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the aim of the investment policy of that scheme as stated in its most recently published offering document is to replicate the performance or composition of an index within subparagraph (2).
- (2) The index must –
  - (a) have a sufficiently diversified composition;
  - (b) be a representative benchmark for the market to which it refers; and
  - (c) be published in an appropriate manner.
- (3) The limit in subparagraph (1) may be raised for a particular scheme up to 35% in value of the scheme property, but only in respect of one body and where justified by exceptional market conditions.

97 **Non-UCITS type schemes that are umbrella funds**

In relation to a scheme which is an umbrella fund, the provisions in this paragraph apply to each sub-fund as they would for a non-UCITS type scheme.

A sub-fund must not invest in another sub-fund of the same umbrella fund.

[Part 5A](#)

[INVESTMENT POWERS AND BORROWING LIMITS FOR](#)

## NON-UCIT TYPE SCHEMES OPERATING AS FAIFs

### 98 Application

(1) This Part applies to -

- (a) a manager of a scheme;
- (b) the governing body; and
- (c) a trustee or fiduciary custodian

of a non-UCITS type scheme operating as a FAIF.

(2) Paragraphs 76 to 97 in Part 5 (Investment and borrowing powers) apply to the persons detailed in paragraph (1).

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### 99 Investment powers - general

(1) The scheme property of a non-UCITS scheme operating as a FAIF may, subject to the requirements of this part, comprise any assets or investments to which it is dedicated.

(2) The scheme property may also include movable or immovable property that is necessary for the direct pursuit of the scheme's business of investing in those assets or investments.

(3) The scheme property must be invested only in accordance with the relevant provisions in this section that are applicable to that non-UCITS scheme operating as a FAIF and within any upper limit specified in this section.

(4) The instrument constituting the scheme may restrict the investment powers of a scheme further than the relevant restrictions in this section.

(5) The scheme property may only, except where otherwise provided in the requirements of this part, consist of any one or more of:

- (a) transferable securities;
- (b) money market instruments;

- (c) units in collective investment schemes permitted under paragraph 83 (Investment in collective investment schemes);
- (d) derivatives and forward transactions permitted under paragraph 86R (Permitted transactions (derivatives and forwards));
- (e) deposits permitted under paragraph 52 (Investment in deposits);
- (f) immovables permitted under paragraph 90 (Investment in property) to paragraph 92 (Investment limits for immovables); and
- (g) gold up to a limit of 10% in value of the scheme property.

#### 100 Spread – general

- (1) This paragraph does not apply in respect of government and public securities.
- (2) Not more than 20% in value of the scheme property is to consist of deposits with a single body.
- (3) Not more than 10% in value of the scheme property is to consist of transferable securities or approved money-market instruments issued by any single body subject to paragraph 96 (Schemes replicating an index).
- (4) The limit of 10% in (3) is raised to 25% in value of the scheme property in respect of covered bonds.
- (5) In applying (3) certificates representing certain securities are to be treated as equivalent to the underlying security.
- (6) The exposure to any one counterparty in an OTC derivative transaction must not exceed 10% in value of the scheme.
- (7) Except for a feeder scheme which (in respect of investment in units in collective investment schemes) is dedicated to the units of a master scheme, not more than 35% in value of the scheme is to consist of the units of any one scheme.
- (8) For the purpose of calculating the limit in (6), the exposure in respect of an OTC derivative may be reduced to the extent that collateral is

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held in respect of it if the collateral meets each of the conditions specified in (9).

- (9) The conditions referred to in (8) are that the collateral:
- (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
  - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
  - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
  - (d) can be fully enforced by the non-UCITS retail scheme operating as a FAIF at any time.
- (10) For the purpose of calculating the limit in (6), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:
- (a) comply with the conditions set out in Part 7 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the Banking Consolidation Directive; and
  - (b) are based on legally binding agreements.
- (11) In applying this paragraph, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
- (a) it is backed by an appropriate performance guarantee; and
  - (b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.
- (12) For the purposes of this paragraph a single body is:
- (a) in relation to transferable securities and money market instruments, the person by whom they are issued; and
  - (b) in relation to deposits, the person with whom they are placed.

## 101 Investment in collective investment schemes

(1) A non-UCITS scheme operating as a FAIF must not invest in units in a collective investment scheme (second scheme) unless the second scheme is a scheme which satisfies the criteria in paragraph 41(2)(a) to (d) or meets each of the requirements at (a) to (d):

(a) the second scheme operates on the principle of the prudent spread of risk;

(b) the second scheme is prohibited from investing more than 15% in value of the property of that scheme in units in collective investment schemes or, if there is no such prohibition, the non-UCITS scheme's authorised fund manager is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made;

(c) the participants in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price:

(i) related to the net value of the property to which the units relate; and

(ii) determined in accordance with the scheme; and

(d) where the second scheme is an umbrella, the provisions in (a) to (c) and paragraph 100 (Spread: general) apply to each sub-fund as if it were a separate scheme.

(2) Feeder schemes which (in respect of investment in units in collective investment schemes) are dedicated to units in a single collective investment scheme must, in addition to the investment in the master scheme, only hold cash or near cash to maintain sufficient liquidity to enable the scheme to meet its commitments, such as redemptions. Feeder schemes may also use techniques and instruments for the purpose of efficient portfolio management, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

## 102 Due diligence requirements

(1) A non-UCITS scheme operating as a FAIF must not invest in units in schemes in paragraph 101(a) to (c) ('second schemes') unless the

authorised fund manager has carried out appropriate due diligence on each of the second schemes and:

(a) is satisfied, on reasonable grounds and after making all reasonable enquiries, that each of the second schemes complies with relevant legal and regulatory requirements;

(b) has taken reasonable care to determine that:

(i) the property of each of the second schemes is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second scheme;

(ii) the calculation of the net asset value of each of the second schemes and the maintenance of their accounting records is segregated from the investment management function; and

(iii) each of the second schemes is regularly audited by an independent auditor in accordance with international standards on auditing.

(2) The manager of a non-UCITS scheme operating as a FAIF invested in one or more second schemes must carry out appropriate due diligence as detailed in (1) on those schemes on an ongoing basis.

(3) The manager of a non-UCITS scheme operating as a FAIF which is a feeder scheme must ensure that:

(a) its master scheme; and

(b) where its master scheme is itself a feeder scheme, any scheme into which that master scheme invests;

operates on a basis that is consistent with the paragraphs in this section notwithstanding any due diligence previously carried out which suggested that those schemes would so operate.

## Part 6

### OPERATING DUTIES AND RESPONSIBILITIES

### 103 Application

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This Part applies to -

- (a) a manager of a scheme;
- (b) the governing body; and
- (c) a trustee or fiduciary custodian.

### 104 Dealing

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#### (1) Application

This paragraph applies to a manager, the governing body and a trustee or fiduciary custodian.

#### (2) Initial offers

- (a) During the initial offer period, units may only be issued at the initial price.
- (b) The length of any initial offer should not be unreasonable when considered alongside the characteristics of the scheme.
- (c) The manager must, as soon as practicable after receiving the initial price from the purchaser and no later than the fourth business day following the end of the initial offer, pay the trustee or fiduciary custodian in respect of any unit it has agreed to sell during the period of the initial offer -
  - (i) in the case of a single-priced scheme, the initial price of that unit; or
  - (ii) in the case of a dual-priced scheme, the initial price of that unit less, where relevant, an amount not exceeding the amount of any preliminary charge stated in the offering document.
- (d) The period of the initial offer comes to an end if the manager reasonably believes the price that would reflect the current value of the scheme property would vary by more than 2% from the initial price.

**(3) Issue and cancellation of units by an open-ended investment company**

- (a) Units in an open-ended investment company are issued or cancelled by the manager making a record of the issue or cancellation and of the number of the units of each class concerned, and cannot be issued or cancelled in any other manner, unless subparagraph 11 of Appendix 1 (Table: contents of the documents constituting the scheme) applies.
- (b) The time of the issue or cancellation under subparagraph (a) is the time when the record is made.

**(4) Issue and cancellation of units in a unit trust scheme**

- (a) The trustee must issue or cancel units in a unit trust scheme when instructed by the manager.
- (b) Any instructions given by the manager must state, for each class of unit to be issued or cancelled, the number to be issued or cancelled, expressed either as a number of units or as an amount in value (or as a combination of the two).
- (c) If the trustee is of the opinion that it is not in the interests of participants that any units should be issued or cancellation or that to do so would not be in accordance with the trust deed or offering document, it must notify the manager of that fact and it is then relieved of the obligation to issue or cancel those units.

**(5) Issue and cancellation of units in multiple classes**

If a scheme has two or more classes of unit in issue, the manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by reference to a particular valuation point, if -

- (a) the trustee or fiduciary custodian gives its prior agreement; and
- (b) the relevant classes -
  - (i) have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the scheme property; or
  - (ii) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the units in

each class is calculated by reference to undivided shares in the scheme property.

**(6) Issue and cancellation of units through a manager**

- (a) The manager may require, on agreement with the trustee or fiduciary custodian, or may permit, on the request of the investor, direct issues and cancellations of units by an open-ended investment company or by the trustee of a unit trust scheme.
- (b) If subparagraph (a) applies -
  - (i) the documents constituting the scheme provides for this; and
  - (ii) the offering document provides details of the procedure to be followed which must be consistent with the provision in this Part.

**(7) Controls over the issue and cancellation of units**

- (a) A manager must ensure that at each valuation point there are at least as many units in issue of any class as there are units registered to participants for that class.
- (b) A manager must not -
  - (i) for a unit trust scheme, when giving instructions to the trustee for the issue or cancellation of units; or
  - (ii) for an open-ended investment company, when arranging for the issue or cancellation of units;do, or omit to do, anything that would, or might, confer on itself or an associate a benefit or advantage at the expense of a participant or a potential participant.
- (c) For the purpose of subparagraph (a), the manager may take into account instructions to redeem units at the following valuation point received before any time agreed with the trustee or fiduciary custodian for such purpose.

**(8) Modification to number of units issued or cancelled**

- (a) Any instruction for the issue or cancellation of units under subparagraph (3) (Issue and cancellation of units by an open-ended investment company) or subparagraph (4) (Issue and cancellation

of units in a unit trust scheme) may be modified but only if the trustee or fiduciary custodian agrees and has taken reasonable care to determine that -

- (i) the modification corrects an error in the instruction; and
  - (ii) the error is an isolated one.
- (b) Any error in subparagraph (a) must be corrected within the payment period applicable under subparagraph (10) (Payment for units issued) or subparagraph (11) (Payment for cancelled units).

**(9) Compensation for box management errors**

- (a) Where the manager has not complied with subparagraph (7), it must correct the error as soon as possible and must reimburse the scheme any costs it may have incurred in correcting the position.
- (b) The manager need not reimburse the scheme when -
- (i) the amount under subparagraph (a) is not, in the trustee or fiduciary custodian's opinion, material to the scheme; Deleted: (a)
  - (ii) the manager can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
  - (iii) the requirements of subparagraph (8) are complied with. Deleted: (8)

**(10) Payment for units issued**

- (a) The manager must –
- (i) in the case of a single-priced scheme, by the close of business on the fourth business day following the issue of any units, arrange for payment to the trustee or fiduciary custodian or the open-ended investment company of the price of the units and any payments required under subparagraph (7) (Dilution) of paragraph 105; or Deleted: 105  
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  - (ii) make the payment referred to in subparagraph (a) in cash or cleared funds unless subparagraph (12) (In specie issue and cancellation) applies.
- (b) Where the manager has not complied with subparagraph (a), it must reimburse the scheme for any lost interest unless the amount

involved is not, in the trustee or fiduciary custodian's opinion, material to the scheme.

**(11) Payment for cancelled units**

- (a) On cancelling units the manager must, in the case of a single-priced scheme, before the expiry of the fourth business day following the cancellation of the units or, if later, as soon as practicable after delivery to the trustee or fiduciary custodian or the open-ended investment company of such evidence of title to the units as it may reasonably require, require the trustee or fiduciary custodian to pay the price of the units (less any deduction required under subparagraph (7) of paragraph [105](#), to the manager or, where relevant, the participant or, for a relevant pension scheme, in accordance with the relevant provisions of the trust deed.
- (b) If the manager has not ensured that the scheme property includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in Part 5 (Investment and borrowing powers)) within the period in subparagraph (a), that period is extended, for any relevant currency, until the shortage is rectified.
- (c) If subparagraph (b) applies, the manager must take reasonable steps to rectify the currency shortage as quickly as possible.
- (d) This subparagraph does not apply where subparagraph (12) is in operation.
- (e) Nothing in this subparagraph requires an open-ended investment company, a fiduciary custodian or a manager to part with money or to transfer scheme property for a cancellation or redemption of units where any money due on the earlier issue or sale of those units has not been received.

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**(12) In specie issue and cancellation**

The trustee or fiduciary custodian may take into or pay out of scheme property assets other than cash as payment for the issue or cancellation of units but only if -

- (a) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of participants; and

- (b) the documents constituting the scheme so provides.

**(13) Sale and redemption**

- (a) In accordance with Appendix 2 (Table: contents of the offering document), the manager must describe the arrangements for the sale and redemption of units in the offering document.
- (b) The manager must, at all times during the dealing day, be willing to effect the sale of units in the scheme, in accordance with the conditions in the documents constituting the scheme and the offering document unless -
  - (i) it has reasonable grounds to refuse such sale; or
  - (ii) the issue of units is prevented under subparagraph (14), (Limited issue).
- (c) Subject to subparagraph (15) (Limited redemption) and subparagraph (16) (Deferred redemption), the manager must, at all times during the dealing day, on request of any qualifying participant, effect the redemption of units in accordance with the conditions in the documents constituting the scheme and the offering document unless it has reasonable grounds to refuse such redemption.
- (d) On agreeing to a redemption of units in subparagraph (c), the manager must pay the participant the appropriate proceeds of redemption within the period specified in subparagraph (e) unless the manager has reasonable grounds for withholding all or any part of the proceeds.
- (e) The period in subparagraph (d) expires at the close of business on the fourth business day following the later of -
  - (i) the valuation point at which the price for the redemption was determined; or
  - (ii) the time when the manager has all the duly executed instruments and authorisations to effect (or enable the manager to effect) the transfer of title to the units.
- (f) Except where subparagraph (g) applies, and subject to subparagraph (16) (Deferred redemption), the manager must sell or redeem units at a price determined no later than the end of the

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business day immediately following the receipt and acceptance of an instruction to do so, or at the next valuation point for the purposes of dealing in units if later (or, for a sale or redemption at an historic price, at the price determined at the last valuation point).

- (g) Where the scheme ([including a non-UCITS type scheme operating as a FAIF](#)) operates limited redemption arrangements, the manager must sell or redeem units at a price determined no later than the expiry of a period of 185 days from the date of the receipt and acceptance of the instruction to sell or redeem.
- (h) Subparagraphs (d) and (e) and subparagraph (5) (Sale and redemption prices for single-priced schemes) of paragraph 105, do not apply where the manager is buying units as principal on an investment exchange (for a unit trust scheme in accordance with a power in the trust deed) and settlement will be made in accordance with the rules of that exchange.

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#### (14) Limited issue

- (a) If a scheme limits the issue of any class of unit, the offering document of a scheme must provide for the circumstances and conditions when units will be issued.
- (b) Where subparagraph (a) applies, the manager may not provide for the further issue of units unless, at the time of the issue, it is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the scheme's investment objective or materially prejudicing existing participants.
- (c) Within a scheme, unit classes may operate different arrangements for the issue of units provided there is no prejudice to the interests of any participant.

#### (15) Limited redemption

- (a) The documents constituting the scheme and the offering document of a non-UCITS type scheme ([including a non-UCITS type scheme operating as a FAIF](#)) that invests substantially in immovables or whose investment objective is to provide a specified level of return, may provide for limited redemption arrangements appropriate to its aims and objectives.

- (b) Where subparagraph (a) applies, the scheme must provide for redemptions at least once in every six months.
- (c) Within a scheme, unit classes may operate different arrangements for redemption of units provided there is no prejudice to the interests of any participant.

**(16) Deferred redemption**

- (a) The documents constituting the scheme and the offering document of a scheme which has at least one valuation point on each business day, may permit deferral of redemptions at a valuation point to the next valuation point where the requested redemptions exceed 10%, or some other reasonable proportion disclosed in the offering document, of the scheme's value.

(b) The documents constituting the scheme and the offering document of a non-UCITS type scheme operating as a FAIF may permit deferral of redemptions at a valuation point to a following valuation point where the requested redemptions exceed 10%, or some other reasonable proportion disclosed in the offering document, of the scheme's value.

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(c) Any deferral of redemptions under subparagraph (a) must be undertaken in accordance with the procedures explained in the offering document which must ensure -

- (i) the consistent treatment of all participants who have sought to redeem units at any valuation point at which redemptions are deferred; and
- (ii) that all deals relating to an earlier valuation point are completed before those relating to a later valuation point are considered.

**(17) Property schemes**

- (a) The manager of a property scheme must take reasonable steps to ensure that no body corporate holds more than 10% of the net asset value of that fund (the "maximum allowable").
- (b) Where the manager of a property scheme becomes aware that a body corporate holds more than the maximum allowable, he must -
  - (i) notify the body corporate of that event;

- (ii) not pay any income distribution to the body corporate; and
  - (iii) redeem or cancel the body corporate's holding down to the maximum allowable within a reasonable time-frame.
- (c) For the purpose of subparagraph (b)(iii), a reasonable time-frame means the time-frame which the manager reasonably considers to be appropriate having regard to the interests of the participants as a whole.

## Valuation and pricing

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### (1) Application

This paragraph applies to a manager, the governing body, a trustee or fiduciary custodian.

### (2) Valuation

- (a) To determine the price of units the manager must carry out a fair and accurate valuation of all the scheme property in accordance with the documents constituting the scheme and the offering document.
- (b) For a dual-priced scheme, each valuation of the scheme property must consist of two parts, carried out on an issue basis and a cancellation basis respectively.

### (3) Valuation points

- (a) A scheme must not have fewer than two regular valuation points in any month and if there are only two valuation points in any month, the regular valuation points must be at least two weeks apart.
- (b) The offering document of a scheme must contain information about its regular valuation points for the purposes of dealing in units in accordance with Appendix 2 (Table: contents of the offering document).
- (c) Where a scheme operates limited redemption arrangements, subparagraph (a) does not apply and the valuation points must be stated in the offering document but must not be set more than six months apart.
- (d) Where a scheme operates limited redemption arrangements, it must be valued and prices published in the manner set out in

subparagraph (9) (Publication of prices) at least once in every month.

- (e) In subparagraph (d), a valuation point for the purpose of publishing prices only, does not make it a valuation point for the purpose of subparagraph (b) unless it is disclosed as such in the offering document.
- (f) Higher volatility funds must have at least one valuation point every business day [except where the scheme is a non-UCITS type scheme operating as a FAIF.](#)
- (g) Qualifying money market funds must have at least one valuation point every business day at which the valuation is carried out on an amortised cost basis.
- (h) No valuation points are required during the period of any initial offer.
- (i) The manager may determine to have an additional valuation point for a scheme as a result of market movement under subparagraph (8) (Forward and historic pricing) or otherwise, in which case it must inform the trustee or fiduciary custodian.

**(4) Price of a unit**

- (a) A manager must ensure that the price of a unit of any class is calculated -
  - (i) by reference to the net value of the scheme property; and
  - (ii) in accordance with the provisions of both the documents constituting the scheme and the offering document.
- (b) Any unit price calculated in accordance with subparagraph (a) must be expressed in a form that is accurate to at least four significant figures.
- (c) For each class of units in a single-priced scheme, a single price must be calculated at which units are to be issued and cancelled.
- (d) For each class of units in a dual-priced scheme, an issue price and a cancellation price must be calculated by reference to the respective parts of the valuation carried out under subparagraph (2)(b).

**(5) Sale and redemption prices for single-priced schemes**

The manager of a single-priced scheme must not -

- (a) sell a unit for more than the price of a unit of the relevant class at the relevant valuation point, to which may be added any preliminary charge permitted and any payments required under subparagraph (7); or
- (b) redeem a unit for less than the price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted and any deductions under subparagraph (7).

**(6) Sale and redemption price parameters for dual-priced schemes**

(a) The manager of a dual-priced scheme must not -

- (i) sell a unit for more than the maximum sale price of a unit of the relevant class at the relevant valuation point; or
- (ii) redeem a unit for less than the cancellation price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted.

(b) The maximum sale price of units under subparagraph (a)(i) is the total of -

- (i) the issue price; and
- (ii) the current preliminary charge.

(c) The sale price of units under subparagraph (a)(i) must not be less than the relevant redemption price under subparagraph (a)(ii).

(d) The redemption price under subparagraph (a)(ii) must not exceed the relevant issue price of the relevant units.

(e) Subject to subparagraph (5) of paragraph [109](#), (Charges for the exchange of units in an umbrella), in the case of an umbrella -

- (i) the maximum price at which units in one sub-fund that is a dual-priced scheme may be acquired in exchange for units in another sub-fund must not exceed the relevant maximum sale price (less any preliminary charge) of the new units; and

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- (ii) the minimum price at which the old units in a sub-fund that is a dual-priced scheme may be taken in exchange must not be less than the equivalent cancellation price.

**(7) Dilution**

- (a) When arranging to sell, redeem, issue or cancel units, or when units are issued or cancelled under subparagraph (6)(a) of paragraph 104, a manager is permitted to -

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- (i) require the payment of a dilution levy; or
- (ii) make a dilution adjustment; or
- (iii) neither require a dilution levy nor make a dilution adjustment; in accordance with its statements in the offering document required by Appendix 2 (Table: contents of the offering document).

- (b) A manager operating either a dilution levy or a dilution adjustment, must operate that measure in a fair manner to reduce dilution and solely for that purpose.
- (c) A dilution levy becomes due at the same time as payment or transfer of property becomes due for the issue, sale, redemption or cancellation and any such payment in respect of a dilution levy must be paid to the trustee or fiduciary custodian to become part of scheme property as soon as practicable after receipt.
- (d) A dilution adjustment may be made as part of the calculation of the unit price for the purpose of reducing dilution in the scheme or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the issue or cancellation of units.
- (e) Where the manager decides to make or not to make a dilution adjustment, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an affected person.
- (f) As soon as practicable after a valuation point, the manager must provide the trustee or fiduciary custodian with the amount or rate of any dilution adjustment made to the price or any dilution levy applied.

**(8) Forward and historic pricing**

- (a) For the sale and redemption of units, the manager must, in accordance with the offering document of a scheme, operate on the basis of forward price only or historic prices.
- (b) If forward prices only are to be used, all deals must be at a forward price.
- (c) Forward prices for the sale and redemption of units must be used -
  - (i) for a higher volatility fund;
  - (ii) where the regular valuation points are more than one business day apart;
  - (iii) if the request to deal reaches the manager through the post or by any similar form of non-interactive communication;
  - (iv) for an issue or cancellation under subparagraph (6) of paragraph 104;
  - (v) if the applicant for the sale or redemption so requests; or
  - (vi) where the manager has reason to believe at any time that the price that would reflect the current value of the scheme property would vary by more than 2% from the last calculated price, unless the manager has decided to carry out an additional valuation.
- (d) If a manager operates historic prices, the offering document must detail the circumstances under which deals in the scheme, individually or otherwise, will nevertheless be carried out on a forward price basis or when the scheme will elect to move to forward prices or declare an additional valuation point.
- (e) Where the scheme elects to move to forward prices temporarily in accordance with subparagraph (d), such election will only apply until the next valuation point.
- (f) All sub-funds of a scheme which is an umbrella must adopt the same pricing basis, but this does not apply merely because of a requirement to price on a forward price basis temporarily under this subparagraph.

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(9) **Publication of prices**

Where the manager is prepared to deal in units, or is willing to issue or cancel units, under subparagraph ~~(6)(a)~~ of paragraph ~~104~~, it must make the dealing prices public in an appropriate manner.

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(10) **Maintaining the value of a qualifying money market fund**

The manager of a qualifying money market fund must -

- (a) carry out a valuation of the scheme property on a mark to market basis at least once every week and at the same valuation point used to value the scheme property on an amortised cost basis; and
- (b) ensure that the value of the scheme property when valued on a mark to market basis does not differ by more than 0.5% from the value of the scheme property when valued on an amortised cost basis.

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106 **Title and registers**

(1) **Application**

- (a) This paragraph applies to a manager and a trustee or fiduciary custodian of a scheme;
- (b) in addition subparagraph (7) (Plan registers) also applies to any other director of an open-ended investment company.

(2) **Register: general requirements and contents**

- (a) Either the manager, the trustee or fiduciary custodian (as nominated in the documents constituting the scheme) must establish and maintain a register of participants as a document in accordance with this paragraph.
- (b) The manager or trustee in accordance with their duties under subparagraph (a) must exercise all due diligence and take all reasonable steps to ensure the information contained on the register is at all times complete and up to date.
- (c) The register must contain -
  - (i) the name and address of each participant (for joint participants, no more than four need to be registered);

- (ii) the number of units of each class held by each participant;
  - (iii) the date on which the participant was registered for units standing in his name; and
  - (iv) the number of units of each class currently in issue.
- (d) No notice of any trust, express, implied or constructive which may be entered in the register is binding on the manager or trustee, but this does not affect their obligations under subparagraph (7)(a) (Plan registers).
- (e) The register is conclusive evidence of the persons entitled to the units entered in it.
- (f) The person responsible for the register in subparagraph (a) must -
- (i) take reasonable steps to alter the register on receiving written notice of a change of name or address of any participant;
  - (ii) in relation to a change of name in subparagraph (i), where a certificate has been issued, either endorse the existing certificate or issue a new one;
  - (iii) make the register available for inspection free of charge on the Island by or on behalf of any participant (including the manager), during office hours, but it may be closed for periods not exceeding 30 business days in any one year;
  - (iv) supply free of charge to any participant or his authorised representative a copy of the entries on the register relating to that participant on request;
  - (v) where a participant defaults on paying for the issue or sale of units, make an alteration or deletion in the register to compensate for the default after which the manager becomes entitled to those units (until those units are either cancelled or re-sold and paid for); and
  - (vi) carry out any conversion of units allowed for by subparagraph (6), (Conversion of units) after consultation with the manager or trustee or fiduciary custodian, as appropriate.

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**(3) The manager as participant**

- (a) If no person is entered in the register as the participant of a unit, the manager must be treated as the holder of each such unit which is in issue.
- (b) Where units are transferred to the manager, they need not be cancelled and the manager need not be entered on the register as the new participant.

**(4) Transfer of units by act of parties**

- (a) Every participant is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless it is permitted by the trust deed or offering document.
- (b) Every instrument of transfer of units must be signed by, or on behalf of, the participant transferring the units (or, for a body corporate, sealed by that body corporate or signed by one of its officers) authorised to sign it and, unless the transferee is the manager, the transferor must be treated as the participant until the name of the transferee has been entered in the register.
- (c) Every instrument of transfer (stamped as necessary) must be left for registration, with the person responsible for the register, accompanied by -
  - (i) any necessary documents that may be required by legislation; and
  - (ii) any other evidence reasonably required by the person responsible for the register.
- (d) The details of instruments of transfer must be kept for a period of six years from the date of its registration.
- (e) On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the register.

(5) **Certificates**

- (a) Following the sale of units or as a result of subparagraph (4) (Transfer of units by act of parties) a document recording title to those units may be issued in such a form as the trust deed permits.
- (b) The person responsible for the register must issue any document in subparagraph (a) or provide relevant information in a timely manner where the procedures for redeeming units require the participant to surrender that document.

(6) **Conversion of units**

Where there is more than one class of units offered for issue or sale, the participant has a right to convert from one to the other, provided that doing so would not contravene any provision in the offering document.

(7) **Plan registers**

- (a) The manager and the governing body or the person responsible for the register of a unit trust scheme may arrange for a plan register to be established and maintained.
- (b) Where payments are made out of scheme property to establish and maintain a plan register, plan investors must be treated as participants for the purposes of paragraphs 11 to 13 and subparagraph (2) (Register: general requirements and contents).

**107 Appointment and replacement of the manager and the trustee or fiduciary custodian**

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(1) **Application**

This paragraph applies in accordance with subparagraph (2) (Table of application).

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(2) **Table of application**

This table belongs to subparagraph (1).

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<b>Subparagraph of paragraph 107</b>	<b>Manager of an Authorised Scheme</b>	<b>Trustee or fiduciary custodian of an Authorised Scheme</b>
(1)	Yes	Yes

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<del>(3)</del>	Yes	Yes	Deleted: (3)
<del>(4)</del>	Yes	Yes	Deleted: (4)
(5)	Yes		
<del>(6)</del>		Yes	Deleted: (6)
<del>(7)</del>		Yes	Deleted: (7)
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<del>(9)</del>		Yes	Deleted: (9)
<del>(10)</del>	Yes	Yes	Deleted: (10)

**(3) Appointment of a manager of an open-ended investment company**

- (a) The manager (or other director) of an open-ended investment company must take all practicable steps to ensure the open-ended investment company has at all times as its manager a person who is qualified to act as manager of an open-ended investment company.
- (b) If the open-ended investment company ceases to have any director, the fiduciary custodian must exercise its powers, under the Act, to appoint a person to be a manager of the open-ended investment company.
- (c) A manager must not voluntarily terminate its appointment as manager of an open-ended investment company unless the termination is effective at the same time as the commencement of the appointment of a successor manager.

**(4) Changes to authorised schemes**

Any proposal to –

- (a) alter the scheme;
- (b) replace the manager;
- (c) replace its trustee or fiduciary custodian; or
- (d) replace the governing body or any person comprising its governing body

must be notified to the Commission in accordance with paragraph 3 of Schedule 1 to the Act. Effect is not to be given to any proposal otherwise than in accordance with paragraph 4 of Schedule 1 to the Act.

**(5) The governing body**

(a) The governing body must exercise reasonable care to ensure that the manager of an open-ended investment company undertakes the responsibilities allocated under subparagraph (3) of paragraph 108, (Functions of the manager) in a competent manner and the manager must give those directors the information and explanations they consider necessary for this purpose.

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(b) A director of an open-ended investment company must not appoint an alternate director.

(c) When there is no person acting as manager of an open-ended investment company, the governing body has the functions of a manager under subparagraph (3) of paragraph 108, but this does not affect the powers of the directors under subparagraph (13) of paragraph 108 (Committees and delegation).

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(d) When subparagraph (c) applies, the governing body must retain the services of one or more authorised persons to assist them in performing the functions referred to in subparagraphs (3)(a) and (b) of paragraph 108.

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**(6) Open-ended investment company without a governing body**

If the open-ended investment company ceases to have a governing body, the trustee or fiduciary custodian may -

(a) retain the services of an authorised person to carry out the functions referred to in subparagraphs (3)(c)(i) and subparagraphs (3)(c)(ii) of paragraph 108; or

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(b) manage the scheme property itself on behalf of the open-ended investment company until a director is appointed or the winding up of the open-ended investment company is commenced provided it is not prohibited from doing so by any law or rule.

**(7) Replacement of a manager of a unit trust scheme**

(a) The manager of a unit trust scheme is subject to removal by written notice by the trustee upon any of the following events, subject to

the Commission being notified in accordance with paragraph 3 of Schedule 1 to the Act. Effect is not to be given to any proposal otherwise than in accordance with paragraph 4 of Schedule 1 to the Act -

- (i) the calling of a meeting to consider a resolution for winding up the manager;
  - (ii) an application being made to dissolve the manager or to strike it off any register of companies;
  - (iii) the presentation of a petition for the winding up of the manager;
  - (iv) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the manager's creditors;
  - (v) the appointment of a receiver to the manager (whether an administrative receiver or a receiver appointed over particular property);
  - (vi) anything equivalent to subparagraphs ~~(i)~~ to ~~(v)~~ above occurring in respect of the manager in a jurisdiction outside the Isle of Man;
  - (vii) the trustee forming the reasonable opinion, and stating in writing, that a change of manager is desirable in the interest of participants;
  - (viii) a resolution of participants being passed to remove the manager; or
  - (ix) the participants of three quarters in value of all of the units then in issue (excluding units held or treated as held by the manager or by any associate of the manager) making a request in writing to the trustee that the manager should be removed.
- (b) On receipt of a notice by the trustee under subparagraph (a) and subject to the Commission giving its approval or not objecting within one month of the date on which the notice was given, the manager of the unit trust scheme ceases to be the manager; and the trustee must by deed appoint another person eligible under the Act to be the manager of the unit trust scheme upon and subject to that other entering into such deed or deeds as the trustee may require.

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- (c) If the name of the unit trust scheme contains a reference to the name of the former manager, the former manager is entitled to require the new manager and the trustee immediately on receipt of a notice under subparagraph (a) to propose a change in the name of the unit trust scheme.

**(8) Retirement of a manager of a unit trust scheme**

- (a) The manager of a unit trust scheme has the right to retire in favour of another person eligible under the Act and approved in writing by the trustee subject to the Commission giving its approval or not objecting within one month of the date on which the notice was given upon -
  - (i) the retiring manager appointing that person by deed as manager in its place and assigning to that person all its rights and duties as such a manager; and
  - (ii) the new manager entering into such deeds as the trustee reasonably considers necessary or desirable to be entered into by that person in order to secure the due performance of its duties as the manager of the unit trust scheme.
- (b) Upon retirement, the retiring manager -
  - (i) subject to subparagraph (c), is released from all further obligations under this Schedule and under the trust deed; and
  - (ii) may retain any consideration paid to it in connection with the change without having to account for it to any participant.
- (c) Subparagraph (b)(ii) does not affect the rights of the trustee or any other person in respect of any act or omission on the part of the retiring manager before his retirement.

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**(9) Consequences of removal or retirement of a manager of a unit trust scheme**

- (a) Upon the removal or retirement of the manager, the removed or retiring manager -
  - (i) is entitled to be recorded in the register for those units continued to be held or treated as held by it; and
  - (ii) may require the trustee to issue to it a certificate for those units (if not previously issued).

- (b) Subparagraph (a) is subject to any restriction in the offering document relating to the permitted categories of participants.

**(10) Retirement of the trustee or fiduciary custodian**

- (a) The trustee or fiduciary custodian of a scheme may not retire voluntarily except upon the appointment of a new trustee or fiduciary custodian and subject to the Commission giving its approval or not objecting within one month of the date on which the notice was given.
- (b) The trustee or fiduciary custodian of a scheme must not retire voluntarily unless, before its retirement, it has ensured that the new trustee or fiduciary custodian has been informed of any circumstance of which the retiring trustee or fiduciary custodian has informed the Commission.
- (c) When the trustee or fiduciary custodian of a scheme wishes to retire or ceases to be an authorised person, the manager may, subject to the Act, appoint another person eligible to be the trustee or fiduciary custodian in its place, subject to the Commission giving its approval or not objecting within one month of the date on which notice of the appointment of the person was given.

**108 Powers and duties of the scheme, the manager and the trustee or fiduciary custodian**

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**(1) Application**

This paragraph applies in accordance with subparagraph (2), (Table of application).

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**(2) Table of application**

Subparagraph of paragraph <u>108</u>	Manager of an Authorised Scheme	Trustee or fiduciary custodian of an Authorised Scheme
<u>(1)</u>	Yes	Yes
<u>(3)</u>	Yes	Yes
<u>(4)</u>		Yes
<u>(5)</u>	Yes	Yes

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Subparagraph of paragraph <u>108</u>	Manager of an Authorised Scheme	Trustee or fiduciary custodian of an Authorised Scheme
<u>(6)</u>	Yes	
<u>(7)</u>	Yes	
<u>(8)</u>	Yes	Yes
<u>(9)</u>	Yes	Yes
<u>(10)</u>	Yes	Yes
<u>(11)</u>		Yes
<u>(12)</u>	Yes	Yes
<u>(13)</u>	Yes	Yes
<u>(14)</u>	Yes	Yes

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**(3) Functions of the manager**

- (a) The manager must manage the scheme in accordance with -
  - (i) the documents constituting the scheme;
  - (ii) the provisions in this Schedule; and
  - (iii) the most recently published offering document.
- (b) The manager must take such steps as necessary to ensure compliance with the provisions in this Schedule that impose obligations upon the open-ended investment company.
- (c) The manager must -
  - (i) make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
  - (ii) instruct the trustee or fiduciary custodian in writing how rights attaching to the ownership of the scheme property are to be exercised, but not where subparagraph (11) of paragraph

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~~108~~ (Exercise of rights in respect of the scheme property) applies; and

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- (iii) take action immediately to rectify any breach of paragraph ~~105~~, and, where the breach relates to the incorrect pricing of units or to the late payment in respect of the issue of units, the rectification must, (unless the trustee or fiduciary custodian otherwise directs under subparagraph ~~(iv)~~), extend to the reimbursement or payment, or arranging the reimbursement or payment, of money -

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- (A) by the manager to participants and former participants;
- (B) by the manager of an open-ended investment company, to the open-ended investment company;
- (C) by the open-ended investment company to the manager;
- (D) by the manager to the trustee or fiduciary custodian; or
- (E) by the trustee (for the account of the unit trust scheme) to the manager.

- (iv) Rectification under subparagraph ~~(iii)~~, need not, unless the trustee or fiduciary custodian so directs, extend to any such reimbursement or payment where it appears to the trustee or fiduciary custodian such breach, is of minimal significance.

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#### (4) General duties of the trustee or fiduciary custodian

- (a) The trustee or fiduciary custodian of a scheme must take reasonable care to ensure that the scheme is managed by the manager in accordance with -

- (i) Part 5 (Investment and borrowing powers);
- (ii) Paragraph ~~104~~ (Dealing);
- (iii) Paragraph ~~105~~ (Valuation and pricing);
- (iv) Paragraph ~~110~~ (Income: accounting, allocation and distribution); and
- (v) any provision of the documents constituting the scheme or offering document that relates to the provisions referred to in subparagraphs ~~(i)~~ to ~~(iv)~~.

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- (b) The trustee or fiduciary custodian must, in so far as not required under subparagraph (a)(iii), take reasonable care to ensure on a continuing basis that -
- (i) the manager is adopting appropriate procedures to ensure that the price of a unit is calculated for each valuation point in accordance with paragraph [105](#); and
    - Deleted: 105
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  - (ii) the manager has maintained sufficient records to show compliance with paragraph [105](#).
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- (c) The trustee or fiduciary custodian, when acting in its capacity as trustee or fiduciary custodian, must act solely in the interests of the participants.
- (d) The trustee or fiduciary custodian -
- (i) must also take reasonable care to ensure that;
    - (A) the manager considers whether or not to exercise the power provided by subparagraph [\(Z\)](#) of paragraph [105](#) (Dilution) and, if applicable, dilution levy or dilution adjustment that is imposed;
      - Deleted: (7)
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    - (B) the manager has in relation to subparagraph [\(A\)](#), taken account of all factors that are material and relevant to the manager's decision; and
    - (C) when the manager considers whether or not to exercise the power under subparagraph [\(Z\)](#) of paragraph [105](#), the manager has acted in accordance with the restrictions imposed by that subparagraph; and
      - Deleted: (7)
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  - (ii) has no duty in respect of the manager's exercise of the discretion referred to in subparagraph [\(i\)](#).
    - Deleted: (i)
- (5) **Duties of the manager and the trustee or fiduciary custodian under the general law**
- (a) The duties and powers of the manager, the directors of an open-ended investment company and the trustee or fiduciary custodian under the provisions in this Schedule and under the documents constituting the scheme are in addition to the powers and duties under the general law.

- (b) Subparagraph (a) applies only in so far as the relevant general law is not qualified by the provisions in this Schedule or the documents constituting the scheme.

**(6) Maintenance of records**

- (a) The manager must make and retain for six years such records as enable -
  - (i) the scheme and the manager to comply with the provisions in this Schedule; and
  - (ii) it to demonstrate at any time that such compliance has been achieved.
- (b) The manager must make and retain for six years a daily record of the units in the scheme held, acquired or disposed of by the manager, including the classes of such units, and of the balance of any acquisitions and disposals.
- (c) Where relevant, a manager must make and retain for a period of six years a daily record of -
  - (i) how it calculates and estimates dilution; and
  - (ii) its policy and method for determining the amount of any dilution levy or dilution adjustment.
- (d) The manager must on the request of the trustee or fiduciary custodian immediately supply it with such information concerning the management and administration of the scheme as the trustee or fiduciary custodian may reasonably require.

**(7) Maintenance of capital: notification**

The manager of an open-ended investment company must immediately notify the Commission in writing if the open-ended investment company's capital falls below the minimum or exceeds the maximum stated in the instrument of incorporation.

**(8) Auditor: unit trust schemes**

- (a) The manager of a unit trust scheme must, upon any vacancy for the position of auditor for a unit trust scheme, with the approval of the trustee, appoint an appropriate auditor as auditor for the unit trust scheme.

- (b) The audit fees of the appropriate auditor are determined by the manager with the approval of the trustee.
- (c) The manager of a unit trust scheme may, with the approval of the trustee, at any time, remove the appropriate auditor of a unit trust scheme; this power exists notwithstanding anything in any agreement between the persons concerned.

**(9) Dealings in scheme property**

- (a) The manager may give instructions to deal in the property of the scheme.
- (b) The manager must obtain the consent of the trustee or fiduciary custodian for the acquisition or disposal of immovable property.
- (c) Where the trustee or fiduciary custodian is of the opinion that a deal in property is not within the provisions in this Schedule and the documents constituting the scheme, the trustee or fiduciary custodian may require the manager to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.
- (d) Where the trustee or fiduciary custodian is of the opinion that -
  - (i) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a person other than the trustee or fiduciary custodian; and
  - (ii) the trustee or fiduciary custodian cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other person;

the manager must, if the trustee or fiduciary custodian so requests, either cancel the transaction or make a corresponding disposal.

**(10) Control by the trustee or fiduciary custodian over the scheme property**

- (a) The trustee or fiduciary custodian of a scheme is responsible for the safekeeping of all of the scheme property (other than tangible movable property) entrusted to it and must -
  - (i) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the scheme;

- (ii) ensure that scheme property in registered form is, as soon as practicable, registered in the name of the trustee or fiduciary custodian, its nominee or a person retained by it under subparagraph ~~(13)(a)~~ (Committees and delegation);
  - (iii) take into its custody or under its control documents of title to the scheme property other than for transactions in derivatives or forward transactions; and
  - (iv) ensure that any transaction in derivatives or a forward transaction is entered into so as to ensure that any resulting benefit is received by the trustee or fiduciary custodian.
- (b) The trustee or fiduciary custodian is responsible for the collection of income due to be paid for the account of the scheme.
- (c) The trustee or fiduciary custodian must keep for six years such records as are necessary -
- (i) to enable it to comply with the provisions in this Schedule; and
  - (ii) to demonstrate that it has achieved such compliance.

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**(11) Exercise of rights in respect of the scheme property**

- (a) The trustee or fiduciary custodian must take all necessary steps to ensure that instructions given to it by the manager for the exercise of rights attaching to the ownership of scheme property are carried out.
- (b) Where the scheme property of a scheme contains units in any other scheme managed or otherwise operated by the manager of the unit trust scheme or, as the case may be, by the governing body or by any associate of either, the trustee or fiduciary custodian must exercise any voting rights associated with those units in accordance with what he reasonably believes to be the interests of the participants in the scheme.

**(12) Duties of the trustee or fiduciary custodian and the manager: investment and borrowing powers**

- (a) The manager must avoid the scheme property being used or invested contrary to Part 5, or any provision in the documents constituting the scheme or the offering document as referred to in

paragraph 26 and paragraph 77, except to the extent permitted by subparagraph (c)(ii).

- (b) The manager must, immediately upon becoming aware of any breach of a provision listed in subparagraph (a), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within subparagraph (c).
- (c) The manager must restore compliance with Part 5 as soon as reasonably practicable having regard to the interests of the participants and, in any event, within the period specified in subparagraph (e) or, when applicable, subparagraph (f) where -
  - (i) the scheme property is -
    - (A) used or invested contrary to Part 5 (other than a provision excusing a failure to comply on a temporary basis); and
    - (B) the contravention is beyond the control of both the manager and the trustee or fiduciary custodian; or
  - (ii) there is a transaction (“subsequent transaction”) deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an investment (‘original investment’) of the scheme if -
    - (A) the subsequent transaction, but for this provision would constitute a breach of Part 5; and
    - (B) at the time of the acquisition of the original investment, it was reasonable for the manager, to expect that a breach would not be caused by the subsequent transaction; and

in this provision the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the trustee or fiduciary custodian or the manager.
- (d) Immediately upon the trustee or fiduciary custodian becoming aware of any breach of any provision listed in subparagraph (a), it must ensure that the manager complies with subparagraph (b).
- (e) The maximum period for restoration of compliance under subparagraph (c) starts at the date of discovery of the relevant

circumstance and lasts, subject to any extension under subparagraph (f) -

- (i) for six months; or
  - (ii) where the transaction in question was a transaction in derivatives or a forward transaction under paragraphs 46 and paragraph 86 (Permitted transactions (derivatives and forwards)), until the close of business five business days later; or
  - (iii) where the transaction relates to an immovable, for two years.
- (f) The period specified at subparagraph (e)(ii) is extended where:
- (i) the transaction involved a delivery of a commodity, from five to twenty business days;
  - (ii) the reason for the contravention in subparagraph (c)(i) is the inability of the manager to close out a transaction because of a limit in the number or value of transactions imposed by an eligible derivatives market, until five business days after -
    - (A) the inability resulting from any such limit is removed; or
    - (B) it becomes, to the knowledge of the manager, reasonably practicable and reasonably prudent for the transaction to be closed out in some other way.

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### (13) Committees and delegation

- (a) The governing body may delegate to any one or more of their number any of the directors' powers or duties but remain responsible for the acts or omissions of any such directors.
- (b) The manager of a scheme and the governing body have the power to retain the services of anyone to assist in the performance of their respective functions, provided that -
  - (i) a mandate in relation to managing investments of the scheme property is not given to -
    - (A) the trustee or fiduciary custodian; or
    - (B) any other person whose interests may conflict with those of the manager or the participants; or

- (C) an authorised person operating from an establishment on the Island unless such person is authorised under the Act to so act; or
- (D) any other person operating from an establishment other than the Island unless such person -
  - (I) is authorised or registered in such country for the purpose of asset management; and
  - (II) is subject to prudential supervision in such country;
    - and in addition if that person is not an EEA firm, co-operation is ensured between the Commission and the overseas regulator of that person;
- (ii) the manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;
- (iii) the mandate permits the manager to -
  - (A) give further relevant instructions to the person so retained; and
  - (B) withdraw the mandate with immediate effect when this is in the interests of the participants; and
- (iv) the mandate does not prevent effective supervision of the manager and it must not prevent the manager from acting, or the scheme from being managed in the best interests of the participants.
- (c) Subject to subparagraph (a), where services are retained under (b), the responsibility which the manager had in respect of such services prior to that retention of services will remain unaffected.
- (d) The trustee or fiduciary custodian of a scheme may delegate any function to any person save -
  - (i) the open-ended investment company or the governing body or the manager of a scheme, to assist the trustee or fiduciary custodian to perform -
    - (A) any function of oversight in respect of the scheme, its directors or the manager as the case may be; or

- (B) any function of custody or control of the scheme property;
  - (ii) an associate of the open-ended investment company or of the governing body or of the manager of the scheme (as the case may be) to assist the trustee or fiduciary custodian to perform any function in subparagraph (i)(A); or
  - (iii) a nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property of the scheme unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the trustee or fiduciary custodian.
- (e) Where a trustee or fiduciary custodian retains services under subparagraph (d) -
- (i) if it retains the services of a director of the open-ended investment company, or an associate or such a director or its own associate, then its liability for those services shall remain unaffected; and
  - (ii) in any other case, it will not be held responsible by virtue of the provisions in this Schedule for any act or omission of the person so retained if it can show that -
    - (A) it was reasonable for it to obtain assistance to perform the function in question;
    - (B) the person retained was and remained competent to provide assistance in the performance of the function in question; and
    - (C) it had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.

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**(14) Conflicts of interest**

- (a) The manager, the governing body and the trustee or fiduciary custodian must take reasonable care to ensure that a transaction within subparagraphs (i) to (vi) is not carried out on behalf of the scheme -

- (i) putting cash on deposit with an affected person unless that person is an eligible institution or an approved bank and the arm's length requirement in subparagraph (b) is satisfied; Deleted: (b)
  - (ii) lending money by an affected person to, or for the account of, the scheme, unless the affected person is an eligible institution or an approved bank, and the arm's length requirement in subparagraph (b) is satisfied; Deleted: (b)
  - (iii) the dealing in property by an affected person, to, or with, the scheme (or the trustee or fiduciary custodian for the account of the scheme), unless subparagraph (c) applies; Deleted: (c)
  - (iv) the vesting of property (other than cash) by an affected person in the scheme or the trustee or fiduciary custodian for the account of the scheme against the issue of units in the scheme, unless -
    - (A) subparagraph (c) applies; or Deleted: (c)
    - (B) the purpose of the vesting is that the whole or part of the property of a body corporate or a collective investment scheme becomes the first property of the scheme and the participants of shares or units in the body corporate or collective investment scheme become the first participants in the scheme;
  - (v) the acquisition of scheme property by an affected person from the scheme (or the trustee or fiduciary custodian acting for the account of the scheme), unless subparagraph (12) of paragraph 104 (In specie issue and cancellation) applies, or unless subparagraph (c) applies; and Deleted: (12)  
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  - (vi) transactions within paragraphs 62 to 66 (Stock lending) by an affected person with, or in relation to, the scheme unless the arm's length requirement in subparagraph (b) is satisfied. Deleted: (b)
- (b) Any transaction in subparagraphs (a)(i), (a)(ii) or (a)(vi) must be at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm's length between the affected person and an independent party.
- (c) There is no breach of subparagraphs (a)(iii), (a)(iv) or (a)(v) if the transaction meets the requirements of subparagraphs (d) (best

execution on-exchange), (e) (independent valuation) or (f) (arm's length transaction).

(d) There is best execution on-exchange for the purposes of subparagraph (c) if -

- (i) the property is an approved security or an approved derivative;
- (ii) the transaction is effected under the rules of the relevant exchange with or through a person who is bound by those rules;
- (iii) there is evidence in writing of the effecting of the transaction and of its terms; and
- (iv) the manager has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the scheme.

(e) There is independent valuation for the purposes of subparagraph (c) if -

- (i) the value of the property is certified in writing for the purpose of the transaction by a person approved by the trustee or fiduciary custodian as -
  - (A) independent of any affected person; and
  - (B) qualified to value property of the relevant kind; and
- (ii) the trustee or fiduciary custodian is of the opinion that the terms of the transaction are not likely to result in any material prejudice to participants.

(f) There is an arm's length transaction for the purposes of subparagraph (c) if -

- (i) subparagraph (d)(i) is not satisfied;
- (ii) it is not reasonably practicable to obtain an independent valuation under subparagraph(e); and
- (iii) the trustee or fiduciary custodian has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in subparagraph (b).

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## 109 Payments

### (1) Application

This paragraph applies in accordance with subparagraph (Table of application).

### (2) Table of application

Table of Application. This table belongs to subparagraph (1).

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Subparagraph of paragraph 109	Manager of an Authorised Scheme	Trustee or fiduciary custodian of an Authorised Scheme
(1) to (3)	Yes	Yes
(4)	Yes	
(5)	Yes	
(6)	Yes	Yes
(7)	Yes	
(8)	Yes	
(9)	Yes	Yes
(10)	Yes	

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### (3) Payments out of scheme property

- (a) The only payments which may be recovered from the scheme property of a scheme are those in respect of -
  - (i) remunerating the parties operating the scheme;
  - (ii) the administration of the scheme; or
  - (iii) the investment or safekeeping of the scheme property.
- (b) No payment under this provision can be made from scheme property if it is unfair to (or materially prejudices the interests of) any class of participants or potential participants.
- (c) Subparagraphs (a) and (b) do not apply to any payments in relation to any taxation payable by the scheme.

- (d) Subparagraphs (a) and (b) do not permit payments to third parties for the safekeeping or administration of units on behalf of participants rather than on behalf of the scheme.

**(4) Charges on buying and selling units**

- (a) No person other than the manager may impose charges on participants or potential participants when they buy or sell units.
- (b) A manager must not make any charge or levy in connection with -
  - (i) the issue or sale of units except where a preliminary charge is made in accordance with the offering document of the scheme which must be either a fixed amount or calculated as a percentage of the price of a unit; or
  - (ii) the redemption or cancellation of units, except a redemption charge made in accordance with the offering document current at the time the relevant units were purchased by the participant.
- (c) This provision is subject to subparagraph (7) of paragraph [105](#), (Dilution).

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**(5) Charges for the exchange of units in an umbrella**

For a scheme which is an umbrella, a manager must not make a charge on an exchange of units in one sub-fund for units in another sub-fund unless the amount of the charge is not more than the amount stated in the current offering document.

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**(6) Allocation of payments to income or capital**

- (a) The manager must determine whether a payment is to be made from the income property or capital property of a scheme, and in doing so the manager must -
  - (i) pay due regard to whether the nature of the cost is income related or capital related and the objective of the scheme; and
  - (ii) agree the treatment of any payment with the trustee or fiduciary custodian.
- (b) Where, for any annual accounting period, the amount of the income property is less than the income distributed, the shortfall must, as from the end of that period, be charged to the capital

account and must not subsequently be transferred to the income account.

**(7) Prohibition on promotional payments**

- (a) No payment may be made from scheme property to any person, other than a payment to the manager permitted by this Schedule, for the acquisition or promotion of the sale of units in a scheme.
- (b) Subparagraph (a) does not apply to the costs a scheme incurs preparing and printing any simplified offering document (if required), provided the offering document states that these costs are properly payable to the manager from scheme property.

**(8) Movable or immovable property**

An open-ended investment company or its governing body must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

**(9) Payment of liabilities on transfer of assets**

- (a) Where the property of a scheme is transferred to a second scheme (or to the trustee or fiduciary custodian for the account of the scheme) in consideration of the issue of units in the second scheme to participants in the first scheme, subparagraph (b) applies.
- (b) The open-ended investment company, its governing body, its fiduciary custodian or the trustee of the unit trust scheme as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if -
  - (i) there is nothing in the documents constituting the scheme of the scheme expressly forbidding the payment; and
  - (ii) the manager is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

## (10) Allocation of scheme property

For a scheme which is an umbrella, any assets to be received into, or any payments out of, the scheme property which are not attributable to one sub-fund only, must be allocated by the manager between the sub-funds in a manner which is fair to the participants of the umbrella generally.

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### 110 Income accounting, allocation and distribution

#### (1) Application

- (a) This paragraph applies to a manager.
- (b) Subparagraph (Unclaimed, de minimis and joint participant distributions) also applies to the trustee or fiduciary custodian of a scheme.
- (c) Except in the case of subparagraphs (2) (Accounting periods) and (3) (Income allocation and distribution), this paragraph applies as if each sub-fund were a separate scheme.

#### (2) Accounting periods

- (a) A scheme must have -
  - (i) an annual accounting period;
  - (ii) a half-yearly accounting period; and
  - (iii) an accounting reference date.
- (b) A half-yearly accounting period begins with the first day of an annual accounting period and ends on -
  - (i) the day which is six months before the last day of that annual accounting period; or
  - (ii) some other reasonable date as set out in the offering document of the scheme.
  - (iii) The first annual accounting period of a scheme must begin -
    - (A) on the first day of any period of initial offer; or
    - (B) in any other case, on the date of the relevant authorisation order;

and in either case must end on the next accounting reference date, except where subparagraph (d), applies.

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- (c) When the accounting reference date of a scheme falls less than six months after the beginning of the first annual accounting period, that period may be extended until the subsequent accounting reference date.
  - (d) Each annual accounting period of a scheme subsequent to the first period is to run for a period of 12 months, beginning on the next day after the accounting reference date, except where subparagraph (e) applies.
  - (e) Following a revision to the offering document of the scheme that includes a change to the accounting reference date, the annual accounting period may be shortened, or extended by up to six months, so as to end on the new accounting reference date.
  - (f) The manager must consult the trustee or fiduciary custodian and the scheme's appropriate auditor before shortening or extending an accounting period in accordance with subparagraphs (d) or (e).
- (3) **Income allocation and distribution**
- (a) A scheme must have an annual income allocation date, which must be within four months of the accounting reference date.
  - (b) A scheme may have interim income allocation dates and one or more interim accounting periods for each of those dates and, if it does, the interim income allocation date must be within four months of the end of the relevant interim accounting period(s).
  - (c) A scheme must have a distribution account to which the income property is transferred at the end of the relevant accounting period.
  - (d) If income is allocated and distributed during an accounting period -
    - (i) with effect from the end of the relevant accounting period, the amount of income allocated to unit classes that accumulate income becomes part of the capital property and requires an adjustment to the proportion of the value of the scheme property to which they relate if other classes of units are in issue during the period;

(ii) the adjustment in subparagraph (i), must ensure the price of units remains unchanged despite the transfer of income; and

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(iii) the amount of any interim distribution may not be more than the amount which, in the opinion of the manager, would be available for allocation if the interim accounting period and all previous interim accounting periods in the same annual accounting period, taken together, were an annual accounting period.

**(4) Unclaimed, de minimis and joint participant distributions**

(a) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the offering document, must become part of the capital property.

(b) The manager and the trustee or fiduciary custodian may agree a de minimis amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.

(c) Distributions made to the first named joint participant on the register will be as effective a discharge to the trustee or fiduciary custodian and manager, as if the first named joint participant had been a sole participant.

**Part 7**

**SUSPENSION OF DEALINGS AND TERMINATION OF SCHEMES**

**111 Introduction**

**(1) Application**

This Part applies to a manager, the governing body and a trustee or fiduciary custodian.

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**112 Suspension and restart of dealings**

(1) The manager may, with the prior agreement of the trustee or fiduciary custodian, and must without delay, if the trustee or fiduciary custodian so requires, temporarily suspend the issue, cancellation, sale and redemption of units in a scheme (referred to in this Part as “dealings in units”), where due to exceptional circumstances it is in the interest of all the participants in the scheme.

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- (2) The manager and the trustee or fiduciary custodian must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the participants.
- (3) On suspension, the manager, or the trustee or fiduciary custodian if it has required the manager to suspend dealings in units, must -
  - (a) immediately inform the Commission, stating the reason for its action; and
  - (b) as soon as practicable give written confirmation of the suspension and the reasons for it to -
    - (i) the Commission; and
    - (ii) the Home State regulator in each EEA State in which the manager holds itself out as willing to sell or redeem units of the scheme concerned.
- (4) The manager must ensure that a notification of the suspension is made to participants of the scheme as soon as practicable after suspension commences.
- (5) In making the notification set out in subparagraph (4), the manager must ensure that it -
  - (a) draws participants' particular attention to the exceptional circumstance which resulted in the suspension;
  - (b) is clear, fair and not misleading; and
  - (c) informs participants how to obtain the information detailed in subparagraph [Q](#).
- (6) The manager must ensure that it publishes (on its website or by other general means) sufficient details to keep participants appropriately informed about the suspension including, if known, its likely duration.
- (7) During a suspension -
  - (a) none of the obligations in paragraph [104](#) (Dealing) apply; and
  - (b) the manager must comply with as much of paragraph [105](#) (Valuation and pricing) as is practicable in the light of the suspension.

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- (8) The suspension of dealings in units must cease as soon as practicable after the exceptional circumstances referred to in subparagraph (1) have ceased.
- (9) The manager and the trustee or fiduciary custodian must formally review the suspension at least every 28 days and inform the Commission of the results of this review and any change to the information provided in subparagraph 0. Deleted: (2)
- (10) The manager must inform the Commission of the proposed restart of dealings in units and immediately after the restart must confirm this by giving notice to the Commission and the authorities mentioned in subparagraph 0. Deleted: (3)(b)(i)
- (11) The manager may agree, during the suspension, to deal in units in which case all deals accepted during, and outstanding prior to, the suspension will be undertaken at a price calculated at the first valuation point after restart of dealing in units, subject to subparagraph 0. Deleted: (13)
- (12) This subparagraph applies to a sub-fund as it applies to a scheme, and -
- (a) references to the units of the class or classes relate to that sub-fund and to the scheme property attributable to the sub-fund; and
  - (b) this subparagraph can only apply to one or more classes of units without being applied to other classes, if it is in the interest of all the participants.
- (13) If a scheme operates limited redemption arrangements, and the event in (1) has affected a valuation point, the manager must declare an additional valuation point as soon as possible after the restart of dealings in units.

**113 Winding up a solvent open-ended investment company and terminating a sub-fund of an open-ended investment company**

**(1) Special meanings for termination of a sub-fund of an open-ended investment company**

In this Part, where a sub-fund of an open-ended investment company is being terminated, references to -

- (a) units, are references to units of the class or classes related to the sub-fund to be terminated;

- (b) a resolution, or extraordinary resolution, are references to such a resolution passed at a meeting of participants of units of the class or classes referred to in subparagraph (a);
  - (c) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
  - (d) liabilities, are references to liabilities of the open-ended investment company allocated or attributable to the sub-fund to be terminated.
- (2) **When an open-ended investment company is to be wound up or a sub-fund terminated**
- (a) An open-ended investment company must not be wound up except under this paragraph or under the Act.
  - (b) An open-ended investment company must not be wound up under this paragraph if there is a vacancy in the position of manager.
  - (c) An open-ended investment company must not be wound up or a sub-fund terminated under this paragraph -
    - (i) unless and until effect may be given, under the Act, to proposals to wind up the affairs of the open-ended investment company or to proposals to make the alterations to the documents constituting the scheme and offering document that will be required if a sub-fund is terminated; and
    - (ii) unless a statement has been prepared and sent or delivered to the Commission under subparagraph (3), of paragraph 113 (Solvency statement) and received by the Commission prior to satisfaction of the condition in subparagraph (i).
  - (d) Subject to subparagraph (c) and the subsequent provisions of this paragraph, the appropriate steps to wind up an open-ended investment company or terminate a sub-fund under this paragraph must be taken -
    - (i) if an extraordinary resolution to that effect is passed; or
    - (ii) when the period (if any) fixed for the duration of the open-ended investment company or the sub-fund by the documents constituting the scheme expires or any event occurs, for which the documents constituting the scheme provides that the

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open-ended investment company or the sub-fund is to be wound up; or

- (iii) on the date stated in any agreement by the Commission in response to a request from the directors for the winding up of the open-ended investment company or a request for the termination of the sub-fund.

**(3) Solvency statement**

- (a) Before notice is given to the Commission of the proposals referred to in subparagraph (2)(c), the directors must make a full enquiry into the open-ended investment company's affairs to determine whether the open-ended investment company will be able to meet all its liabilities.
- (b) The manager must then, based on the results of this enquiry, prepare a statement either -
  - (i) confirming that the open-ended investment company will be able to meet all its liabilities within twelve months of the date of the statement; or
  - (ii) stating that such confirmation cannot be given.
- (c) This solvency statement must -
  - (i) relate to the open-ended investment company's affairs at a date no more than 28 days before the date on which notice is given to the Commission;
  - (ii) be approved by the governing body and signed on its behalf by the manager; and
  - (iii) if it contains the confirmation under subparagraph (b)(i), be signed by the governing body or the manager.
- (d) A statement which contains the confirmation under subparagraph (b)(i) must annex a statement signed by the appropriate auditor to the open-ended investment company to the effect that, in his opinion, the enquiry required by subparagraph (a) has been properly made and is fairly reflected by the confirmation.
- (e) The solvency statement must be sent or delivered to the Commission and the trustee or fiduciary custodian no later than 21 days after notice is given to the Commission.

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**(4) Consequences of commencement of winding up or termination**

- (a) Winding up or termination must commence once the conditions referred to in subparagraph (2)(c) are both satisfied or, if later, once the events in subparagraph (2)(d) have occurred.
- (b) Once winding up or termination has commenced -
  - (i) Paragraph ~~104~~ (Dealing), Paragraph ~~105~~ (Valuation and pricing) and Part 5 (Investment and borrowing powers) cease to apply to the open-ended investment company or to the units and scheme property in the case of a sub-fund;
  - (ii) the open-ended investment company must cease to issue and cancel units;
  - (iii) the manager must cease to sell or redeem units or to arrange for the issue or cancellation of units;
  - (iv) no transfer of a unit may be registered and no other change to the register of participants may be made without the sanction of the governing body;
  - (v) where winding up an open-ended investment company, the open-ended investment company must cease to carry on its business, except for its beneficial winding up; and
  - (vi) the corporate status and corporate powers of the open-ended investment company and (subject to the preceding provisions of this subparagraph) the powers of the governing body continue until the open-ended investment company is dissolved.
- (c) If the manager has not previously notified participants of the proposal to wind up the open-ended investment company or terminate the sub-fund, the manager must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the participants.

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**(5) Manner of winding up or termination**

- (a) Subparagraphs (b) to (i) of this subparagraph apply to winding up an open-ended investment company and termination of a sub-fund, subparagraph (j) only applies to the winding up of an open-ended

investment company and subparagraphs (k) to (o) only apply to the termination of a sub-fund of an open-ended investment company.

- (b) The manager must, as soon as practicable after winding up or termination has commenced, cause the scheme property to be realised and the liabilities of the open-ended investment company or the sub-fund to be met out of the proceeds.
- (c) The manager must instruct the trustee or fiduciary custodian how such proceeds (until utilised to meet liabilities or make distributions to participants) must be held and those instructions must be prepared with a view to the prudent protection of creditors and participants against loss.
- (d) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the open-ended investment company's or the sub-fund's remaining liabilities, the manager may arrange for the trustee or fiduciary custodian to make one or more interim distributions to the participants proportionately to the right of their respective units to participate in scheme property at the commencement of the winding up or termination.
- (e) On or before the date on which the final account is sent to participants in accordance with subparagraph (6) (Final account and termination account), the manager must arrange for the trustee or fiduciary custodian to make a final distribution to the participants, in the same proportions as provided by subparagraph (d), of the balance remaining (net of a provision for any further expenses of the open-ended investment company or sub-fund).
- (f) Subparagraphs (b) to (e) are subject to the terms of any scheme of arrangement sanctioned by an extraordinary resolution passed on or before the commencement of the winding up or termination.
- (g) Where the open-ended investment company and one or more participants (other than the manager) agree, the requirement in subparagraph (b) to realise the scheme property does not apply to that part of the scheme property which is proportionate to the right to participate in scheme property of that or those participants.
- (h) In the case of subparagraph (g), the manager must cause the open-ended investment company to distribute that part of the scheme property in specie to that or those participants in proportion to

their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the manager appropriate to ensure that those participants bear the proportion of the liabilities and the expenses of the distribution attributable to their units.

- (i) The trustee or fiduciary custodian must notify the Commission once the winding up of the open-ended investment company or the termination of a sub-fund (including compliance with subparagraph (6) is complete and at the same time the manager or the trustee or fiduciary custodian must request the Commission to revoke the relevant authorisation order.
- (j) Where any sum of money stands to the account of the open-ended investment company at the date of its dissolution, the manager must arrange for the trustee or fiduciary custodian to pay or lodge that sum within one month after that date.
- (k) Where any sums (including unclaimed distributions) remain standing to the account of the scheme property following tender of payment (whether to a creditor or a participant), the manager must instruct the trustee or fiduciary custodian to retain the sums ('tendered sums') in an account ('unclaimed payments account') separate from any other part of the scheme property.
- (l) The trustee or fiduciary custodian must, if instructed by the manager, make a payment out of the unclaimed payments account for the purpose of settling a claim for a tendered sum.
- (m) Any costs and reasonable expenses of the manager for investigating a claim and any costs and expenses incurred by the trustee or fiduciary custodian in making a payment out of the unclaimed payments account may be reimbursed from the payment.
- (n) The person entitled to any tendered sum is not entitled to any interest in respect of the unclaimed payments account and any interest arising in respect of the unclaimed payments account must be allocated between the continuing sub-funds of the open-ended investment company in a manner which is fair to the participants of the open-ended investment company generally.
- (o) Amounts standing to the credit of an unclaimed payments account must be excluded from the value of the scheme property and must not be subject to any distribution under this subparagraph, but

upon a dissolution of the open-ended investment company under the Act, the trustee or fiduciary custodian must cease to hold those amounts as part of that account and they will become subject to the provisions of subparagraph (j).

**(6) Final account and termination account**

- (a) Once the open-ended investment company's affairs are fully wound up or termination of the sub-fund has been completed (including distribution or provision for distribution in accordance with subparagraph (5)(e), the governing body must prepare an account of the winding up or termination showing -
  - (i) how it has been conducted; and
  - (ii) how the scheme property has been disposed of.
- (b) The account in subparagraph (a) must be, if there is -
  - (i) approved by the governing body and either signed by the governing body or by the manager on its behalf; or
  - (ii) no governing body, signed by the manager.
- (c) Once signed, this account is the "final account" for the purposes of the winding up of an open-ended investment company and the "termination account" for the purposes of the termination of a sub-fund.
- (d) The final account must state the date on which the open-ended investment company's affairs were fully wound up and the date stated must be regarded as the final day of the accounting period of the open-ended investment company then running ('final accounting period').
- (e) The manager must ensure that the open-ended investment company's appropriate auditor makes a report in respect of the final account or termination account, which states the appropriate auditor's opinion whether the final account or termination account has been properly prepared for the purpose of subparagraph (a).
- (f) Within two months of the date of the completion of the winding up of the open-ended investment company or termination of the sub-fund, the manager must send a copy of the final account or termination account and the appropriate auditor's report on it to

the Commission and to each person who was a participant (or the first named of joint participants) immediately before its end.

**(7) Duty to ascertain liabilities**

- (a) The manager must use all reasonable endeavours to ensure that all the liabilities of the open-ended investment company are discharged before the completion of the winding up or termination.
- (b) The duty in subparagraph (a) relates to all liabilities of which the manager -
  - (i) is, or becomes, aware before the completion of the winding up or termination; or
  - (ii) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.
- (c) If the manager rejects any claim against the open-ended investment company in whole or part or against the open-ended investment company in respect of a liability in whole or part, the manager must immediately send to the claimant written notice of its reasons for doing so.

**(8) Reports and accounts**

- (a) The manager need not (as would be required under paragraph 21 (Provision of abbreviated financial statements)) send to each participant a copy of any abbreviated financial statements relating to an annual accounting period or half-yearly accounting period which began after commencement of winding up or termination, if the directors of the open-ended investment company, after consulting the Commission, have reasonably determined that this is not required in the interest of participants.
- (b) Where subparagraph (8) applies, a copy of the short or financial statements must be supplied free of charge to any participant upon request.

**(9) Liabilities of the manager**

- (a) Except to the extent that the manager can show that it has complied with subparagraph (7) (Duty to ascertain liabilities), the manager -

- (i) is personally liable to meet any liability of an open-ended investment company, of which it is the manager, wound up under this paragraph (whether or not the open-ended investment company has been dissolved); and
- (ii) must keep the open-ended investment company indemnified against any liability allocated or attributable to a sub-fund that has been terminated under these provisions,

that was not discharged before the completion of the winding up or termination.

- (b) Where winding up an open-ended investment company, if the proceeds of the realisation of the assets attributable, or allocated to a particular sub-fund of an umbrella open-ended investment company are insufficient to meet the liabilities attributable or allocated to that sub-fund, the manager must pay to the open-ended investment company, for the account of that sub-fund the amount of the deficit, unless and to the extent that the manager can show that the deficit did not arise as a result of any failure by the manager to comply with the provisions in this Schedule.
- (c) The liabilities of the manager under this provision create a debt accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the open-ended investment company in the circumstances described in subparagraph (b)).
- (d) The obligations of the manager under this subparagraph do not affect any other obligation of the manager under these provisions or the general law.

**(10) Additional provisions applicable to umbrella companies**

- (a) Liabilities of an open-ended investment company which is an umbrella attributable, or allocated, to a particular sub-fund must be met first out of the scheme property attributable or allocated to such sub-fund.
- (b) If the liabilities to be met out of a particular sub-fund of an umbrella open-ended investment company are greater than the proceeds of the realisation of the scheme property attributable or allocated to that sub-fund, the deficit must be met out of the scheme property attributable or allocated to the solvent sub-funds of that umbrella open-ended investment company in which the

proceeds of realisation exceed liabilities and divided between those sub-funds in a manner that is fair to the participants in those solvent sub-funds.

- (c) Subparagraph (b) applies in respect of any deficit arising as a result of additional liabilities accruing to a sub-fund through the operation of subparagraph (b).
- (d) In calculating the amount of liabilities for the purpose of subparagraph (b), account must be taken of any payments received or to be received from the manager under subparagraph (9) (Liabilities of the manager).

**(11) Miscellaneous**

(a) If -

(i) during the course, or as a result, of the enquiry referred to in subparagraph ~~(3)(a)~~ (Solvency statement), the governing body become of the opinion that it will not be possible to provide the confirmation referred to in subparagraph ~~(3)(b)(i)~~ of that provision; or

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(ii) after winding up or termination has commenced, the manager becomes of the opinion that the open-ended investment company will be unable to meet all its liabilities within twelve months of the date of the statement provided under subparagraph ~~(3)(b)~~,

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the governing body must immediately present a petition or cause the open-ended investment company to present a petition for the winding up of the open-ended investment company.

(b) If, after the commencement of a winding up under this Part and before notice of completion of the winding up has been sent to the Commission, there is a vacancy in the position of manager, the governing body must immediately present or cause the governing body to present or, if there are no directors, the trustee or fiduciary custodian must immediately present, a petition for the winding up of the open-ended investment company.

**114 Winding up a unit trust scheme and terminating a sub-fund of a unit trust scheme**

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**(1) Special meanings for termination of a sub-fund of a unit trust scheme**

In this paragraph, where a sub-fund of a unit trust scheme is being terminated, references to -

- (a) units, are references to units of the class or classes related to the sub-fund to be terminated;
- (b) a resolution or extraordinary resolution, are references to such a resolution passed at a meeting of participants of units of the class or classes referred to in subparagraph (a);
- (c) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
- (d) liabilities, are references to liabilities of the unit trust scheme allocated or attributable to the sub-fund to be terminated.

**(2) When a unit trust scheme is to be wound up or a sub-fund terminated**

(a) Upon the happening of any of the events or dates referred to in subparagraph (b) and not otherwise -

- (i) Paragraphs ~~104~~ (Dealing) and ~~105~~ (Valuation and pricing) and Part 5 (Investment and borrowing powers) cease to apply to the unit trust scheme;
- (ii) the trustee must cease to issue and cancel units;
- (iii) the manager must cease to sell and redeem units;
- (iv) the manager must cease to arrange the issue or cancellation of units under subparagraph ~~(6)~~ of paragraph ~~104~~ (Issue and cancellation of units through a manager); and
- (v) the trustee must proceed to wind up the unit trust scheme or terminate the sub-fund in accordance with subparagraph ~~(3)~~.

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(b) The events referred to in subparagraph (a) are -

- (i) the authorisation order of the unit trust scheme is revoked;

- (ii) alterations to the unit trust scheme's trust deed and offering document that will be required if the sub-fund is terminated taking effect in accordance with the Act;
- (iii) the passing of an extraordinary resolution winding up the unit trust scheme or terminating the sub-fund, provided Commission's prior consent to the resolution has been obtained by the manager or trustee;
- (iv) in response to a request to the Commission by the manager or the trustee for the revocation of the authorisation order, the Commission has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the unit trust scheme, the Commission will agree to that request;
- (v) the expiration of any period specified in the trust deed as the period at the end of which the unit trust is to be wound up or the sub-fund is to terminate; or
- (vi) the effective date of a duly approved scheme of arrangement, which is to result in the unit trust scheme or sub-fund that is subject to the scheme of arrangement being left with no property.

**(3) Manner of winding up or termination**

- (a) Where subparagraph (2)(b)(vi) applies, the trustee must wind up the unit trust scheme or terminate the sub-fund in accordance with the approved scheme of arrangement.
- (b) In any other case falling within subparagraph (2) -
  - (i) once the unit trust scheme falls to be wound up or sub-fund terminated, the trustee must realise the scheme property;
  - (ii) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the trustee must distribute the proceeds of that realisation to the participants and the manager proportionately to their respective interests in the unit trust scheme or sub-fund as at the date, or the date of the relevant event referred to in subparagraph (2); and

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- (iii) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the trustee after one year from the date on which they became payable must be paid by the trustee into court (or, in Scotland, as the court may direct), subject to the trustee having a right to retain any expenses properly incurred by him relating to that payment.
  - (c) Where the trustee and one or more participants agree, the requirement in subparagraph (b) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those participants.
  - (d) The trustee may distribute the part of the scheme property referred to in subparagraph (c) in the form of property, after making adjustments or retaining provisions as appears appropriate to the trustee for ensuring that, that or those participants bear a proportional share of the liabilities and costs.
  - (e) On completion of the winding up in respect of the events referred to in (2)(b)(iii), (2)(b)(iv) or (2)(b)(v), the trustee must notify the Commission in writing and at the same time the manager or trustee must request the Commission to revoke the relevant authorisation order.
- (4) Accounting and reports during winding up or termination**
- (a) For any annual or half-yearly accounting period which began after commencement of the winding up or termination, the trustee (after consulting the manager (if appropriate) and the Commission) may direct that paragraph 21 (Provision of abbreviated financial statements) may be dispensed with, provided that it has taken reasonable care to determine that the report is not required in the interests of the participants.
  - (b) Where subparagraph (a) applies, a copy of the short and financial statements must be supplied free of charge to any participant upon request.
  - (c) The period in question in subparagraph (b) must be reported on together with the following period in the next report prepared for the purposes of this subparagraph.
  - (d) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final annual accounting period.

- (e) Within two months after the end of the final annual accounting period or the termination of the sub-fund, the annual reports of the manager and trustee must be published and sent to the Commission and to each person who was a participant or the first named of joint participants immediately before its end.

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## 115 Schemes of arrangement

### (1) Schemes of arrangement: requirements

- (a) If a scheme of arrangement is entered into in relation to a scheme ("transferor scheme") or a sub-fund of a scheme which is an umbrella ("transferor sub-fund"), a manager must ensure that the participants of the transferor scheme or sub-fund do not become participants of units in a collective investment scheme other than a authorised or recognised collective investment scheme.
- (b) Where, for the purpose of a scheme of arrangement, it is proposed that scheme property of a scheme should become the property of another authorised or recognised collective investment scheme or sub-fund of a authorised or recognised collective investment scheme, the proposal must not be implemented without the sanction of an extraordinary resolution of the participants in the scheme, unless subparagraph (c) applies.
- (c) Where, for the purposes of a scheme of arrangement, it is proposed that scheme property attributable to a sub-fund of an umbrella scheme should become the property of another authorised or recognised collective investment scheme or of another sub-fund of a authorised or recognised collective investment scheme (whether or not of that umbrella), the proposal must not be implemented without the sanction of -
  - (i) an extraordinary resolution of the participants in the sub-fund of that umbrella; and
  - (ii) (unless implementation of the scheme of arrangement is not likely to result in any material prejudice to the interests of the participants in any other sub-fund of that umbrella) an extraordinary resolution of the participants of units in that umbrella.
- (d) If it is proposed that a scheme or sub-fund of an umbrella should receive property (other than its first property) as a result of a scheme of arrangement (or an arrangement equivalent to a scheme

of arrangement) which is entered into by some other collective investment scheme or sub-fund, or by a body corporate, the proposal must not be implemented without the sanction of an extraordinary resolution of the participants in the scheme or (as the case may be) of the class or classes of units related to the sub-fund unless subparagraph (e) applies.

- (e) This subparagraph (e) applies if the directors of the open-ended investment company or the manager and trustee of the unit trust scheme agree that the receipt of the property concerned for the account of the scheme -
  - (i) is not likely to result in any material prejudice to the interests of the participants of the scheme;
  - (ii) is consistent with the objectives of the scheme or sub-fund;  
and
  - (iii) could be effected without any breach of a provision in Part 5 (Investment and borrowing powers).

**Appendix 1: contents of the documents constituting the scheme**

This table belongs to paragraph 6 (Matters which must be included in the documents constituting the scheme).

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	<b>Investment powers in eligible markets</b>
1.	A statement that, subject to any restriction in this Schedule or the documents constituting the scheme, the scheme has the power to invest in any eligible securities market or deal on any eligible derivatives market to the extent that power to do so is conferred by Part 5 (Investment and borrowing powers).
	<b>Participant's liability to pay</b>
2.	A provision that a participant is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units which he holds.
	<b>Base currency</b>
3.	A statement of the base currency of the scheme.
	<b>Valuation and pricing</b>
4.	A statement setting out the basis for the valuation and pricing of the scheme.
	<b>Duration of the scheme</b>
5.	If the scheme is to be wound up after a particular period expires, a statement to that effect.
	<b>Object of the scheme</b>

6.	<p>A statement:</p> <p>(1) as to the object of the scheme, in particular the types of investments and assets in which it and each sub-fund (where applicable) may invest;</p> <p>(2) that the object of the scheme is to invest in property of that kind with the aim of spreading investment risk and giving participants the benefits of the results of the management of that property; <u>and</u></p> <p><u>(3) for a non-UCITS type scheme operating as a FAIF, a statement that it is a fund of alternative investment funds.</u></p>
	<b>Government and public securities: investment in one issuer</b>
7.	For a UCITS type scheme, if the scheme is permitted to invest more than 35% of the value of the scheme in government and public securities, a statement as to the individual states or bodies in which over 35% of the value of the scheme may be invested in government and public securities.
	<b>Classes of unit</b>
8.	A statement:
	<p>(1) specifying the classes of unit that may be issued, and for a scheme which is an umbrella, the classes that may be issued in respect of each sub-fund; and</p> <p>(2) if the rights of any class of unit differ, a statement describing those differences in relation to the differing classes.</p>
	<b>Manager's charges and expenses</b>
9.	A statement setting out the basis on which the scheme manager may make a charge and recover expenses out of the scheme property.
	<b>Issue or cancellation directly through the open-ended investment company, trustee or fiduciary custodian</b>
10.	Where relevant, a statement authorising the issue or cancellation of units to take place through the open-ended investment company, trustee or fiduciary custodian directly.

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	<b>In specie issue and cancellation</b>
11.	Where relevant, a statement authorising payment for the issue or cancellation of units to be made by the transfer of assets other than cash.
	<b>Restrictions on sale and redemption</b>
12.	Where relevant, the restrictions which will apply in relation to the sale and redemption of units under subparagraph <del>(13)</del> , of paragraph <del>104</del> , (Sale and redemption).
	<b>Voting at meetings</b>
13.	The manner in which votes may be given at a meeting of participants under subparagraph <del>(8)</del> , of paragraph <del>12</del> , (Voting rights).
	<b>Certificates</b>
14.	A statement authorising the person responsible for the register to charge for issuing any document recording, or for amending, an entry on the register, other than on the issue or sale of units.
	<b>Income</b>
15.	A statement setting out the basis for the distribution or re-investment of income.
	<b>Income equalisation</b>
16.	Where relevant, a provision for income equalisation.
	<b>Redemption or cancellation of units on breach of law or rules</b>
17.	A statement that where any holding of units by a participant is (or is reasonably considered by the manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.
	<b>Open-ended investment companies: resolution to remove a director</b>

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18.	A statement that the open-ended investment company may (without prejudice to the requirements of the Act) by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of participants, remove a director before his period of office expires, despite anything else in the documents constituting the scheme or in any agreement between the open-ended investment company and that director.
	<b>Open-ended investment companies: charges and expenses</b>
19.	A statement that charges or expenses of the open-ended investment company may be taken out of the scheme property.
	<b>Unit trust schemes: governing law for a trust deed</b>
20.	A statement that the trust deed is made under and governed by the law of the Island
	<b>Unit trust schemes: trust deed to be binding and authoritative</b>
21.	A statement that the trust deed:
	(1) is binding on each participant as if it had been a party to it and that it is bound by its provisions; and
	(2) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms.
	<b>Unit trust schemes: declaration of trust</b>
22.	A declaration that, subject to the provisions of the trust deed and all rules made under the Act and for the time being in force:
	(1) the scheme property (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the participants according to the number of units held by each participant or, where relevant, according to the number of undivided shares in the scheme property represented by the units held by each participant; and
	(2) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with paragraph <a href="#">110</a> , (Income: accounting, allocation and distribution).

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	<b>Unit trust schemes: trustee's remuneration</b>
23.	Where relevant, a statement authorising payments to the trustee by way of remuneration for its services to be paid (in whole or in part) out of the scheme property.
	<b>Unit trust schemes: responsibility for the register</b>
24.	A statement identifying the person responsible under the provisions for the maintenance of the register.

**Appendix 2: contents of the offering document**

This table belongs to subparagraph 10(2) of paragraph 10 (Publishing offering document).

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1.	<b>Document status</b>
	A statement that the document is the offering document of the scheme valid as at a particular date (which shall be the date of the document).
2.	<b>Scheme</b>
	A description of the scheme including:
	(a) its name;
	(b) whether it is an open-ended investment company or a unit trust scheme and that:
	(i) participants are not liable for the debts of the scheme;
	(ii) for an open-ended investment company that is not a protected cell company, a statement that the sub-funds of a scheme which is an umbrella are not 'ring fenced' and in the event of the umbrella being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, that the remaining liabilities may have to be met out of the assets attributable to other sub-funds;
	(iii) for an open-ended investment company that is a protected cell company, a statement to the effect that its sub-funds are segregated portfolios of assets and that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge the liabilities of or claims against the umbrella or any of its other sub-funds and shall not be available for such purpose;
	(c) whether it is a UCITS type scheme or a non-UCITS type scheme;

	(d) for an open-ended investment company, the address of its head office and the address of the place for service on the open-ended investment company of notices or other documents required or authorised to be served on it;
	(e) the effective date of the authorisation order made by the Commission and relevant details of termination, if the duration of the scheme is limited;
	(f) its base currency;
	(g) for an open-ended investment company, the maximum and minimum sizes of its capital; and
	(h) the circumstances in which it may be wound up under this Schedule and a summary of the procedure for, and the rights of participants under, such a winding up
3.	<b>Investment objectives and policy</b>
	The following particulars of the investment objectives and policy of the scheme:
	(a) the investment objectives, including its financial objectives;
	(b) the scheme's investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
	(c) an indication of any limitations on that investment policy;
	(d) the description of assets which the capital property may consist of;
	(e) the proportion of the capital property which may consist of an asset of any description;
	(f) the description of transactions which may be effected on behalf of the scheme and an indication of any techniques and instruments or borrowing powers which may be used in the management of the scheme;
	(g) a list of the eligible markets through which the scheme may invest or deal in accordance with paragraph 35 (Eligible markets: requirements);

	(h) for an open-ended investment company, a statement as to whether it is intended that the scheme will have an interest in any immovable property or movable property for the direct pursuit of the open-ended investment company's business;
	(i) where paragraph 40 (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the scheme property is or may be invested in government and public securities and the names of the individual states, local authorities or public international bodies in whose securities the scheme may invest more than 35% of the scheme property;
	(j) the policy in relation to the exercise of borrowing powers by the scheme;
	(k) for an scheme which may invest in other schemes, the extent to which the scheme property may be invested in the units of schemes which are managed by the manager or by its associate;
	(l) where a scheme invests principally in scheme units, deposits or derivatives, or replicates an index in accordance with paragraphs 47 and 86 (Schemes replicating an index), a prominent statement regarding this investment policy;
	(m) where derivatives transactions may be used in a scheme, a prominent statement as to whether these transactions are for the purposes of efficient portfolio management (including hedging) or meeting the investment objectives or both and the possible outcome of the use of derivatives on the risk profile of the scheme;
	(n) information concerning the profile of the typical investor for whom the scheme is designed;
	(o) information concerning the historical performance of the scheme;
	(p) for a non-UCITS type scheme which invests in immovables, a statement of the countries or territories of situation of land or buildings in which the scheme may invest;

	(q) for a scheme which invests a substantial portion of its assets in other schemes, a statement of the maximum level of management fees that may be charged to that scheme and to the schemes in which it invests;
	(r) where the scheme is a qualifying money market fund, a statement to that effect and a statement that the scheme's investment objectives and policies will meet the conditions specified in the definition of qualifying money market fund;
	(s) where the net asset value of a scheme is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect; and
	(t) for a UCITS type scheme, a statement that any participant may obtain on request the types of information (which must be listed) referred to in subparagraph <u>10(3)</u> , (Availability of offering document and financial statements).
	(u) <u>for a non-UCITS type scheme operating as a FAIF, a statement that it is a fund of alternative investment funds.</u>
4.	<b>Reporting, distributions and accounting dates</b>
	Relevant details of the reporting, accounting and distribution information which includes:
	(a) the accounting and distribution dates;
	(b) procedures for:
	(i) determining and applying income (including how any distributable income is paid);
	(ii) unclaimed distributions; and
	(iii) if relevant, calculating, paying and accounting for income equalisation;
	(c) the accounting reference date and when the financial statements will be published in accordance with subparagraph <u>(22)</u> of paragraph <u>13</u> , (Publication and availability of annual and half-yearly financial statements); and

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	(d) when the abbreviated financial statements will be sent to participants in accordance with subparagraph of paragraph <a href="#">21</a> (Provision of abbreviated financial statements).
5.	<b>Characteristics of the units</b>
	Information as to:
	(a) where there is more than one class of unit in issue or available for issue, the name of each such class and the rights attached to each class in so far as they vary from the rights attached to other classes;
	(b) how participants may exercise their voting rights and what these amount to;
	(c) where a mandatory redemption, cancellation or conversion of units from one class to another may be required, in what circumstances it may be required; and
	(d) for a unit, the fact that the nature of the right represented by units is that of a beneficial interest under a trust.
6.	<b>Scheme manager</b>
	The following particulars of the manager:
	(a) its name;
	(b) the nature of its corporate form;
	(c) the date of its incorporation;
	(d) the address of its registered office;
	(e) the address of its head office, if that is different from the address of its registered office;
	(f) if neither its registered office nor its head office is on the Island, the address of its principal place of business on the Island;
	(g) if the duration of its corporate status is limited, when that status will or may cease; and

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	(h) the amount of its issued share capital and how much of it is paid up.
7.	<b>Governing body</b>
	The following particulars of the governing body:
	(a) the names of the directors;
	(b) the manner, amount and calculation of the remuneration of such directors; and
	(c) its regulatory status.
8.	<b>Trustee or fiduciary custodian</b>
	The following particulars of the trustee or fiduciary custodian:
	(a) its name;
	(b) the nature of its corporate form;
	(c) the address of its registered office;
	(d) the address of its head office, if that is different from the address of its registered office;
	(e) if neither its registered office nor its head office is on the Island, the address of its principal place of business on the Island; and
	(f) a description of its principal business activity.
9.	<b>Investment adviser or asset manager</b>
	If an investment adviser or asset manager is retained in connection with the business of an scheme:
	(a) its name; and
	(b) where it carries on a significant activity other than providing services to the scheme as an investment adviser, what that significant activity is.

10.	<b>Appropriate auditor</b>
	The name of the appropriate auditor of the scheme.
11.	<b>Contracts and other relationships with parties</b>
	The following relevant details:
	(a) for an open-ended investment company:
	(i) a summary of the material provisions of the agreement between the open-ended investment company and the manager; the governing body and the investment adviser and/or asset manager; and the governing body and the fiduciary custodian which may be relevant to participants including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;
	(ii) the main business activities of each of the directors (other than those connected with the business of the open-ended investment company) where these are of significance to the open-ended investment company's business;
	(iii) if any director is a body corporate in a group of which any other corporate director of the open-ended investment company is a member, a statement of that fact;
	(iv) the main terms of each contract of service between the open-ended investment company and a director in summary form; and
	(v) for an open-ended investment company that does not hold annual general meetings, a statement that copies of contracts of service between the open-ended investment company and its directors, including the manager, will be provided to a participant on request;
	(d) the names of the directors of the manager and the main business activities of each of the directors (other than those connected with the business of the scheme) where these are of significance to the scheme's business;

	(e) if an investment adviser or asset manager retained in connection with the business of the scheme is a body corporate in a group of which any director of the open-ended investment company or the manager of the unit trust scheme is a member, that fact;
	(f) a summary of the material provisions of any contract between the manager or the open-ended investment company and any investment adviser or asset manager which may be relevant to participants;
	(g) if an investment adviser or asset manager retained in connection with the business of the scheme has the authority of the manager or the open-ended investment company to make decisions on behalf of the manager or the open-ended investment company, that fact and a description of the matters in relation to which it has that authority;
	(h) what functions (if any) the manager has delegated and to whom; and
	(i) in what capacity (if any), the manager acts in relation to any other authorised or recognised collective investment schemes and the name of such schemes.
12.	<b>Register of participants</b>
	Details of:
	(a) the address on the Island where the register of participants, and where relevant the plan register is kept and can be inspected by participants; and
	(b) the registrar's name and address.
13.	<b>Payments out of scheme property</b>
	In relation to each type of payment from the scheme property, details of:
	(a) who the payment is made to;
	(b) what the payment is for;
	(c) the rate or amount where available;

	<p>(d) how the following remuneration and expenses will be determined where they are payable out of the property of the scheme:</p> <p>(i) the remuneration of the manager;</p> <p>(ii) the remuneration of the trustee;</p> <p>(iii) where the scheme is an open-ended investment company, the remuneration the remuneration and expenses of the governing body and, if the constitutional documents of the scheme permit any of the above to be at a higher level, what those higher levels are or how they may be determined;</p> <p>(iv) the nature of any other expenses payable out of the property of the scheme and how their amounts will be determined;</p>
	(e) when it will be paid; and
	(f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.
14.	<b>Allocation of payments</b>
	If, in accordance with subparagraph <del>(6)</del> of paragraph <del>109</del> (Allocation of payments to income or capital), the manager and the trustee or fiduciary custodian have agreed that all or part of any income expense payments may be treated as a capital expense:
	(a) that fact;
	(b) the policy for allocation of these payments; and
	(c) a statement that this policy may result in capital erosion or constrain capital growth.
15.	<b>Moveable and immovable property (open-ended investment company only)</b>
	An estimate of any expenses likely to be incurred by the open-ended investment company in respect of movable and immovable property in which the open-ended investment company has an interest.

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16.	<b>Valuation and pricing of scheme property</b>
	In relation to the valuation of scheme property and pricing of units:
	(a) either:
	(i) in the case of a single-priced scheme, a provision that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point; or
	(ii) in the case of a dual-priced scheme, the manager's policy for determining prices for the sale and redemption of units by reference to a particular valuation point and an explanation of how those prices may differ;
	(b) details of:
	(i) how the value of the scheme property is to be determined in relation to each purpose for which the scheme property must be valued;
	(ii) how frequently and at what time or times of the day the scheme property will be regularly valued for dealing purposes and a description of any circumstance in which the scheme property may be specially valued;
	(iii) where relevant, how the price of units of each class will be determined for dealing purposes;
	(iv) where and at what frequency the most recent prices will be published; and
	(v) where relevant in the case of a dual-priced scheme, the manager's policy in relation to large deals; and
	(c) if provisions in subparagraphs (a) and (b) above do not take effect when the documents constituting the scheme or (where appropriate) any amending documents takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.
17.	<b>Dealing</b>
	The following particulars:

	(a) the procedures, the dealing periods and the circumstances in which the manager will effect:
	(i) the sale and redemption of units and the settlement of transactions (including the minimum number or value of units which one person may hold or which may be subject to any transaction of sale or redemption) for each class of unit in the scheme; and
	(ii) any direct issue or cancellation of units by an open-ended investment company or by the trustee (as appropriate) through the manager in accordance with subparagraph <del>(6)</del> of paragraph <del>104</del> (Issue and cancellation of units by a manager);
	(b) the circumstances in which the redemption of units may be suspended;
	(c) whether certificates will be issued in respect of registered units;
	(d) the circumstances in which the manager may arrange for, and the procedure for the issue or cancellation of units in specie;
	(e) the investment exchanges (if any) on which units in the scheme are listed or dealt;
	(f) the circumstances and conditions for issuing units in an scheme which limit the issue of any class of units in accordance with subparagraph <del>(14)</del> of paragraph <del>104</del> (Limited issue);
	(g) the circumstances and procedures for the limitation or deferral of redemptions in accordance with subparagraph <del>(15)</del> of paragraph <del>104</del> (Limited redemption) or subparagraph <del>(16)</del> of paragraph <del>104</del> (Deferred redemption);
	(h) in the offering document available during the period of any initial offer:
	(i) the length of the initial offer period;
	(ii) the initial price of a unit, which must be in the base currency;

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	(iii) the arrangements for issuing units during the initial offer, including the manager's intentions on investing the subscriptions received during the initial offer;
	(iv) the circumstances when the initial offer will end;
	(v) whether units will be sold or issued in any other currency; and
	(vi) any other relevant details of the initial offer ; and
	(vii) whether a participant may effect transfer of title to units on the authority of an electronic communication and if so the conditions that must be satisfied in order to effect a transfer.
18.	<b>Dilution</b>
	In the case of a single-priced scheme, details of what is meant by dilution including:
	(a) a statement explaining:
	(i) that it is not possible to predict accurately whether dilution is likely to occur; and
	(ii) which of the policies the manager is adopting under subparagraph <del>(7)</del> of paragraph <del>105</del> , (Dilution) together with an explanation of how this policy may affect the future growth of the scheme; and
	(b) if the manager may require a dilution levy or make a dilution adjustment, a statement of:
	(i) the manager's policy in deciding when to require a dilution levy, including the manager's policy on large deals, or when to make a dilution adjustment;
	(ii) the estimated rate or amount of any dilution levy or dilution adjustment based either on historical data or future projections; and
	(iii) the likelihood that the manager may require a dilution levy or make a dilution adjustment and the basis (historical or projected) on which the statement is made.

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19.	<b>Forward and historic pricing</b>
	The manager's normal basis of pricing under subparagraph (8) of paragraph 105, (Forward and historic pricing).
20.	<b>Preliminary charge</b>
	Where relevant, a statement authorising the manager to make a preliminary charge and specifying the basis for and current amount or rate of that charge.
21.	<b>Redemption charge</b>
	Where relevant, a statement authorising the manager to deduct a redemption charge out of the proceeds of redemption; and if the manager makes a redemption charge:
	(a) the current amount of that charge or if it is variable, the rate or method of calculating it;
	(b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the manager on request; and
	(c) how the order in which units acquired at different times by a participant is to be determined so far as necessary for the purposes of the imposition of the redemption charge.
22.	<b>Property Scheme</b>
	For a property scheme, a statement that:
	(a) it is a property scheme;
	(b) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
	(c) in the event that the manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the manager is entitled to delay any redemption or cancellation of units if the manager reasonably considers such action to be:

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	(i) necessary in order to enable an orderly reduction of the holding to below 10%; and
	(ii) in the interests of the participants as a whole.
23.	<b>General information</b>
	Details of:
	(a) the address at which copies of the documents constituting the scheme, any amending documents and the most recent annual and half-yearly financial statements may be inspected and from which copies may be obtained;
	(b) the manner in which any notice or document will be served on participants;
	(c) the extent to which and the circumstances in which:
	(i) the scheme is liable to pay or suffer tax on any appreciation in the value of the scheme property or on the income derived from the scheme property; and
	(ii) deductions by way of withholding tax may be made from distributions of income to participants and payments made to participants on the redemption of units;
	(d) any possible fees or expenses not described in subparagraphs 13 to 21 above, distinguishing between those to be paid by a participant and those to be paid out of scheme property ; and
	(e) for an open-ended investment company, that an annual general meetings will be held.
24.	<b>Information on the umbrella</b>
	In the case of a scheme which is an umbrella, the following information:
	(a) that a participant is entitled to exchange units in one sub-fund for units in any other sub-fund (other than a sub-fund which has limited the issue of units);

	(b) that an exchange of units in one sub-fund for units in any other sub-fund is treated as a redemption and sale for taxation purposes;
	(c) that in no circumstances will a participant who exchanges units in one sub-fund for units in any other sub-fund be given a right by law to withdraw from or cancel the transaction;
	(d) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;
	(e) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund;
	(f) for each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the scheme which is an umbrella; and
25.	<b>Application of offering document contents to an umbrella</b>
	For a scheme which is an umbrella, information required must be stated:
	(a) in relation to each sub-fund where the information for any sub-fund differs from that for any other; and
	(b) for the umbrella as a whole, but only where the information is relevant to the umbrella as a whole.
26.	<b>Marketing in an EEA state</b>
	The offering document of a UCITS type scheme which is prepared for the purpose of marketing units in an EEA State must give details as to:
	(a) what special arrangements have been made:
	(i) for paying in that EEA State amounts distributable to participants resident in that EEA State;
	(ii) for redeeming in that EEA State the units of participants resident in that EEA State;

	(iii) for inspecting and obtaining copies in that EEA State of the documents constituting the scheme and amendments to it, the offering document and the annual and half-yearly financial statements; and
	(iv) for making public the price of units of each class; and
	(b) how the open-ended investment company or the manager of a unit trust scheme will publish in that EEA State notice:
	(i) that the annual and half-yearly financial statements are available for inspection;
	(ii) that a distribution has been declared;
	(iii) of the calling of a meeting of participants; and
	(iv) of the termination of the scheme or the revocation of its authorisation.
27.	<b>Investment in overseas property through an intermediate holding vehicle</b>
	If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement disclosing the existence of that intermediate holding vehicle or series of intermediate holding vehicles and confirming that the purpose of that intermediate holding vehicle or series of intermediate holding vehicle is to enable the holding of overseas immovables by the scheme.
28.	<b>Additional information</b>
	Any other material information which is within the knowledge of the governing body of an open-ended investment company or the manager of a unit trust scheme, or which the governing body or manager would have obtained by making reasonable enquiries, including but not confined to, the following matters:

	(a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the offering document, for the purpose of making an informed judgement about the merits of investing in the scheme and the extent and characteristics of the risks accepted by so participating;
	(c) a clear and easily understandable explanation of any risks which investment in the scheme may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
	(d) if there is any arrangement intended to result in a particular capital or income return from a holding of units in the scheme or any investment objective of giving protection to the capital value of, or income return from, such a holding:
	(i) details of that arrangement or protection;
	(ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;
	(iii) a description of the risks that could affect achievement of that return or protection; and
	(iv) details of the arrangements by which the manager will notify participants of any action required by the participants to obtain the benefit of the guarantee; and
	(e) whether any notice has been given to participants of the manager intention to propose a change to the scheme and if so, its particulars.