



COLLECTIVE INVESTMENT SCHEMES ACT 2008

**COLLECTIVE INVESTMENT SCHEMES (AUTHORISED
SCHEMES) (ALTERNATIVE INVESTMENT AND
BORROWING POWERS) REGULATIONS 2009**

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Approved by Tynwald

2009

Coming into operation

7 May 2009

The Financial Supervision Commission, after carrying out the consultations required by section 24(13) of the Collective Investment Schemes Act 2008¹, makes these Regulations under section 24(1) of, and Schedule 5 to, that Act.

1 Title

The title of these Regulations is the Collective Investment Schemes (Authorised Schemes) (Alternative Investment and Borrowing Powers) Regulations 2009.

2 Commencement

Subject to section 25(1) of the Act, these Regulations come into operation on 7 May 2009.

3 Interpretation

In these Regulations:

“non-UCITS type scheme” means a scheme whose investment and borrowing parameters are in line with Parts A, D and F of the Schedule to these Regulations and as such are not in line with the investment and borrowing parameters in the UCITS Directive;

“scheme particulars” has the same meaning as “offering document” under the Act;

¹ 2008 c.7

“the 2005 Regulations” means the Financial Supervision (Authorised Collective Investment Schemes) Regulations 2005²;

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

“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 (UCITS) (No 85/611/EEC).

“UCITS type scheme” means a scheme whose investment and borrowing parameters are in line with Parts A to E of the Schedule to these Regulations and as such are in line with the investment and borrowing parameters in the UCITS Directive. It does not mean that the scheme is a UCITS scheme under the UCITs Directive.

4 Amendment of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 2005

(1) In regulation 3 insert the following –

“EEA Regulator” means a financial regulator in the European Economic Area;

“unitholder” means a participant in the scheme;”.

(2) For regulation 150 of the 2005 Regulations (delegation by manager) substitute –

“150(1) Subject to the restrictions in paragraph (2) and to any restrictions in the principal constitutional documents, the manager of an authorised scheme has the power to delegate any function to any person.

(2) The restrictions referred to in paragraph (1) are that –

(a) a mandate in relation to managing investments of the scheme property is not given to –

(i) the trustee; or

(ii) any other person whose interests may conflict with those of the manager or the unitholders; or

(iii) any other person who is not–

(A) a firm which holds a licence to conduct the relevant activity under section 7 of the Financial Services Act 2008³, or a person

² SD 836/05

³ 2008 c.8

authorised by an EEA regulator or a person approved by the Commission; and

- (B) a person who holds a regulatory permission which extends to managing investments;
- (b) the manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;
- (c) the mandate permits the manager to –
 - (i) give further relevant instructions to the person to whom functions have been delegated; and
 - (ii) withdraw the mandate with immediate effect when this is in the interests of the unitholders; and
- (d) the delegation 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 unitholders.”.

5 Application of the Schedule

- (1) An authorised scheme is not required to comply with the provisions of the 2005 Regulations specified in paragraph (3) where–
 - (a) the manager and the trustee or fiduciary custodian (as applicable) have given written notice to the Commission that the scheme has elected to meet the requirements in the Schedule;
 - (b) the election referred to in sub-paragraph (a) specifies whether the scheme has elected to be a UCITs type scheme or a non-UCITs type scheme;
 - (c) the Commission has consented in writing to the proposed changes referred to in sub-paragraph (d) which are required for the implementation of the election in sub-paragraph (a); and
 - (d) all necessary changes required to comply with these Regulations have been made.
- (2) The scheme particulars for an authorised scheme which meets the requirements in paragraph (1) must contain the following statement –

“The [name of scheme] is an authorised scheme under the Financial Supervision (Authorised Collective Investment Schemes) Regulations 2005 and has elected to comply with the requirements of regulation 5 of and the Schedule to the Collective Investment Schemes (Authorised Schemes) (Alternative Investment and Borrowing Powers) Regulations 2009.”.

- (3) The provisions of the 2005 Regulations referred to in paragraph (1) are regulations 406 to 689.

MADE 7th May 2009

Brian Stott

Commissioner

John R Aspden

Chief Executive

SCHEDULE
ALTERNATIVE INVESTMENT AND BORROWING POWERS

PART A INTRODUCTION

1 General

(1) Where the scheme elects in accordance with regulation 5 to meet the investment and borrowing requirements equivalent to –

- (a) a UCITS type scheme it must comply with Parts A to E of this Schedule; or
- (b) a non-UCITS type scheme it must comply with Parts A, D and F of this Schedule;

(2) For the purpose of this schedule –

“approved bank” means a deposit taker under the Financial Services Act 2008 or a firm authorised to carry on a banking or deposit -taking business under the law of any member State or under the law of any other country or territory which is acceptable to the Commission;

“approved money-market instrument” means 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. 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 sub-paragraphs (a) or (b) or is subject to yield adjustments as set out in sub-paragraph (c);

“approved security” means a transferable security that is admitted to official listing in an EEA State or is traded on or under the rules of an eligible securities market (otherwise than by the specific permission of the market authority);

“Banking Consolidation Directive” means the European Parliament and European Council Directive of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (No 2006/48 /EC);

“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.;

“EEA State” means a state which is a member of the European Economic Area;

“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” in relation to a securities or a derivatives market means a market that satisfies the requirements in paragraph 9 (eligible markets: requirements);

“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;

“margin” means cash or other property paid, transferred or deposited under the terms of a derivative; for these purposes cash or property will be treated as having been paid, transferred or deposited if it must be paid, transferred or deposited in order to comply with a requirement imposed by the market on which the contract is made or traded;

“MiFID” means the European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC);

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

“OTC derivative” means a derivative traded solely over the counter;

“qualifying money market fund” means –

- (a) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which satisfies the following conditions –
 - (i) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
 - (ii) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
 - (iii) it must provide liquidity through same day or next day settlement;
- (b) for the purposes of sub-paragraph (a)(ii), a money market instrument is to be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality.
- (c) for the purposes of sub-paragraph (b), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an ECAI within the meaning of Article 81(1) of the Banking Consolidation Directive;

“repo” means –

- (a) an agreement between a seller and buyer for the sale of securities, under which the seller agrees to repurchase the securities, or equivalent securities, at an agreed date and, usually, at a stated price;
- (b) an agreement between a buyer and seller for the purchase of securities, under which the buyer agrees to resell the securities,

or equivalent securities, at an agreed date and, usually, at a stated price;

“stock lending” means the disposal of a designated investment subject to an obligation or right to reacquire the same or a similar designated investment from the same counterparty;

“transferable security” has the meaning in paragraph 7;

“trustee” includes fiduciary custodian.

- (3) Relevant terms that are not included above will have the meaning given in the UCITs Directive as supplemented by the European Commission Directive of 19 March 2007 which related to implementing the European Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITs) as regards the clarification of certain definitions.
- (4) Other relevant terms in this schedule shall have the meaning given in the 2005 Regulations.

2 Treatment of obligations

- (1) Where a requirement in this Schedule 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 Schedule, 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 Schedule 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.

PART B GENERAL INVESTMENT POWERS AND LIMITS FOR A SCHEME FOLLOWING A UCITS COMPATIBLE INVESTMENT STRATEGY

3 Application

Paragraphs 4 to 27 apply to a manager and a trustee of a UCITs-type scheme in accordance with the table below.

Paragraph(s)	Manager of an Authorised Scheme	Trustee of an Authorised Scheme
4 to 8	Yes	-
9(1) – (2) (a)	Yes	-
9(2)(c)	-	Yes
9(3)	Yes	-
10 - 19	Yes	-
20(1)	Yes	-
20(2) - (4)	Yes	Yes
21 - 28	Yes	-

4 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 scheme particulars, the scheme property of the scheme aims to provide a prudent spread of risk.
- (2) Paragraphs 3 to 27 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 sub-paragraph (1) is complied with during such period.

5 Investment powers: general

Scheme property must be invested only in accordance with the relevant provisions in Parts B to E of this Schedule that are applicable to that scheme and up to any maximum limit so stated, but, the instrument 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.

6 Valuation

- (1) In this Schedule, the value of the scheme property of a scheme means the net value determined in accordance with regulations 242 to 274

(valuation of the property of the scheme) of the 2005 Regulations, after deducting any outstanding borrowings, whether immediately due to be repaid or not.

- (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 242 to 274 (valuation of the property of the scheme);
 - (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.
- (3) When valuing the scheme property the cancellation basis of valuation referred to in regulation 255(2) (basis of valuation) of the 2005 Regulations is to be applied.

7 Transferable securities

- (1) A transferable security is an investment which is any of the following –
- (a) a share;
 - (b) a debenture;
 - (c) a government and public security;
 - (d) a warrant; or
 - (e) 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 sub-paragraph (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.

8 Scheme property: general

- (1) 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 12 (investment in collective investment schemes);
 - (c) approved money-market instruments permitted under paragraph 16 (investment in money-market instruments);
 - (d) derivatives and forward transactions permitted under paragraph 18 (permitted transactions (derivatives and forwards)); and
 - (e) deposits permitted under paragraph 22 (investment in deposits).
- (2) Transferable securities and money-market instruments held within a scheme must be –
 - (a) admitted to or dealt in on an eligible market within paragraph 9(1)(a) (eligible markets: requirements); or
 - (b) dealt in on an eligible market within paragraph 9(1)(b); or
 - (c) admitted to or dealt in on an eligible market within paragraph 9(2); or
 - (d) for a money-market instrument, within paragraph 16(b).
 - (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.
- (3) Not more than 10% in value of the scheme property is to consist of –
 - (a) transferable securities which do not fall within sub-paragraph (2); or
 - (b) money-market instruments which do not fall within paragraph 16(b).

9 Eligible markets: requirements

- (1) A market is eligible for the purposes of this Schedule 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 sub-paragraph (2).
- (2) A market not falling within sub-paragraph (1)(a) and (b) is eligible for the purposes of this Schedule if –
- (a) the manager, after consultation with and notification to the trustee, decides that market is appropriate for investment of, or dealing in, the scheme property;
 - (b) the market is included in a list in the scheme particulars; and
 - (c) the trustee 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 sub-paragraph (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.

10 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 money-market instruments issued by any single body.

- (5) The limit of 5% in sub-paragraph (4) is raised to 10% in respect of up to 40% in value of the scheme property.
- (6) In applying sub-paragraphs (4) and (5), certificates representing certain securities are to be treated as equivalent to the underlying security.
- (7) 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 a banking institution.
- (8) Not more than 20% in value of the scheme property is to consist of transferable securities and money-market instruments issued by the same group (as referred to in sub-paragraph (2)).
- (9) Not more than 20% in value of the scheme is to consist of the units of any one collective investment scheme.
- (10) In applying the limits in sub-paragraphs (3), (4), (5), (6) and (7), 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 or money-market instruments issued by;
or
 - (b) deposits made with; or
 - (c) exposures from OTC derivatives transactions made with,
a single body.
- (11) For the purpose of calculating the limits in sub-paragraphs (7) and (10), 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 sub-paragraph (12).
- (12) The conditions referred to in sub-paragraph (11) 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.
- (13) For the purpose of calculating the limits in sub-paragraphs (7) and (10), 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.
- (14) 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.

11 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 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 sub-paragraph (4) have been made.
- (4) Where it is intended that sub-paragraph (3) may apply, the instrument constituting the scheme, and the most recently published scheme particulars, 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.

12 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 sub-paragraph (2)(b) to (d).
- (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 2000⁴ (an Act of Parliament) (schemes authorised in designated countries or territories); or
 - (c) 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
 - (d) be authorised in another EEA State (provided the requirements of article 19(1)(e) of the UCITS Directive are met); or
 - (e) be authorised under Schedule 1 or recognised under Schedule 4 to the Act.
- (3) The second scheme must comply, where relevant, with paragraph 13 (investment in associated collective investment schemes) and paragraph 14 (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 sub-paragraphs (3) and (4) and paragraph 10 (spread: general) apply to each sub-fund as if it were a separate scheme.

⁴ 2000 c.8

13 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 scheme particulars of the investing UCITS type scheme clearly states that the property of that investing scheme may include such units; and
- (b) paragraph 14 (investment in other group schemes) is complied with.

14 Investment in other group schemes

(1) Where –

- (a) an investment or disposal is made under paragraph 13; 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 sub-paragraphs (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 sub-paragraph (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 sub-paragraph (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 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.

15 Investment in warrants and nil and partly paid securities

- (1) Where a UCITS type scheme invests in a warrant, the exposure created by the exercise of the right conferred by that warrant must not exceed the limits in paragraph 10 (spread: general) and paragraph 11 (spread: government and public securities).
- (2) A transferable security or a 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 requirements of this Schedule.

16 Investment in money-market instruments

A UCITS type scheme may invest in money-market instruments which are normally dealt in on the money market, are liquid and whose value can be accurately determined at any time, provided the money-market instrument –

- (a) meets the requirements of paragraph 8(3)(schemes property: general);
- (b) is issued or guaranteed by –
 - (i) a central, regional or local authority or central bank of an EEA State, the European Central Bank, the European Union or the European Investment Bank, a non-EEA State or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more EEA States belong; or
 - (ii) an establishment subject to prudential supervision in accordance with criteria defined by European Community law or an establishment which is subject to and complies with prudential rules considered by the UK Financial Services Authority to be at least as stringent as those laid down by Community law; or
 - (iii) the Isle of Man Government; or
- (c) is issued by a body, any securities of which are dealt in on an eligible market.

17 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 18 (permitted transactions (derivatives and forwards)); and
 - (b) the transaction is covered, as required by paragraph 29 (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 10 (spread: general) and paragraph 11 (spread: government and public securities) save as provided in sub-paragraph (4).
- (3) Where a transferable security or 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 27 (relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of paragraph 10 and paragraph 11.

- (6) The relaxation in sub-paragraph (4) is subject to the manager taking account of paragraph 4 (prudent spread of risk).
- (7) Where derivatives transactions may be used in an 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 must be contained in the scheme particulars.

18 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 20 (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;
 - (b) money-market instruments permitted under paragraph 16 (investment in money-market instruments);
 - (c) deposits permitted under paragraph 22 (investment in deposits);
 - (d) derivatives permitted under this paragraph;
 - (e) collective investment scheme units permitted under paragraph 12 (investment in collective investment schemes);
 - (f) financial indices;
 - (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 schemes constitutional documents and the most recently published scheme particulars.
- (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, 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 19(3) (requirement to cover sales) are satisfied.

- (6) Any forward transaction must be made with an eligible institution or an approved bank.

19 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) Paragraph (1) does not apply to a deposit.

- (3) Paragraph (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 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 sub-paragraph (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.

20 OTC transactions in derivatives

- (1) A transaction in an OTC derivative under paragraph 18(1) (b) must be with an approved counterparty.

- (2) A counterparty to a transaction in derivatives is not treated as an approved counterparty under sub-paragraph (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 sub-paragraph 3.
- (3) The terms of the transaction in derivatives are only treated as being on approved terms under sub-paragraph (2) where, before the transaction is entered into, the trustee is satisfied that the counterparty has agreed with the manager –
- (a) to provide a reliable and verifiable valuation in respect of that transaction at least daily and at any other time at the request of the manager; and
 - (b) that it or an alternative counterparty will, at the request of the manager, enter into a further transaction to sell, liquidate or close out that transaction at any time, at a fair value arrived at under the pricing model or other reliable basis agreed under sub-paragraph (4).
- (4) A transaction in derivatives is only capable of valuation under sub-paragraph (3)(b) 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 the pricing model which has been agreed between the manager and the trustee; or
 - (b) on some other reliable basis reflecting an up-to-date market value which has been so agreed.

21 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 sub-paragraph (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 sub-paragraph (2)(a) or (b).

22 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.

23 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 sub-paragraph (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).

24 Concentration

A UCITS type scheme –

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

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

25 UCITS type schemes that are umbrella funds

- (1) In relation to a UCITS type scheme which is an umbrella fund, the provisions in Parts B to E of this Schedule 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 23 (significant influence for managers of authorised schemes); and
 - (b) paragraph 24 (concentration).
- (2) A sub-fund must not invest in another sub-fund of the same umbrella fund.

26 Schemes replicating an index

- (1) 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 scheme particulars is to replicate the composition of a relevant index which satisfies the criteria specified in paragraph 27 (relevant indices).
- (2) The limit in sub-paragraph (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.

27 Relevant indices

The indices referred to in paragraph 26 are those which satisfy the following criteria –

- (a) the composition is sufficiently diversified;
- (b) the index is a representative benchmark for the market to which it refers; and
- (c) the index is published in an appropriate manner.

Part C DERIVATIVE EXPOSURE

28 Application

PART C applies to a manager of a UCITS type scheme.

29 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 sub-paragraph (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 sub-paragraph (2).
- (4) Property which is the subject of a transaction under Part D of this Schedule (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).

30 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 29 (cover for transactions in derivatives and forward transactions), except if sub-paragraph (2) applies.
- (2) Where, for the purposes of this paragraph the trustee 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 sub-paragraph (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.

31 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 29.

PART D STOCK LENDING

32 Application

Part D applies to the trustee and manager of a UCITS type scheme or a non-UCITS type scheme.

33 Stock lending: general

A scheme may only enter into a stock lending arrangement or repo contract in accordance with the requirements in this Part D 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.

34 Stock lending: requirements

- (1) The trustee 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 are in a form which is acceptable to the trustee and are in accordance with good market practice;
 - (b) the counterparty is –
 - (i) an eligible institution; or
 - (ii) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
 - (iii) any other person approved by the Commission; and
 - (c) collateral is obtained to secure the obligation of the counterparty under the terms referred to in sub-paragraph(a) and the collateral is –
 - (i) acceptable to the trustee;
 - (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 sub-paragraph (1)(a) to transfer to the trustee the securities transferred by the trustee under the stock lending arrangement or securities of the same kind.
- (3) Sub-paragraph (1)(c) does not apply to a stock lending transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

35 Treatment of collateral

- (1) Collateral is adequate for the purposes of this paragraph only if it is –
- (a) transferred to the trustee or its agent;
 - (b) at least equal in value, at the time of the transfer to the trustee, to the value of the securities transferred by the trustee; 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 14 (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
 - (b) the trustee 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 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.
- (5) The duty in sub-paragraph (4) may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired where the trustee 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 regulations 242 to 274 (valuation of the property of the scheme) of the 2005 Regulations or this Schedule, 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 is part of the scheme property for the purposes of these regulations, except in the following respects –
 - (a) it does not fall to be included in any valuation for the purposes of regulations 242 to 274 of the 2005 Regulations or this Schedule, because it is offset under sub-paragraph (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) Sub-paragraphs (6) and (7)(a) do not apply to any valuation of collateral itself for the purposes of this paragraph.

36 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.

Part E CASH AND NEAR CASH

37 Application

(1) Part E applies to a manager and a trustee of a UCITs type scheme in accordance with sub-paragraph (2).

(2)

Paragraph(s)	Manager	Trustee
38	Yes	-
39(1) to (3)	-	Yes
39(4) and (5)	Yes	-
39(6)	-	Yes
39(7)	Yes	Yes
40	Yes	-
41	Yes	Yes
42(1) to (3)	Yes	Yes
42(4)	-	Yes
43	Yes	-
44	-	Yes
45	Yes	Yes

38 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.

39 General power to borrow

- (1) The trustee (on the instructions of the manager) may, in accordance with this paragraph and paragraph 40 (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) Sub-paragraph (1) is subject to the obligation of the scheme to comply with any restriction in the instrument constituting the scheme.
- (3) The trustee may borrow under sub-paragraph (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 sub-paragraph (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.
- (6) The trustee may only give its consent as required under sub-paragraph (5) on such conditions as appear to the trustee 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 paragraph 30(2) (borrowing).
- (8) A scheme must not issue any debenture unless it acknowledges or creates a borrowing that complies with sub-paragraphs (1) to (6).

40 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 paragraph 30(2) (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.

41 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 sub-paragraph (1); nor is the placing of money on deposit or in a current account.

42 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 Part D of this Schedule (stock lending) are not to be regarded as lending for the purposes of sub-paragraph (1).
- (3) The scheme property must not be mortgaged.
- (4) Nothing in this paragraph prevents the trustee at the request of the manager, from lending, depositing, pledging or charging scheme property for margin requirements where transactions in derivatives or forward transactions are used for the account of the scheme in accordance with any other of the paragraphs in this Schedule.

43 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 instrument 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) Sub-paragraph (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 sub-paragraph (2) must, on any day, be –

- (a) covered under paragraph 29 (cover for transactions in derivatives and forward transactions); and
- (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.

44 Guarantees and indemnities

- (1) A trustee 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) Sub-paragraphs (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 trustee 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 trustee 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 unitholders 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.

PART F NON UCITS TYPE SCHEMES

Investment powers and borrowing limits for non - UCITS type schemes

45 Application

- (1) Part F applies to the manager and the trustee of a non-UCITS type scheme.
- (2) Where Part F contains a reference to a paragraph in any of Parts A to E of this Schedule, 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.

46 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 scheme particulars, the scheme property of the non-UCITS type scheme aims to provide a prudent spread of risk.
- (2) The requirements in Part F relating to spread of investments do not apply during any period in which it is not reasonably practical to comply, provided that sub-paragraph (1) is complied with during such period.

47 Investment powers: general

- (1) The scheme property of a non-UCITS type scheme may, subject to the requirements in this Part F, 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 instrument 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 this Part F, consist of any one or more of –
 - (a) transferable securities;
 - (b) money-market instruments;

- (c) units in collective investment schemes permitted under paragraph 53 (investment in collective investment schemes);
- (d) derivatives and forward transactions permitted under paragraph 56 (permitted transactions (derivatives and forwards));
- (e) deposits permitted under paragraph 22 (investment in deposits);
- (f) immovables permitted under paragraph 60 (investment in property) and paragraph 62 (investment limits for immovables); and
- (g) gold up to a limit of 10% in value of the scheme property.

48 Transferable securities and money-market instruments

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 9 (eligible markets: requirements); or
- (b) subject to a limit of 20% in value of the scheme property be –
 - (i) transferable securities which are not approved securities; or
 - (ii) money-market instruments which are liquid and have a value which can be determined accurately at any time.

49 Valuation

In this Part F the value of the scheme property means the value of the scheme property determined in accordance with paragraph 6 (valuation).

50 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 66 (schemes replicating an index).
- (4) In applying sub-paragraph (3) certificates representing certain securities are to be treated as equivalent to the underlying security.
- (5) The exposure to any one counterparty in an OTC derivative transaction must not exceed 10% in value of the scheme.

- (6) Except for a feeder fund, not more than 35% in value of the scheme is to consist of the units of any one scheme.
- (7) For the purpose of calculating the limit in sub-paragraph (5), 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 sub-paragraph (8).
- (8) The conditions referred to in sub-paragraph (7) 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.
- (9) For the purpose of calculating the limit in sub-paragraph (5), 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.
- (10) 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.
- (11) 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.

51 Spread: government and public securities

- (1) This paragraph applies in respect of government and public securities.

- (2) The requirements in paragraph 11 (spread: government and public securities) apply to investment in government and public securities by a non-UCITS type scheme , except for paragraph 11(4) which will apply to such a scheme only to the extent that it concerns the most recently published scheme particulars of the scheme .

52 Investment in warrants and nil and partly paid securities

A non-UCITS type scheme must not invest in warrants, and nil and partly paid securities unless the investment complies with the conditions in paragraph 15 (investment in warrants and nil and partly paid securities).

53 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 sub-paragraphs (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 retail scheme by the UK Financial Services Authority (provided the requirements of article 19(1)(e) of the UCITS Directive are met);
 - (d) be authorised in another EEA State (provided the requirements of article 19(1)(e) of the UCITS Directive are met);
 - (e) be authorised under Schedule 1 or recognised under Schedule 4 of the Act.
 - (f) be a scheme where the investment and borrowing powers are the same or more restrictive than those of a non-UCITS type scheme; or
 - (g) 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 sub-paragraphs (3) to (5) and paragraph 50 (spread: general) apply to each sub-fund as if it were a separate scheme.

54 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 scheme particulars of the investing scheme clearly states that the property of that investing fund may include such units; and
- (b) the conditions in paragraph 14 (investment in other group schemes) are complied with.

55 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 56 (permitted transactions (derivatives and forwards)); and
 - (b) covered, as required by paragraph 29 (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 50 (spread: general) and paragraph 51 (spread: government and public securities) except as provided in sub-paragraph (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 66 (schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of paragraph 50 and paragraph 51.

- (5) The relaxation in sub-paragraph (4) is subject to the manager taking account of paragraph 46 (prudent spread of risk).
- (6) Where derivatives transactions may be used in an 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 must be contained in the scheme particulars.

56 Permitted transactions (derivatives and forwards)

- (1) A transaction in a derivative must be within paragraph 18(1) (permitted transactions (derivatives and forwards)) and –
 - (a) the underlying must be within paragraph 47 (investment powers: general) or paragraph 18(2)(f) to (i); and
 - (b) the exposure to the underlying must not exceed the limits in paragraph 50 (spread: general) and paragraph 51 (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 instrument constituting the scheme and the most recently published scheme particulars.
- (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 31 (continuing nature of limits and requirements).

57 Transactions for the purchase or disposal of property

The requirements of paragraph 19 (requirement to cover sales) apply to non-UCITS type schemes in the same manner as to UCITS type schemes.

58 OTC transactions in derivatives

Any transaction in an OTC derivative under paragraph 56 (permitted transactions (derivatives and forwards)) must comply with the requirements of paragraph 20 (OTC transactions in derivatives).

59 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 sub-paragraph (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 sub-paragraph (2)(a) or (b).

60 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 sub-paragraphs (2) to (5).
- (2) An immovable must –
 - (a) be situated in a country or territory identified in the scheme particulars for the purpose of this paragraph; and
 - (b) if situated in –
 - (i) 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 sub-paragraph (b)(i) or (ii), be equivalent to any of the interests in sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 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.

61 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 unitholders 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 chapter 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.

62 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 sub-paragraph (2), immovables within paragraph 60(4)(b) (investment in property) must be regarded as one immovable.
- (4) The figure of 15% in sub-paragraph (2) may be increased to 25% once the immovable has been included in the scheme property in compliance with sub-paragraph (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 paragraph 63 (on the assumption the immovable is not mortgaged).
- (7) The aggregate value of –
 - (a) mortgages secured on immovables under sub-paragraph (6);
 - (b) borrowing of the scheme under paragraph 64(e); 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.

63 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 trustee at the outset and upon any vacancy.
- (2) The standing independent valuer in sub-paragraph (1) must be independent of the scheme, the directors (where applicable), the manager and the trustee.
- (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 sub-paragraph (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 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 sub-paragraph (a) instead of under sub-paragraph(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 sub-paragraph (d); and
 - (f) any valuation by the standing independent valuer must be on the basis of an 'Open Market value' as defined in Practice Statement 3 in the Royal Institute of Chartered Surveyors' Appraisal and Valuation Manual (first edition published September 1995) but subject to regulations 242 to 274 (valuation of the property of the scheme) of the 2005 Regulations.
- (4) In relation to an immovable –
- (a) any valuation under regulations 242 to 274 (valuation of the property of the scheme) of the 2005 Regulations 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.

64 Stock lending

A non-UCITS type scheme may undertake stock lending in accordance with Part D of this Schedule (stock lending).

65 Cash, borrowing, lending and other provisions

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

- (a) paragraph 7 (transferable securities);
- (b) paragraph 37 (application) including paragraph 37(2) (table of application) ;
- (c) paragraph 38 (cash and near cash);
- (d) paragraph 39(1) to (3) and (8) (general power to borrow);
- (e) paragraph 40(1) and (2) (borrowing limits);
- (f) paragraph 41 (restrictions on lending of money) ;
- (g) paragraph 42 (1), (2) and (4) (restrictions on lending of property other than money);
- (h) paragraph 43 (general power to accept or underwrite placings);
and
- (i) paragraph 44 (guarantees and indemnities).

66 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 scheme particulars is to replicate the performance or composition of an index within sub-paragraph (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 sub-paragraph (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.

67 Non-UCITS type schemes that are umbrella funds

- (1) 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.
- (2) A sub-fund must not invest in another sub-fund of the same umbrella fund.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations set out alternative investment and borrowing powers that an authorised collective investment scheme which meets specified criteria can adopt in place of the investment and borrowing powers in the Financial Supervision (Authorised Collective Investment Schemes) Regulations 2005.