

Financial Services (Investment and Fiduciary Services)
FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)
REGULATIONS, 1991.

Regulations made under s.17.

1989-47

**Subsidiary
1991/068**

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT
SCHEMES) REGULATIONS, 1991**

(LN. 1991/068)

25.4.1991

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:

Directive 85/611/EEC

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Title.

1. These Regulations may be cited as the Financial Services (Collective Investments Schemes) Regulations, 1991.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires,—

“accumulation unit” means a unit in an authorised collective investment scheme described as such;

“the annual accounting period” is the period of twelve months between dates specified for the purpose in the formation documents;

“annual income allocation date” means the date in the calendar year specified in the trust deed as the date on or before which allocations of income in respect of each annual accounting period are to be made;

“annual distribution date” means the date in the calendar year specified in the trust deed as the date on or before which distributions of income in respect of each annual accounting period are to be made;

“approved options and futures market” means such market as is approved by the Authority by notice in the Gazette;

“associate” in relation to a body corporate means—

- (a) a controller of that body corporate or any subsidiary of that controller; or
- (b) an officer or employee of that body corporate; or
- (c) any subsidiary of that body corporate and any officer or employee of that subsidiary;

“authorised banking institution” means a banking institution in respect of which a licence, under the Banking Act, is in force and also includes any person who is authorised under the law of a member State as a credit institution;

“base currency” means sterling or any other currency specified in the formation documents as the base currency of the scheme;

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“bearer certificate” means a certificate representing units of any class which contains a statement that the bearer of the certificate is entitled to the number of units of that class represented by the certificate (being, in the case of a public investment company, a share warrant to bearer);

“cancellation” in relation to a unit or share in a public investment company, means the redemption thereof by the company;

“cancellation price” means the price for each unit payable by the trustee on the cancellation of units;

“capital property” means—

- (a) in the case of a mutual or common fund or unit trust scheme, all the property for the time being held on the trusts of the trust deed; and
- (b) in the case of a public investment company, all the property of the company other than any part of such property which is attributable to shares which do not form part of the collective investment scheme;

excluding income property and any amount for the time being standing to the credit of the distribution account;

“cash” includes foreign currency;

“constituent part” in relation to an umbrella fund, means one of the separate parts into which the property of the umbrella fund is divided;

“controller” means in relation to a body corporate, a person who either alone or with any associate or associates, is entitled to exercise or control the exercise of 15 per cent or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary;

“creation” in relation to shares in a public investment company, means the issue thereof by the company;

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

“director” in relation to a body corporate includes a person occupying in relation to it the position of a director (by whatever name called)

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and any person in accordance with whose directions or instructions the directors of that body are accustomed to act;

“distribution” in relation to accumulation units means the allocation of income to capital property;

“distribution account” means the account known by that name and opened and maintained in accordance with Part II of Schedule 5;

“extraordinary resolution” has the meaning assigned to it in paragraph 40 of Schedule 11;

“feeder fund” has the meaning given to it in regulation 55(1);

“fund of funds” has the meaning given to it in regulation 56(1);

“formation documents” means in the case of a mutual or common fund or a unit trust, the trust deed and in the case of a public investment company, the articles of association, the trustee agreement and the management agreement;

“half-yearly accounting period” means the period of six months beginning with the date at which the annual accounting period begins;

“holder” in relation to a unit or share in an authorised collective investment scheme, means the person who is entered in the register as the holder of that unit or share or a bearer of a bearer certificate representing that unit or share;

“income equalisation” has the meaning given to it in paragraphs 12 to 15 of Schedule 8;

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

“income unit” means a unit in a collective investment scheme which is not an accumulation unit;

“initial offer” has the meaning given to it by regulation 19;

“initial price of units” has the meaning given to it by regulation 19;

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“interim income allocation date” means the date in the calendar year specified in the trust deed as the date on or before which allocations of income are required or authorised to be made or, if the trust deed leaves the determination of that date to the discretion of the manager, the date determined for that purpose by the manager;

“investment adviser” means a person who is engaged by the manager under a commercial arrangement not being a mere contract of employment to exercise for the manager the latter’s discretionary powers or to supply the manager with advice as to the merits of investment opportunities or information relevant to the making of judgments about the merits of investment opportunities;

“issue” in relation to units, means the sale of units by the manager as a principal and “issue price” shall be construed accordingly;

“management share” means a share issued by the directors only to the manager at par value;

“mid-market value” in relation to property of any description and a particular time, means the arithmetic average of the amount which would be received in consideration of the sale of the property at that time and the amount which would be payable in order to buy the property at that time on the assumption that the sale and purchase respectively were on the best terms available on an approved market on which the property is traded for transactions in property of that description in what, in the reasonable opinion of the manager, is a standard size;

“minimum holding of units”, in relation to any unit (whether income or accumulation units), means–

- (a) such number of units of that class; or
- (b) that number of units of that class including fractions as may have such value (calculated at the sale price);

as the manager may with the approval of the trustee from time to time prescribe as the minimum holding a person must have in order to qualify to be a holder of units of that class in the scheme;

“minimum repurchase number of units”, in relation to any units (whether income or accumulation units) means–

- (a) such number of units of that class; or

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- (b) that number of units of that class including fractions as may have such value (calculated at the sale price);

as the manager may with the approval of the trustee from time to time prescribe as the minimum to any one transaction of repurchase of units of that class;

“money market fund” has the meaning given to it by regulation 51(1);

“near cash” means money in a current account with an authorised banking institution or money in a deposit account with such an institution which can be withdrawn immediately;

“nominal share”, in relation to a public investment company, means a non-participating redeemable second preference share in the company;

“period of initial offer” has the meaning given to it by regulation 19;

Def. omitted by LN. 73/1992 r.2(d) as from 28-5-1992.

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

“redemption” in relation to units in a scheme means the purchase of units from a holder by the manager as a principal and “redeem” and “redemption price” shall be construed accordingly;

“re-purchase” in relation to units, means the purchase from a holder in the scheme by the manager, as a principal, on his own account of units held by the holder;

“sale” in relation to units, means the sale by the manager, as a principal, of units which he owns and “sale price” shall be construed accordingly;

“scheme particulars” in relation to an authorised collective investment scheme means scheme particulars issued in relation to that scheme;

“transferable security” means any investment falling within paragraphs 1 to 6 of Schedule 1 to the Act other than an investment title which either cannot be transferred or can be transferred only with the consent of a third party;

“trustee agreement” means an agreement between the trustee of a public investment company, the manager of that scheme and the company sealed by the parties containing only a provision that the trustee

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agrees to become the trustee of the collective investment scheme on and subject to these Regulations and the terms of the formation documents of the scheme and a declaration that the trustee will hold the property of the scheme on trust for the company in accordance with these Regulations.

“umbrella fund” has the meaning given to it by regulation 57(1).

(2) In these Regulations, “Government and other public securities” means investments falling within paragraph 3 of Schedule 1 to the Act which are issued by or on behalf of—

- (a) the Government of Gibraltar or a member State or a local authority in a member State; or
- (b) the Government of any country or territory approved by the Authority for the purpose of this sub-regulation by notice published in the Gazette; or
- (c) an international organisation the members of which include a member State,

and includes investments which would fall within paragraph 3 of Schedule 1 to the Act if the paragraph extended to investments guaranteed by a local authority in any member State or by the Government of Gibraltar, the Government of any member State or by the Government of any country or territory specified in the notice referred in paragraph (b).

PART I.**AUTHORISATION OF COLLECTIVE INVESTMENT SCHEMES.****Application for licences.**

3. Any application for a licence in respect of a collective investment scheme as an authorised scheme shall be made jointly by the manager and the trustee or custodian (as the case may be), or jointly by the proposed manager and the proposed trustee or custodian, of the scheme:

Provided that in the case of a public investment company seeking the exercise of the power conferred by regulation 12(2), the application shall be made by the manager, or proposed manager, alone.

Licences.

4. (1) Subject to subregulation (2) the Authority may, on any application duly made in accordance with section 6 of the Act issue a licence under

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section 8 of that Act providing that a collective investment scheme may operate as—

- (a) an authorised scheme if it appears to the Authority that the scheme complies with the applicable requirements of the Act, of these Regulations (other than Parts V and VI) and of any other relevant regulations made thereunder;
- (b) an authorised scheme which is a transferable securities scheme described in Part V of these Regulations if it appears to the Authority that the scheme complies not only with the requirements referred to in paragraph (a) but also with the requirements of that Part;
- (c) an authorised scheme of a kind described in Part VI of these Regulations if it appears to the Authority that the scheme complies not only with the requirements referred to in paragraph (a) but also with the requirements of that Part applicable to a scheme of that kind.

(2) The conditions to be satisfied by any collective investment scheme before a licence under section 8 of the Act may be granted are—

- (a) the scheme shall be constituted or incorporated under the laws of Gibraltar;
- (b) the scheme shall be constituted in Gibraltar and shall be regarded as so constituted if the manager is a body corporate incorporated in Gibraltar and has its registered office and its head office in Gibraltar;
- (c) subject to regulation 67(2), the trustee or custodian, as the case may be, shall be a body corporate having its registered office in Gibraltar or in a member State, and if its registered office is in a member State it shall have a place of business in Gibraltar;
- (d) the manager and the trustee or custodian, as the case may be, shall be different persons who are independent of each other;
- (e) the directors of the manager and the directors of the trustee or custodian shall in the opinion of the Authority be of good repute and have the experience required for the performance of their duties;
- (f) the manager and the trustee or custodian shall have furnished such financial and professional guarantees that the Authority may satisfy itself that the manager and the trustee or custodian

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are likely to be able to discharge their obligations under the Act, and any direction given by the Authority;

- (g) the choice of manager and trustee or custodian, shall be acceptable to the Authority;
- (h) the formation documents and scheme particulars comply with the relevant provisions of these or any other relevant regulations and are in a form acceptable to the Authority;
- (i) the name of the scheme shall be approved by the Authority;
- (j) the purposes of the scheme shall be reasonably capable of being successfully carried into effect;
- (k) the manager shall have appointed an auditor who has the approval of the trustee or custodian and who complies with the requirements of Part IX of these Regulations.

(3) On issuing a licence in accordance with subregulation (1)(b), of this regulation, the Authority may also issue a certificate to the effect that the scheme is authorised and complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument.

PART II.**GENERAL REQUIREMENTS IN RELATION TO UNIT TRUSTS AND
COMMON OR MUTUAL FUNDS.****Application of Part II.**

5. The provisions of this Part apply to any unit trust scheme or common or mutual fund situated in Gibraltar.

Trust deed and fund rules.

6. (1) A unit trust scheme shall be established by a written instrument under seal (“the trust deed”) made between the manager and the trustee.

(2) A common or mutual fund shall be established either by a written instrument under seal (“the trust deed”) made between the manager and the trustee or by the formation documents of a company incorporated under the Companies Act (“the fund rules”).

(3) The trust deed or fund rules—

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- (a) shall contain provision for the matters prescribed by Schedule 2;
 - (b) shall subject to regulation 86 specify the conditions for the replacement of the manager and the trustee; and
 - (c) shall contain rules to ensure the protection of the interests of participants in the event of the replacements mentioned in (b) above.
- (4) The provisions contained in the trust deed or fund rules shall not contravene the provisions of the Act.

Property to be held by trustee.

7. The property of a unit trust scheme or common or mutual fund shall be held by the trustee on trust for the participants.

PART III.
GENERAL REQUIREMENTS IN RELATION TO
PUBLIC INVESTMENT COMPANIES.

Application of Part III.

8. The provisions of this Part apply to any public investment company constituted in Gibraltar, save that the provisions of regulations 14-16 shall apply only to those public investment companies so constituted which are also open-ended investment companies.

Place of incorporation and head office.

9. The company shall be incorporated under the Companies Act and have its head office in Gibraltar; and the address of the registered office of the company and of its head office shall not be changed without the prior written approval of the Authority.

Notice of change of directors.

9A. (1) Where any person becomes or ceases to be a director of a public investment company, the company shall not later than 21 days after the happening of the event give notice in writing of the event to the Authority.

(2) A notice under subregulation (1) shall include the full name of the person and the date on which the appointment commenced or ceased, as the case may be, together with the reasons for the appointment or the cessation of the appointment, as the case may be.

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Contents of memorandum and articles of association.

10. (1) The provisions contained in the memorandum and articles of association of the company shall not contravene the provisions of the Act.

(2) The articles of association of the company shall provide for the matters prescribed in Schedule 3; and shall subject to regulations 87 and 88 also specify the conditions for the replacement of the manager and of the custodian, and contain rules to ensure the protection of the interests of the participants in the event of any such replacement.

Financial and other resources.

11. (1) The company shall satisfy the Authority that it has sufficient paid-up capital to enable it to conduct its business effectively and to meet all its liabilities. It shall not in any case be entitled to commence business unless it has paid-up capital of at least £50,000 or the equivalent thereof in some other currency.

(2) The company may acquire such property as is essential to the proper and direct conduct of its business.

Property of the scheme to be held by custodian.

12. Except in the case provided for by subregulation (2), the property of the collective investment scheme constituted by the company shall be placed in the custody of the custodian for safe-keeping by means of an agreement between the custodian and the company and, where appropriate, the manager, in which the custodian accepts custodianship of that property and agrees to observe the provisions of the formation documents.

Duty to enforce rights of action.

13. (1) If a public investment company has at any time a right of action against the custodian or manager or any investment adviser to the manager for breach of duty or otherwise, it shall be the duty of the directors of the company to prosecute and enforce that right for the benefit of the company.

(2) Subregulation (1) shall apply where the property of the scheme includes units permitted by virtue of regulation 42 and where that public investment company has at any time a right of action against another company in the same group as the manager or another company which is managed by any person who is a controller of the manager or of whom the manager is a controller.

Re-classification of shares by open-ended investment companies.

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14. (1) Notwithstanding the provisions of the Companies Act, an open-ended investment company, if permitted by its formation documents, may classify any of its redeemable preference shares as units, provided that the units so created—

- (a) have the same value and are the same in number; and
- (b) carry the same rights and obligations;

as the shares they replace.

(2) The provisions of the Companies Act shall apply to the units created by virtue of subregulation (1) as if those units were redeemable preference shares.

(3) References in this Part, in Part IV and in Schedules 5, 7, 8, 10 and 11 to redeemable preference shares shall include references to units and vice versa.

Share capital of open-ended investment companies.

15. (1) The authorised share capital of an open-ended investment company shall consist of management shares and unclassified shares in the amounts and nominal values stated in its memorandum of association.

- (2) (a) The directors of the open-ended investment company shall issue the management shares at par value to the manager of the scheme, or to an associated company of the manager;
- (b) the only right to payment attaching to the management shares shall be on a winding up of the open-ended investment company and only after payment to the holders of redeemable preference shares, units and normal shares.
- (3) (a) The directors of the open-ended investment company may issue the unclassified shares in the company as nominal shares or as units;
- (b) a nominal share shall have the same nominal value as a unit and may be issued only to the manager of the scheme, or to an associated company of the manager, at par value and solely for the purpose of providing to the manager funds for the cancellation of units;

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- (c) the only right to payment attaching to the nominal shares shall be on a winding up of the company and only after payment to the holders of redeemable preference shares and units;
- (d) the manager may convert any nominal share for the time being held by it into a unit at any time at which the creation of units is permitted under these Regulations by giving notice to the company and paying to the company the creation price of the unit less (subject to regulation 16) the nominal value of the nominal share so converted;
- (e) the company may redeem at par value any nominal share subject to the provisions of the Companies Act and the giving of one month's notice in writing to the holder of that share, and may for such redemption apply any monies (not being part of the property of the scheme) which lawfully may be so applied.

Separate account of non-unit shares.

16. (1) The directors of the open-ended investment company shall maintain a separate account showing the property attributable to all shares which are not units.

(2) The property referred to in subregulation (1) shall comprise the subscription monies paid upon the issue of the shares referred to in that subregulation and accretions thereto less any expenditure thereout.

(3) Upon the conversion of a nominal share into a unit, the nominal value of that nominal share shall be transferred from the separate account referred to in subregulation (1) to the property of the scheme or, to the extent that there are insufficient monies in that separate account to effect the transfer, shall be paid by the manager into the property of the scheme.

PART IV.**GENERAL PROVISIONS WITH REGARD TO
COLLECTIVE INVESTMENT SCHEMES.****Application of Part IV.**

17. (1) The provisions of this Part shall apply to all collective investment schemes constituted in Gibraltar whether as unit trusts or common or mutual funds under the provisions of Part II, or as public investment companies under the provisions of Part III, of these Regulations.

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(2) Where the Authority is satisfied that to do so would be appropriate, taking account of the nature of the collective investment scheme and the character and number of persons who may be participants in the scheme, the Authority may, in its discretion, vary any provision of these Regulations in respect of that scheme to the extent that and subject to such limitations and conditions, if any, as it thinks fit:

Provided that this subregulation shall not apply to a collective investment scheme to which Part V applies.

Units and accumulation units.

18. (1) The interests of participants in a scheme shall consist of units (including fractions of a unit) and each unit shall be treated as representing one undivided share in the capital property of the scheme.

(2) Where accumulation units are in existence—

(a) any accumulation units issued otherwise than in pursuance of the initial offer shall, when issued, each represent the same number (including fractions) of undivided shares in the capital property of the scheme as each other accumulation unit then in existence; and

(b) with effect from—

(i) the record date for each annual accounting period, and

(ii) the record date for each half-yearly accounting period in respect of which an amount is available for allocation of income,

the number (including fractions) of undivided shares in the capital property of the scheme represented by each accumulation unit then in existence shall be increased to such number (calculated to at least five significant figures) as will ensure that thereafter the creation price of an accumulation unit shall remain unchanged notwithstanding the transfer made to the distribution account.

Initial capital property.

19. (1) Where the initial capital property of a scheme is to be acquired by the making of an offer for sale of units to the public (“the initial offer”) that offer shall be at a price (“the initial price”) stated in the formation documents of the scheme or, if no such price is so stated, at such price as

shall be agreed between the manager and the trustee or custodian, as the case may be.

(2) The initial offer shall be kept open for such period as is specified in the formation documents of the scheme or, if no such period is so specified, for such period as shall be agreed between the manager and the trustee or custodian.

Currency of initial price.

20. The initial price shall be expressed in the base currency of the scheme.

Constituents of capital property, hedging transactions and borrowings.

21. (1) If the formation documents of the scheme impose restrictions—

- (a) on the descriptions of property which may comprise the capital property of the scheme; or
- (b) on the proportion of the capital property of the scheme which may consist of property of any one description; or
- (c) on the descriptions of hedging transaction which may be effected on behalf of the scheme; or
- (d) on borrowing which may be made on behalf of the scheme,

those restrictions shall be observed notwithstanding that they are not imposed by the Act.

(2) If a statement is made in the scheme particulars that the manager may in relation to any matter falling within any paragraph of subregulation (1), adopt in the management of the scheme a policy more restrictive than the restrictions imposed in relation to that matter by the formation documents of the scheme, no significant departure may be made in the management of the scheme from any such policy unless and until the departure has been approved by an extraordinary resolution at a meeting of the participants called for the purpose and scheme particulars amended accordingly have been published.

Manager's periodic charge.

22. (1) The only payment to be made to the manager out of the property of a scheme by way of remuneration for the manager's services shall be a periodic charge permitted by and calculated in accordance with the formation documents of the scheme, and which shall not exceed—

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- (a) such annual percentage of the value of the property of the scheme as is specified in those formation documents as the maximum of the manager's periodic charge; or
- (b) such lower annual percentage of the value of the property of the scheme as is specified in the most recently published scheme particulars,

divided by 365 and multiplied by the number of days (including fractions of a day) in the period in respect of which the charge has accrued.

(2) The value of the property of the scheme referred to in subregulation (1) is the value of that property—

- (a) as at the valuation point at which the period in respect of which the charge has accrued begins or, if that period does not begin at a valuation point, at the valuation point next before its beginning, and
- (b) determined on the offer basis of the valuation carried out at that valuation point.

(3) In subregulation (2) “valuation point” means the time by reference to which a valuation is carried out in accordance with Part 1 of Schedule 7 of these Regulations.

Fees of trustee or custodian.

23. Such fees of the trustee or custodian as are paid out of the property of the scheme shall be calculated and accrue and be paid in the manner determined by the formation documents of the scheme.

Payments out of and into the property of the scheme.

24. (1) The following expenses only may be paid out of the property of the scheme—

- (a) the costs of dealing in the property;
- (b) the interest on borrowings permitted under the scheme and charges incurred in negotiating, effecting, terminating or varying the terms of such borrowings;
- (c) the costs and expenses incurred in obtaining a listing of the units of the scheme on any stock exchange;

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- (d) taxation and duties payable in respect of the property of the scheme, the formation documents of the scheme and the creation and sale of units;
- (e) any costs incurred in modifying the formation documents of the scheme;
- (f) any costs incurred in the preparation and publication of the scheme particulars and of any amended or supplementary particulars;
- (g) any costs incurred in respect of meetings of the participants;
- (h) any periodic charge payable to the manager in accordance with regulation 22;
- (i) the fees of the trustee or custodian as the case may be payable in accordance with regulation 23;
- (j) any expenses or disbursements of the trustees or custodian which are authorised by the formation documents of the scheme to be paid out of the property of the scheme;
- (k) the fees and expenses of the auditor;
- (l) the costs incurred in publishing annual and half-yearly reports;
- (m) the costs incurred in keeping the register;
- (n) the costs incurred in the establishment of the scheme as stated in the scheme particulars, amortised over the period, not exceeding 5 years, specified in those particulars;
- (o) the costs incurred by the operator and permitted by the formation documents; and
- (p) any fees payable to the Authority and any fees payable to any regulatory authority in a country or territory outside Gibraltar in which units of the scheme are or may be marketed.

(2) If the trustee or custodian, as the case may be, notifies the manager that any of the expenses referred to in paragraphs (e) or (g) of subregulation (1) have been incurred for the benefit of the manager, those expenses shall be borne by the manager and not paid out of the property of the scheme.

(3) All payments of a capital or income nature properly payable out of the property of a scheme shall, to the extent that the income property of the

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scheme is insufficient to meet them when they fall due for payment, be paid out of the capital property of the scheme.

(4) All repayments of a capital nature properly payable into the property of a scheme shall be paid into the capital property of the scheme.

(5) All payments or repayments of an income nature properly payable out of or into the property of a scheme shall be paid out of or into the income property of the scheme.

Sub-division and consolidation of units.

25. The manager may, at any time when no bearer certificates are in issue, with the approval of the trustee or the custodian, as the case may be, determine that—

- (a) each unit shall be subdivided into two or more units; or
- (b) that two or more units shall be consolidated,

whereupon, such units shall stand so subdivided or consolidated.

Creation, etc. of units, and calculation of prices.

26. The formation documents of a scheme shall provide in a manner consistent with the provisions of Schedule 7 for the creation, cancellation, sale, repurchase and redemption of units, the valuation of the property of the scheme and the calculation of the sale, issue, repurchase and redemption prices of units and any other matters prescribed by that Schedule.

Repurchases and redemptions.

27. (1) Any participant in a scheme shall be entitled, at his request made in writing to the manager, to have his units repurchased or redeemed directly or indirectly out of the property of the scheme in accordance with the formation documents of the scheme.

- (2) The manager—
 - (a) may, with the prior agreement of the trustee or custodian of the scheme, or
 - (b) shall, if the trustee or custodian of the scheme so requires,

suspend the repurchase or redemption of units at any time for a period not exceeding one month, if he or the trustee or custodian are of the opinion that

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there is good and sufficient reason to so suspend the repurchase or redemption of units having regard to the interests of the participants.

(3) The manager shall forthwith give notice in writing of any suspension under subregulation (2), stating the reasons therefor, to the Authority.

(4) The Authority may by notice in writing to the manager require the manager to suspend the repurchase or redemption of units for such period as may be specified in the notice if the Authority is satisfied that such suspension is necessary in the interests of participants or in the public interest.

(5) Where applicable the manager shall forthwith give notice in writing of any suspension under subregulation (2) or (4) to the authority responsible for authorising collective investment schemes in any member State in which the manager holds itself out as willing to sell, issue, repurchase or redeem the units.

Allocation and distribution of income.

28. The formation documents of a scheme shall provide in a manner consistent with the provisions of Schedule 8 for—

- (a) the periodic determination of the amount available for income allocation; and
- (b) the allocation and distribution, as the nature of the units of the scheme may require, of the amount so determined.

Payment of issue price.

29. Except in the case of a bonus issue of units made in accordance with the formation documents of the scheme, no unit of a scheme shall be issued unless the equivalent of the net issue price is paid into the property of the scheme before close of business on the fourth business day next after the instructions given by the manager to the trustee for the issue of the units.

Lending, guarantees and indemnities.

30. (1) None of the property of a scheme may be lent or used to discharge any obligation arising under a guarantee or indemnity given by the manager, the trustee or the custodian with respect to the obligations of a third party.

(2) For the purposes of subregulation (1) neither the consideration payable for any instrument creating or evidencing indebtedness which may lawfully be included within the property of the scheme, nor the placing of money on deposit or in a current account, nor the transfer of title to any

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property of the scheme on terms that involve title being transferred back at some future date shall be regarded as lending.

(3) Subregulation (1) shall not be construed as preventing a scheme from acquiring transferable securities which are not fully paid.

Uncovered sales of transferable securities.

31. The trustee, custodian or manager of a scheme, acting in their capacities as such, and the company in the case of an open-ended investment company, shall not enter into any obligation to dispose of any transferable securities belonging to the scheme which is not a hedging transaction unless the property of the scheme includes either property or rights to acquire property sufficient to enable all such obligations to be discharged.

Acquisition of significant influence over company management.

32. (1) The property of a scheme shall not consist of such number of securities of a body corporate carrying rights to vote at general meetings of that body as would give the manager power significantly to influence the conduct of the business of that body.

(2) For the purposes of this regulation, a manager shall be taken to have power significantly to influence the conduct of business of a body corporate if it can, by virtue of the securities in question, exercise or control the exercise of 20% or more of the votes cast at general meetings of that body (disregarding for this purpose any temporary suspension of voting rights in respect of the securities of that body).

(3) The Authority may, subject to subregulation (4), by notice in writing to the manager, exempt a scheme in relation to such securities of such bodies corporate as may be specified in the notice, from the foregoing provisions of this regulation subject to such conditions as the Authority may consider necessary for the protection of the interests of participants in the scheme.

(4) In the case of a scheme to which Part V applies, an exemption under subregulation (3) shall only apply in relation to such securities as are mentioned in paragraph (i) of the proviso to regulation 49.

Units in another scheme.

33. Except in the case of a feeder fund, the property of a scheme, other than cash or near cash or property held for the purpose of hedging transactions, shall not comprise only units in a single other collective investment scheme.

Limitation on investments.

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34. (1) The property of a scheme shall not include any investments falling within paragraph 4 of Schedule 1 of the Act unless—

- (a) where the value of all such instruments as are included in the property of the scheme exceeds 5% of the value of that property, the cost of acquiring the investments to which all such instruments relate could be met in full out of—
 - (i) cash or near cash comprised in the property of the scheme which is not taken into account for the purposes of subregulation (2) or for the purposes of regulations 36, 40 and 41; or
 - (ii) sums which could be borrowed without contravening regulation 40, and
- (b) the right to subscribe conferred by the instrument could be exercised without contravening the Act.

(2) The property of a scheme shall not include any transferable security if, to the knowledge of the manager, a call is to be made within three months for any sum unpaid on that security.

(3) Subregulation (2) shall not apply to a transferable security where the call on that transferable security together with any calls for sums unpaid on other transferable securities comprised in the property, which, to the knowledge of the manager are to be made within three months, could be met in full—

- (a) out of cash or near cash which is not taken into account for the purposes of subregulation (1) or for the purposes of regulations 36, 40 and 41; or
- (b) out of sums which could be borrowed without contravening regulation 40.

Dealing as principals.

35. (1) The manager and trustee or custodian, as the case may be, shall take all reasonable steps to ensure that neither they nor any investment adviser appointed by the manager, or any associate of either of them or of any such investment adviser, as principal—

- (a) sells, or deals in the sale of, property to the trustee or custodian for account of the scheme, or vests property in the trustee or

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custodian against the issue of units in the scheme (otherwise than pursuant to a unitisation); or

- (b) purchases property from the trustee or custodian for the account of the scheme.

(2) The steps referred to in subregulation (1) include the making of reasonable enquiries as to who are associates of the manager, the trustee, the custodian, or any investment adviser appointed by the manager.

(3) A transaction in any property is not prohibited by subregulation (1)–

- (a) if the value of that property is certified in writing for the purpose of that transaction by a person selected or approved by the trustee or custodian, as the case may be, as qualified to value property of the description to which that property belongs and the trustee or custodian is of the opinion that the terms of that transaction are not such as are likely to result in any prejudice to participants; or

- (b) where that property is an investment which is dealt in on an approved market, the transaction is effected with or through a member of that market under arrangements recorded in writing by the manager and made between the manager, the trustee or custodian and that member which the trustee or custodian and the manager are satisfied impose on that member a duty to take reasonable steps to ensure that every transaction effected by that member for the account of the scheme is effected on the best terms available at the time the transaction is effected on the market generally for transactions with reliable counterparties of the same size and nature as the transaction in question.

(4) In subregulation (3)(b) “approved market” means–

- (a) the Official List of an investment exchange of any member State; and
- (b) the principal or only market established under the rules of an investment exchange approved by the Authority for the purposes of that subregulation by notice published in the Gazette.

(5) Neither the trustees, custodian, manager or any investment adviser appointed by the manager nor any associate of any of them shall be liable to account to the others or to any participant for any profits or benefits made by or derived from any transaction permitted by subregulation (3).

Hedging transactions.

36. (1) Subject to the provisions of subregulations (2) and (3) of this regulation, of regulation 30(3) and of Schedule 9, the property of a scheme may be used in hedging transactions.

(2) No transaction shall be regarded as a hedging transaction for the purposes of this regulation unless—

- (a) the transaction is one which may reasonably be regarded as economically appropriate to the reduction or elimination of risks arising in the management of the scheme by virtue of fluctuations in the price of investments comprised in the property of the scheme or by reason of fluctuations in interest or exchange rates;
- (b) any instrument used in the transaction is one which, by virtue of the relationship between fluctuations in its price and fluctuations in the price of the property of the scheme or any part thereof or fluctuations in interest or exchange rates, may reasonably be regarded as an instrument which may appropriately be used in order to reduce or eliminate risk arising with respect to the property in question or any relevant part of it from such fluctuations; and
- (c) the purpose of the transaction is the reduction or elimination of risk and not speculation, and, for these purposes, a transaction shall not be regarded as one for the reduction or elimination of risk if, having regard to other hedging transactions which have been entered into in relation to the property in question, it is unreasonable to consider that a risk continues to arise of a kind for which the instrument may appropriately be used.

(3) If at any time after a hedging transaction has been entered into, circumstances arise which have the effect that, having disregard to all obligations and rights arising under hedging transactions which have been closed out, the transaction could not then be entered into except in contravention of the provisions of subregulation (2) of this regulation or any provision of Schedule 9, the manager shall, forthwith on becoming aware of that fact, take all reasonable steps to ensure that those provisions are complied with, either by closing out the transaction or providing cover for it or otherwise.

Breach of investment limits.

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37. If the property of a scheme is at any time invested in contravention of the provisions of the Act, or the formation documents, the manager shall take such steps as are necessary to ensure that the property of the scheme is invested in a manner which complies with those provisions as soon as is reasonably practicable having regard to the interests of the participants or potential participants in the scheme and in any event, within six months of the date upon which the manager becomes aware of the contravention.

Advertising.

38. (1) The manager of a scheme shall not issue or cause to be issued any advertisement for or in connection with the scheme unless its contents have been approved by the trustee or custodian, and a copy has been lodged with the Authority.

(2) The Authority may by notice in writing either before or after the issue of an advertisement require the manager of a scheme to amend, withdraw or refrain from issuing an advertisement as in its discretion it may determine.

(3) For the purposes of subregulations (1) and (2) “advertisement” does not include any publication of the issue, sale, repurchase or redemption prices of units.

Exercise of voting or other rights.

39. All rights to vote or other rights falling within the meaning given in regulation 71(5) thereto, attaching to any part of the property of the scheme shall be exercised, or not exercised, in such manner as the manager may in writing direct.

Borrowing.

40. (1) The manager, the trustee or the custodian, of a scheme or, where the scheme is constituted as a public investment company, such public investment company, shall not borrow sums of money repayable out of the property of the scheme except in accordance with the provisions of this regulation.

(2) No sum shall be borrowed—

- (a) unless the terms of borrowing provide for repayment of that sum not later than three months from the date of the borrowing; and

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- (b) if, on the date it is proposed to borrow the sum, that sum together with all other sums borrowed and not repaid at that date would—
- (i) amount in aggregate to a sum greater than the total of all sums which are to become part of the property of the scheme within one month of that date; and
 - (ii) if they were immediately repayable, require more than 10% in value of the property of the scheme to be utilised for the purposes of repayment.

(3) A scheme which is constituted as a public investment company may borrow any sum for the purpose of acquiring immovable property essential for the direct pursuit of its business if—

- (a) on the date it is proposed to borrow the sum, its amount does not exceed 10% of the value of the property of the scheme; and
- (b) that sum together with all other sums borrowed and not repaid at that date would not, if they were immediately repayable, require more than 15% in value of the property of the scheme to be utilised for the purposes of repayment.

(4) If at any time it appears that the total of the sums borrowed would, if they were immediately repayable, require more than the permitted limit in value of the property of the scheme to be utilised for the purposes of repayment, the manager shall, as soon as is reasonably practicable having regard to the interests of participants, take such steps as are necessary to ensure that the total of the sums borrowed is reduced so that it does not give rise to the circumstances described in this subregulation.

(5) In subregulation (4) “permitted limit” means—

- (i) 10% where all the borrowing was effected solely under either subregulation (2) or subregulation (3); and
- (ii) 15% where the borrowing was affected partly under subregulation (2) and partly under subregulation (3),

or such other higher percentage as the Authority may expressly allow.

(6) The foregoing provisions of this regulation do not apply to the acquisition of currency other than the base currency of the scheme by means of a back to back loan, that is to say, an arrangement under which an amount of base currency at least equal to 110% of the amount of the other currency borrowed is placed, and continues to be kept, on deposit by the

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borrower with the lender, his agent or any other person designated by the lender for that purpose, provided that if the amount of base currency kept on deposit ceases to be at least equal to 110% of the amount of currency borrowed, the manager shall, as soon as practicable in the interests of participants, take such steps as are necessary to ensure that sufficient base currency is placed on deposit as will secure that the total amount deposited is at least equal to 110% of the amount of currency borrowed.

(7) Nothing in this regulation shall be construed as preventing the trustee or custodian from borrowing monies in accordance with this regulation, on the best commercial terms available, for the account of the scheme either from the trustee, or custodian acting otherwise than in its capacity as trustee, or custodian or from another body corporate in the same group as the trustee, or custodian, or from any controller of the trustee, or custodian, or from any person of whom the trustee or custodian is a controller.

Underwriting and placings.

41. (1) The manager of a scheme shall not enter into agreements or understandings of a kind to which this regulation applies unless—

- (a) in the case of an underwriting or subunderwriting agreement, the trustee or custodian, could discharge any obligation it may be called upon to perform in pursuance of the agreement without contravention of the Act;
- (b) in the case of any other agreement or understanding, the transferable securities could be acquired without so contravening; and
- (c) in any case other than a case in which the cost of acquiring any transferable securities that the trustee or custodian may or will be called upon to acquire in pursuance of any such agreement or understanding is to be met by the issue of units in the scheme, that cost could be met in full out of cash or near cash comprised in the property of the scheme and which is not taken into account for any other purposes or out of sums which could be borrowed without contravening regulation 40(2)(b)(ii).

(2) This regulation applies to any underwriting or sub-underwriting agreement and to any agreement or understanding that transferable securities will be issued to or acquired by the trustee or custodian acting in its capacity as such.

(3) The manager shall take all reasonable steps and exercise all due diligence to ensure that the conditions specified in subregulation (1)(a) to

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(c) continue to be fulfilled at all times during which the trustee or custodian may or will be called upon to acquire transferable securities in pursuance of any agreement or understanding to which this regulation applies.

Investment in units of certain other schemes.

42. The property of a scheme shall not consist of units in another collective investment scheme which is managed by the manager of the former scheme or by another company in the same group as the manager or which is managed by any person who is a controller of the manager or of whom the manager is a controller unless—

- (a) the formation documents of the latter scheme state that its object is investment in a particular geographic area or economic sector;
- (b) the formation documents of the former scheme and the scheme particulars state that property of the scheme may be invested in such units; and
- (c) the investment is expressly permitted by the Authority.

PART V.

**ADDITIONAL PROVISIONS CONCERNING SCHEMES FOR
COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES.**

Application of Part V.

43. (1) Subject to subregulation (2) of this regulation this Part applies to a collective investment scheme (in this Part referred to as a transferable securities scheme)—

- (a) the sole object of which (subject to the provisions of this Part) is the investment in transferable securities of capital raised from members of the public and which operates on the principle of risk-spreading;
- (b) which confers on participants the right referred to in regulation 27(1) but where action taken by the scheme to ensure that the stock exchange value of its units does not significantly vary from their net asset value such action shall be regarded as equivalent to such right of repurchase or redemption.

(2) This Part does not apply to—

- (a) a transferable securities scheme of the close-ended type;

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- (b) a transferable securities scheme which does not promote the sale of its units to the public within the European Economic Community;
 - (c) a transferable securities scheme the units of which, under the formation documents, may only be sold to the public outside the European Economic Community;
 - (d) a public investment company the assets of which are invested through the intermediary of its subsidiary companies mainly otherwise than in transferable securities; or
 - (e) a transferable security scheme which is a feeder fund or a fund of funds.
- (3) The investments of a scheme to which this Part applies shall consist solely of transferable securities.
- (4) In this Part “transferable securities” means securities the title to which can be transferred without the consent of any third party and which are–
- (a) admitted to official listing on a stock exchange in the Community;
 - (b) dealt in on another regulated market in the Community which operates regularly and is recognised and open to the public;
 - (c) admitted to official listing on a stock exchange outside the Community or dealt in on another regulated market outside the Community which operates regularly and is recognised and open to the public and is approved by the Authority for this purpose, and
 - (d) recently issued securities.
- (5) For the purposes of this regulation “recently issued securities” means securities–
- (a) which were issued on terms that an application would be made to an exchange or market which, if accepted, would result in the securities becoming securities such as are mentioned in paragraph (a), (b) or (c) of subregulation (3);
 - (b) with respect to which no application of the kind described in subparagraph (a) has been refused; and

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- (c) with respect to which not more than twelve months has passed since the date of their issue.

(6) Nothing in this regulation shall be taken to exclude a transferable securities scheme from the provisions of Part IV and the property of such a scheme may include cash and items of near cash provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be repurchased or for the efficient management of the scheme in accordance with its objects.

Alteration of scheme.

44. The objects of a transferable securities scheme shall not be altered so as to have the effect that the scheme ceases to comply with the requirements of this Part.

Restrictions on activities of manager.

44A. The manager of a transferable securities scheme shall not engage in any activity other than acting as manager or authorised or recognised collective investment schemes.

Permissible investments.

45. (1) A transferable securities scheme may invest in other categories of transferable securities not mentioned in regulation 43(4).

(2) The investment of a transferable securities scheme shall not in aggregate exceed 10% of the value of the property in the categories of the securities described in subregulation (1).

Spread of investments.

46. (1) Except as otherwise provided in this regulation, not more than 10% of the value of the property of a transferable securities scheme shall consist of securities issued by the same issuer.

(2) Except as provided for by subregulation (4) and (5), not more than 40% of the value of the property of a transferable securities scheme shall consist of securities issued by different issuers in the securities of each of which the scheme has invested more than 5% of the value of its property.

(3) Not more than 35% of the value of the property of a transferable securities scheme shall consist of Government and other public securities issued by the same issuer, and where both Government and other public securities and other securities are issued by the same issuer, not more than

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35% of the value of the property of the scheme shall consist of such Government and other public securities and other securities.

(4) The Governor may by notice in the Gazette vary the figure 10% in subregulation (1) to a figure not exceeding 25% in such cases as may be prescribed in that notice;

Provided that—

- (a) no body corporate shall be so prescribed unless it has its registered office in the Community and it appears to the Authority that—
 - (i) a principal object of the body is the granting of credit; and
 - (ii) that body is subject by law to special public supervision designed to protect the holders of the bonds or other instruments issued by it;
- (b) no category of bond or other instrument shall be so prescribed unless it appears to the Authority that—
 - (i) sums deriving from the issue of the instruments must by law be invested in assets which during the whole period of their validity, are capable of covering claims attaching to those instruments; and
 - (ii) those sums would, in the event of the inability of the body which issued the instruments, to pay its debts in full, be used in priority for the reimbursement of the principal and payment of the accrued interest due in respect of those instruments;
- (c) not more than 80% of the value of the property of a transferable securities scheme shall consist of the instruments so prescribed and issued by different bodies if the scheme has invested more than 5% of the value of its property in any one such body.

(5) The securities referred to in subregulations (3) or (4) shall not be taken into account in applying the limit of 40% in subregulation (2).

Investment in Government and other public securities.

47. (1) Notwithstanding regulation 46, if it is satisfied that the scheme will provide to participants the same degree of protection as would a scheme

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complying with regulation 46, the Authority may authorise a transferable securities scheme to invest up to 100% of the value of its property in Government and other public securities of at least six different issues provided that not more than 30% in value of the property of the scheme consists of Government and other public securities of the same issue.

(2) For the purposes of subregulation (1), Government and other public securities shall be regarded as being of a different issue if, notwithstanding that they are issued by the same person, they are issued on different terms whether as to repayment dates, interest rates, the identity of the guarantor, if any, or otherwise.

(3) A scheme authorised under this regulation shall—

- (a) specify in its formation documents the governments, authorities and international organisations issuing or guaranteeing securities in which it may invest more than 35% in value of its property;
- (b) include a prominent statement in any document promoting the scheme (including the scheme particulars) that it has been granted such authorisation and the statement shall specify each of the governments, authorities and international organisations referred to in subparagraph (a) above.

(4) Any authorisation under this regulation shall be specified in the licence issued to the scheme under section 8 of the Act.

Investment in certain collective investment schemes.

48. (1) The property of a transferable securities scheme shall not include units of a collective investment scheme of the open-ended type unless the collective investment scheme is either—

- (a) an authorised transferable securities scheme; or
- (b) a scheme which is—
 - (i) of a kind described in regulation 43(1);
 - (ii) recognised under the provisions of section 24 or 26 of the Act; and
 - (iii) the formation documents of which restrict investments in other collective investment schemes having the characteristics described in this paragraph and prohibit

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more than 5% in value of its property to consist of such units.

(2) Subject to regulation 42, not more in aggregate than 5% in value of the property of a transferable securities scheme shall consist of units in schemes of the kind described in paragraphs (a) and (b) of subregulation (1).

Acquisition of other holdings.

49. The property of a transferable securities scheme shall not include more than 10% of—

- (a) the shares of a body corporate not carrying rights to vote at general meetings of that body;
- (b) investments falling within paragraph 2 of Schedule 1 of the Act issued by the same issuer; or
- (c) the units in any single collective investment scheme:

Provided that—

- (i) this regulation shall not apply to the acquisition, by a scheme which is a public investment company, of shares of a subsidiary company carrying on the business of investment management, advice or marketing exclusively on behalf of the public investment company;
- (ii) paragraphs (b) and (c) above shall not have effect in any case in which it is not possible, at the time the securities are acquired, to ascertain the gross amount of the investment or the net amount of the units in issue.

Exercise of subscription rights, etc.

50. (1) The manager of a transferable securities scheme shall not be obliged to comply with the limits prescribed by regulation 45(2), 46, 47(1), 48 or 49 when exercising subscription rights arising in respect of securities comprised in the property of the scheme.

(2) If the limits referred to in subregulation (1) are exceeded—

- (a) as a result of the exercise of subscription rights or in circumstances or for reasons beyond the manager's control or knowledge, the manager shall, as soon as is reasonably practicable and having regard to the interests of participants and potential participants in the scheme, take steps to dispose

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of such securities as will enable those limits to be complied with; and

- (b) in any other case, the manager shall forthwith take steps to dispose of such securities as will enable those limits to be complied with.

PART VI.

ADDITIONAL PROVISIONS CONCERNING:

- A. MONEY MARKET FUNDS
- B. GOVERNMENT AND OTHER PUBLIC SECURITIES FUNDS
- C. FEEDER FUNDS
- D. FUND OF FUNDS
- E. UMBRELLA FUNDS.

A. Money Market Funds.

51. (1) A “money market fund” means a collective investment scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of any one or more of the following—

- (a) deposits;
- (b) loans;
- (c) instruments creating or evidencing indebtedness which are not transferable securities,

or any one or more of the above and transferable securities as defined in regulation 43 (3).

(2) The objects of a scheme authorised as a money market fund shall not be altered so as to have the effect that the scheme ceases to be such a fund.

(3) Subject to the provisions of regulation 36, the property of a money market fund shall not include anything other than the following—

- (a) cash or deposits with or loans to an authorised banking institution or a local authority, where such deposits or loans are either repayable within a period of six months or made on terms on which the trustee, custodian or manager, as the case may be, may demand repayment within that period unconditionally and without payment of a penalty exceeding

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more than seven days' interest calculated at normal commercial rates;

- (b) public securities redeemable at the option of the holder within a period of two years or which will be redeemed by the issuer within that period;
- (c) bills of exchange issued by an authorised banking institution and repayable within a period of twelve months;
- (d) investments falling within paragraph 2 of Schedule 1 of the Act which—
 - (i) are not subordinated;
 - (ii) are repayable within twelve months;

and which are either—

- (aa) issued by an authorised banking institution otherwise than by way of creating or acknowledging indebtedness arising on the making of a deposit or loan of the kind described in paragraph (a); or
- (bb) traded on or dealt in under the rules of a market recognised for this purpose by the Authority and otherwise than by virtue of the specific permission of the authority of such market.

(4) The provisions of regulation 36 shall only apply in the case of a money market fund, to property of the kind referred to in paragraphs (b) and (c) of subregulation (3).

Value of property.

52. At least 50% in value of the property of a money market fund shall consist of instruments, deposits or loans which are repayable within two weeks or which are capable of being transferred without the consent of a third party.

Further provisions on Money Market Funds.

53. (1) Subject to subregulation (2), in relation to the value of the property of a money market fund—

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- (a) not more than 80% shall consist of transferable securities;
- (b) not more than 5% shall consist of instruments which are not public securities and are issued by the same issuer;
- (c) not more than 10% shall be kept on deposit with or on loan to the same person;
- (d) not more than 80% shall consist of Government and other public securities, and if more than 35% of the value of the property consists of such securities the property must include Government and other public securities of at least five different issues;
- (e) not more than 30% shall consist of Government and other public securities of the same issue.

(2) Notwithstanding subregulation (1)(c) up to 20% in value of the property of a money market fund may be kept on deposit or loan with any one authorised banking institution provided—

- (a) that the institution is not in the same group as the manager, trustee or custodian and is not a controller of any of them or a body corporate of which any of them is controller;
- (b) that the amount deposited or lent does not exceed 10% of the institution's issued capital and reserve as shown in its last published accounts.

(3) Regulation 47(2) shall apply for the purposes of subregulations (1)(d) and (e).

(4) For the purposes of this regulation—

- (a) the trustee or the custodian, each body corporate in the same group as the trustee or custodian, any controller of the trustee or custodian, and any person of whom the trustee or custodian is a controller;
- (b) the manager, each body corporate in the same group as the manager, any controller of the manager and any person of whom the manager is a controller,

shall be treated as one person.

B. Government and other Public Securities Funds.

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54. (1) A “Government and other public securities fund” means a collective investment scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of Government and other public securities including units in other authorised or recognised collective investment schemes which are Government and other public securities funds.

(2) The object of the scheme authorised as a Government and other public securities fund shall not be altered so as to have the effect that the scheme ceases to be such a fund.

(3) The property of a Government and other public securities fund shall include Government and other public securities of at least six different issues.

(4) Not more than 30% in value of the property of the Government and other public securities fund shall consist of Government and other public securities of the same issue.

(5) Regulation 47(2) shall apply for the purposes of sub-regulations (2) and (3).

C. Feeder Funds.

55. (1) A “feeder fund” means a collective investment scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in a single collective investment scheme.

(2) Subject to regulation 36 and to subregulation (4) of this regulation, the property of a feeder fund shall consist only of units in the single collective investment scheme which—

- (a) is named in its objects; and
- (b) is an authorised or recognised scheme.

(3) The objects of a scheme authorised as a feeder fund shall not be altered so as to have the effect that the scheme ceases to be such a fund or to enable it to invest in any other scheme.

(4) The property of a feeder fund may include cash and money in a current or deposit account which is near cash, provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be repurchased or for the efficient management of the scheme in accordance with its object or for other purposes which may reasonably be regarded as ancillary to that object.

D. Fund of Funds.

56. (1) A “fund of funds” means a collective investment scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in collective investment schemes.

(3) The objects of a scheme authorised as a fund of funds shall not be altered so as to have the effect that the scheme ceases to be such a fund.

(4) The property of a fund of funds shall not include units in another fund of funds.

(5) Not more than 20% in value of the property of a fund of funds shall comprise units in a single collective investment scheme.

(6) Regulation 55(4) shall apply to a fund of funds.

E. Umbrella Funds.

57. (1) An “umbrella fund” means a collective investment scheme in which the participants are entitled to exchange rights in one part of the property for rights in another part.

(2) Each constituent part of an umbrella fund shall qualify for separate authorisation as if it were the subject of a separate application for such authorisation.

(3) The following provision shall apply in the case of an umbrella fund as if each reference therein to the property of the scheme were a reference to each separate part mentioned in subregulation (1) and subject to the further following modifications—

- (a) regulation 18;
- (b) regulation 19, applied at the outset to the umbrella fund as a whole, and applied thereafter on the occasion of the addition of any new constituent part, to that part;
- (c) regulation 21, subject to the modification that for each reference to scheme particulars and for each reference to the formation documents there shall be substituted respectively a reference to that part of the scheme particulars and to that part of the formation documents which relates to the constituent part in question;

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- (d) regulation 22(2);
- (e) regulation 24, but subject to the modification that any expenses which may under regulation 22 be paid out of the property of the scheme and any sums received which are not attributable to one constituent part only shall be allocated amongst the constituent parts in such a way as the manager, after consulting the trustee, considers to be fair to the participants in the various constituent parts;
- (f) regulation 25;
- (g) regulation 74 and Schedule 10–
 - (i) subject to the modification that for paragraph 7(b) of Schedule 10 there shall be substituted the following–
 - “(b) bear the collective name of the scheme and the name of the constituent part, and”; and
 - (ii) as if the exchange of units in one constituent part for units in another were a redemption of units in the one constituent part and the issue or reissue to the holder of units in the other;
- (h) regulations 61(1), 64, 69 and 70(2);
- (i) regulation 70(3) as if the exchange of units in one constituent part for units in another were a redemption of units in the one constituent part and the issue or re-issue to the holder of units in the other;
- (j) regulations 71(2) and 73;
- (k) regulations 79, 81 and 82 together with the following additional obligations–
 - (i) to include in each report the following information in relation to each of the other constituent parts in the umbrella fund–
 - (A) the name of the part; and
 - (B) a description of the investment objectives; and
 - (C) such statements about the changes over the period to which the report relates in the capital

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value of units in the constituent part and the income therefrom as the manager considers appropriate to enable a holder to judge the relative merits of investment in that constituent part as compared with investment in any other constituent part; and

- (ii) to supply to any person to whom a report relating to a constituent part has been sent the corresponding report relating to any of the other constituent parts if that person requests that that report be sent to him; and
- (iii) to state in each report relating to a constituent part the fact that the corresponding report for any other constituent part will be sent to any holder who requests it;

(1) paragraphs 1 to 11 in Schedule 8;

(m) paragraphs 12 to 15 in Schedule 8, as if the exchange of units in one constituent part for units in another were a redemption of units in one constituent part and the issue or re-issue to the holder of units in the other.

(4) In addition to the matters required by Schedule 2 to be stated in the trust deed, in the case of an umbrella fund the trust deed shall contain a statement to the effect that the holders are entitled to exchange rights in one part of the scheme for rights in another.

(5) The matters required by paragraphs 1 and 2 of Schedule 2 to be stated in the trust deed shall be stated both in relation to the umbrella fund as a whole and in relation to each constituent part, the matter required by paragraph 22 of that Schedule to be so stated shall be stated in relation to each constituent part and different provisions may be made about any of those matters in relation to different constituent parts.

(6) The declaration required by paragraph 3 of Schedule 2 to be contained in a trust deed shall be so framed that it will apply to each constituent part of an umbrella fund separately.

(7) The provision required to be in the trust deed by paragraph 26(2) of Schedule 2 in relation to a modification of the trust deed of the description mentioned in (b) of that paragraph and the provision required to be in the trust deed by paragraph 26(3) shall be so framed as to apply separately in the case of each constituent part of an umbrella fund.

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(8) Schedule 2 shall have effect in relation to an umbrella fund subject to the following—

- (a) if any of the matters referred to in paragraphs 3 and 12 are contained in the trust deed, the provision containing that matter must apply to the scheme as a whole;
- (b) paragraph 34 shall apply separately in relation to each constituent part and shall so apply as though the words “in the case of a scheme which is a Government or other public securities fund” were omitted and the following words were substituted therefor—

“In the case of a constituent part the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of either Government and other public securities or Government and other public securities and units in other collective investments schemes which are or, if authorised, would be Government and other public securities funds”;

- (c) if any of the matters referred to in any of paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 31 and 38 are contained in a trust deed, the same provision concerning that matter must apply in the case of each constituent part but those paragraphs shall apply as if the references in them to a scheme and to units in a scheme are the references respectively to each constituent part taken separately and to units in each constituent part taken separately;
- (d) if any of the matters referred to in paragraphs 5, 6, 32, 33, 35, 36 and 37 of Schedule 2 are contained in the trust deed, different provisions about them may be made for different constituent parts.

(9) Schedule 11 shall apply in the case of an umbrella fund to each constituent part as well as to the fund as a whole and shall so apply as if the reference to the holders were a reference to the holders of units in that constituent part.

Provided that a meeting of holders of units in one constituent part only may, in pursuance of paragraph 7 of Schedule 11—

- (a) sanction a modification, alteration or addition to a provision of the formation documents only if the provision relates to that constituent part; or

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- (b) sanction a departure by the manager from a policy statement included in the scheme particulars only if that statement relates only to that constituent part.

PART VII.

GENERAL PROVISIONS WITH REGARD TO MANAGERS.

Eligibility to be a manager.

58. No person shall carry on the business of manager of a collective investment scheme in or from within Gibraltar and have the duties and powers provided for in these Regulations unless:

- (a) it is a body corporate incorporated under the Companies Act and having its head office in Gibraltar which is licensed to do so under section 8 of the Act and the business of manager is carried on solely in relation to an authorised or recognised scheme; or
- (b) it is authorised to do so in a member State, and
 - (i) carries on the business of manager solely in relation to a scheme recognised under section 24 of the Act; and
 - (ii) shall have delivered to the Registrar of Companies such documents and returns as are required to be so delivered under sections 289-291 of the Companies Act by a company required to be registered under Part IX of that Act, notwithstanding that it would not otherwise have been required to do so under the provisions of that Part.

Power to delegate by the manager.

58A.(1) Notwithstanding regulation 58(a) the manager will be permitted, subject to any restriction in the trust deed or the memorandum and articles of association as the case may be, and to the approval of the Authority, to delegate any of its functions to an entity or entities in Gibraltar or any member State or elsewhere.

- (2) If—
 - (a) the manager delegates any function concerning the management of the property of the scheme; or

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- (b) the manager delegates any function to the trustee or to an entity with which it or the trustee is closely linked,

the manager remains responsible, even though it could have satisfied the conditions in subregulation (3), for the acts or omissions of the delegate as if they were the acts or omissions of the manager.

(3) In the case of any delegation by the manager to which subregulation (2) does not apply, the manager, is not responsible for any act or omission of the delegate if the manager can show—

- (a) that it was reasonable for an agent to be employed for the function in question; and
- (b) that the agent was and remained competent to undertake the function in question, and
- (c) that the manager had taken reasonable care to ensure that the function in question was undertaken by the agent in a competent manner.

Change of address, etc.

59. (1) The address of the registered or head office of a body corporate which is a manager by virtue of the provisions of regulation 58(a) shall not be changed without the prior written consent of the Authority.

(2) The names or addresses of the persons authorised to accept service in Gibraltar on behalf of a manager by virtue of the provisions of regulation 58(b) shall not be changed without the prior written consent of the Authority.

Notice of change of directors.

59A. (1) Where any person becomes or ceases to be a director of a manager to which regulation 58(a) applies, the manager shall not later than 21 days after the happening of the event give notice in writing of the event to the Authority.

(2) A notice under subregulation (1) shall include the full name of the person and the date on which the appointment commenced or ceased, as the case may be, together with a statement of the reason for the appointment or cessation of the appointment, as the case may be.

Financial resources.

60. A manager shall at all times have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.

Duties of manager.

61. (1) The manager shall in the performance of its duties act solely in the interests of participants and take reasonable care to protect those interests, and in particular shall—

- (a) manage the property of the scheme and make decisions as to the constituents of that property in accordance with—
 - (i) the provisions of the Act;
 - (ii) the formation documents;
 - (iii) the most recently published scheme particulars; and
 - (iv) in the case of a public investment company where the formation documents provide that the directors of the company may give directions, any directions from time to time so given by the directors of the company which are consistent with the provisions of subparagraphs (i), (ii) and (iii);
- (b) take all reasonable steps and exercise all due diligence to avoid the property of the scheme being invested in contravention of the provisions of this regulation;
- (c) have prepared in the prescribed form the accounts required by regulation 81 and shall arrange for such accounts to be audited in accordance with regulation 77.

(2) The manager shall be liable to the participants for any loss suffered by them as a result of any unjustifiable failure on its part to perform its obligations or because of its improper performance of them.

Appointment of investment adviser.

62. (1) The manager shall have the right to appoint an investment adviser, to terminate any such appointment and to replace any adviser who ceases to be an investment adviser.

(2) The remuneration and expenses of an investment adviser shall be borne by the manager who shall remain responsible for the performance of all of its duties notwithstanding the appointment of any investment adviser.

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Requests, etc. to manager and investment adviser.

63. The manager and, any investment adviser appointed by the manager shall—

- (a) at the request of the trustee or custodian forthwith supply the trustee or custodian with such information concerning the administration of the scheme as it may reasonably require; and
- (b) comply with any directions given by the trustee or the custodian for the purpose of satisfying regulation 70.

Units held by manager.

64. (1) The manager shall keep a daily record of units held by it, distinguishing between different types of units and showing all acquisitions and disposals by the manager and the balance thereof.

(2) The manager shall make the daily record available for inspection by the trustee or custodian at any time during ordinary office hours free of charge and likewise supply to the trustee or custodian a copy of the record or any part of it on request.

Prohibition on charging fees or costs in certain cases.

65. The manager shall not charge any fees or costs on account of transactions relating to the units of a collective investment scheme where the assets of the scheme include units in another collective investment scheme managed by that manager or a body corporate in the same group as that manager, or which is managed by any person who is a controller of that manager or of whom that manager is a controller.

Acquisition of significant influence.

66. (1) Where the manager manages more than one collective investment scheme, regulation 32 will apply as if the references therein to the property of a scheme were references to the property of all or any of the schemes so managed.

(2) Regulation 37 shall apply to a contravention of the restriction imposed by subregulation (1) (whether occurring by reason of a failure by the manager to take all reasonable steps within its control or otherwise) as if references therein to a scheme were references to all or any of the schemes in question.

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PART VIII.
GENERAL PROVISIONS WITH REGARD TO TRUSTEES
AND CUSTODIANS.**

Eligibility to be a trustee or custodian.

67. (1) The trustee or custodian of a collective investment scheme shall, subject to subregulations (2) and (3), be a body corporate—

- (a) incorporated under the Companies Act and having its head office in Gibraltar and which is licensed under the Banking Act; or
- (b) authorised in another member State as a credit institution and having established a permanent place of business in Gibraltar,

and shall only act as trustee or custodian to authorised or recognised collective investment schemes.

(2) Notwithstanding subregulation (1) the Authority may license some other body corporate as a trustee or custodian of a scheme if it is satisfied that that body corporate incorporated under the Companies Act and having its head office in Gibraltar has sufficient financial resources and experience necessary to enable it effectively to conduct its business and to carry out its obligations as a trustee or custodian.

(3) The trustee or custodian of a scheme recognised by virtue of section 24 of the Act may be a body corporate which—

- (a) is authorised as trustee or custodian by the competent authority in the member State authorising the scheme; and
- (b) shall have delivered to the Registrar of Companies such documents and returns as are required to be so delivered under sections 289-291 of the Companies Act by a company required to be registered under Part IX of that Act, as if the trustee or custodian were such a company.

Power to delegate by the trustee or custodian.

67A.(1) Notwithstanding subregulation (1) (a) and (2) of regulation 67, the trustee or custodian will be permitted to delegate any of its functions to an entity or entities in Gibraltar or any member State or elsewhere subject to the provisions of subregulation (2).

- (2) (a) Subject to paragraph (b) and (c), the trustee may delegate any function to any person, including the manager.

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- (b) The trustee may not delegate to the manager—
 - (i) any function of oversight in respect of the manager, or
 - (ii) any function of custody or control of the property of the scheme,

nor may the trustee delegate any function in (i) to an entity with which the manager is closely linked.
- (c) The trustee may not delegate to anyone the function of being a custodian of documents of title or documents evidencing title to property of the scheme unless the arrangements with the custodian prevent the custodian from releasing the documents into the possession of a third party without the consent of the trustee.
- (d) This subregulation is subject to any restriction in the trust deed.

(3) If the trustee or the custodian delegates any function to the manager or an entity with which the trustee, the custodian or the manager is closely linked, the trustee or as the case may be the custodian, remains responsible, even though it could have satisfied the conditions in subregulation (4), for the acts or omissions of the delegate as if they were the acts or omissions of the trustee, or as the case may be of the custodian.

(4) In the case of any delegation by the trustee or the custodian to which subregulation (3) does not apply, the trustee, or as the case may be the custodian, is not responsible for any act or omission of the delegate if the trustee (or custodian) can show—

- (a) that it was reasonable for an agent to be employed for the function in question; and
- (b) that the agent was and remained competent to undertake the function in question, and
- (c) that the trustee (or custodian) had taken reasonable care to ensure that the function in question was undertaken by the agent in a competent manner.

Change of address.

68. A trustee or custodian to which subregulation (1) or (2) of regulation 67 applies shall notify the Authority in writing of any intended change of address of its registered office or permanent place of business in Gibraltar.

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Notice of change of directors.

68A. (1) Where any person becomes or ceases to be a director of a trustee or custodian to which subregulations (1) or (2) of regulation 67 applies, the trustee or custodian, as the case may be, shall not later than 21 days after the happening of the event give notice in writing of the event to the Authority.

(2) A notice under subregulation (1) shall include the full name of the person and the date on which the appointment commenced was ceased, as the case may be, together with the reason for the appointment or cessation of the appointment, as the case may be.

Custody of assets.

69. The trustee or custodian of a collective investment scheme shall take into its custody the property of the scheme to hold and deal with such property in accordance with the provisions of the Act and the formation documents of the scheme.

General duties.

70. (1) In carrying out its duties, the trustee or custodian shall act solely in the interests of the participants.

(2) The trustee or custodian shall take reasonable care to ensure that the collective investment scheme is managed by the manager in accordance with the provisions of the Act and the formation documents of the scheme, and shall ensure that—

- (a) the property of the scheme is invested,
- (b) the sale, issue, repurchase, redemption and cancellation of units are carried out,
- (c) the value of units is calculated by the manager, and
- (d) the scheme's income is applied,

in accordance with those provisions and the formation documents.

(3) The trustee or custodian shall ensure that the methods used by the manager in calculating prices at which units are sold, issued and repurchased are adequate to ensure that those prices are within any limits prescribed by the provisions of the Act or the formation documents and for this purpose shall carry out periodic checks on the methods and shall check

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the price applied in any transaction if requested by a participant or former participant to do so within one year after the completion of the transaction.

(4) The trustee or custodian shall ensure that any consideration resulting from transactions involving the property of the scheme is remitted to the trustee or custodian within the usual time limits.

Instructions, etc. from manager and forwarding of documents.

71. (1) The trustee or custodian shall carry out the instructions of the manager unless it has reasonable cause to believe that so to do would contravene regulation 70.

(2) Without prejudice to the generality of subregulation (1), the trustee or custodian may—

- (a) notify the manager that it will not accept the acquisition or disposal of any investment to comprise, or comprising, part of the property of the scheme if it has reasonable cause to believe that such acquisition or disposal would contravene regulation 70; and
- (b) in the circumstances referred to in subparagraph (a) give directions under regulation 63 for the acquisition or disposal of such other investment as would be acceptable to it.

(3) Subject to subregulation (4) the trustee or custodian shall—

- (a) at the written request of the manager, from time to time execute and deliver, or cause to be executed and delivered, to the manager or its nominees, such powers of attorney or proxies as the manager may reasonably require, in such name or names as the manager may request, authorising such attorneys or proxies to exercise any right to vote or other right attaching to any part of the property of the scheme or otherwise act in respect of all or any part of that property; and
- (b) without undue delay forward to the manager all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by the trustee or custodian as registered holder of any investment comprised in the property of the scheme.

(4) In so far as the property of a scheme consists of units in another collective investment scheme which is managed by the manager of the former scheme or by another company in the same group as the manager or which is managed by any person who is a controller of that manager or of

whom that manager is a controller, the trustee or custodian shall exercise or not exercise rights of voting conferred by the property of the scheme as it thinks fit, after consulting the manager.

(5) In this regulation—

“right to vote” includes any right to give consent to, or approval of, any arrangement, scheme or resolution, or any alteration in or abandonment of any rights attaching to any part of the property of the schemes; and

“other right” includes any right to requisition, or join in the requisitioning of, any meeting, to give notice of any resolution, to circulate any statement and to consent to any short notice of any meeting.

Liability of trustee or custodian.

72. (1) The trustee or custodian of a collective investment scheme shall be liable to the manager and to the participants for any loss suffered by them as a result of—

- (a) any unjustifiable failure by it to perform its obligations; or
- (b) the improper performance by it of those obligations.

(2) The liability of the trustee or custodian under this regulation shall not be affected by—

- (a) any entrustment made under regulation 73; or
- (b) any appointment made under regulation 74,

and shall extend to acts and omissions of any person so entrusted or appointed as though they were acts or omissions of the trustee or custodian itself.

Entrustment of property.

73. (1) Subject to subregulation (2), the trustee or custodian may—

- (a) entrust the documents evidencing title to all or part of the property of a collective investment scheme for safe-keeping to a sub-custodian, not being the manager, and not being an employee or associate of either the trustee or custodian or the manager unless, in the case of an associate, the associate is a

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subsidiary of the trustee or custodian which is licensed under the Banking Act; and

- (b) where such sub-custodian undertakes to perform on behalf of the trustee or custodian the obligations imposed by regulation 71(3)(b), arrange for that sub-custodian to become the registered holder of the property of the scheme the title to which is in registered form.

(2) The trustee or custodian shall only make or allow any entrustment under subregulation (1) where—

- (a) it is satisfied after making reasonable enquiries, and continues to be satisfied after repeating those enquiries at reasonable intervals, that the sub-custodian is a fit and proper person capable of discharging its functions; and
- (b) arrangements have been made and continue to be made with the sub-custodian which—
 - (i) protect the rights of the trustee or custodian in priority to other creditors of that sub-custodian; and
 - (ii) the trustee or custodian is satisfied are the best available under the law of the country or territory in which the property will be kept.

Register of participants.

74. (1) Subject to subregulation (2), the trustee or custodian of a collective investment scheme shall establish and maintain a register of the participants of the scheme in accordance with the provisions of Schedule 10.

(2) The trustee or custodian may appoint some other person to establish and maintain the register on its behalf, and, where any such appointment is made, anything required or authorised to be done under the provisions of Schedule 10 in relation to the register by, to or before the trustee or custodian, may be done by, to or before the person so appointed.

Notification of contraventions.

75. The trustee or custodian of a collective investment scheme shall notify the Authority in writing, forthwith after becoming aware of the matter, of any failure, act or omission of the manager constituting a breach or contravention of any of the provisions of the Act or of the formation documents of the scheme and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

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PART IX.
REQUIREMENTS AS TO AUDITORS.

Appointment and qualifications of auditor.

76. (1) The auditor of a collective investment scheme shall—

- (a) have a place of business in Gibraltar;
- (b) be registered under the provisions of the Auditors Approval and Registration Act;
- (c) not be a director, controller or manager of the trustee or custodian, or the manager of the scheme or, in the case of a public investment company, a director controller or manager of the company;
- (d) be approved by the Authority.

(2) An auditor shall cease to hold his appointment as auditor of a scheme if he ceases to fulfill any of the requirements of paragraphs (a), (b) and (c) of subregulation (1) or if the Authority withdraws its approval or if the manager, with the approval of the trustee or custodian, revokes the appointment.

(3) In the event that the manager revokes the appointment of the auditor the manager shall forthwith and in any case within 14 days notify the Authority of such revocation and of the reasons therefor.

(4) In the event of a vacancy the manager of the scheme shall as soon as practicable make a new appointment of an auditor who satisfies the requirements of subregulation (1) and who has the approval of the trustee or custodian.

(5) In subregulation (1)(c) “manager”, in relation to the trustee or custodian or manager of a scheme, means an employee of the trustee or custodian or manager of the scheme who—

- (a) under the immediate authority of the directors of the trustee or custodian or manager of the scheme, is responsible, either alone or jointly with one or more other persons, for the conduct of the business of the trustee or custodian or manager of the scheme; or

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- (b) under the immediate authority of the said directors or of a person who is a manager by virtue of paragraph (a), exercise managerial functions or is responsible for maintaining accounting or other records of the trustee or custodian or manager of the scheme.

Audit of accounts.

77. (1) The auditor appointed by virtue of regulation 76 shall audit the accounts required to be included in the annual report in accordance with regulation 81 and shall carry out the duties of an auditor generally in accordance with professional auditing standards and shall in his report state whether or not in his opinion the accounts give a true and fair view of the financial position of the scheme as at the end of the accounting period to which they relate.

(2) The audit fees of the auditor shall be determined by the manager with the approval of the trustee or custodian as the case may be.

Communication with Competent Authority.

78. No duty to which an auditor of a collective investment scheme is subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request from that Authority, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of the scheme and which is relevant to any function of the Authority under the Act.

PART X.

**REQUIREMENTS AS REGARDS ANNUAL AND HALF YEARLY
REPORTS, SCHEME PARTICULARS AND OTHER INFORMATION.**

Contents of annual and half-yearly reports.

79. (1) The annual report of a collective investment scheme shall include—
- (a) a balance sheet or statement of assets and liabilities;
 - (b) an income and distribution account;
 - (c) a capital account;
 - (d) a copy of the report of the auditor of the scheme on the above-mentioned accounts including any qualifications made by the auditor;

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- (e) a report by the manager to the participants on the activities of the scheme during the financial year;
- (f) a copy of the report by the trustee or custodian to the participants as to the manner in which the scheme has been managed during the financial year;
- (g) such matters as in relation to paragraphs (a) to (f) above are specified in Schedules 5 and 6.

(2) The auditor and the trustee or custodian shall deliver their reports to the manager in good time to enable the manager to include such reports in the annual report.

(3) A half-yearly report shall include the matters specified in Parts I and II of Schedule 6.

Contents of scheme particulars.

80. (1) For the purposes of this Part, the formation documents of a collective investment scheme shall form an integral part of the scheme particulars and shall, except as is provided for by subregulation (3) be annexed thereto.

(2) The scheme particulars shall include—

- (a) particulars of the matters specified in Schedule 4 in so far as such particulars do not appear in the formation documents; and
- (b) such further information as may be necessary to enable investors to make an informed judgment as to the investment proposed.

(3) Notwithstanding subregulation (1), the formation documents need not be annexed to the scheme particulars if participants and potential participants are informed by the scheme particulars—

- (a) that the formation documents will be sent to them free of charge on request; or
- (b) of the place in Gibraltar and in any member State in which units of the scheme are marketed where such documents are available for inspection free of charge.

(4) The scheme particulars shall be revised at least once in every twelve months but, if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the

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scheme particulars are due for such an annual revision, they shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.

Documents to be published by manager.

81. (1) The manager of a collective investment scheme shall prepare and publish in accordance with the provisions of this Part the following documents relating to that scheme—

- (a) the scheme particulars;
- (b) an annual report for each financial year; and
- (c) a half-yearly report covering the first six months of each financial year.

(2) The annual and half-yearly reports shall be published not later than four months and two months respectively from the end of the accounting period to which they relate.

Publication of scheme particulars and reports.

82. (1) The manager of a collective investment scheme shall send to the Authority a copy of the scheme particulars (including any revision thereof) and of every annual and half-yearly report of the scheme.

(2) Any advertisement or other information promoting a scheme in Gibraltar or elsewhere shall indicate that scheme particulars exist and the places where those particulars may be obtained by members of the public.

(3) The manager of a scheme shall not effect any sale of units in the scheme to any person unless it has offered to that person free of charge a copy of the scheme particulars, a copy of the most recent annual report (if any) and a copy of any subsequent half-yearly report.

(3A) The manager of the scheme which qualifies for the issue of a certificate under regulation 4(3) shall not effect any sale of units in the scheme to any person in a member State unless it has offered to that person free of charge a copy of the scheme particulars, a copy of the most recent annual report (if any) and a copy of any subsequent half-yearly report in an official language of that member State.

(4) Except in the case of a collective investment scheme which in the opinion of the Authority does not promote the sale of its units to the public, the manager shall make copies of—

- (a) the scheme particulars;
- (b) the formation documents (if not annexed to the scheme particulars);
- (c) the annual and half-yearly reports;

available for inspection by any member of the public free of charge during ordinary office hours at its principal place of business in Gibraltar and at such other places as may be specified in the scheme particulars.

(5) The manager shall, at the request of any holder of units in the scheme, supply to that person free of charge a copy of the most recent scheme particulars and annual report and of any subsequent half-yearly report.

Publication of prices.

83. The manager of a collective investment scheme shall publish, in such manner as may be approved by the Authority, the issue, sale, repurchase and redemption prices of units in the scheme on each day that it holds itself out as willing to issue, sell, repurchase or redeem such units, and shall in any event so publish such prices at least twice a month unless the Authority authorises a reduction of the frequency to once a month if such a reduction will not prejudice the interests of participants.

PART XI.**RECOGNITION OF OVERSEAS SCHEMES.****Schemes constituted and authorised in member States.**

84. (1) The operator of a collective investment scheme constituted and authorised in a member State and in respect of which notice has been given in accordance with section 24(3) of the Act shall specify in that notice—

- (a) the arrangements made to ensure that such facilities as the Authority may prescribe exist in Gibraltar for making payments to participants in the scheme and for repurchasing or redeeming units in the scheme;
- (b) the availability in English to participants and potential participants in Gibraltar of such documents and other information about the scheme as must be published in the member State in which the scheme is constituted and authorised.

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(2) The notice referred to in subregulation (1) shall have annexed thereto—

- (a) the formation documents of the scheme;
- (b) the scheme particulars;
- (c) the latest annual report (if any) of the scheme and any subsequent half-yearly report, and
- (d) such further details of the arrangements made for marketing the units of the scheme in Gibraltar as the Authority may reasonably require,

and if any of the said documents are not in English, there shall be annexed to them a certified translation in English.

(3) A scheme which is a recognised overseas scheme by virtue of section 24 of the Act may, for the purpose of carrying on its activities in Gibraltar, and notwithstanding the provisions of any other enactment, use the same name as it uses in the member State in which it is constituted, save that the Authority may require that name to be accompanied by such explanatory particulars as it may specify if it considers that name may otherwise cause confusion.

(4) Part X of the Companies Act shall be satisfied in respect of any body corporate which is established outside Gibraltar and which conducts business in Gibraltar for or on behalf of a collective investment scheme recognised by virtue of section 24 of the Act, notwithstanding that it would not otherwise have been required to do so under the provisions of that Part.

(5) The operator of a scheme which is a recognised overseas scheme by virtue of section 24 of the Act shall, within 21 days of the occurrence of the event, give notice to the Authority in writing of any alteration of or affecting any of the matters mentioned in this regulation and shall, where appropriate, annex to that notice any amended document of the kind specified in paragraph (a) or (b) or (d) of subregulation (2).

(6) Where the notice and any amended documents mentioned in subregulation (5) are not in English, there shall be annexed to them a certified translation in English.

(7) Where an alteration of the kind referred to in subregulation (5) is of or affects a matter which falls within the matters to be dealt with by the certification required in section 24(4)(a) of the Act, the notice referred to in subregulation (5) shall be accompanied by a certificate of the relevant regulatory authorities in the member State in which the scheme is authorised

confirming that such alteration does not affect the authorisation of the scheme.

Schemes not authorised in a member State.

85. (1) An application under section 26 of the Act for recognition of a collective investment scheme which is authorised elsewhere than in a member State or constituted in a member State but not authorised by the competent authority in that member State shall have annexed to it—

- (a) the formation documents of the scheme;
- (b) the scheme particulars;
- (c) details of the arrangements made for marketing the units of the scheme in Gibraltar including the arrangements made to ensure that such facilities as the Authority may prescribe exist in Gibraltar for making payments to participants and for repurchasing or redeeming units;
- (d) such other information and documents as the Authority may require,

and if any of the documents are not in English, there shall be annexed to them a certified translation in English.

(2) An application to which this regulation applies shall be considered by the Authority as if it were an application for a licence under section 6 of the Act.

(3) The Governor may by notice published in the Gazette exempt from the application of section 26(2)(a) collective investment schemes constituted and authorised in countries or territories designated in that notice, and may remove such exemption by further notice published in the Gazette.

(4) Where an application for recognition is made in respect of a scheme constituted and authorised in a designated country or territory, the provisions of section 26(2)(b)(iv) as to prescribed requirements are paragraphs (b), (c) and (d) of subregulation (5) for as long as the country or territory continues to be so designated.

(5) In relation to an application to which subregulation (1) or (4) applies—

- (a) regulations 4(2)(a), (b) and (c), 4(3) and 9 shall not apply;

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- (b) the manager of the scheme shall—
- (i) have a permanent place of business in Gibraltar and be registered under Part IX of the Companies Act; or
 - (ii) appoint a body corporate registered in Gibraltar and licensed in accordance with section 8 of the Act as a representative in Gibraltar having powers to act generally for it and to accept service of notice and documents on its behalf; and
 - (iii) shall deposit such other facilities and maintain such deposits, property and assets in Gibraltar as the Authority considers desirable in the interests of participants and the provisions of regulation 59 shall apply as if they referred to the representative of the manager appointed in accordance with this subregulation and not to the manager;
- (c) *Omitted*
- (d) a public investment company constituting a scheme to which this regulation applies shall register under Part IX of the Companies Act and the address of the registered office of the company and of its head office and any changes thereto shall be notified in writing to the Authority.

(6) Regulations 5, 8 and 17 shall be deemed to refer to a scheme, fund or company, as the case may be, which is the subject of an application under this regulation.

(7) The manager of a collective investment scheme recognised by virtue of section 26 of the Act shall within 21 days of the occurrence cause notice to be given to the Authority in writing of any alteration of or affecting any of the matters mentioned in this regulation and where appropriate shall cause to be annexed to that notice any amended document of the kind specified in subregulation (1) and where any amended documents are not in English there shall be annexed to them a certified translation in English.

PART XII.
REPLACEMENT OF TRUSTEE OR
CUSTODIAN AND MANAGER.

Replacement of trustee or custodian.

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86. (1) Subject to sections 18(1)(b) and (2) and 19(2) of the Act and to subregulations (2) and (3), the trustee or custodian of a collective investment scheme shall cease to hold that position in the event that—

- (a) an extraordinary resolution for its removal from office has been adopted in accordance with Schedule 11 at a meeting of participants; or
- (b) the Authority has withdrawn its approval of the trustee or custodian; or
- (c) the trustee or custodian has entered into a composition with creditors, has obtained a suspension of payment or is the subject of an order for winding up by a court or its members have adopted a resolution for its voluntary winding up.

(2) The manager shall—

- (a) give notice in writing to the trustee or custodian of the terms of the resolution referred to in subregulation (1)(a);
- (b) inform the participants in writing on the occurrence of any event referred to in subregulations (1)(b) and (c); and
- (c) inform the Authority of the occurrence of any event referred to in subregulation (1)(c).

(3) The removal of the trustee or custodian shall not take effect until the provisions of section 20 of the Act have been satisfied, and thereupon—

- (a) all powers, duties, obligations and rights of the former trustee or custodian in its capacity as such shall cease to have effect (but without prejudice to any liability arising in respect of any act or omission previously committed); and
- (b) the new trustee or custodian shall exercise all the powers and enjoy all the rights and be subject to all the duties and obligations arising from its appointment under the Act, the formation documents of the scheme and the instrument of appointment.

(4) In the event that the trustee or custodian shall have become ineligible to remain in that position by virtue of subregulation (1), the manager shall take all such steps as are necessary to safeguard the interests of the participants and shall in any case within two calendar months of the occurrence of such event submit to the Authority the name of a new trustee

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or custodian, together with such other information in respect of that trustee or custodian as the Authority may require.

(5) In the case of a unit trust scheme or common or mutual fund, any appointment of a new trustee shall be made by a written instrument under seal supplemental to the trust deed, between the new trustee and the manager;

(6) In the case of a scheme constituted by a public investment company, any appointment of a new custodian shall be made by contract between the new custodian and the manager;

(7) Any instrument or contract appointing a new trustee or custodian shall contain such provisions as the other party thereto considers to be necessary or desirable to secure the due performance of its duties by the new trustee or custodian and the protection of the interests of participants.

Replacement of manager.

87. (1) Subject to section 19 of the Act and to subregulations (3) and (4), the manager of a collective investment scheme shall be removed if it is given notice in writing by the trustee or custodian to that effect in any of the following events—

- (a) the manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the trustee or custodian);
- (b) a receiver is appointed for the manager or any part of its undertaking;
- (c) the trustee or custodian considers that there are good and sufficient reasons why a change of manager is desirable in the interests of the participants and gives notice in writing to that effect with the reasons to the participants;
- (d) an extraordinary resolution for the removal of the manager is adopted at a meeting of the participants in accordance with the provisions of Schedule 11;
- (e) the holders of three-quarters or more in value of the units of the scheme (excluding units held or deemed to be held by the manager) make a request in writing to the trustee or custodian that the manager be removed; or
- (f) the Authority withdraws its approval of the manager.

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(2) Subject to subregulation (4), the manager may retire on giving notice in writing to the trustee or custodian to that effect and if the manager and the trustee or custodian have agreed in writing on the person proposed to be appointed as the new manager and the person has signified in writing his willingness to be appointed.

(3) The trustee or custodian shall inform the participants in writing of the occurrence of any event referred to in paragraphs (a), (b) or (f) of subregulation (1) and shall likewise inform the Authority of the occurrence of any event referred to in paragraphs (a), (b) or (c) of subregulation (1) or subregulation (2).

(4) The removal or retirement of a manager shall not take effect until the appointment of a new manager has been approved by the Authority and has taken effect, and thereupon—

- (a) subject to regulation 88, all powers, duties, obligations and rights of the former manager in its capacity as such shall cease to have effect (but without prejudice to any liability arising in respect of any act or omission previously committed); and
- (b) the new manager shall exercise all the powers and enjoy all the rights and be subject to all the duties and obligations arising from its appointment under the Act, the formation documents of the scheme and the instrument of appointment.

(5) In the event that the manager shall have become ineligible to remain in that position by virtue of subregulation (1), the trustee or custodian shall take all such steps as are necessary to safeguard the interests of the participants and shall in any case within two calendar months of the occurrence of such event submit to the Authority the name of a new manager together with such other information in respect of that manager as the Authority may require.

(6) In the case of a unit trust scheme or common or mutual fund, any appointment of a new manager shall be made by a written instrument under seal supplemental to the trust deed, between the trustee and the new manager.

(7) In the case of a scheme constituted by a public investment company, any appointment of a new manager shall be made by a management agreement between the new manager and the company.

(8) Any such instrument or contract appointing a new manager shall contain such provisions as the other party thereto considers to be necessary

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or desirable to secure the due performance of its duties by the new manager and the protection of the interests of participants.

(9) In the case of the appointment of a new manager by a public investment company, the new manager may, by notice in writing served on the public investment company within one month after the appointment takes effect, remove any director of the latter company from office and appoint one or more new directors (subject to any limit on the number of directors contained in the articles of association of the company).

Units and management shares held by removed or retiring manager.

88. (1) When the removal or retirement of a manager takes effect—

- (a) that manager shall remain entitled to all units held or deemed to be held by it and shall be entitled to require the trustee or custodian to issue to it a certificate or certificates in respect thereof (if not previously issued) and to be registered in the register as the holder, thereof;
- (b) in the case of an open-ended investment company, that manager, or an associated company of the manager, issued with shares in accordance with regulation 15 shall transfer all the management and nominal shares held by it to the new manager or any associated company of the new manager at nominal value.

(2) If a removed or retired manager fails to effect such a transfer as is mentioned in subregulation (1)(b) within a period of one month after the date on which it ceased to be manager, the custodian shall receive the purchase money on behalf of that manager and shall execute the transfer on the latter's behalf and such transfer shall be registered by the company.

(3) In the event of the application of subregulation (2) the custodian shall, on request by the removed or retiring manager, account, without interest, for the purchase money received.

PART XIII.
TERMINATION OF AUTHORISED SCHEMES.

Winding up.

89. (1) Forthwith upon the occurrence of any of the events specified in subregulation (2)—

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- (a) the trustee shall cease the creation and cancellation of units in the collective investment scheme;
- (b) the manager shall cease the issue and repurchase of units in the scheme; and
- (c) the trustee or manager shall proceed to wind up the scheme in accordance with regulation 90.

(2) The events referred to in subregulation (1) are–

- (a) the cancellation of the licence issued under section 8 of the Act in relation to the scheme;
- (b) the making by the court of an order under section 37(1)(b) of the Act for the winding up of the scheme;
- (c) the expiration of any period specified in the trust deed as the period at the end of which the scheme is to terminate; and
- (d) any other event specified in the trust deed as requiring the winding up of the scheme.

(3) The trustee shall forthwith inform the Authority of the occurrence of any event such as is referred to in paragraph (c) or (d) of subregulation (2).

Manner of winding up a unit trust.

90. (1) Upon the passing of a resolution by the participants in accordance with the formation documents of a collective investment scheme approving the amalgamation of that scheme with another body or scheme the trustee shall wind up the scheme in accordance with that resolution on the terms of the approved amalgamation.

(2) In any other case, the trustee shall, as soon as practicable after the scheme falls to be wound up under this regulation, realise the property of the scheme and, after paying thereout all liabilities properly so payable and retaining provision for the costs of the winding-up, distribute the proceeds of that realisation to the participants and the manager (upon production by them of evidence as to their entitlement thereto) proportionately to their respective interests in the scheme:

Provided that, in the case of a scheme which is a pension scheme, payment of the proceeds of realisation shall not be made to participants in the scheme but in accordance with the destinations specified in the formation documents.

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(3) Any unclaimed net proceeds or other cash held by the trustee after the expiration of twelve months from the date on which the same became payable shall be paid by the trustee into court subject to the trustee having a right to retain thereout any expenses incurred by him in making that payment into court.

(4) The trustee shall inform the Authority of the initiation, progress and termination of the winding up.

Winding up of public investment companies.

91. (1) Notwithstanding section 148 of the Companies Act, no public investment company incorporated under the Companies Act may be wound up voluntarily.

(2) Without prejudice to the cases in which under section 158(1) of the Companies Act a petition may be presented for the winding up of such a company by the court, a petition for such winding up may also, with the prior leave of the court, be presented by the Authority on any of the following grounds—

- (a) that the company has contravened any provision of the Act, or in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information or has contravened any requirement or prohibition imposed under the Act or any provision of the memorandum or articles of association of the company;
- (b) that the company has failed to keep proper records of its investment business and as a result it is not possible to ascertain the liabilities or rights of the participants or whether the company is financially sound;
- (c) that the company is unable to pay its debts;
- (d) that the winding up would be in the public interest; and
- (e) that the company has been wound up in the United Kingdom.

(3) Without prejudice to sections 156 and 159(1) of the Companies Act, the court may, if satisfied as to the grounds submitted in a petition by the Authority under subregulation (2) order the winding up of the company.

(4) If the licence under section 8 of the Act authorising a scheme constituted by a public investment company incorporated under the Companies Act is cancelled by an order under section 37(1)(b) of the Act or subregulation (3) for the winding up of such a scheme—

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- (a) the creation, cancellation, issue, repurchase or redemption of units and redeemable preference shares in the company shall forthwith cease; and
- (b) where the licence has been cancelled the company shall as soon as is practicable thereafter apply to the court under section 158(1) of the Companies Act to be wound up.

Notices.

92. (1) The trustee of a collective investment scheme shall as soon as practicable publish a notice of any event requiring the winding up of the scheme under regulation 89.

(2) A public investment company to which regulation 91 applies shall as soon as practicable publish a notice of any application to the court for its winding up.

(3) Any notice such as is referred to in subregulation (1) or (2) shall be published in the Gazette and in at least one newspaper with wide circulation in each country in which units in the scheme concerned have been marketed.

(4) If it appears to the Authority that there has been a failure to publish any notice required by this regulation it may publish such a notice at the expense of the scheme concerned.

**PART XIV.
MISCELLANEOUS.**

Meeting of participants.

93. (1) The provisions of Schedule 11 shall apply to the convening of meetings of participants in a collective investment scheme, to attendance and voting thereat and to the other matters relating to the conduct and procedure of such meetings provided for in that Schedule.

(2) The provisions of Schedule 11 shall apply in the case of a scheme constituted by a public investment company notwithstanding any of the provisions of the Companies Act.

Service of notice and documents on participants.

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94. (1) Any notice or other document required by or under the Act, to be given to or served on a participant in a scheme shall be deemed to have been duly given or served—

- (a) in the case of units for the time being represented by bearer certificates, if it is given or served in the manner provided by the most recently published scheme particulars; or
- (b) in the case of units held by a registered participant, if it is sent by post to or left at his address as appearing in the register.

(2) Any notice, direction or other document required by or under the Act, to be given to or served on a participant which is a body corporate may be given to or served on the secretary of that body or sent to him by post at the address of the registered or head office of that body.

(3) Any notice, direction or other document sent by post to a participant shall be deemed to have been duly given or served on the fourth day following that on which the letter containing the same is posted, and in proving the sending it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

(4) The giving or serving of a notice or other document to or on any one of several joint participants shall be deemed to be effective in relation to the other joint participants.

General duties and powers of manager and trustee.

95. (1) The duties imposed by or under the Act, on the manager and the trustee or the custodian of a collective investment scheme and, in the case of public investment company, the company, are in addition to and not in derogation from any other duties otherwise imposed on them by law.

(2) Where the provisions of the Act permit an act to be done or a decision to be made or a discretion to act or decide to be exercised by a manager, a trustee or custodian or, in the case of a public investment company, the company, such act or decision or exercise of discretion shall be deemed to be authorised by the formation documents unless such act, decision or exercise of discretion is thereby expressly or by implication prohibited or excluded.

Restrictions on disclosure of information.

96. (1) Subject to the provisions of this regulation a person , which expression shall include a former member, officer or servant of the Authority who discloses information obtained in the exercise or discharge of his duties under the Act shall be guilty of an offence.

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- (2) Subregulation (1) shall not apply to disclosure of information—
- (a) with the consent of the person from whom it was obtained and, if different, of the person to whom it relates;
 - (b) to the Authority or a person appointed by the Authority for the purpose of assisting the Authority or the person so appointed to discharge their duties under the Act;
 - (c) to the competent authority of a member State or of a state or territory designated by virtue of regulation 85(3) where the information relates to—
 - (i) a collective investment scheme recognised under section 24 or 26 of the Act and authorised in that member State or designated state or territory; or
 - (ii) a collective investment scheme authorised by virtue of section 8 of the Act and marketed or proposed to be marketed in that member State or designated state or territory.
- if that information would assist the authority in the exercise of these duties in relation to the scheme;
- (d) in pursuance of any Community obligation or any international convention or of any other reciprocal arrangements applicable in Gibraltar;
 - (e) which is a matter of public record or knowledge;
 - (f) with a view to the institution of or otherwise for the purposes of criminal proceedings;
 - (g) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of the Act;
 - (h) with a view to the making of an application to the Supreme Court for the winding up of a public investment company or otherwise for the purposes of such a winding up; and
 - (i) made to a person qualified in law, accountancy, valuation or any other matter requiring professional skill and knowledge in order to obtain advice.

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SCHEDULE 1

Regulation 2

ARRANGEMENTS FALLING OUTSIDE PART III OF THE ACT.

The following are not collective investment schemes for the purposes of Part III of the Act—

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business other than an investment business as defined in section 3(2) of the Act and enters into the arrangements for commercial reasons related to that business;
- (c) arrangements where each of the participants is a body corporate in the same group as the operator;
- (d) arrangements where—
 - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate in the same group as the operator; and
 - (ii) the property to which the arrangements relate consists of investments in or of a member of that group falling within paragraph 1 or 2 of Schedule 1 of the Act or falling within paragraph 4 or 5 of that Schedule so far as relating to those paragraphs or rights to and interests in any such investments;
- (e) arrangements where the receipt of the contribution of each participant constitutes acceptance of a deposit within the meaning of section 3(1) of the Banking Act by an institution which is either—
 - (i) licensed or recognised under the Act as a deposit taking business;
 - (ii) Registered or recognised as a Building Society under the provisions of the Banking Act.

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- (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
- (g) contracts of insurance;
- (h) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (i) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 1 of the Act;
- (j) arrangements under which the rights or interests of the participants are represented by—
 - (i) investments falling within paragraph 2 of Schedule 1 of the Act which are issued by—
 - (aa) a single body corporate which is not a public investment company, or
 - (bb) by a single issuer which is not a body corporate and are guaranteed by the government of any country or territory;
 - (ii) investments falling within subparagraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of Schedule 1 of the Act provided that these latter investments are issued by the same person as issued the investments falling within subparagraph (1) or are issued by a single other issuer;
 - (iii) investments falling within paragraph 3 of Schedule 1 of the Act issued by the same government, local authority or public authority; or
 - (iv) investments falling within paragraph 4 of Schedule 1 of the Act which are issued other than by a public investment company and which confer rights in respect of investments issued by the same issuer, falling within paragraph 1 of that Schedule or within subparagraph (i), (ii) or (iii) above;

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- (k) arrangements which would fall within paragraph (j) were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him in activities which are investment business or include rights or interests under a swap arrangement.

For these purposes a swap arrangement means an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which—

- (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
- (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in (i) above;
- (l) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him;
- (m) occupational pension schemes;
- (n) arrangements the purpose of which is the provision of clearing services and which are operated by a body corporate or unincorporated association recognised under section 30 of the Act;
- (o) a society registered under the provisions of the Friendly Societies Act and a body corporate other than a public investment company; and
- (p) such other classes of arrangements as the Governor may from time to time by notice in the Gazette specify.

SCHEDULE 2

Regulation 6(3)

CONTENTS OF TRUST DEEDS

Note

The requirements of paragraphs 1 to 16 shall be satisfied in relation to each constituent part of an umbrella fund and (where applicable) in relation to the umbrella fund as a whole.

1. Name.

The name of the scheme, being a name consistent with the investment objectives of the scheme in accordance with paragraph 2 below.

2. Investment objectives.

If an objective of the scheme is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the scheme is investment in any economic sector, or all economic sectors, a statement of that fact (specifying the sectors).

3. Declaration of trust.

A declaration that, subject to the provisions of the deed or rules and to any statutory requirements for the time being in force—

- (a) the property of the scheme (other than sums standing to the credit of the distribution account) is held by the trustee on trust for participants *pari passu* according to the number of units held by each participant or, in a case where income units and accumulation units are both in issue, according to the number of individual shares in the property of the scheme represented by the units held by each participant, and
- (b) the sums standing to the credit of the distribution account are held by the trustee on trust for distribution.

4. Status.

A statement of to which category of collective investment scheme the scheme is intended to belong.

5. Manager's periodic charge.

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- (a) A statement authorising the manager to make a periodic charge payable out of the property of the scheme and specifying how it shall accrue due and be paid, with a statement of the maximum of the charge expressed as an annual percentage of the value of the property of the scheme.
- (b) A statement authorising the manager to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in subparagraph (a) with authority to increase it to a large percentage of that value (not greater than the said maximum) but with effect only from the expiry of three months from the date on which the manager gives notice in writing to each participant entered on the register of its intention so to do.

6. Trustee's remuneration.

A statement authorising the manager to make payments to the trustee by way of remuneration for his services, relieving the trustee from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue due and be paid.

7. Trustee's remuneration chargeable to the property of the scheme.

A statement authorising any payments to the trustee by way of remuneration for his services to be paid (in whole or in part) out of the property of the scheme specifying the basis on which that remuneration is to be calculated and how it should accrue due and be paid.

8. Trustee's disbursements.

The descriptions of expenses or disbursements of the trustee, including the fees of the registrar (if any) or any expenses or disbursements incurred by the trustee in itself performing the functions of registrar, which are to be payable out of the property of the scheme.

9. Manager's preliminary charge.

A statement of the maximum percentage of the creation price of a unit in the scheme which may be included in the issue price of that unit calculated by reference to that creation price as a preliminary charge receivable by the manager.

10. Investment in schemes managed by the manager or its associate.

A statement as to whether or not the property of the scheme may include units in another collective investment scheme which is managed or operated by the manager or by another company in the same group as the manager or which is managed or operated by any person who is a controller of the manager or of whom the manager is the controller.

11. Dealing by manager, trustee and associates.

A provision as to whether or not a person who is the trustee, the manager, any associate of either of them, any investment adviser of the manager or a person of any other specified description shall be authorised:

- (a) to become the owner of units in the scheme and to hold, dispose or otherwise to deal with those units as if that person were not such a person, or
- (b) to deal in property of any description on that person's individual account notwithstanding the fact that property of that description is included in the property of the scheme, or
- (c) to act as agent in the sale or purchase of property to or from the trustee for the account of the trust, without that person having to account to any other such person, to the participants or any of them for any profits or benefits made by or derived from or in connection with any such transaction.

12. Limited categories of participant.

A provision as to whether or not participation in the scheme apart from that of the manager is confined to any specified category or categories of persons and provision for the repurchase of any units acquired by excluded persons.

13. Certificates.

A provision as to whether or not the manager and the trustee are to be relieved from any duty to issue certificates other than bearer certificates and as to whether or not the issue of bearer certificates is authorised.

A provision as to whether or not the trustee will be authorised to charge fees in accordance with paragraph 34 of Schedule 7 to these Regulations.

14. Holders of bearer certificates.

A statement of how the participants who are holders of bearer certificates are to identify themselves.

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15. Grouping periods.

A provision as to whether or not there will be grouping for equalisation and, if grouping is to be permitted for periods within an accounting period, what those periods are to be.

16. Meetings.

- (a) A statement as to the minimum proportion in the value of the units in issue that will entitle the participants holding that minimum to convene at any time a meeting;
- (b) a statement that the period of notice for the calling of a meeting of participants must not be less than 14 days and if the period is to be longer than the period of 14 days what that longer period is to be;
- (c) a statement as to the number of participants present in person or by proxy at a meeting which is to constitute a quorum;
- (d) a statement as to the number of participants competent to demand a poll at a meeting of participants;
- (e) a statement as to the majority necessary for the passing of an extraordinary resolution.

(In the case of an umbrella fund, the requirements of paragraphs 17 to 39 shall be satisfied in relation to the scheme as a whole).

17. Trust deed to be binding and authoritative.

A statement that the trust deed is binding on each participant as if he had been a party to it and so is to be bound by its provisions and authorises and requires the trustee and the manager to do the things required of them by the terms of the deed.

18. Certificates.

Unless provision is contained in the trust deed that certificates shall not be issued, the form and content of and the manner of authenticating certificates evidencing title to a holding of units.

19. Annual accounting period.

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The dates in the calendar year on which the annual accounting period begins and ends which must, in the case of an umbrella fund, be the same for all the constituent funds.

20. Annual and interim allocation dates.

The date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date which must, in the case of an umbrella fund, be the same for all the constituent funds. A provision authorising or requiring interim allocations of income and either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the manager.

21. Participant's liability to pay.

A provision that a participant is not liable to make any further payment after he has paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

22. Base currency.

A statement of the currency to be the base currency in the scheme.

23. Units.

A statement of the type of class of units to be issued by the scheme.

24. Umbrella funds.

If the scheme is an umbrella fund, a statement that the scheme is an umbrella fund, a description of the different constituent parts and a statement to the effect that participants are entitled to exchange rights in one part of the scheme for rights in another.

25. Feeder funds.

If the scheme is a feeder fund, a statement of the name and authorised status of the scheme into which it is to feed.

26. Supplemental deeds.

(1) A provision that no modification may be made to the trust deed except by a deed, expressed to be supplemental to the trust deed, entered into by the trustee and the manager and, unless there are no participants,

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approved by an extraordinary resolution at a meeting of participants called for the purpose:

But the deed or rules may contain a provision that no such approval is required of any modification which is required solely—

- (a) to implement any change in the law or as a direct consequence of any such change in the law, or
- (b) in the case of a relevant pension scheme, to preserve its status as such a scheme, or
- (c) to change the name of the scheme, or
- (d) to change the dates on which the annual accounting period begins and ends or to change the annual income allocation date, or
- (e) if the trust deed provides for interim accounting periods, to change the dates on which any period begins or ends or to change the interim allocation date which relates to any such period, or
- (f) to make an amendment which the trustee and the manager agree is either for the benefit of participants and potential participants or does not involve any of them in any material prejudice, or
- (g) to remove from the trust deed or fund rules obsolete provisions, or
- (h) to replace the trustee or the manager when he has been removed or wishes to retire or has retired.

(2) A provision that, where such a supplemental deed as is referred to in subparagraph (1) contains a relevant modification (as defined in subparagraph (3)) to the trust deed, that supplemental deed shall not be taken to have been approved by an extraordinary resolution at a meeting of participants unless each such modification has been the subject of a separate motion for its approval which has been separately approved by an extraordinary resolution at that meeting.

(3) For the purposes of subparagraph (2) each of the following is a relevant modification:—

- (a) an increase in the maximum of any periodic charge payable to the manager; and

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- (b) a modification to a matter which is required to be specified in the trust deed or in scheme particulars.

(4) In the case of an umbrella fund, the provision in subparagraph (2) in relation to a modification of the description mentioned in sub-paragraph (3)(b) is to be framed so as to apply separately in the case of each constituent part.

27. Governing law.

A statement that the deed is made under and governed by the laws of Gibraltar.

28. Duration of the scheme.

If the scheme is to terminate after the expiration of a particular period, a statement to that effect.

29. Umbrella funds: manager's charge on an exchange of units.

A statement authorising the manager of an umbrella fund to make a charge of a fixed amount on the exchange of units in one constituent part for units in another (other than the first such exchange by a participant in any one annual accounting period) and specifying what the maximum of the amount may be.

30. Management fund.

- (a) Provision for authorising or requiring that expenses payable out of the property of the scheme may be charged at uniform rate throughout accounting periods by the establishment of a fund to which shall be transferred at the beginning of an accounting period an amount representing an estimate of expenses payable out of the property of the scheme or fund during that period and out of which those expenses shall be paid as they fall due.
- (b) Provision that the manager's periodic charge shall be paid into any fund created in accordance with subparagraph (a) as security for payment of expenses payable or likely to be payable by the manager under the trust deed.

31. Initial price.

A statement of the initial price of units.

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32. Period of the initial offer.

A statement of the length of the period of the initial offer.

33. Constituents of property, hedging transactions and borrowing powers.

A description of the assets of which the capital property of the scheme may consist or the proportion of the capital property of the scheme which may consist of an asset of any description, and the description of hedging transactions which may be effected on behalf of the scheme, and the borrowing powers exercisable in relation to the scheme.

34. Government and other public securities fund.

In the case of a scheme which is a Government and other public securities fund, a statement as to whether or not the manager has discretion to invest more than 35% in value of the property of the scheme in Government and other public securities issued by the same issuer.

But in the case of an umbrella fund, a statement that this provision will apply in relation only to any constituent part which is a Government and other public securities fund.

35. Accumulation units.

A provision stating whether under the scheme units may be accumulation units only or accumulation units as well as income units.

36. Cash deposits with trustee or associates.

A provision that cash forming part of the property of the scheme or standing to the credit of the distribution account may only be placed by the trustee in any current, deposit or loan account with itself (if a licensed or recognised bank) or with any associate (being a licensed or recognised bank) of the trustee or of the manager for so long as that banker pays interest thereon at no lower rate than is, in accordance with normal banking practice, the commercial rate for deposits of the size of deposit in question negotiated at arm's length.

37. Borrowing from trustee or associates.

A provision that money which may be borrowed for the account of the scheme may be borrowed from the trustee (if a licensed or recognised bank) or from any associate (being a licensed or recognised bank) of the trustee or of the manager, so long as the bank charges interest at no greater rate, than

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is, in accordance with normal banking practice, the commercial rate for a loan of the size of loan in question negotiated at arm's length.

38. Investment adviser.

A provision authorising the manager to appoint one or more investment advisers.

39. Manager's and trustee's discretions.

- (a) A provision as to whether or not the manager, the trustee, the directors or any two or more of them together may perform or refrain from performing an act of any description or make a decision of any description which otherwise they would have a discretion so to do.
- (b) A provision as to whether or not the manager is authorised to exercise any powers under regulation 30 of these Regulations and a statement of those powers and any conditions or limitations on those powers.

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SCHEDULE 3

Regulation 10(2)

**CONTENTS OF THE ARTICLES OF ASSOCIATION OF A PUBLIC
INVESTMENT COMPANY.**

Note

The requirements of paragraphs 1 to 16 shall be satisfied in relation to each constituent part of an umbrella fund and (where applicable) in relation to the umbrella fund as a whole.

1. Application of the Act and of the Companies Act.

A statement that the company is a public investment company within the meaning of section 2(1) of the Act.

Where the company is an open-ended investment company a statement that it is such within the meaning of paragraph 5(4) of Part I of Schedule 3 to the Companies Act.

2. Table A.

A provision that except as may be expressly provided in the articles of association, no articles of association in Schedule 1 to the Companies Act will apply to the company.

3. Investment objectives.

If an objective of the scheme is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the scheme is investment in any economic sector, or all economic sectors, a statement of that fact (specifying the sectors).

4. Status.

A statement of to which category of collective investment scheme the scheme is intended to belong.

5. Manager's periodic charge.

- (a) A statement authorising the manager to make a periodic charge payable out of the property of the scheme and specifying how it shall accrue due and be paid, with a statement of the

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maximum of the charge expressed as an annual percentage of the value of the property of the scheme.

- (b) A statement authorising the manager to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in subparagraph (a) with authority to increase it to a larger percentage of that value (not greater than the said maximum) but with effect only from the expiry of three months from the date on which the manager gives notice in writing to each participant entered on the register of its intention so to do.

6. Custodian's remuneration.

A statement authorising the manager to make payments to the custodian by way of remuneration for his services, relieving the custodian from any obligation to account for those payments to the company, to the participants or to any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue due and be paid.

7. Custodian's remuneration chargeable to the property of the scheme.

A statement authorising any payments to the custodian by way of remuneration for his services to be paid (in whole or in part) out of the property of the scheme specifying the basis on which that remuneration is to be calculated and how it should accrue due and be paid.

8. Custodian's disbursements.

The descriptions of expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of Registrar, which are to be payable out of the property of the scheme.

9. Manager's preliminary charge.

A statement of the maximum percentage of the creation price of a unit in the scheme which may be included in the issue price of that unit calculated by reference to that creation price as a preliminary charge receivable by the manager.

10. Investment in schemes managed by the manager or its associate.

A statement as to whether or not the property of the scheme may include units in another collective investment scheme which is managed or operated by the manager or by another company in the same group as the manager or

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which is managed or operated by any person who is a controller of the manager or of whom the manager is the controller.

11. Dealing by manager, custodian and associates.

A provision as to whether or not a person who is the custodian, the manager, any associate of either of them, any investment adviser of the manager or a person of any other specified description shall be authorised:

- (a) to become the owner of units in the scheme and to hold, dispose or otherwise to deal with those units as if that person were not such a person, or
- (b) to deal in property of any description on that person's individual account notwithstanding the fact that property of that description is included in the property of the scheme, or
- (c) to act as agent in the sale or purchase of property to or from the custodian for the account of the scheme,

without that person having to account to any other such person, to the company, to the participants or any of them for any profits or benefits made by or derived from or in connection with any such transaction.

12. Limited categories of participants.

A provision as to whether or not participation in the scheme apart from that of the manager is confined to any specified category or categories of persons and provision for the repurchase of any units acquired by excluded persons.

13. Certificates.

A provision as to whether or not the manager and the trustee are to be relieved from any duty to issue certificates other than bearer certificates and as to whether or not the issue of bearer certificates is authorised.

A provision as to whether or not the custodian will be authorised to charge fees in accordance with paragraph 34 of Schedule 10 to these Regulations.

14. Holders of bearer certificates.

A statement of how the participants who are holders of bearer certificates are to identify themselves.

15. Grouping periods.

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A provision as to whether or not there will be grouping for equalisation and, if grouping is to be permitted for periods within an accounting period, what those periods are to be.

16. Meetings.

- (a) If the proportion is to be less than 10%, a statement as to this lesser proportion in the value of the units in issue that will entitle the participants holding that proportion to requisition the calling at any time of a meeting;
- (b) a statement that the period of notice for the calling of a meeting of participants must not be less than 14 days and if the period is to be longer than the period of 14 days what that longer period is to be;
- (c) if the number present in person or by proxy at a meeting to constitute a forum is to be less than 10% of the participants holding all the units in issue, a statement as to the number of participants present in person or by proxy at a meeting which is to constitute a quorum;
- (d) if the number of participants competent to demand a poll at a meeting of participants if it be less than those holding 5% of the units for the time being in issue, a statement as to the number of participants competent to demand a poll at a meeting of participants;

(In the case of an umbrella fund, the requirements of paragraphs 17 to 39 shall be satisfied in relation to the scheme as a whole).

17. Directors.

Provision for the appointment and retirement of directors and for regulating and recording their proceedings.

Provisions for the removal of directors from office, for alternate directors and for director's remuneration.

18. Certificates.

Unless provision is contained in the Articles of Association that certificates shall not be issued, the form and content of and the manner of authenticating certificates evidencing title to a holding of units.

19. Annual accounting period.

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The dates in the calendar year on which the annual accounting period begins and ends which must, in the case of an umbrella fund, be the same for all the constituent funds.

20. Annual and interim allocation dates.

The date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date which must, in the case of an umbrella fund, be the same for all the constituent funds. A provision authorising or requiring interim allocations of income and either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the manager.

21. Base currency.

A statement of the currency to be the base currency in the scheme.

22. Umbrella funds.

If the scheme is an umbrella fund, a statement that the scheme is an umbrella fund, a description of the different constituent parts and a statement to the effect that participants are entitled to exchange rights in one part of the scheme for rights in another.

23. Feeder funds.

If the scheme is a feeder fund, a statement of the name and authorised status of the scheme into which it is to feed.

24. Governing law.

A statement that the articles are made under and governed by the laws of Gibraltar.

25. Duration of the scheme.

If the scheme is to terminate after the expiration of a particular period, a statement to that effect.

26. Umbrella funds: manager's charge on an exchange of units.

A statement authorising the manager of an umbrella fund to make a charge of a fixed amount on the exchange of units in one constituent part for units in another (other than the first such exchange by a participant in any one

annual accounting period) and specifying what the maximum of the amount may be.

27. Management fund.

- (a) Provision for authorising or requiring that expenses payable out of the property of the scheme may be charged at uniform rate throughout accounting periods by the establishment of a fund which shall be transferred at the beginning of an accounting period an amount representing an estimate of expenses payable out of the property of the scheme or fund during that period and out of which those expenses shall be paid as they fall due.
- (b) Provision that the manager's periodic charge shall be paid into any fund created in accordance with subparagraph (a) as security for payment of expenses payable or likely to be payable by the manager under the articles.

28. Initial price and bid and offer.

A statement of the initial price of units and of the basis of calculation of bid and offer prices.

29. Period of the initial offer.

A statement of the length of the period of the initial offer.

30. Constituents of property, hedging transactions and borrowing powers.

A description of the assets of which the capital property of the scheme may consist or the proportion of the capital property of the scheme which may consist of an asset of any description, and the description of hedging transactions which may be effected on behalf of the scheme, and the borrowing powers exercisable in relation to the scheme.

Government and other public securities fund.

In the case of a scheme which is a Government and other public securities scheme, a statement as to whether or not the manager has discretion to invest more than 35% in value of the property of the scheme in Government and other public securities issued by the same issuer.

But in the case of an umbrella fund, a statement that this provision will apply in relation only to any constituent part which is a Government and other public securities scheme.

32. Accumulation shares or units.

A provision stating whether under the scheme, shares or units may be accumulation shares or units only or accumulation shares or units as well as income shares or units.

33. Cash deposits with custodian or associates.

A provision that cash forming part of the property of the scheme or standing to the credit of the distribution account may only be placed by the custodian in any current, deposit or loan account with itself (if a licensed or recognised bank) or with any associate (being a licensed or recognised bank) of the custodian or of the manager for so long as that banker pays interest thereon at no lower rate than is, in accordance with normal banking practice, the commercial rate for deposits of the size of deposit in question negotiated at arms length.

34. Borrowing from custodian or associates.

A provision that money which may be borrowed for the account of the scheme may be borrowed from the custodian (if a licensed or recognised bank) or from any associate (being a licensed or recognised bank) of the custodian or of the manager, so long as that bank charges interest at no greater rate, than is, in accordance with normal banking practice, the commercial rate for a loan of the size of loan in question negotiated at arm's length.

35. Investment adviser.

A provision authorising the manager to appoint one or more investment advisers.

36. Manager's and custodian's discretions.

- (a) A provision as to whether or not the manager, the custodian, the directors or any two or more of them together may perform or refrain from performing an act of any description or make a decision of any description which otherwise they would have a discretion so to do.
- (b) A provision as to whether or not the manager is authorised to exercise any powers under regulation 30 of these Regulations and a statement of those powers and any conditions or limitations on those powers.

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- (c) A statement as to whether or not the directors may give directions to the manager with regard to the constituents of the property of the scheme and a statement of any limitations on the power of the directors to give such directions.

SCHEDULE 4

Regulation 80(2)

MATTERS TO BE INCLUDED IN SCHEME PARTICULARS.

PART I.

UNIT TRUSTS OR COMMON OR MUTUAL FUNDS.

1. The scheme particulars of a unit trust or common or mutual fund shall include—

- (1) Name of the scheme;
- (2) Date of establishment of the scheme. Indication of duration, if limited;
- (3) Statement of the place where the formation documents, if not annexed, and periodical reports may be obtained;
- (4) Brief indication relevant to participants of the tax system applicable to the scheme. Details of whether deductions are made at source from the income and capital gains paid by the scheme to participants.
- (5) Accounting and distribution dates;
- (6) Names of the persons responsible for auditing the accounting information referred to in regulation 79;
- (7) Details of the types and main characteristics of the units and in particular:
 - the nature of the right (real, personal or other) represented by the unit,
 - original securities or certificates providing evidence of title entry in a register or in an account,
 - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,
 - indication of unit-holders' voting rights if these exist,
 - circumstances in which winding-up of the scheme can be decided on and winding-up procedure, in particular as regards the rights of participants.

(8) Where applicable, indication of stock exchanges or markets where the units are listed or dealt in;

(9) Procedures and conditions of issue of and sale of units;

(10) Procedure and conditions for repurchase (or redemption) of units, and circumstances in which repurchase (or redemption) may be suspended;

(11) Description of rules for determining and applying income;

(12) Description of the scheme's investment objectives including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialization in geographical or industrial sectors), any limitations on that investment policy and an indication of any borrowing techniques and instruments or powers which may be used in the management of the scheme;

(13) Rules for the valuation of assets;

(14) Determination of the sale or issue price and the repurchase price of units, in particular;

- the method and frequency of the calculation of those prices,
- information concerning the charges relating to the issue or sale and the repurchase or redemption of units,
- the means, places and frequency of the publication of those prices.

(15) Information concerning the manner, amount and calculation of remuneration payable by the fund to the management company, the trustee or those appointed to carry out the duties of registrar or custodian, and reimbursement of any costs by the fund to the manager, to the trustee or those appointed to carry out the duties of registrar or custodian.

PART II.

PUBLIC INVESTMENT COMPANIES.

2. The scheme particulars of a scheme which is a public investment company shall include–

(1) Name or style, form in law, place of registered office and head office if different from the registered office;

(2) Date of incorporation. Indication of duration if limited;

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(3) Statement of the place where the formation documents, if they are not annexed, and periodical reports may be obtained;

(4) Brief indications relevant to participants of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to participate;

(5) Accounting and distribution dates;

(6) Names of the persons responsible for auditing the accounting information referred to in regulation 79;

(7) Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company;

(8) Capitals;

(9) Details of the types and main characteristics of the shares and in particular;

- original securities or certificates providing evidence of title; entry in a register or in an account,
- characteristics of the shares,
- indication of any denominations which may be provided for,
- indication of participants' voting rights,
- circumstances in which winding up of the investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.

(10) Where applicable, indication of stock exchanges or markets where the shares are listed or dealt in.

(11) Procedures and conditions of issue and sale of shares.

(12) Procedures and conditions for repurchase or redemption of shares and circumstances in which repurchase or redemption may be suspended.

(13) Description of rules for determining and applying income.

(14) Description of the company's investment objectives, including financial objectives (e.g. capital growth or income), investment policy (e.g.

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specialization in geographical or industrial sectors), any limitations on that investment policy and an indication of any borrowing techniques and instruments or powers which may be used in the management of the company.

(15) Rules for the valuation of assets.

(16) Determination of the sale or issue price and the repurchase or redemption price of shares, in particular:

- the method and frequency of the calculation of those prices,
- information concerning the changes relating to the sale or issue and the repurchase or redemption of shares,
- the means, places and frequency of the publication of those prices;

including:–

- the method and frequency of calculation of the net asset value of shares,
- the means, place and frequency of the publication of that value,
- the stock exchange in the country of marketing the price on which is determined the price of transactions effected out with stock exchanges in that country.

(17) Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the custodian or the third parties.

PART III.

**INFORMATION TO BE INCLUDED IN ALL SCHEME
PARTICULARS.**

3. All scheme particulars shall contain the following information concerning the manager–

(1) Name or style, form in law, place of registered office and head office if different from the registered office;

(2) Date of Incorporation. Indication of duration if limited;

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(3) If the company manages other collective investment schemes, indication of those other schemes;

(4) Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect of that company;

(5) Amount of the subscribed capital with an indication of the capital paid-up.

4. All scheme particulars shall include the following information concerning the trustee–

(1) Name or style, form in law, place of registered office and head office if different from the registered office;

(2) Main activity.

5. All scheme particulars shall contain the following information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the scheme–

(1) Name or style of the firm or name of the adviser;

(2) Material provisions of the contract with the manager or the public investment company which may be relevant to the participants excluding those relating to remuneration;

(3) Other significant activities.

6. All scheme particulars shall contain the following information about the unit price and purchase and payment to participants–

Information concerning the arrangements for making payments to participants, repurchasing or redeeming units and making available information concerning the scheme. Such information must in any case be given in Gibraltar. In addition, where units are marketed in member States, such information shall be given in respect of that State in the prospectus circulated there.

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SCHEDULE 5

Regulation 79

ACCOUNTS.

The references in this Schedule to units include references to redeemable preference shares.

Part I: Statement of assets and liabilities.

The statement of assets and liabilities included in the accounts shall set out a statement of assets and liabilities as at the end of the period to which the report relates including a portfolio statement representing the different descriptions of assets in which the property of the scheme is invested grouped according to classifications appropriate to the stated investment objectives and showing—

- (a) the number or quantity, description and value of each asset, showing separately in respect of each asset or group of assets, in relation to which a hedging transaction has been effected any right or obligation under that hedging transaction not matched by a corresponding obligation or right;
- (b) the percentage of the net value of the property of the scheme that each holding represents;
- (c) instruments creating or acknowledging indebtedness;
- (d) bank balances;
- (e) other assets of the scheme;
- (f) the total value of all assets of the scheme;
- (g) a description and the amount of the actual and future contingent liabilities and of contingent liabilities not provided for; and
- (h) the total net value of all assets of the scheme less the net value of the liabilities of the scheme.

Part II: Income and distribution account.

The following matters shall be set out in the income and distribution account included in the accounts—

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- (a) the total income from assets of the scheme, specifying the descriptions;
- (b) the total other income, specifying the descriptions;
- (c) any periodic charge payable to the manager and authorised to be paid out of the property of the scheme;
- (d) where any fees or expenses of the trustee or custodian as the case may be have been paid by the manager out of the manager's own resources and not out of the property of the scheme, the amount of those fees and expenses if not separately shown in the capital account;
- (e) the total amount deducted for taxation before distribution to the participants;
- (f) the balance brought forward from the last account and the balance carried forward to the next account;
- (g) the amount available for allocation to the participants in respect of the period;
- (h) the fees of the trustee or custodian and disbursements payable out of the property of the scheme distinguishing fees for custody of documents or assets from other fees;
- (i) the auditor's fees payable out of the property of the scheme;
- (j) any other payments out of the property of the scheme;
- (k) the amount of any interim allocations of income;
- (l) the amount of the final allocation of income, showing by way of a note to the account how the amount is made up, taking account of tax and any income equalisation adjustment referred to in paragraphs 12 to 15 in Schedule 8;
- (m) if there is a deficit on income account charged to capital account, the amount of that deficit; and
- (n) if there is a deficit on capital account charged to income account, the amount of that deficit.

Part III: Capital account.

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The following matters be set out in the capital account included in the accounts—

1. The value of the property of the scheme at the beginning of the period.
2. The amount of cash or the value of assets received on the creation of new units.
3. The amount of cash or the value of assets paid out on the cancellation of units.
4. The net increase or decrease in the aggregate value of the property of the scheme over the period.
5. Any charges and expenses charged to capital.
6. The value of the property of the scheme at the end of the period.
7.
 - (a) Information about the dealing commissions, including mark-up or mark-down incurred in dealing in the property of the scheme, including the average rate of commission paid for those transactions where any commission is paid;
 - (b) The proportion of the aggregate value of the transactions in the property of the scheme done with or through each of the persons, if any, having control over or being controlled by the manager, trustee or custodian with which transactions have been carried out in the property of the scheme excluding foreign exchange transactions and the total amount of such commissions;
 - (c) The names of all persons, other than the trustee or custodian acting as such, dealing in more than 10% of the aggregate value of a transaction in the property of the scheme.
8. A statement of the net realised profits or losses during the period.
9. A statement of the net increase or decrease in the unrealised appreciation or depreciation in the value of the capital property during the period.
10. A statement of the effect of currency hedging transactions.
11. Any transfers to or from the income account, together with the reasons and basis for any such transfers.
12. The net movement in the income account.

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The following matters shall be set out in the notes to the accounts—

1. Accounting policies.

- (a) The policy regarding dividends and other income received and receivable;
- (b) The basis of valuation of the property of the scheme;
- (c) The exclusion from the statement of assets and liabilities of any assets or liabilities relating to the income of the scheme or the amount of the current distribution;
- (d) If applicable, a statement of the basis for converting amounts in currencies other than sterling into amounts in sterling;
- (e) A statement of the rate of corporation tax with an explanation of any other tax charge or refund appearing in the income and distribution account;
- (f) If applicable, an explanation of the basis of valuing unlisted or suspended securities.

2. Other income.

An analysis of the income shown in the income and distribution account and, where material, showing separately the following terms—

- (a) interest on loan and debenture stocks;
- (b) interest on deposits and loans in currencies other than sterling;
- (c) interest on bank and short term deposits; and
- (d) dividends on overseas stocks.

3. Equalisation.

A definition and explanation of equalisation.

4. Units in issue.

The number of units in existence or deemed to be in existence at the end of the period to which the account relates.

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5. Net liquid assets.

An analysis of net liquid assets as at the end of the period of which the account relates (unless shown in the statement of assets and liabilities) including the following items where applicable—

- (a) amounts receivable from brokers for sales of securities;
- (b) amounts payable to brokers for purchases of securities.

6. Back-to-back loans.

Details of any back-to-back loans including the terms and interest rate margins.

7. Partly paid shares.

A statement showing the uncalled liability in respect of any partly paid shares.

8. Forward exchange transaction.

A statement of open forward exchange positions.

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SCHEDULE 6

Regulation 79

ANNUAL AND HALF-YEARLY REPORTS.

Note: The references in this Schedule to units include references to redeemable preference shares.

Part I: Report of the manager.

The following matters shall be set out in every annual and half-yearly report of the manager—

1. The names and addresses of the following—

- (a) the manager;
- (b) the trustee;
- (c) any investment adviser;
- (d) the registrar;
- (e) the auditor.

2. The objectives of the scheme.

3. The manager's policy for achieving the objectives of the scheme.

4. A statement that the scheme is an authorised scheme within the meaning of the Act.

5. A statement of to which category of scheme the scheme belongs. In the case of an umbrella fund, this statement is to be made separately in relation to each constituent part.

6. A review of the manager's investment activities during the period to which the report relates.

7. Particulars of any significant change in the scheme particulars made since the making of the last report by the manager.

8. A statement of the amount (if any) to be distributed to participants or accumulated in respect of the period in question.

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9. A statement of the total number of the units of each type in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period and a statement of the basis of calculating average net assets in issue during the year.

10. A statement of the mid-market value per unit of the property of the scheme at the beginning of the period to which the report relates and at the end of that period.

11. A statement of any subdivision or consolidation of units which has been effected during the period to which the report relates.

12. Any other significant information which would enable participants to make an informed judgment 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.

Part II: Portfolio statement.

The following shall be set out in the portfolio statement included in the report of the manager–

1. The changes in the investments in the property of the scheme since the end of the preceding accounting period showing whether they are new holdings, or changes in existing holdings, and giving a description of each holding and showing the net changes in the number of units in or the nominal value of that holding since the end of the preceding accounting period.

2. The total cost of purchases of investments since the last portfolio statement.

3. The total proceeds of sales of investments since the last portfolio statement.

Part III: Comparative table.

The following matters shall be set out in the comparative table included in the report of the manager–

1. A performance record over the last 10 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 the highest sale price and the lowest repurchase price of the units during each of those years, the net income per unit distributed or, in the case of accumulation units, allocated during each of those years taking account of any subdivision or consolidation of units that occurred during that period and the net income

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which would have been distributed or allocated to accumulation units over each of those years per £1000 invested at the beginning of the 10 year period.

2. Over the last three annual accounting periods, 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, the total value of the property of the scheme at the end of each of those years (calculated on the bid basis of valuation) and the cancellation price per unit and the number of units in existence or deemed to be in existence at the end of each of those years.

Part IV: Report of the auditor.

The report of the auditor to the holders for any annual accounting period shall state—

- (a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Regulations and the formation documents.
- (b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period;
- (c) if the auditor is of opinion that proper accounting records have not been kept by the manager or that the accounts are not in agreement with the manager's accounting records, that fact together with any resulting qualification;
- (d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact together with any resulting qualifications; and
- (e) if the auditor is of opinion that the information given in the report of the manager for that period is inconsistent with the accounts, that fact together with any resulting qualifications.

Part V: Report of the trustee.

The report of the trustee to the participants for any annual accounting period shall state whether in the trustee's opinion the manager has managed the scheme in that period—

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the manager and trustee by the

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formation documents, by the scheme particulars and by the Act and any relevant regulations thereunder; and

- (b) otherwise in accordance with the provisions of the formation documents, the scheme particulars and the Act and any relevant regulations thereunder; and

if the manager has not done so, the respects in which it has not done so and the steps which the trustee has taken in respect thereof.

SCHEDULE 7

Regulation 22(3)

Part 1: Valuation of property.

Note: References in this Schedule to units include references to redeemable preference shares.

Periodic valuations.

1. For the purposes of determining the prices at which units in a scheme may be created, cancelled, sold or repurchased the manager shall regularly carry out a valuation of the property of the scheme in the base currency with such frequency as is specified in the scheme particulars.

Provided that such frequency must not be less than twice in every calendar month and if a valuation is conducted only twice in a calendar month, there are at least two weeks between each valuation point.

2. The manager may carry out additional valuations of the property of the scheme for the purposes described in paragraph 1 if it considers it desirable to do so.

3. The property of a scheme may not be valued for the purposes of these Regulations at a time at which any market on which property representing 40% or more in value of the property of the scheme is traded normally – opens for business or which is within the period of two hours preceding that time.

4. In valuing the property of a scheme the prices taken shall be the most recent prices that can reasonably be obtained after the valuation point with a view to giving an accurate valuation of the scheme as at that point.

Property to be included and assumptions to be made in a periodic valuation.

5. In calculating the value of the property of the scheme–

- (a) where, immediately before the valuation point, the trustee is under an obligation to create or cancel units, it shall be assumed–
 - (i) that the units in question were created or cancelled, as the case may be,

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- (ii) that the trustee has paid or, as the case may be, has received the consideration for those units, and
 - (iii) that all other things required by these Regulations or by the formation documents to be done in consequence thereof were done;
- (b) where, immediately before the valuation point, the trustee has not done something in consequence of a creation or cancellation of units which it is required to do, it shall be assumed that that thing was done;
- (c) subject to paragraph 6, where, immediately before the valuation point, agreements are in existence for the unconditional sale or purchase of property on behalf of the scheme which have not been completed, it shall be assumed that they were completed at that time and that everything required to be done in accordance with their terms was done;
- (d) there shall be deducted from the property of the scheme—
- (i) a reasonable estimate by the manager of the total amount of liabilities, including potential liabilities, which have accrued to date and are payable out of the property of the scheme including the principal amount of any outstanding borrowings whenever repayable; and
 - (ii) the value, calculated in accordance with paragraph 9 of all options written for the scheme;
- (e) there shall be added to the property of the scheme—
- (i) a reasonable estimate by the manager of the total amount of any claims for repayment of any taxation levied on capital (including capital against) or on income accrued before the valuation point; and
 - (ii) a sum representing any interest or dividends accrued but not received or receivable; and
- (f) in determining the value in the base currency of property which would otherwise be valued in a currency other than the base currency, the value shall be converted at a rate of exchange which represents the average of the highest and the lowest rates of exchange quoted, at the relevant time, for conversion of that currency into the base currency on the market on which the manager would normally deal if it wished to make a

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conversion unless the manager and the trustee agree that it is in the interests of participants and potential participants that a different rate be used, in which case the value shall be converted at the rate agreed between them.

6. For the purpose of paragraph 5 (c), an agreement shall not be regarded as one for the unconditional sale or purchase of property if—

- (a) it is a future or a contract for differences which is not yet due to be performed or which is due to be performed but which has been closed out; or
- (b) it is an option written for the scheme which has not expired but has not yet been exercised by the purchaser or which has been exercised but which has been closed out; or
- (c) it is an option purchased for the scheme which has not expired but which has not yet been exercised.

Basis of valuation.

7. A valuation carried out in accordance with paragraphs 1 to 4 shall be in two parts, one on an offer basis and the other on a bid basis.

8. For each basis of valuation, cash and amounts held on a current or deposit account shall be taken at their nominal value.

9. For the purposes of paragraph 5(d)(ii), the value of an option written for the scheme on property of any description shall be—

- (a) for that part of the valuation which is on an offer basis, the amount of premium which would be received if an option on that kind on property of that description were written on the best terms then available on an approved options and futures market on which such options are traded less an estimated amount of such fiscal charges, commission and other charges as would be payable by the writer of such an option, calculated on the basis that the commissions and charges payable were the least that could reasonably be expected to be paid in connection with the transaction; and
- (b) for that part of the valuation which is on a bid basis, the total of the amount of premium which would be paid if an option on that kind on property of that description were purchased on the best terms then available on an approved options and futures market on which such options are traded and an estimated amount of such fiscal charges, commission and other charges

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as would be payable by the purchaser of such an option, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with the transaction.

10. The value of a margined contract, which is not a written option shall be—

- (a) for that part of the valuation which is on an offer basis, an amount, which may be a negative amount, equal to the total of the following—
 - (i) the amount of initial margin which would have to be deposited in order to enter into a contract of that kind on property of that description on the best terms then available on an approved options and futures market on which contracts of that kind are traded;
 - (ii) the amount of accrued margin which would be receivable or payable on closing out the contract and which will be a negative amount if accrued margin would be receivable and which will be a positive amount if accrued margin would be payable;
 - (iii) an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then entered into, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to enter into the contract; and
- (b) for that part of the valuation which is on a bid basis, whichever is applicable of the following—
 - (i) in a case in which margin would be receivable for the account of the scheme if the contract were to be closed out, the amount of margin which would be receivable if the contract were closed out on the best terms then available on an approved options and futures market on which contracts of that kind are traded less an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract; and

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- (ii) in a case in which margin would be payable out of the property of the scheme if the contract were to be closed out, a negative amount equal to the total of the amount of margin which would be payable if the contract were closed out on the best terms then available on an approved options and futures market on which contracts of that kind are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract.

11. All other property, for that part of the valuation which is on an offer basis, shall be valued—

- (a) in the case of property which is an investment of any description other than a unit in a collective investment scheme, at the market dealing offer price of that investment;
- (b) in the case of property which is units in a collective investment scheme, at the price at which units of the kind in question were or would have been created following the most recent valuation of the relevant scheme, or if—
 - (i) there is no such creation price for the units in question; or
 - (ii) the relevant creation price is higher than the issue price then being offered for deals of the relevant size; or
 - (iii) the manager, after making reasonable enquiries, has been unable to ascertain the relevant creation price;

at the issue price then being offered for deals of the relevant size; and

- (c) if there is no price of the property in question under subparagraph (a) or (b), at a reasonable estimate of the amount which would be paid by a buyer, by way of consideration, for an immediate transfer or assignment to him at arm's length less any fiscal charges, commission and other purchase charges which would be payable by him.

12. All other property, for that part of the valuation which is on a bid basis, shall be valued—

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- (a) in the case of property which is an investment of any description other than a unit in a collective investment scheme, at the market dealing bid price of that investment at the relevant time;
- (b) in the case of property which is units in a collective investment scheme, at the amount which would be received if they were offered for redemption at the relevant time in what, in the reasonable opinion of the manager, is a standard size; and
- (c) if there is no price of the property in question under subparagraph (a) or (b), at a reasonable estimate of the amount which would be received by a seller by way of consideration for an immediate transfer or assignment from him at arm's length less any fiscal charges, commission and other sales charges which would be payable by him.

13. The trustee, the manager and, in the case of an open-ended investment company, the directors shall be entitled to rely upon a statement as to the value of any investment or the rate of exchange prevailing at any time if they believe it to be genuine and to be given by a person independent of either of them who is competent to make such a statement.

Suspension and resumption of valuation.

14. The manager may with the prior agreement of the trustee, or shall if the trustee so requires, at any time for a period not exceeding one month suspend the valuation of the property of the scheme if the manager, (or the trustee in the case of any requirement by the trustee) is of the opinion that there is good and sufficient reason to do so having regard to the interests of the participants.

15. At the time of suspension of the valuation of the property of the scheme under paragraph 14 the manager, (or the trustee if it has required the manager to suspend the valuation of the property of the scheme) shall inform the Authority of the suspension, stating the reasons for its action, and forthwith confirm the suspension by giving notice in writing to the Authority. If the Authority so requires the manager or, as the case may be, the trustee shall also give notice to any participant who has an outstanding request for the repurchase of his units, stating the reasons for the suspension and offering the participant the opportunity to cancel his request for repurchase.

16. Before the resumption of the valuation of the property of the scheme, the manager shall inform the Authority of the proposed resumption, and forthwith after the resumption, confirm the resumption by giving notice in writing to the Authority.

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17. No units shall be created or cancelled or sold or repurchased by the manager during any period during which the valuation of the property of the scheme is suspended in accordance with the above provisions.

Part 2: Creation and cancellation of units

Units to be created and cancelled on the instructions of the manager.

1. In the case of a unit trust, units may be created or cancelled by the trustee only upon receipt of written notice from the manager and, in the case of an open-ended investment company units may be created or cancelled only upon receipt by the company and the custodian of written notice from the manager.

But no units in an open-ended investment company may be created or cancelled without the consent of the custodian and no such units may be created otherwise than as fully paid.

2. Subject to paragraphs 13 and 14, units shall be created upon the receipt of written notice from the manager in accordance with the provisions of paragraphs 15 to 19, 22 to 25 or 26 to 28 stating, in relation to each type of unit to be created, how many units are to be created expressed as a number of units or as an amount in value (or partly the one and partly the other).

3. For the purpose of a unitisation, units shall be created in favour only of the holders of shares, or, as the case may be, of units, in the body corporate or collective investment scheme which is being wound-up or property of which is being transferred.

4. Upon the creation of units, the manager of a scheme which is neither a Government and other public securities fund nor a money market fund shall either—

- (a) pay the trustee in cash or in cleared funds, before the close of business on the fourth business day next after the instructions referred to in paragraph 2 were given, the creation price of those units; or
- (b) in any case within paragraph 5 other than a unitisation, ensure that the beneficial interest in the relevant assets is transferred to the trustee forthwith and that legal title to those assets is transferred within the period mentioned in subparagraph (a) above.

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5. Units may, whether for the purposes of a unitisation or otherwise, be created in exchange for assets other than money but only if the trustee is satisfied that acquisition of the assets in exchange for the number of units to be created is not likely to result in any material prejudice to the interests of participants or potential participants.

6. Paragraph 4 shall apply in the case of the manager of a scheme which is either a Government and other public securities fund or a money market fund as if the period specified in paragraph 4(a) were the period ending with the close of business on the business day next after the giving of the instructions referred to in paragraph 2.

Cancellation of units.

7. Subject to paragraphs 13 and 14, units shall be cancelled upon—

- (a) the receipt by the trustee and, in the case of an open-ended investment company by the company of written notices by the manager stating, in relation to each type of unit to be cancelled, how many units or what value of units (or partly the one and partly the other) are to be cancelled and whether the units are ones which the manager owns as principal or whether they are units belonging to a participant (or partly the one and partly the other); and
- (b) the delivery to the trustee of such evidence of the title to those units of the person seeking to cancel them as the trustee may reasonably require.

8. The trustee of a scheme which is neither a Government and other public securities fund nor a money market fund shall except where cancellation is to take place under paragraphs 39 to 45 of Part 3 of this Schedule and provided that the manager has ensured that the property of the scheme includes or will include that the cash in the appropriate currency, pay the cancellation price of those units out of the property of the scheme before the close of business on the fourth business day next after the cancellation of the units.

9. In a case in which the manager has not ensured that the property of the scheme includes or will include sufficient cash in the appropriate currency within the period referred to in paragraph 8, the trustee shall pay the cancellation price forthwith upon the manager so ensuring.

10. Paragraphs 8 and 9 shall apply in the case of the trustee of a scheme which is either a Government and other public securities fund or a money market fund as if the period referred to in paragraph 8 were the period

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ending with the close of business on the business day next after the cancellation of the units in question.

11. In the case of an open-ended investment company, the nominal amounts paid up on units shall be redeemed out of the proceeds arising from the issue of an equal number of nominal shares (which the manager shall arrange), and any premium on such units may, at the discretion of the directors, be paid from the profits available for dividend as at the date of their cancellation or from the share premium account or from both.

12. Upon the cancellation of a unit pursuant to this Schedule the participants shall cease to be entitled to any rights in respect thereof (excepting the right to receive a distribution which has become due and payable in respect thereof prior to such cancellation), and accordingly his name shall be removed from the register with respect thereto and, in the case of an open-ended investment company the unit shall, as an unclassified share, be available for creation and until creation shall form part of the unissued share capital of the company.

Refusal to create or cancel units: trustee's powers and duties.

13. Subject to paragraph 14, the trustee may, on receipt of written instructions directing it to create or cancel units, forthwith give written notice to the manager stating that the trustee refuses to create or cancel, as the case may be, all or such number of the units requested to be created or cancelled as is specified in the notice, and the consequence of the giving of that notice shall be that that number of units shall not be created or cancelled.

14. The trustee may not give such a notice in relation to the creation of units for the purposes of a unitisation and, in any other case, may give it only if it is of the opinion that it is not in the interests of participants for the units the subject of the notice to be created or cancelled, as the case may be.

Creation of units: initial offer or unitisation.

15. Paragraphs 16 and 17 shall apply instead of paragraphs 22 to 28 for the purpose of determining when, during an initial offer, the manager may, and when it is required to, give instructions to create units, and paragraph 19 shall apply instead of those paragraphs with respect to the creation of units for the purposes of a unitisation.

16. The manager may given written instructions to create units in the scheme at the beginning of the first business day during the period of the initial offer.

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17. Subject to paragraph 18, the manager shall, at the beginning of each business day other than the first during the period of the initial offer and at the beginning of the first business day after that period, give instructions for the creation of units in the scheme in such numbers at least as will enable the manager immediately to fulfil all obligations to sell units which it assumed during the preceding business day.

18. Paragraph 17 shall not apply if, at the beginning of each business day other than the first during the period of the initial offer and at the beginning of the first business day after that period, the manager pays to the trustee either the total amount received during the previous business day in respect of orders for units to be sold or such amount less the total of the manager's preliminary charge, if any, in respect of those units.

19. The manager shall have no power to give instructions for the creation of units for the purposes of a unitisation and the trustee shall have sole power to determine what units are to be created having regard to the terms of any arrangements relating to the unitisation to which the trustee is a party.

Compulsory termination of initial offer.

20. The manager shall cease to agree to sell units at the initial price and shall not give instructions for the creation of units other than units which the manager has already agreed to sell upon becoming aware or having reason to believe that, if the property of the scheme were valued in accordance with Part I of this Schedule, the sale price excluding any preliminary charge would differ from the initial price excluding any such charge by 2% or more.

21. On the occurrence of circumstances of the kind described in paragraph 20 the manager shall forthwith carry out a valuation of the property of the scheme for the purposes of determining new prices at which units in the scheme are to be created, cancelled, sold and repurchased.

Creation and cancellation of units where the scheme is valued at intervals of more than two hours.

22. Paragraphs 23 to 25 shall apply in the case of every scheme the property of which is normally valued for the purposes of paragraphs 1 to 4 of Part 1 to this Schedule at intervals of more than two hours, and they apply so as to determine when the manager of such a scheme may, and when it is required to, give instructions for the creation of units in the scheme and when it may give instructions for the cancellation of units in the scheme.

23. Subject to the provisions of paragraph 25, the manager may within the period of two hours immediately after each valuation point, give written instructions for the creation of units but it shall give such instructions within

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that period to create units in the scheme at least in such number or of such value (or partly the one and partly the other) as will enable it to fulfil all outstanding obligations to sell units which it had assumed before that valuation point.

24. Subject to the provisions of paragraph 25, the manager may give instructions to cancel units only within the period of two hours immediately following a valuation point.

25. Notwithstanding the provisions of paragraphs 23 and 24, the manager may give instructions for the creation or cancellation of units otherwise than within the period of two hours following each valuation point provided that it does so by reference to the prices to be calculated at the next valuation point and the units are to be created or cancelled after that next valuation point.

Creation and cancellation of units where the scheme is valued at intervals of not more than two hours.

26. Paragraphs 27 and 28 apply to every scheme the property of which is normally valued for the purposes of paragraphs 1 to 4 of Part 1 of this Schedule at intervals of not more than two hours and they apply so as to determine when the manager of such a scheme may, and when it is required to, give instructions for the creation of units in the scheme and when it may give instructions for the cancellation of units in the scheme.

27. The manager may, at any time between one valuation point and the next, give written instructions for the creation of units but it shall give such instructions within that period to create units in the scheme at least in such number or of such value (or partly the one and partly the other) as will enable it to fulfill all outstanding obligations to sell units which it had assumed before the former valuation point.

28. The manager may give written instructions for the cancellation of units at any time between one valuation point and the next.

Creation price.

29. The price for each unit payable by the manager of a scheme to the trustee on the creation of a unit during an initial offer shall be the initial price of that unit less the amount of any preliminary charge made in respect of that unit.

30. Subject to paragraphs 33 and 34, the price for each unit payable to the trustee on the creation of units, otherwise than for creation during an initial offer or for the purposes of a unitisation, shall be the sum of the amounts calculated in accordance with paragraph 32.

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31. For the purposes of paragraphs 29 and 30, units shall be treated as created during an initial offer if they were created after the close of the offer but were units which the manager had agreed to sell before the offer closed.

32. The amounts calculated in accordance with paragraphs 29 to 31 are—

- (a) an amount in the base currency equal to the value determined on the offer basis by reference to the most recent valuation point of that part of the capital property of the scheme which is attributable to units of the type in question in existence (or assumed in accordance with paragraph 5 (a) of Part 1 of this Schedule to be in existence) at that valuation point divided by the number of those units; and
- (b) an amount in the base currency of income equalisation divided by the number of those units.

33. Any price calculated in accordance with paragraphs 29 to 32 shall be accurate to at least four significant figures.

34. Where the trustee creates units in circumstances in which the total price payable in any particular currency for all units created on that occasion would include a fraction of the smallest unit of that currency it shall round up or down the total price payable to the nearest such unit.

Cancellation price.

35. Subject to paragraphs 37 and 38 and to paragraphs 39 to 45 of Part 3 of this Schedule, the price for each unit payable by the trustee on the cancellation of units shall be the sum of the amounts calculated in accordance with paragraph 36.

36. The amounts referred to in paragraph 35 are—

- (a) an amount in the base currency equal to the value determined on the bid basis by reference to the most recent valuation point of that part of the capital property of the scheme which is attributable to units of the type in question in existence (or assumed, in accordance with paragraph 5 (a) of Part 1 of this Schedule, to be in existence) at that valuation point divided by the number of those units, and
- (b) an amount in the base currency equal to the value determined on the bid basis by reference to the most recent valuation point of that part of the income property of the scheme which is attributable to units of the type in question in existence (or

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assumed, in accordance with paragraph 5 (a) of Part 1 of this Schedule, to be in existence) at that valuation point divided by the number of those units.

37. Any price calculated in accordance with paragraph 35 shall be accurate to at least four significant figures.

38. Where units are cancelled in circumstances in which the total price payable in any particular currency for all units cancelled on that occasion would include a fraction of the smallest unit of that currency the total price payable shall be rounded up or down to the nearest such unit.

Manager as agent.

39. Where the manager acts as agent for the trustee or, in the case of an open-ended investment company the company, in connection with the sale or purchase by the trustee or the company of units otherwise than in the course of an initial offer or otherwise than in the circumstances described in paragraphs 39 to 45 of Part 3 of this Schedule, the price at which the manager sells units shall be a price which is not greater than the total of the creation price next calculated in accordance with paragraph 30 and the amount, if any, specified in the scheme particulars as the maximum of the manager's preliminary charge, and the price at which it buys units shall be the cancellation price next calculated in accordance with paragraph 35.

40. The manager shall not agree to sell units as agent for the trustee or the company during an initial offer at a price which is greater than the initial price.

41. The manager shall not make any charge in connection with its sale or purchase of units as agent as aforesaid except the preliminary charge referred to in paragraph 39.

Part 3: Sale and repurchase of units.

Prices at which units may be sold and repurchased.

1. The manager shall not agree to sell units during an initial offer at a price which is greater than the initial price.

2. Except in the case of a large deal, the manager shall either—

- (a) agree to sell and repurchase all units at forward prices; or
- (b) subject to paragraph 3 and except in relation to units which the manager is prohibited by paragraphs 10 to 14 from selling or

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repurchasing at historic prices, agree to sell and repurchase all units at historic prices.

3. The manager may, at any time, elect to cease agreeing to sell and repurchase units at historic prices and begin agreeing to sell and repurchase them at forward prices, in which case the manager shall not, until after the next valuation point, sell or repurchase units at historic prices, except in the case of a large deal.

4. Except in the case of a large deal, the manager shall not sell or repurchase units at a price which is either greater than the relevant maximum price notified to the trustee under paragraph 17(b) or less than the relevant minimum prices notified.

5. The sale price of units may include a preliminary charge, expressed either as a fixed amount or calculated as a percentage of the creation price, but, in either case, the amount of that charge shall not be greater than such percentage at the most recent creation price as may be specified in the formation documents and scheme particulars as the maximum of that charge. The preliminary charge included in the initial price shall be no greater than the percentage specified in the formation documents and scheme particulars.

6. The manager shall not make any charge in connection with the sale or repurchase of units except the preliminary charge referred to in paragraph 5.

7. Where the manager receives an offer to acquire units, or a request that units be repurchased, in circumstances in which the total price payable for all units for which the request is made would include a fraction of a unit of currency, the manager shall round up or down the total payable to the nearest such unit.

Manager's discretion in case of large deal.

8. Subject to paragraphs 10 to 16, in the case of a large deal the manager may sell or repurchase the units in question at either a forward or an historic price provided that the price is neither greater than the total of the relevant creation price notified to the trustee under paragraph 17(a) and such percentage, if any, of the creation price as may be stated in the formation documents and scheme particulars as the maximum of its preliminary charge not less than the relevant cancellation price so notified.

9. In paragraph 8, the relevant creation price and the relevant cancellation price for units sold or repurchased at a forward price are the prices notified upon the completion of the valuation by reference to the valuation point next following the agreement of the manager to sell or repurchase the units and the relevant prices for units sold or repurchased at an historic price are

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the prices notified upon completion of the valuation by reference to the valuation point last preceding that agreement.

Cases in which manager may not deal at an historic price.

10. Except in the case of an initial offer, the manager shall sell or, as the case may be, repurchase units at a forward price if the applicant has requested that units be sold or repurchased at a forward price.

11. Except in the case of an initial offer, the manager shall, subject to paragraph 12, sell or, as the case may be, repurchase units at a forward price if the applicant has applied for units to be sold or repurchased and the manager has agreed to sell or repurchase the units without the applicant knowing the price at which the units would be sold or repurchased.

12. Notwithstanding the provisions of paragraph 11, but subject to the provisions of paragraph 10, if an application for units to be sold or repurchased is received during the period between a valuation point and whichever is the earlier of the end of the two hour period specified in paragraphs 22 to 28 or in Part 2 of this Schedule and the completion of the valuation carried out by reference to that valuation point, the manager may sell or repurchase the units at an historic price.

And for the purposes of this paragraph, a valuation is deemed to be completed as soon as the manager first knows of the creation and cancellation prices in question.

13. The manager shall not sell or repurchase units at an historic price if it knows, or has reason to believe, that, if the property of the scheme were valued in accordance with the provisions of Part 1 of this Schedule its value would have increased or, as the case may be, decreased by 2% or more from the value calculated at the last valuation point.

14. The manager shall not sell or repurchase units at an historic price which is calculated by reference to a valuation point which occurred before the preceding business day.

Manager's duty where it knows, or has reason to believe, that value of property has materially changed.

15. If, before the occurrence of circumstances of the kind described in paragraphs 10 to 14, the manager was selling or repurchasing units at an historic price, the manager shall forthwith upon the occurrence of those circumstances, cease to do so and shall either—

- (a) sell and repurchase units at a forward price until the next valuation point; or

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- (b) carry out a valuation of the property of the scheme for the purposes of determining new prices at which units in the scheme are to be created, cancelled, sold and repurchased.

16. The manager need not, in order to comply with the provisions of paragraph 15(b), carry out a valuation in accordance with the provisions of Part 1 of this Schedule if the manager reasonably believes, and the trustee agrees, that an adequate valuation may be obtained by reference to fluctuations in an index of property the composition of which reflects the composition of the property of the scheme.

Manager's duty to notify trustee of creation and cancellation prices and of dealing spread.

17. Forthwith upon a valuation being completed, whether in accordance with Part 1 of this Schedule or by virtue of the provisions of paragraph 16, the manager shall notify the trustee of the following—

- (a) the creation and cancellation prices;
- (b) if the manager is acting as principal, the maximum sale price and the minimum repurchase price for deals which the manager agreed before the valuation point should be done at a forward price and which are to be used for deals, other than large deals, which are to be done at an historic price before the next valuation point; and
- (c) the number of units held by the manager as principal at the valuation point.

18. The price notified to the trustee as the maximum sale price shall not exceed the total of the creation price notified under paragraph 17 (a), and the maximum amount of any preliminary charge specified in the formation documents and scheme particulars.

19. The price notified to the trustee as the minimum repurchase price shall not be less than the cancellation price notified under paragraph 17 (a).

Income equalisation.

20. On the sale of a unit which the manager has repurchased and not cancelled, the manager shall pay to the trustee, not later than the next date on which sums are distributed to participants such part of the creation price by reference to which the price of that unit was determined as represented income equalisation.

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21. All payments by the manager under paragraph 20 shall to the extent that they relate to any unit's income which is accumulated within the property of the scheme, be treated as part of the capital property and, to the extent that they relate to other units, be allocated for distribution.

Manager's duty to notify trustee of additional valuation and change in pricing basis.

22. The manager shall inform the trustee and, in the case of an open-ended investment company, the company forthwith of—

- (a) any decision to carry out a new valuation other than a regular valuation of the kind described in paragraphs 1 to 4 of Part 1 of this Schedule; and
- (b) any decision to cease dealing at historic or forward prices.

Publication of sale and repurchase prices.

23. The manager shall—

- (a) on each day on which it holds itself out as willing to sell or repurchase units, publish cancellation, sale and repurchase prices of those units in at least one newspaper circulating in Gibraltar;

Provided that the manager shall not be obliged to publish prices on any day on which no local newspaper is published; and

- (b) at least once in every week publish, in like manner to subparagraph (a), such percentage, if any, as is stated in the scheme particulars as the maximum of its preliminary charge.

24. Paragraph 23 shall apply in a case in which the manager is acting as agent for the trustee or the company in the case of an open-ended investment company, the company as if the references to sale and repurchase prices were references to the sum of the relevant creation price and the maximum amount of any preliminary charge made in respect of units sold by reference to that creation price.

25. The cancellation, sale and repurchase prices published in Gibraltar shall be the prices last notified to the trustee under the provisions of paragraphs 17 to 19 before the newspaper in which they were published ceased to accept material for publication in the relevant edition, shown in the base currency or in sterling, and shall be accurate to at least four significant

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figures and the creation price referred to in paragraph 24 shall be the creation price last so notified.

Contract notes.

26. Each contract note which is issued on the sale or repurchase of units shall state—

- (a) the price in the relevant currency at which the units in question were sold or repurchased;
- (b) the cancellation price (in the relevant currency) by reference to the valuation by reference to which the price at which the units in question were sold or repurchased was calculated; and
- (c) either the amount of any preliminary charge if it is of a fixed amount or the percentage, if any, stated in the scheme particulars as the maximum to the preliminary charge.

Conversion of units.

27. Subject to paragraph 28 the trustee of a scheme in which there are units of more than one type shall at the request in writing of the manager convert units of any one type into the appropriate number of units of any other type subject to both classes of unit being in existence and being offered for sale at the time that the conversion is requested.

28. Subject to the provisions of paragraphs 27 and 29 to 31 the manager shall request the trustee to make a conversion if it is requested to do so by a participant but the manager shall be under no duty to make such a request and the trustee shall be under no duty to give effect to any such request if it would result in the participant being a holder of units of either type less than any minimum number or value of units stated in the formation documents and scheme particulars as the minimum number or value of units which any participant may hold.

29. The appropriate number of units for the purposes of this regulation shall be determined by the manager, after consulting the trustee, on terms that are fair to the participant seeking the conversion of units and to other participants.

30. In the case of an open-ended investment company, the company shall take appropriate action to carry the provisions of paragraphs 27 to 29 into effect.

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None of the provisions of paragraphs 12 to 15 of Schedule 8, Part 2 of this Schedule or of paragraphs 1 to 26 shall apply when units are converted in accordance with paragraphs 27 to 29.

Manager's obligation to sell and repurchase units.

32. Subject to paragraph 38 and to paragraphs 14 to 17 of Part 1 of this Schedule and paragraphs 39 to 45, the manager shall, except during an initial offer or a unitisation, at the request in writing of any participant agree to repurchase units held by that participant at a price in the base currency.

33. Except as provided in paragraph 34 when the manager of a scheme which is not a Government and other public securities fund or a money market fund has agreed to repurchase any units, it shall pay the participant the repurchase price (less, if the consideration is to be remitted abroad, the cost of remitting it) not later than the close of business on the fourth business day following the later of the following times—

- (a) the next valuation point occurring after the receipt by the manager of the requests to repurchase the units; or
- (b) the time when the manager is possessed of all duly executed instruments and authorisations as will vest, or enable the manager to arrange for the vesting of, title to the units in itself.

34. Paragraph 33 shall not apply where units are purchased by the manager on an approved market.

35. Paragraph 33 shall apply when the manager is possessed of all duly executed instruments and authorisations as will vest, or enable the manager to arrange for the vesting of, title to the units in itself.

36. Paragraph 33 shall apply when the manager of a Government and other public securities fund or a money market fund agrees to repurchase units as if the period specified in that paragraph were the period ending with the close of business on the business day next following whichever is the later of the times specified in paragraph 33(a) or (b).

37. Subject to paragraph 38, the manager shall, at any time at which it holds itself out as willing to repurchase units, also be willing to sell units and, unless it has reasonable grounds for refusing to do so, at the request in writing of any person agree to sell units to that person at a price in the base currency.

38. The manager shall not be under any duty—

- (a) to repurchase such number or value of units—

- (i) as is below any minimum number or value stated in the formation documents and scheme particulars as the minimum number or value of units which may be the subject of one act of repurchase (unless the manager is asked to repurchase all of a participant's units); or
 - (ii) as would result in the participant holding fewer than any minimum number or value stated in the formation documents and scheme particulars as the minimum number or value of units which any participant may hold;
- (b) to repurchase units if it ensures that the participant is able to sell his units on an investment exchange at a price not significantly different from the price at which they would have been repurchased; and
 - (c) to sell units in a number or to a value which is less than any minimum number or value stated in the formation documents and scheme particulars as the minimum number or value which may be the subject of any one transaction of purchase or which any participant may hold.

39. Paragraphs 32 to 38 shall apply, in a case in which the manager is acting as agent for the trustee or the company, as if—

- (a) the references to the manager selling and repurchasing units were references to its selling and purchasing units as agent for the trustee or the company;
- (b) references to the sale price and the repurchase price of units were references to the price at which units are to be sold and purchased by the manager as agent; and
- (c) the reference in paragraph 33(b) to title to units being vested in the manager were a reference to units being cancelled by the trustee or the company.

Transfer or sale of property in lieu of payment of repurchase price.

40. Subject to the provisions of paragraph 45, where a participant requests repurchase of a number of units representing not less than 5% of all the undivided shares in the property of the scheme represented by all the units of the scheme in existence, the manager may, by serving a notice in writing on the participant not later than the close of business on the second business day following the day on which that request is received, elect that the

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participant shall not be paid the repurchase price of his units but instead shall accept a transfer of property of the scheme and, if such a notice is so served, unless the participant serves on the manager a notice in accordance with paragraph 41, repurchase of those units shall be in accordance with paragraph 43.

41. Where a notice is served on a participant in accordance with paragraph 40, the participant may serve a further notice on the manager not later than the close of business on the twenty-first business day following receipt by the participant of the first-mentioned notice requiring the manager, instead of arranging for a transfer of property, to arrange for a sale of that property and the payment to the participant of the net proceeds of that sale and, if such a notice is so served, repurchase of those units shall take place forthwith in accordance with paragraph 44.

42. Subject to paragraph 45, where a participant requests a repurchase of a number of units representing not less than 5% of all the undivided shares in the property of the scheme represented by all the units of the scheme in existence, he may at the same time request the manager, instead of paying him the purchase price of those units, to arrange for the transfer to him of property of the scheme instead of payment of the repurchase price, and if such a request is made, repurchase of the units in question shall take place forthwith in accordance with paragraph 43.

43. A repurchase of units in accordance with paragraphs 40 to 42 and 44 to 46 shall be effected by—

- (a) the manager forthwith giving written notice to the trustee that repurchase of the units in question is to be effected by a transfer of property of the scheme; and
- (b) the trustee thereupon cancelling the units in question and transferring to the participants the relevant proportion or as near as is in the trustee's opinion practicable to the relevant proportion having regard to the need to be fair both to the participant and to continuing participants, of each description of asset in the property of the scheme.

44. A repurchase of units in accordance with paragraphs 40 to 43, 45 and 46 shall be effected in the same way as a repurchase under paragraph 43 except that the manager shall arrange for a sale of such of the assets in question as are not cash in the base or other currency of repurchase and a payment by the trustee to the participant of the net proceeds of that sale and the relevant proportion of cash.

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45. The provisions of paragraphs 40 to 44 shall not have effect to enable units to be repurchased at a time when valuations are suspended in accordance with paragraphs 14 to 17 of Part 1 of this Schedule.

46. Paragraphs 40 to 45 shall apply in a case in which the manager acts as agent for the trustee or the company as if the references to repurchase were references to cancellation.

Dealings in units in currencies other than the base currency.

47. The initial price, the creation price and the cancellation price may be a price in a currency other than the base currency provided that the price is calculated at such rate of exchange between that other currency and the base currency as the trustee is satisfied is not likely to result in any material prejudice to the interest of participants.

48. The manager may sell or repurchase units in a currency other than the base currency provided that the price at which the manager sells or repurchases such units is calculated at a rate of exchange between the base currency and that other currency determined by the manager after consulting the trustee as being a rate which is fair to the relevant potential participant or participant, as the case may be.

49. If the scheme particulars contain a statement that valuations of the property of the scheme are to be carried out in one or more currencies other than the base currency (and identify each currency in which the valuations are to be so carried out) the manager shall procure that on each occasion on which a valuation is carried out in accordance with this Part, an additional valuation is carried out in each such currency and in such a case this Part will apply as if each such currency were the base currency, as well as the base currency:

Provided that paragraphs 23 to 25 shall not require publication of prices in more than one currency in the same newspaper.

50. Where paragraph 49 applies, it shall be the duty of the trustee to satisfy itself that the methods of valuation and rates of exchange used in carrying out valuations in currencies other than the base currencies are not likely to result in any material prejudice to the interests of participants or potential participants.

51. Where the manager has once commenced to procure additional valuations in accordance with paragraph 49, it may not cease to do so until after the publication of scheme particulars which do not state that valuations are to be carried out in that currency and the expiry of 90 days' notice in writing of the cessation to all participants.

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Manager may deal in units without accounting for profits.

52. Notwithstanding the fiduciary nature of its duties, the manager shall be required, if there is express provision prominently displayed in the formation documents and scheme particulars stating that there is no obligation to account to the trustee, the participants or, in the case of an open-ended investment company, the company, for any profit made by the manager on the sale of units or on the resale or cancellation of units which the manager has repurchased to account for any such profit made since the date on which the relevant formation documents and scheme particulars were published.

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SCHEDULE 8

Regulation 28

DISTRIBUTIONS OF INCOME

(Note: The references in this Schedule to “units” include references to redeemable preference shares).

Accounting periods.

1. This Schedule determines the annual and half-yearly accounting periods of a scheme but is subject to the right of the manager to choose that any particular annual or half-yearly accounting period shall end on a day which is not more than seven days before or after the day on which that accounting period would otherwise end.

2. Subject to paragraphs 3, 4 and 5 annual accounting periods are successive periods of twelve months. The first six months of an annual accounting period is a half-yearly accounting period.

3. The first annual accounting period shall begin—

- (a) where the scheme is the subject of an initial offer, on the first day of the period of the initial offer, or
- (b) in any other case, when the scheme is authorised.

4. The first annual accounting period shall end—

- (a) on the next day in the calendar year which the formation documents specify as the day on which the annual accounting period ends; or
- (b) if that next day is less than six months after the beginning of the first annual accounting period, on the first anniversary of that next day if the manager after consulting the auditor so determines.

5. The first annual accounting period after the making of a change in the dates of the annual accounting period shall begin on the day next following the end of the annual accounting period immediately preceding the making of that change and shall end—

- (a) on the next day in the calendar year which is the new day on which the annual accounting period ends; or

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- (b) if that next day is less than six months after the beginning of the first annual accounting period to be completed after the making of the change, on the first anniversary of that next day if the manager after consulting the auditor so determines.

Amount available for income allocation.

6. On or before each annual income allocation date the manager shall determine the amount available for income allocation in respect of the immediately preceding annual accounting period, which amount shall be the aggregate of the income property received or receivable by the trustee in respect of that period less—

- (a) the aggregate of all expenses paid or payable during that period which are payable out of the property of the scheme in accordance with regulation 24 and which the manager after consulting the auditor deems to be properly payable out of income;
- (b) such provision for taxation as the manager after consulting the auditor thinks appropriate; and
- (c) the aggregate of those parts of the cancellation prices of units cancelled during that period as was payable out of income property in accordance with these Regulations.

Treatment of amount available for allocation of income in relation to accumulation units.

7. In the case of a scheme which has in existence both accumulation units and income units, the amount available for allocation of income in accordance with paragraph 6, shall be allocated on the record date between accumulation units and income units according to the respective shares in the property of the scheme represented by the accumulation units and income units in issue or deemed to be in issue at the end of the relevant annual accounting period.

8. The amount allocated to the participants holding accumulation units in accordance with paragraph 7 or, in the case of a scheme where all the units in issue are accumulation units, the whole amount available for allocation of income under paragraph 6 shall, with effect from the record date, become part of the capital property and the interests of the participants holding units in that amount shall be satisfied by an increase in accordance with regulation 18(2), with effect from the record date, in the number (including fractions) of undivided shares in the property of the scheme represented by the accumulation units.

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Annual distribution to holders of income units.

9. Except in the case of a scheme whose units are exclusively accumulation units, or on before each annual income allocation date the trustee shall distribute among the participants and the manager in respect of all income units rateably in accordance with the number of such units held or deemed to be held by them respectively on a date not later than the annual income allocation date selected by the manager (“the record date”)–

- (a) if there are no accumulation units, the whole amount available in accordance with paragraph 6 for allocation of income in respect of that annual accounting period; or
- (b) if there are accumulation units, that part of that amount which has been allocated to income units in accordance with paragraphs 7 and 8,

in either case after–

- (i) deducting all amounts previously allocated by way of interim allocations of income in respect of that annual accounting period; and
- (ii) deducting and carrying forward as income property such amount as is necessary to adjust that allocation of income to the nearest one-hundredth of a penny per income unit or such lesser fraction of a penny as the manager may from time to time determine.

10. As soon as may be after the end of each annual accounting period but not later than the record date the amount of cash required to effect a distribution in accordance with paragraph 9 shall be transferred to an account to be known as “the distribution account.”

Interim allocations of income.

11. If the formation documents require or authorise the making of any interim allocation of income before the annual income allocation date in any year in respect of a period “an interim accounting period”) within the annual accounting period, paragraphs 6 to 10 shall apply to the making of that interim allocation of income as if–

- (a) references therein to the annual accounting period were references to the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together;

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- (b) references therein to the annual income allocation date were references to the interim income allocation date; and
- (c) in paragraph 6 for the reference to the amount available for allocation of income in respect of the annual accounting period there were substituted a reference to such amount as may be determined by the manager to be allocated by way of interim allocation of income not exceeding such sum as in the opinion of the manager represents the amount which would be available for allocation of income under paragraph 6 if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

Income equalisation.

12. An allocation of income to be made in respect of each unit sold or re-sold during the accounting period in respect of which that income allocation is made shall include a capital sum (“income equalisation”) representing the manager’s best estimate of the amount of income included in the creation price by reference to which the sale price of that unit was determined.

13. The amount of income equalisation may be the actual amount of income in question or, if the formation documents permit it, it may be an amount arrived at by taking the aggregate of the amounts of income included in the creation price in respect of units of the type in question issued or re-issued in the accounting period in question (or such lesser period as is specified for this purpose in the formation documents) and dividing that aggregate by the number of those units and applying the resultant average to each of the units in question.

14. Income equalisation in the case of a unit re-sold by the manager in the accounting period in question shall be financed out of the payment made by the manager to the trustee in accordance with paragraphs 20 and 21 of Part 3 of Schedule 7 in respect of that unit and accordingly the manager shall be paid by the trustee out of the distribution account (in the case of income units) and out of the capital property (in the case of accumulation units) a sum equal to the income equalisation applicable to that unit when allocations of income are made for that accounting period in accordance with paragraphs 9 and 10 of this Schedule or in accordance with those paragraphs as applied by paragraph 11, as the case may be.

15. Paragraphs 12 to 14 shall apply to a scheme only if the formation documents of the scheme contain a statement that it is to apply.

How distributions may be made.

16. Any monies payable to a participant in respect of any unit, the title to which is for the time being represented by a bearer certificate, may be paid by crossed cheque or warrant made payable to the order of the person who, in such manner as is prescribed in the formation documents, has identified himself as the person entitled to that distribution and may be sent by post to such address as that person shall have disclosed for that purpose.

17. Any monies payable to the manager or to a registered participant in respect of any unit may be paid by crossed cheque or warrant made payable to the order of and sent through the post to the usual business address of the manager or the registered address of such participant, as the case may be, or, in the case of joint participants, made payable to and sent to the registered address of that one of the joint participants who is first named on the register.

18. The payment of any cheque or warrant to the first named of joint participants shall be as effective a discharge as if such first named joint participant had been a sole participant.

19. Every such cheque or warrant which is so sent shall be a satisfaction of the monies payable and shall be a good discharge to the person making the payment.

20. Where an authority in writing in that behalf shall have been received from the manager or the registered participant or, in the case of joint participants, from all of them in such form as the trustee or, in the case of an open-ended investment company, the company considers sufficient, the amount payable to such persons shall be paid to their banker or other agent with the same effect as heretofore provided as though such banker or other agent were the sole participant.

21. Any distribution payment which remains unclaimed after a period of twelve years from the date of payment of the same shall be transferred to and become part of the capital property and thenceforth neither the payee nor the participant nor any successor in title of his shall have any right thereto or therein except as part of the capital property.

Distribution statements.

22. On or before each interim income allocation date and on or before each annual income allocation date the trustee shall send to each participant (or to the first named of joint participants) entered in the register as at the record date and shall on request give to every participant holding units the title to which is represented by a bearer certificate—

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- (a) a statement prepared by the manager showing the calculation of the amount to which he is entitled, whether or not the income is distributed to him or allocated to accumulation units and,
- (b) where applicable, a statement of how much of the amount to which he is entitled represents income equalisation.

23. In the case of any distribution on liquidation of the scheme, each statement shall show what proportion of the distribution represents capital and what proportion represents income.

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SCHEDULE 9

Regulation 36

HEDGING TRANSACTIONS

1. No hedging transaction shall be entered into at any time at which the aggregate of—

- (a) the total value calculated in accordance with these Regulations of all cash and other property paid or deposited by way of premium or initial margin which may reasonably be regarded as attributable to any obligation or right then arising under a hedging transaction which is not close out; and
- (b) the amount of any premium or initial margin payable in respect of the proposed transaction,

exceeds 10 per centum in value of the property of the scheme.

2. Except in the case of an instrument which is utilised to hedge against fluctuations in exchange rates, no instrument shall be utilised unless it is either—

- (a) a traded option, or
- (b) any other instrument which is traded on or under the rules of an approved options and futures market and which is an instrument relating to property with respect to which, or to an index or other factor by reference to which, instruments of that kind have been so traded for a period of at least six months.

3. Subject to paragraph 2 no hedging transaction under which an obligation to receive or deliver property arises or may arise at the option of some person other than the trustee, acting in its capacity as such (or, in the case of an open-ended investment company), the company shall be entered into unless the transaction is covered.

4. For the purposes of paragraph 3 a transaction shall be regarded as covered only if—

- (a) in the case where an obligation to deliver property arises or may arise, the property of the scheme includes property, or the rights to acquire property, sufficient to enable that obligation together with any other similar obligation with respect to property of that same kind to be discharged;

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- (b) in the case where an obligation to receive property arises or may arise, the property of the scheme includes either—
- (i) cash or near cash which is not otherwise taken into account for the purposes of paragraph 6 or regulation 41(1)(c), sufficient to enable that obligation and all similar obligations to be discharged; or
 - (ii) rights to dispose of the property should the obligation to acquire it arise.

5. For the purpose of paragraph 4, the property of a scheme shall be regarded as including property sufficient for the discharge of an obligation arising under a hedging transaction which is a contract for differences if it includes property (or rights to acquire property) which, by virtue of the correlation between that property and the property, index or other factor by reference to which any amount payable under the hedging transaction is to be calculated, may reasonably be considered to be sufficient to enable the obligation to be discharged.

6. An option may only be purchased if the property of the scheme comprises cash or near cash which is not taken into account for the purpose of paragraph 4(b)(i) or for the purposes of regulation 41(1)(c) and which is sufficient to enable the payment of that premium and all other premia then payable including, in the case of a call or put option which is a margined contract purchased for the scheme, the amount of any premium which shall become payable unless the option is sold.

7. No hedging transaction under which an obligation to receive property arises or may arise shall be entered into unless the obligation could be discharged without contravening any provision of these Regulations.

8. No instrument relating to currency shall be utilised in order to hedge against fluctuations in exchange rates unless the instrument relates to the base currency or to a currency in which the property or any part of it is denominated.

9. Nothing in this Schedule shall prevent an instrument being utilised in order to close out a hedging transaction.

10. In the application of this Schedule to a money market fund, regulation 36(2)(a) shall have effect as if the reference in that subregulation to investments included reference to such cash, deposits, loans or bills of exchange as are comprised in the scheme property.

SCHEDULE 10

Regulation 74(1)

TITLE TO UNITS AND TRANSFER THEREOF

1. The Register to be established and maintained by the trustee or custodian in accordance with regulation 74 of these Regulations shall be in a legible form or in a manner capable of being reproduced in a legible form.
2. There shall be entered in the register—
 - (a) the name and address of each participant other than one whose units are all for the time being represented by bearer certificates;
 - (b) the number of units (including fractions of a unit) of each type held by each such participant other than units the title to which is for the time being represented by bearer certificates;
 - (c) the date on which the participant was registered in the register in respect of the units standing in his name; and
 - (d) the number of units (including fractions of a unit) of each type for the time being in issue and represented by bearer certificates and the numbers of those certificates.

Provided that the trustee or custodian or person acting on their behalf in accordance with regulation 74(2) shall not be bound to register more than four persons as the joint holders of any units.

The register as evidence of title.

3. The register shall be conclusive evidence as to the persons respectively entitled to the units entered therein.
4. No notice of any trust, express implied or constructive, which may be entered in the register in respect of any unit shall be binding on the manager or the trustee, or, in the case of a public investment company, the custodian or the company.

Certificates.

5. Subject to any express provision in the formation documents to the contrary, the manager and the trustee or custodian shall, within the period

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specified in paragraph 8 provide any person to whom units have been sold with a certificate representing those units in such form as may from time to time be agreed between the manager, the trustee or custodian and, in the case of a public investment company, the directors.

6. (1) Each such certificate shall:—

- (a) be dated;
- (b) bear the name of the scheme (being, in the case of a public investment company, the name of the company);
- (c) bear the names and addresses of the manager and the trustee or custodian;
- (d) bear a distinctive number;
- (e) specify the number of units represented thereby and, where more than one type of unit in the scheme is available, the type of unit represented thereby;
- (f) state the name of the participant; and
- (g) be authenticated on behalf of the trustee or custodian or, in the case of a public investment company, on behalf of the company, in such manner as is specified in the formation documents.

(2) Certificates duly signed by or on behalf of the trustee or custodian shall be valid and binding notwithstanding that before the delivery thereof the trustee or custodian or any person whose signature appears thereon as a duly authorised signatory may have ceased to be the trustee, custodian or authorised signatory, as the case may be.

7. The period referred to in paragraph 6 is the period of 21 days after the time when—

- (a) the purchaser has supplied the manager with such information about the proposed participant as will enable the trustee, custodian or person acting on his behalf to complete the certificate, and the address to which the certificate is to be sent;
- (b) the manager has received the purchase price or other consideration for the sale of the units;
- (c) any period during which the purchaser has a right to cancel the agreement for the purchase of units has expired; and

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(d) the expiry of the period of any initial offer.

8. If the formation documents authorise the issue of bearer certificates a certificate issued under paragraph 5 shall, at the request of the participant, instead of stating his name, state that the bearer of the certificate is entitled to the units represented by the certificate.

9. Upon a subdivision of units in accordance with regulation 25 of these Regulations, the trustee or custodian or person acting on his behalf shall—

- (a) endorse the existing certificate held by a participant to indicate that it represents the original and that additional number of units; or
- (b) issue to each participant a certificate representing the number of additional units to which he has become entitled by reason of the subdivision; or
- (c) issue to each participant, upon surrender of his existing certificates, a certificate representing both the original and the additional units (and such a certificate shall be issued if the participant so requests).

10. Upon, a consolidation of units in accordance with regulation 25, the trustee or custodian or person acting on his behalf shall endorse each existing certificate to indicate that it represents the new number of units or issue a new certificate representing both the original and the new number of units.

11. In either of the cases mentioned in paragraphs 10 and 11, the trustee, custodian or person acting on his behalf shall forthwith give notice of the subdivision or consolidation to each participant (or to the first named of joint participants) whose name is entered in the register accompanied, except where the manager and the trustee are not under an obligation to issue certificates representing units, by an invitation to submit his certificate for endorsement.

12. Paragraph 6 shall not require the manager and the trustee to issue certificates in respect of units purchased under an arrangement for the purchase of units at regular intervals unless the participant has requested the issue of certificates in respect of them.

Default by holder.

13. If—

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- (a) evidence is furnished to the trustee or custodian or person acting on his behalf that default has been made by a participant in making any payment in money or a transfer of property due to the manager or the trustee or custodian in respect of the creation and sale or the re-sale of units to that participant; and
- (b) any certificate issued in respect of those units is received by the trustee, custodian or person acting on his behalf;

that certificate shall be cancelled or suitably amended, and any necessary deletion or alteration made in the register. The manager shall thereafter be entitled to the units in respect of which a defaulting participant's name has been removed from the register until the units are cancelled or re-issued.

Conversion of registered into bearer certificates and vice versa.

14. Where the formation documents allow bearer certificates to be issued, a participant may apply to the trustee, custodian or person acting on his behalf for his name to be struck out of the register in respect of some or all of the units registered in his name and upon surrender to the trustee, custodian or person acting on his behalf of the certificates evidencing title to those units, his name shall be so struck out and bearer certificate or bearer certificates issued to him in substitution therefor.

15. (1) A participant whose units (or some of them) are for the time being represented by bearer certificates may apply to the trustee, custodian or person acting on his behalf for his name to be entered in the register in respect of some or all of those units.

(2) Upon surrender to the trustee, custodian or person acting on his behalf of the bearer certificates representing title to those units, the name of that participant shall be entered in the register in respect of those units and certificates shall be issued to him evidencing his title to those units, unless the formation documents relieve the manager and trustee from any obligation to issue certificates representing units.

Exchange and replacement of certificates.

16. Every participant whose units are represented by certificates shall be entitled to exchange any or all of his certificates for one or more certificates of such denominations as he may require representing the same aggregate number of units of the same type but, before any such exchange is carried out, the participant shall surrender the certificate or certificates to be exchanged.

17. If a certificate has become mutilated or defaced the trustee, custodian or person acting on his behalf in its discretion may issue to the person entitled

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in exchange for and upon surrender of the mutilated or defaced certificate a new certificate representing the same aggregate number of units of the same type.

18. If a certificate is lost, stolen or destroyed the trustee, custodian or person acting on his behalf may in its discretion issue to the person entitled a new certificate in lieu thereof but no such new certificate shall be issued unless the person entitled has—

- (a) furnished to the trustee, custodian or person acting on his behalf evidence satisfactory to the trustee, custodian or person acting on his behalf of the loss, theft or destruction of the original certificate;
- (b) paid all expenses incurred in connection with the investigation of the facts thereof; and
- (c) if required by the trustee, custodian or person acting on his behalf so to do, furnished to the latter such indemnity as may be required.

Transfer of units by act of parties.

19. Every participant shall be entitled to transfer units held by him by an instrument of transfer in any usual or common form or in such other form as the trustee, custodian or person acting on his behalf may from time to time approve.

20. The trustee, custodian or person acting on his behalf shall not be under any duty to accept a transfer—

- (a) if the transfer would result in the participant, or the transferee, being a holder of such number of the units of the type in question as would be less than the minimum holding of units; or
- (b) if the formation documents contain a limitation upon the categories of persons who may be participants and the transferee is not within one of those categories.

21. Every instrument of transfer of units shall be signed by or on behalf of the participant transferring the units (or, in the case of a body corporate, sealed by that body or signed by one of its officers) and, unless the transferee is the manager, the transferor shall be deemed to remain a participant until the name of the transferee has been entered in the register.

22. Every instrument of transfer shall be left with the trustee, custodian or person acting on his behalf for registration accompanied by the certificates relating to the units to be transferred and such other evidence as the trustee, custodian or person acting on his behalf may require to prove the title of the transfer or his right to transfer the units or, in the case of a body corporate, the authority of the signatory on its behalf;

Provided that the trustee, custodian or person acting on his behalf may dispense with the production of any certificate which may have become lost, stolen or destroyed, upon compliance by the transferor with the like requirements to those arising in the case of application by him for the replacement thereof under paragraph 19 of this Schedule.

23. All instruments of transfer shall be retained by the trustee, custodian or person acting on his behalf, for a period of 12 years after the date of registration and a reference shall be made on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.

Registration of a transfer in favour of the manager.

24. Upon the registration of a transfer in favour of the manager, the certificates in respect of the units transferred shall be cancelled and the name of the participant removed from the register but the name of the manager need not be entered in the register as the holder of such units nor a certificate issued therefor.

25. Such removal shall not be treated for any purposes as a cancellation of the units and such units may after the registration of such transfer be sold by the manager or be registered in its name so long as such units have not been cancelled.

Transfer of units by operation of law.

26. On the death of any one of joint participants the survivor or survivors shall be the only persons recognised by the trustee, custodian or person acting on his behalf and the manager as having any title to or any interest in the units held by such joint participants.

27. The executors or administrators of a deceased participant (not being one of two or more joint participants) shall be the only persons recognised by the trustee or the manager as having title to the units held by him.

28. Any person becoming entitled to a unit in consequence of the death or bankruptcy of any sole participant or of the survivor of joint participants may, subject as hereafter provided upon producing such evidence as to his title as the trustee, custodian or person acting on his behalf may properly require, either be registered himself as a participant in respect of such unit

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upon giving to the trustee, custodian or person acting on his behalf notice in writing or transfer such unit to some other person.

The provisions of this Schedule relating to transfer of units shall apply to any such transfer as if the death or bankruptcy had not occurred and as if such notice or transfer were a transfer signed by the participant.

29. A person becoming entitled to a unit in consequence of death or bankruptcy of the participant may have a discharge for all monies payable in respect of the unit but shall not be entitled to receive notice of or attend or vote at any meeting of participants until he has been registered as a participant in respect of such unit.

30. Notwithstanding paragraph 29 of this Schedule, the trustee, custodian or person acting on his behalf, may at its discretion retain any monies payable in respect of any unit in respect of which any person is entitled to be registered as a participant, or which any person is entitled to transfer, until such person is registered as a participant in respect of such unit or has duly transferred the same.

Change of name and address of participant.

31. The trustee, custodian or person acting on his behalf, shall—

- (a) upon receipt of notice in writing of a change of name or change of address of any participants;
- (b) upon being satisfied therefor; and
- (c) on compliance with such formalities, including in the case of change of name, the surrender of any certificate previously issued to such participant, as the trustee, custodian or person acting on his behalf may require;

alter the register accordingly and if requested by the participant amend the certificate or issue a new certificate to the participant.

Payment of fees on issue of certificates.

32. If authorised by the formation documents to do so, the trustee, custodian or person acting on his behalf may make—

- (a) the issue of a certificate in accordance with this Schedule except where such certificate is issued by virtue of paragraphs 6 to 13; and

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- (b) the registration of any grant of probate, letters of administration or any other document relating to or affecting the title to any unit;

conditional upon the payment to the scheme of such reasonable fee therefor as the manager and trustee may agree.

Trustee, custodian or person acting on his behalf, to supply certificates.

33. The trustee, custodian or person acting on his behalf, shall deliver to or to the order of the manager certificates evidencing title to units in such denominations and unless they are bearer certificates, in the names of such persons as participants as the manager may require for the purpose of delivering them to those to whom the manager has sold units and it shall do so forthwith upon the request of the manager—

- (a) in the case of units to be sold upon their creation, upon payment to the trustee of the consideration payable in connection with their sale; or
- (b) in the case of units which are to be re-sold, upon the surrender to the trustee, custodian or person acting on his behalf of certificates representing that number of units of the relevant type which are to be re-sold.

Inspection of register and copies of entries.

34. The trustee, custodian or person acting on his behalf, shall make the register available for inspection by or on behalf of the participants or the manager in Gibraltar free of charge at all times during ordinary office hours except that the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the trustee, custodian or person acting on his behalf, may from time to time determine.

35. The trustee, custodian or person acting on his behalf, shall supply the manager with a copy of the register or any part thereof on payment of a reasonable fee.

36. The trustee, custodian or person acting on his behalf, shall supply a participant or his authorised representative at such reasonable charge, if any, as the trustee, custodian or person acting on his behalf, may determine with a copy in print of the entries on the register relating to that participant.

SCHEDULE 11

MEETINGS OF PARTICIPANTS

Note.

The references in this Schedule to units are to be construed as references to the redeemable preference shares of an open-ended investment company and the references to participants to the holders of such shares.

Convening of meetings and attendance and voting thereat.

1. This schedule shall apply in the case of an umbrella fund to each constituent part as well as to the umbrella fund as a whole and as if the reference to participants were a reference to participants in that constituent part.
2. The trustee, the manager (or, in the case of an open-ended investment company, the directors) may at any time convene a meeting of participants at such time and place as may be thought fit.
3. The manager shall, on the request in writing of participants registered as holding not less than one-tenth (or any proportion less than one-tenth specified for this purpose in the formation documents) in value of the units in issue, convene a meeting of participants at such time and place as may be thought fit.
4. The manager shall be entitled to receive notice of and attend at any such meeting but the manager shall not be entitled to vote or be counted in the quorum therefor and accordingly for the purposes of this Schedule the units held or deemed to be held by the manager shall not be regarded as being in issue.
5. Any associate of the manager shall not be entitled to vote at any meeting except in respect of units which he holds as a bare trustee or nominee on behalf of a person from whom he has received voting instructions.
6. The trustee and its legal advisers shall be entitled to attend every such meeting.

Powers of a meeting of participants.

7. Subject to paragraph 8 a meeting of participants in a unit trust scheme or mutual or common fund duly convened and held in accordance with this Schedule shall be competent by extraordinary resolution—

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- (a) to sanction any modification, alteration or addition to the provisions of the trust deed or fund rules which must be agreed by the trustee and the manager;
- (b) to approve any departure by the manager from a policy a statement of which has been included in scheme particulars;
- (c) to remove the trustee as provided in regulation 86(1)(a) and to remove the manager as provided in regulation 87(1)(d); and
- (d) to approve an arrangement for the amalgamation of the scheme with another body or scheme whether or not that other scheme is a collective investment scheme;

but shall not have any further or other powers.

However a meeting of participants in one constituent part of an umbrella fund may—

- (a) sanction a modification, alteration or addition to a provision of the formation documents only if the provision relates only to that constituent part; or
- (b) sanction a departure by the manager from a policy statement included in scheme particulars only if that statement relates only to that constituent part.

8. Subject to paragraph 10 a meeting of participants in an open-ended investment company shall, in addition to the powers otherwise conferred by law have power, exercisable by extraordinary resolution—

- (a) to approve any departure from policy a statement of which has been included in scheme particulars; and
- (b) to remove the trustee as provided in regulation 86(1)(a) and to remove the manager as provided in regulation 87(1)(d).

9. If a meeting of participants is convened by the manager or trustee to consider a resolution for the removal of the trustee or manager, the person convening the meeting shall procure that the notice must be accompanied by a statement of the reasons for proposing the resolution.

10. A meeting of participants shall not be competent to sanction an increase in the manager's periodic charge except by an extraordinary resolution which provides that the increase shall become effective at a specified date not earlier than 90 days after the date on which the resolution is passed.

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11. Without the consent of the Authority, no modification may be made to the formation documents of a scheme which would result in the scheme no longer being an authorised scheme.

Notices of meetings of participants.

12. Fourteen days' notice (or any longer period of notice specified for the purpose in the formation documents), inclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given, of every meeting must be given to participants in the manner provided for in the formation documents.

13. The notice shall specify the place, day and hour of meeting and the terms of the resolutions to be proposed.

14. A copy of the notice shall be sent by post to the trustee unless the meeting is to be convened by the trustee.

15. The accidental omission to give notice to or the non-receipt of notice by any of the participants shall not invalidate the proceedings at any meeting.

16. Paragraphs 12 to 15 are subject, in the case of an open-ended investment company, to any provision of the Companies Act which requires a longer period of notice.

Quorum.

17. The quorum at a meeting of participants shall be the participants present in person or by proxy of one-tenth (or any proportion more than one-tenth specified for this purpose in the formation documents) of all the units for the time being in issue.

18. No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

19. If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall—

- (a) if it has been convened on the request of participants in accordance with paragraphs 2 to 6, be abandoned; or
- (b) stand adjourned to such day and time not being less than 14 days thereafter and to such place as may be appointed by the chairman and at such adjourned meeting the participants present in person or by proxy shall be a quorum.

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20. Notice of any adjourned meeting of holders shall be given in the same manner as for an original meeting and such notice shall state that the participants present at the adjourned meeting whatever their number and the number of units held by them will form a quorum.

The Chairman.

21. Some person, who need not be a participant, nominated in writing by the trustee shall preside at every meeting of participants and, if no such person is nominated or if at any meeting the person nominated shall not be present within fifteen minutes after the time appointed for holding the meeting, the participants present shall choose one of their number to be chairman.

Adjournment.

22. The chairman may, with the consent of any meeting of participants at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

Votes at meetings.

23. At any meeting of participants an extraordinary resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, by the trustee or by one or more participants present in person or by proxy and holding or representing one-twentieth (or any proportion less than one-twentieth specified for this purpose in the formation documents) of the number of units for the time being in issue.

24. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against such resolution.

25. If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

26. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such time and place as the chairman directs.

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27. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

28. On a show of hands every participant, who (being an individual) is present in person or by proxy or (being a corporation) is present by one of its officers as its proxy, shall have one vote.

29. On a poll every participant who is present in person or by proxy shall have one vote for every undivided share in the property of the scheme represented by the units of which he is the holder and a participant entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

30. A corporation being a participant may authorise such person as it thinks fit to act as its representative at any meeting of participants and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual participant.

31. In the case of joint participants the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint participants and for this purpose seniority shall be determined by the order in which the names stand in the register of holders.

32. On a poll votes may be given either personally or by proxy.

Proxies.

33. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorised.

34. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at such place as the trustee may, in the notice convening the meeting, direct or if no such place is appointed then at the registered office of the manager (or, in the case of an open-ended investment company, the company) not less than 48 hours before the time appointed for holding the meeting or adjourned meeting (or, in the case of a poll, before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy must not be treated as valid.

35. No instrument for appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution.

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36. A person appointed to act as a proxy need not be a participant.

37. An instrument of proxy may be in the usual common form or in any other form which the trustee approves.

38. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or the authority under which the proxy was executed or the transfer of the units in respect of which the proxy is given provided that no intimation in writing of such death, insanity, revocation or transfer has been received at the place appointed for the deposit of proxies or, if no such place is appointed, at the registered office of the manager before the commencement of the meeting or adjourned meeting at which the proxy is used.

Minutes.

39. Minutes of all resolutions and proceedings at every meeting of the participants shall be made and duly entered in books to be from time provided for the purpose at the expense of the scheme and any such minute as aforesaid if purporting to be signed by the chairman of the meeting shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

Meaning of “extraordinary resolution”.

40. In this schedule “extraordinary resolution” means a resolution proposed and passed at a meeting of participants duly convened and held in accordance with this Schedule 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.

Class meetings.

41. If the trustee is of opinion that any extraordinary resolution to be proposed is one in relation to which there is or might be a conflict of interest between the holders of accumulation units and the holders of income units or, in the case of an umbrella fund, between the holders of units in one constituent part and the holders of units in another, such resolution shall be deemed to have been duly passed only if in lieu of being passed at a single meeting of all participants it has been duly passed at separate meetings respectively of the holders of accumulation units and income units or of the holders of the units in the one constituent part and of holders of units in the other, as the case may be.

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42. This Schedule shall apply to each separate meeting of the holders of accumulation units or of holders of income units as though references in this Schedule to units and to holders were references respectively to units of the type in question and to the holders of such units.