

Financial Services (Collective Investment Schemes)
FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)
REGULATIONS 2011

2005-48

**Subsidiary
2011/190**

Subsidiary Legislation made under s. 53 of the Financial Services (Collective Investment Schemes) Act 2005 and section 23(g)(i) of the Interpretation and General Clauses Act.

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT
SCHEMES) REGULATIONS 2011**

(LN. 2011/190)

Commencement **13.10.2011**

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Transposing:

Directive 2007/16/EC
Directive 85/611/EEC
Directive 2009/65/EC
Directive 2011/61/EU
Directive 2013/14/EU
Directive 2014/91/EU

EU Legislation/International Agreements involved:

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SCHEDULE 3

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In exercise of the powers conferred on me by section 53 of the Financial Services (Collective Investment Schemes) Act 2005 and section 23(g)(i) of the Interpretation and General Clauses Act and in order to transpose in part into the law of Gibraltar Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), I have made the following Regulations—

PART I
PRELIMINARY AND INTERPRETATION

Title and commencement.

1. These Regulations may be cited as the Financial Services (Collective Investment Schemes) Regulations 2011 and come into operation on the day of publication.

Interpretation.

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

“base currency” means the currency in the constituting instrument of a collective investment scheme as the base currency of the scheme;

“branch” means a place of business which—

- (a) is part of a management company;
- (b) has no legal personality; and
- (c) provides services for which the management company has been authorised;

“capital property” means the scheme property, other than income property and any amount standing to the credit of the distribution account;

“close links” is a reference to two or more persons linked by either—

- (a) “participation”, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking; or

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- (b) “control”, which means the relationship between a “parent undertaking” and a “subsidiary undertaking” or a similar relationship between two or more persons;

“code of Practice” means a code of Practice issued under section 55 of the Act;

“constituting instrument” means—

- (a) in the case of a common fund, a trust deed or binding agreement as the case may be, made between the manager and the trustee,
- (b) in the case of an authorised open-ended investment company, the memorandum and articles of association of the company, and
- (c) in the case of any other collective investment scheme, any instrument to which the operator is a party that sets out any arrangements with any other person relating to any aspect of the operation or management of the scheme;

“credit institution” has the meaning given in the Financial Services (Banking) Act;

“credit rating agency” has the meaning given in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

“cross-border merger” means a merger of UCITS—

- (a) at least two of which are established in different EEA States; or
- (b) established in the same EEA State into a newly constituted UCITS established in a different EEA State;

“depository” means, subject to the other provisions laid down in Part III and Chapter 3 of Part IV, an institution entrusted with the duties set out in regulations 19 and 20;

“dilution” means the amount of dealing costs incurred, or expected to be incurred by, or for the account of, a collective investment scheme to the extent that the costs may be reasonably expected to result, or have resulted, from the acquisition or disposal of investments by, or for the account of, a scheme as a consequence of the increase or

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decrease in the cash resources of the scheme resulting from the issue or cancellation of units over a period;

“the Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), as it may be amended from time to time;

“distribution account” means the account to which the income property of a collective investment scheme must be transferred as at the end of each accounting period in accordance with the accounting provisions specified in the relevant Code of Practice;

“domestic merger” means a merger between UCITS established in Gibraltar where at least one of the merging UCITS has been notified pursuant to regulation 108;

“durable medium” means an instrument enabling an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and allowing the unchanged reproduction of the information stored;

“EEA Authority” means the person or persons appointed by an EEA State to execute the provisions of the Directive as transposed into national law;

“EEA” and “EEA State” shall be interpreted in accordance with the European Communities Act and, for the avoidance of doubt, for the purposes of these Regulations Gibraltar is deemed to be an EEA State;

“eligible market” has the meaning given in regulation 69;

“enforcement action” means—

- (a) the suspension or cancellation of an authorisation;
- (b) the imposition of a fine by the Authority and recoverable as a civil debt; or
- (c) the imposition by the Authority of any sanction provided for in regulations 126B to 126F in respect of a contravention;

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“ESMA” means the European Supervisory and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council;

“financial instrument” means a financial instrument specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast);

“Government and public security” means a security designated by the Authority as a Government and public security;

“Home State” means the EEA State in which a UCITS is authorised and, in the case of a UCITS authorised in Gibraltar, “Home State” means Gibraltar;

“Host State” means an EEA State, other than the Home State, in which the units of a UCITS are marketed and, where the units of a UCITS are so marketed in Gibraltar, “Host State” means Gibraltar;

“income equalisation” means a capital sum which, in accordance with a power contained in the constituting instrument, is included in an allocation of income for a unit issued or sold during the accounting period in respect of which that income allocation is made;

“income property” means all sums considered by the manager of a collective investment scheme, after consultation with the auditor of the scheme, to be in the nature of income received or receivable for the account of and in respect of the property of the scheme, but excluding any amount for the time being standing to the credit of the distribution account;

“initial capital” shall be construed in accordance with the provisions of section 2 of the Financial Services (Banking) Act;

“initial offer” means an offer for sale of units in a collective investment scheme or in a sub-fund, where all or part of the consideration paid for the units is to be used to acquire the initial scheme property of the scheme or attributable to the sub-fund;

“initial price”, in relation to a unit, means the price to be paid for a unit during the period of the initial offer;

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“investment adviser” means a person retained by the manager of a collective investment scheme under a commercial arrangement which is not a contract of service to supply him with advice in relation to the scheme as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities;

“investment firm” has the meaning given in the Financial Services (Markets in Financial Instruments) Act 2006;

“investment manager” means a person retained by the manager of a collective investment scheme under a commercial arrangement which is not a contract of service to exercise any function concerning the management of the scheme property;

“issue”, in relation to units, means the issue of new units in a collective investment scheme and includes the sale of units;

“key information document” and “key investor information” shall be interpreted in accordance with regulation 93;

“management body” means the body in a management company, open-ended investment company or depositary with ultimate decision-making authority comprising–

- (a) the supervisory and the managerial functions; or
- (b) if those functions are separated, only the managerial function;

“management company” means a company, the regular business of which is the management of UCITS in the form of common funds or of open-ended investment companies (collective portfolio management of UCITS);

“management company’s home state” means the EEA State in which the management company has its registered office and, in the case of a management company with a registered office in Gibraltar “management company’s home State” means Gibraltar;

“management company’s host State” means an EEA State, other than the management company's home State, within the territory of which a management company has a branch or provides services and, in the case of a management company which has a branch or provides services in Gibraltar “management company’s host State” means Gibraltar;

“manager”, in relation to a collective investment scheme, means—

- (a) in relation to a common fund, the person appointed as the manager of the scheme in accordance with the trust deed;
- (b) in relation to any other collective investment scheme, the person appointed to manage the scheme;

“merger” means an operation whereby—

- (a) one or more UCITS or investment compartments thereof (the "merging UCITS"), on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, (the "receiving UCITS"), in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;
- (b) two or more UCITS or investment compartments thereof, (the “merging UCITS”), on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, (the “receiving UCITS”), in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;
- (c) one or more UCITS or investment compartments thereof, (the “merging UCITS”), which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, (the "receiving UCITS");

“Minister” means the Minister responsible for financial services;

“money market instrument” means instruments normally traded on the money markets which are liquid and have a value which can be accurately determined at any time;

“OTC” means over the counter;

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

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“own funds” shall have the same meaning as in Title V, Chapter 2, Section 1 of Directive 2006/48/EC of 14 June 2006 of the European and of the Council relating to the taking up and pursuit of the business of credit institutions (recast), as amended from time to time;

“parent undertaking” is to be construed in accordance with section 2 of the Companies (Consolidated Accounts) Act;

“qualifying holding” means a direct or indirect holding in a management company representing 10% or more of the capital or of the voting rights or making it possible to exercise a significant influence over the management of the management company in which that holding subsists;

“redemption”, in relation to units in a collective investment scheme, means the purchase of the units from the unitholder by the manager of the scheme acting as a principal and “redeem” shall be construed accordingly;

“regulated market” shall be interpreted in accordance with section 2(1) of the Financial Services (Markets in Financial Instruments) Act 2006;

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

“scheme property” means—

- (a) in the case of a common fund, the capital property and the income property, and
- (b) in any other case, the property subject to the collective investment scheme;

“sub-fund”, in relation to an umbrella scheme, means a separate part of the scheme property that is pooled separately;

“subsidiary undertaking” shall be construed in accordance with section 2 of the Companies (Consolidated Accounts) Act;

“umbrella scheme” means a collective investment scheme under which the contributions of the participants and the profits or income out of

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which payments are to be made to them are pooled separately in relation to separate parts of the scheme property.

(2) For the purposes of the interpretation of “branch” in sub-regulation (1), all places of business established the same EEA State by a management company with its head office in another EEA State shall be regarded as a single “branch”.

(3) For the purposes of paragraph (b) of the interpretation of “close links” in sub-regulation (1), the following provisions apply—

- (a) a subsidiary undertaking of a subsidiary undertaking shall be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;
- (b) situations in which two or more natural or legal persons are permanently linked to the same person by a relationship of control shall be regarded as constituting close links between such persons.

(3A) For the purposes of the interpretation of “management body” in sub-regulation (1), where, by law, a management company, open-ended investment company or depositary has in place different bodies with specific functions, the requirements of these Regulations directed at the management body or at the management body in its supervisory function shall also, or shall instead, apply to the members of those bodies of the management company, open-ended investment company or depositary to whom the applicable law assigns the respective responsibility.

(4) For the purposes of the interpretation of “qualifying holding” in sub-regulation (1), there shall be taken into account voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

(5) Articles 13 to 16 of Directive 2006/49/EC of 14 June 2006 of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions (recast), as amended from time to time apply for the purposes of the interpretation of “own funds” in sub-regulation (1) as they apply in relation to that Directive.

Meaning of instruments normally dealt in on the money market.

2A.(1) The reference in regulation 2(1) to money market instruments as instruments shall be understood as a reference to the following—

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- (a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with regulation 47(1)(a), (b) and (c); or
- (b) financial instruments which are not admitted to trading.

(2) The reference in regulation 2(1) to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria—

- (a) they have a maturity at issuance of up to and including 397 days;
- (b) they have a residual maturity of up to and including 397 days;
- (c) they undergo regular yield adjustments in line with money market conditions at least every 397 days; or
- (d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in paragraphs (a) or (b), or are subject to a yield adjustment as referred to in paragraph (c).

Liquid instruments with a value which can be accurately determined at any time.

2B.(1) The reference in regulation 2(1) to money market instruments as instrument which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder.

(2) The reference in regulation 2(1) to money market instruments as instrument which have a value which can be accurately determined at any time shall be understood as a reference to financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available—

- (a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and

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- (b) they are based either on market data or on valuation models including systems based on amortised costs.

(3) The criteria referred to in subregulations (1) and (2) shall be presumed to be fulfilled in the case of financial instruments which are–

- (a) normally dealt in on the money market for the purposes of regulation 2(1); and
- (b) admitted to, or dealt in on a regulated market in accordance with regulation 47(1)(a), (b) or (c),

unless there is information available to the UCITS that would lead to a different determination.

Application to Experienced Investor Funds.

3. These Regulations do not apply to experienced investor funds, except to the extent that these Regulations and the EIF Regulations expressly provide otherwise.

PART II**UCITS MANAGEMENT COMPANIES****CHAPTER 1****CONDITIONS FOR TAKING UP BUSINESS****Authorisation of management companies**

4.(1) It is an offence for a person other than a management company to engage in activities other than–

- (a) the management of a UCITS; or
- (b) the management of collective investment undertakings –
 - (i) not falling within the scope of the Act; and
 - (ii) for which the management company is subject to prudential supervision,

and for these purposes, the management of UCITS includes the functions referred to in Schedule 3.

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(2) Access to the business of management company is subject to prior authorisation and—

- (a) an authorisation granted by the Authority pursuant to these Regulations shall be valid for all EEA States ;
- (b) an authorisation granted by the relevant authority in an EEA State shall be valid in Gibraltar.

(3) The Authority may authorise management companies to provide the following services in addition to the management of UCITS—

- (a) the management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors on a discretionary client-by-client basis, where such portfolios include one or more of the instruments listed in Schedule 1, Section C to the Financial Services (Markets in Financial Instruments) Act 2006; and
- (b) as non-core services—
 - (i) investment advice regarding one or more of the instruments listed in Schedule 1, Section C to the Financial Services (Markets in Financial Instruments) Act 2006;
 - (ii) the safekeeping and administration of units in collective investment undertakings,

provided that the Authority shall not authorise management companies to provide only the services referred to in paragraph (b) or other non-core services, without also authorising the company for the services referred to in paragraph (a).

(4) Sections 4(2) and sections 12, 13 and 19 of the Financial Services (Markets in Financial Instruments) Act 2006 apply to the provision of the services referred to in sub-regulation (3) by management companies.

Conditions of authorisation of management companies.

5.(1) The Authority shall not grant an authorisation to a management company for the purposes of regulation 4 unless the following conditions are met—

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- (a) the management company has an initial capital of at least EUR 125,000, taking into account the following—
 - (i) when the value of the portfolios of the management company exceeds EUR 250.000,000 the management company is required to provide an additional amount of own funds which is equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds EUR 250.000,000 but the required total of the initial capital and the additional amount shall not, however, exceed EUR 10.000,000;
 - (ii) for the purposes of calculating the value of portfolios under this regulation, the following are deemed to be the portfolios of the management company—
 - (aa) common funds managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
 - (bb) open-ended investment companies for which the management company is the designated management company;
 - (cc) other collective investment undertakings managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation; and
 - (iii) irrespective of the requirements in this sub-regulation, the own funds of the management company shall at no time be less than the amount prescribed in regulation 17 of the Financial Services (Capital Adequacy of Investment Firms) Regulations 2007;
- (b) the following provisions apply—
 - (i) persons who effectively conduct the business of a management company must be of sufficiently good repute and sufficiently experienced in relation to the type of UCITS being managed or proposed to be managed;

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- (ii) the names of those persons and of every person succeeding them in office must be communicated forthwith to the Authority; and
- (iii) the conduct of the business of the management company must be decided by at least two persons meeting the conditions in this paragraph;
- (c) an application for authorisation shall be accompanied by a programme of activity including the organisational structure of the management company; and
- (d) the head office and the registered office of the management company shall both be located in Gibraltar,

provided that the Authority may authorise management companies not to provide up to 50% of the additional amount of own funds required pursuant to paragraph (a)(i) where the following conditions apply—

- (i) the management company benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in an EEA State; or
 - (ii) the management company benefits from a guarantee of the same amount given by a credit institution in a non EEA State where it is subject to prudential rules considered by the Authority equivalent to those in force in Gibraltar.
- (2) The Authority—
- (a) shall grant an authorisation to a management company with close links to other persons only where those close links do not prevent the effective exercise of supervisory functions;
 - (b) shall refuse an authorisation to a management company where the laws, regulations or administrative provisions of a non EEA State governing one or more persons with which the management company has close links either—
 - (i) present enforcement difficulties; or
 - (ii) prevent the effective exercise of supervisory functions;

- (c) shall require management companies to supply on a continuous basis information required to monitor compliance with this sub-regulation.

(3) The Authority shall inform an applicant within six months of the submission of a complete application whether or not an authorisation has been granted, and reasons shall be given where an authorisation is refused.

(4) A management company may start business as soon as an authorisation is granted.

(5) The Authority may withdraw an authorisation issued to a management company only—

- (a) where that company—
 - (i) does not make use of the authorisation within 12 months;
 - (ii) expressly renounces the authorisation; or
 - (iii) has ceased the activity covered by these Regulations more than six months previously,

unless the Authority has provided for the authorisation to lapse in such cases;

- (b) where that company has obtained the authorisation by making false statements or by any other irregular means;
- (c) where that company no longer fulfils the conditions under which authorisation was granted;
- (d) where that company no longer complies with the provisions of the Financial Services (Markets in Financial Instruments) Act 2006 where its authorisation also covers the discretionary portfolio management service referred to in regulation 4(3)(a);
- (e) where that company has seriously or systematically infringed the provisions of these Regulations; or
- (f) where that company falls within any of the cases where any statutory provision or rule of law provides for withdrawal.

Refusal of authorisations of management companies.

6.(1) The Authority—

- (a) shall not grant an authorisation to take up the business of management company until it has been informed of the identity of shareholders or members that have qualifying holdings and of the amounts of those holdings, whether direct or indirect;
- (b) shall refuse an authorisation where it is not satisfied as to the suitability of the shareholders or members referred to in paragraph (a), taking into account the need to ensure the sound and prudent management of a management company.

(2) Where branches of management companies with registered offices outside the EEA seek to take up or pursue business in Gibraltar, the Authority shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in the EEA.

(3) Where the Authority is evaluating whether or not to authorise a management company, it shall consult the EEA Authority of any EEA State where the management company—

- (a) is a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in that EEA State;
- (b) is a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in that EEA State; or
- (c) is a company controlled by the same persons controlling another management company, investment firm, credit institution or insurance undertaking authorised in that EEA State.

CHAPTER 2

OPERATING CONDITIONS

Authorisation conditions.

7.(1) The Authority shall require that—

- (a) management companies comply at all times with conditions laid down in regulation 4 and regulation 5(1) and (2);

- (b) the own funds of a management company not fall below the level specified in regulation 5(1)(a),

provided that where paragraph (b) is not complied with the Authority may, on application by the management company, grant the management company reasonable time to rectify the situation in default of which it shall be an offence punishable by a fine at twice level 5 on the standard scale for the management company to continue its activities.

- (2) The following provisions apply–
 - (a) the prudential supervision of a management company is the responsibility of the EEA Authority responsible for authorising that company, whether or not the management company establishes a branch or provides services in another EEA State;
 - (b) paragraph (a) is without prejudice to the provisions of these Regulations conferring responsibility on the Authority where Gibraltar is the host State of a management company.

Qualifying holdings.

8.(1) The provisions of sections 10, 10a and 10b of the Financial Services (Markets in Financial Instruments) Act 2006 apply in relation to qualifying holdings in management companies.

(2) For the purposes of these Regulations, the terms “investment firm” and “investment firms” referred to in section 10 of the Financial Services (Markets in Financial Instruments) Act 2006, shall be understood respectively as, "management company" and "management companies".

Prudential rules.

9.(1) The Authority shall with the consent of the Minister publish codes of conduct setting out prudential rules management companies must observe at all times, having regard to the nature of the UCITS being managed.

(2) Having regard to the nature of the UCITS being managed, the Authority shall require that every management company–

- (a) shall have–

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- (i) sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing;
 - (ii) adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account;
 - (iii) adequate internal control mechanisms ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected;
 - (iv) adequate internal control mechanisms ensuring that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;
- (b) such organisational structure as minimises the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS, or between two UCITS.
- (3) Where the authorisation of a management company covers discretionary portfolio management services it–
- (a) shall not be authorised to invest all or a part of the investor's portfolio in units of collective investment undertakings it manages, unless it receives prior general approval from the client;
 - (b) is subject with regard to the services referred to in regulation 4(3), to the provisions of Financial Services (Investor Compensation Scheme) Act 2002.

Delegation of responsibilities.

10.(1) The Authority may authorise a management company to delegate functions to a third party to achieve greater efficiency but subject to the following conditions–

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- (a) the management company shall inform the Authority of the fact in a manner approved by the Authority, whereupon the Authority shall, without delay, transmit the information to the EEA Authority of the home State of any UCITS concerned;
- (b) the mandate shall not prevent the effectiveness of supervision over the management company, and, in particular, shall not prevent the management company from acting, or the UCITS from being managed, in the best interests of investors;
- (c) when a delegation concerns investment management functions, the delegation of the mandate shall be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision, and shall be in accordance with investment-allocation criteria periodically laid down by the management company;
- (d) where a delegation concerns investment management functions and is given to a non EEA undertaking, cooperation between the Authority and the supervisory authorities of the State concerned shall be to the satisfaction of the Authority;
- (e) where the delegation concerns the core function of investment management, it shall not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;
- (f) measures shall exist enabling the persons conducting the business of the management company to monitor effectively at any time the activity of the delegate;
- (g) the delegation shall not prevent persons conducting the business of the management delegate at any time from withdrawing the delegation with immediate effect when this is in the interest of investors;
- (h) having regard to the nature of the functions to be delegated, the delegate shall be qualified and capable of undertaking the functions in question;
- (i) the UCITS' prospectuses shall list the functions which the management company is allowed to delegate in accordance with this regulation; and

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- (j) the management company shall not delegate functions to the extent that it becomes a letter-box entity.

(2) The liability of a management company or depositary under these Regulations is not affected by the delegation of any functions to third parties.

Conduct of management companies.

11. The Authority shall make the grant of an authorisation to a management company subject to such conditions as the Authority deems appropriate to ensure that the management company—

- (a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;
- (b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;
- (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (d) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated; and
- (e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

Management companies' remuneration policies.

11A.(1) Management companies shall establish and apply remuneration policies and practices that—

- (a) are consistent with and promote sound and effective risk management; and
- (b) do not—
 - (i) encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage; or

- (ii) impair compliance with the management company's duty to act in the best interest of the UCITS.

(2) The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

(3) The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

Remuneration policy principles.

11B.(1) When establishing and applying the remuneration policies referred to in regulation 11A, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities—

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;
- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;
- (c) subject to sub-regulation (3), the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

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- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;
- (g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;
- (h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;
- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- (k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

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- (m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, in respect of any variable remuneration component—
 - (i) a substantial portion must consist of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this paragraph (and for this purpose a substantial portion means at least 50% unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company); and
 - (ii) the instruments which comprise that component must be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS;
- (n) a substantial portion of the variable remuneration component is—
 - (i) deferred over a period (of not less than three years) which is appropriate in view of the holding period recommended to the investors of the UCITS concerned; and
 - (ii) correctly aligned with the nature of the risks of the UCITS in question;

and the remuneration payable under deferral arrangements vests no faster than on a pro-rata basis (and for this purpose a substantial portion means at least 40% or, in the case of a variable remuneration component of a particularly high amount, at least 60%);

- (o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned;
- (p) the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of

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the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in pay-outs of amounts previously earned, including through malus or clawback arrangements;

- (q) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages and—
 - (i) if an employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in paragraph (m); or
 - (ii) if an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of such instruments but subject to a five-year retention period;
- (r) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- (s) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in these Regulations.

(2) The principles set out in sub-regulation (1) shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

(3) The adoption of a remuneration policy under sub-regulation (1)(c) must be undertaken only by those members of the management body who—

- (a) do not perform any executive functions in the management company concerned; and
- (b) have expertise in risk management and remuneration.

Remuneration committees.

11C.(1) Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee.

(2) A remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

(3) A remuneration committee that is set up in accordance with guidelines adopted by ESMA under Article 14a(4) of the Directive shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function.

(4) A remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned.

(5) The members of a remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

(6) If employee representation on the management body is provided for by law, the remuneration committee shall include one or more employee representatives.

(7) When preparing its decisions, a remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.

Investor complaints.

12. Management companies or, where relevant, open-ended investment companies—

- (a) shall take measures, in accordance with regulation 107, and establish appropriate procedures and arrangements to ensure that investor complaints are properly dealt with;

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- (b) shall ensure that that no restrictions exist on investors exercising their legal rights where the management company is authorised elsewhere in the EEA;
- (c) shall ensure that investors can file complaints in the official language or one of the official languages of their EEA State;
- (d) shall establish appropriate procedures and arrangements to make information available at the request of the public or the Authority.

CHAPTER 3

**FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE
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Management companies authorised elsewhere in the EEA.

13.(1) The Authority shall ensure that—

- (a) a management company authorised in another EEA State may pursue in Gibraltar the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services;
- (b) where a management company authorised in another EEA State proposes only to market the units of the UCITS it manages in Gibraltar without establishing a branch, as provided for in Schedule 3 and without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Part XI.

(2) The establishment of a branch or the provision of services by a management company authorised in another EEA State shall not be subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

(3) Subject to the conditions set out in this regulation, a UCITS shall be free to designate or be managed by a management company authorised in another EEA State, provided that such a management company complies with the provisions of—

- (a) regulations 14 or 15; and
- (b) regulations 16 and 17.

Cross-border notifications: management companies.

14.(1) In addition to meeting the conditions imposed in regulations 4 and 5, a management company wishing to establish a branch in another EEA State to pursue the activities for which it has been authorised shall notify the Authority of its intention accordingly.

(2) When making a notification under sub-regulation (1), every management company seeking to establish a branch in another EEA State shall provide the following information to the Authority–

- (a) the EEA State in which the management company plans to establish a branch;
- (b) a programme of operations setting out the activities and services envisaged in accordance to regulation 4(2) and (3) and the organisational structure of the branch, including a description of risk management processes and a description of procedures and arrangements in accordance with regulation 12 put in place by the management company;
- (c) details of the address in the management company's host State from which documents may be obtained; and
- (d) the names of those responsible for the management of the branch.

(3) Taking into account the activities envisaged, unless the Authority has reason to doubt the adequacy of the administrative structure or the financial situation of a management company, the Authority within two months of receiving all the information referred to in sub-regulation (2) shall–

- (a) communicate that information to the EEA Authority of the management company's host State;
- (b) inform the management company of the communication referred to in paragraph (a);
- (c) communicate details of any compensation scheme intended to protect investors to the EEA Authority of the management company's host State;

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- (d) where it refuses to communicate the information referred to in sub-regulation (2) to the EEA Authority of the management company's host State -
 - (i) give reasons for such refusal to the management company concerned within two months of receiving all the information; and
 - (ii) inform the management company that the refusal or failure to reply is subject to a right of appeal to the Supreme Court;
- (e) where a management company wishes to pursue the activity of collective portfolio management referred to in Schedule 3, enclose with the documentation sent to the EEA Authority of the management company's host State—
 - (i) a certificate that the management company has been authorised pursuant to the provisions of these Regulations;
 - (ii) a description of the scope of the management company's authorisation; and
 - (iii) details of any restriction on the types of UCITS that the management company is authorised to manage.
- (4) A management company—
 - (a) authorised under these Regulations and pursuing activities through a branch in a host State shall comply with Article 14 of the Directive as it applies in that State;
 - (b) authorised in another EEA State and pursuing activities in Gibraltar, shall comply with the provisions of regulation 11.
- (5) It is declared for the avoidance of doubt that—
 - (a) where Gibraltar is the host State of a management company, the Authority is responsible for supervising compliance pursuant to sub-regulation (4) ; and
 - (b) before a branch of a management company starts business in Gibraltar, the Authority shall prepare for supervising compliance of the management company with the relevant

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provisions of these Regulations within two months of receiving a notification pursuant to Article 17 of the Directive.

(6) On receipt of a communication from the Authority following a notification as referred to in sub-regulation (5)(b) or on the expiry of the period provided for in that sub-regulation without receipt of any such communication, the branch may be established in Gibraltar and start business.

(7) In the event of change of any particulars communicated in accordance with sub-regulation 2(b), (c) or (d), a management company shall give written notice of that change to the Authority and to the EEA Authority of its host State at least one month before implementing the change.

(8) The Authority shall—

- (a) inform the EEA Authority of the management company's host State of any change in the particulars communicated in accordance with sub-regulation (3)(a);
- (b) update the information contained in the certificate referred to in sub-regulation 3(c) and inform the EEA Authority of the management company's host State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Provisions ancillary to regulation 14.

15.(1) A management company wishing to pursue the activities for which it has been authorised under these Regulations for the first time under regulation 14, shall communicate the following information to the Authority—

- (a) the EEA State in which the management company intends to operate;
- (b) a programme of operations stating the activities and services referred to in regulation 4(2) and (3) envisaged which shall include a description of the risk management process put in place by the management company; and
- (c) a description of the procedures and arrangements taken in accordance with regulation 12.

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- (2) The following provisions apply—
- (a) The Authority shall—
- (i) within one month of receiving the information referred to in sub-regulation (1), forward it to the EEA Authority of the management company's host State; and
 - (ii) communicate to the EEA Authority of the management company's host State details of any applicable compensation scheme intended to protect investors;
- (b) where a management company wishes to pursue the activity of collective portfolio management as referred to in Schedule 3, the Authority shall enclose with the documentation sent to the EEA Authority of the management company's host State—
- (i) a certificate that the management company has been authorised pursuant to the provisions of these Regulations;
 - (ii) a description of the scope of the management company's authorisation; and
 - (iii) details of any restriction on the types of UCITS that the management company is authorised to manage,

and notwithstanding regulations 17 and 108, the management company may then start business in its host State.

(3) A management company authorised under these Regulations pursuing activities in another EEA State shall comply with the provisions of regulation 11.

(4) The following provisions apply where the content of the information communicated in accordance with sub-regulation (1) is amended -

- (a) the management company shall give notice of the amendment in writing to the EEA Authority of its host State and to the Authority before implementing the change;
- (b) the Authority shall—

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- (i) update the information contained in the certificate referred to in sub-regulation (2); and
- (ii) inform the EEA Authority of the management company's host State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Portfolio management services.

16.(1) Where a management company pursues the activity of collective portfolio management in another EEA State on a cross-border basis by establishing a branch or under regulation 14, it shall comply with the provisions of these Regulations, the Companies Act and financial services legislation relating to the management of the company including delegation arrangements, risk-management procedures, prudential rules and supervision procedures referred to in regulation 9, and the management company's reporting requirements. This sub-regulation shall not operate to make compliance with such legislation more onerous than on management companies conducting their activities only in Gibraltar.

(2) The Authority is responsible for supervising compliance with sub-regulation (1).

(3) A management company pursuing the activity of collective portfolio management on a cross-border basis in another EEA State by establishing a branch or in accordance with regulation 14, shall comply with the provisions of these Regulations relating to the constitution and functioning of the UCITS that is to say, provisions applicable to—

- (a) the setting up and authorisation of the UCITS;
- (b) the issuance and redemption of units and shares;
- (c) investment policies and limits, including the calculation of total exposure and leverage;
- (d) restrictions on borrowing, lending and uncovered sales;
- (e) the valuation of assets and the accounting of the UCITS;
- (f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

- (g) the distribution or reinvestment of the income;
- (h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;
- (i) the arrangements made for marketing;
- (j) the relationship with unit-holders;
- (k) the merging and restructuring of the UCITS;
- (l) the winding-up and liquidation of the UCITS;
- (m) where applicable, the content of the unit-holder register;
- (n) the levying of fees for the licensing and supervision of the UCITS; and
- (o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to paragraphs (a) to (m).

(4) A management company to which this regulation refers shall comply with the obligations set out in the fund rules, the instruments of incorporation and obligations set out in the prospectus, which shall be consistent with the applicable law as referred to in sub-regulations (1) and (3).

(5) The Authority is responsible for supervising compliance with sub-regulations (3) and (4).

(6) The management company shall adopt and execute all arrangements and organisational decisions necessary to ensure compliance with rules and obligations relating to the constitution and functioning of the UCITS and with obligations set out in the fund rules, instruments of incorporation and obligations set out in the prospectus.

(7) The Authority is responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all UCITS it manages.

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(8) The Authority shall ensure that where Gibraltar is the host State, a management company authorised in another EEA State is not subject to additional requirements in respect of any matter falling within the scope of these Regulations, save in cases expressly referred to in these Regulations.

Applications to manage UCITS in Gibraltar.

17.(1) Without prejudice to section 5 of the Act, a management company authorised in another EEA State applying to manage a UCITS established in Gibraltar shall provide the Authority with the following documentation—

- (a) the written contract with the depositary referred to in regulation 19(2);
- (b) information on delegation arrangements regarding functions of investment management and administration referred to in Schedule 3,

and where a management company already manages other UCITS of the same type in Gibraltar, reference to the documentation already provided is sufficient.

(2) To ensure compliance—

- (a) with these Regulations, the Authority may ask the EEA Authority of the management company's home State for clarification and information regarding the documentation referred to in sub-regulation (1) and, based on the certificate referred to in regulations 14 and 15, as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's authorisation;
- (b) with provisions equivalent to these Regulations in a host State, the Authority shall respond to a request by the host State for clarification and information regarding matters equivalent to those referred to in paragraph (a), and where applicable, the Authority shall provide its opinion within 10 working days of the initial request.

(3) The Authority may refuse an application by the management company under sub-regulation (1) only where—

- (a) the management company does not comply with rules falling under the responsibility of the Authority pursuant to regulation 16;

- (b) the management company is not authorised to manage the type of UCITS for which authorisation is requested; or
- (c) the management company has not provided the documentation referred to in sub-regulation (1),

and before refusing an application under sub-regulation (1), the Authority shall consult the EEA Authority of the management company's home State.

(4) Any subsequent material modifications of the documentation referred to in sub-regulation (1) shall be notified by the management company to the Authority.

Periodical reporting.

18.(1) Where Gibraltar is host State to a management company, the Authority may, for statistical purposes, require all management companies with branches in Gibraltar to report periodically on their activities.

- (2) Where Gibraltar is host State to a management company—
 - (a) the Authority may require the management company to provide the information necessary for the monitoring of compliance with the relevant provisions of these Regulations and the Directive;
 - (b) the Authority shall ensure that the standard of compliance with the relevant provisions of these Regulations and the Directive required by such company is no more stringent than that expected of management companies authorised under these Regulations;
 - (c) the management company shall ensure that procedures and arrangements referred to in regulation 12 enable the Authority to obtain directly from the management company the information referred to in this sub-regulation.

(3) Where Gibraltar is host State to a management company and the Authority ascertains that the management company is in breach of a relevant provision of these Regulations or constituting documents, the Authority shall require the management company concerned to put an end to that breach and inform the EEA Authority of the management company's home State thereof.

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(4) Where sub-regulation (3) applies and the management company concerned refuses to provide the Authority with information falling under the Authority's responsibility or fails to take the necessary steps to put an end to the breach referred to in sub-regulation (3) the Authority shall inform the EEA Authority of the management company's home State accordingly.

(5) Where Gibraltar is the home State of the management company and the EEA Authority of the host State informs the Authority of matters falling within sub-regulation (3), the Authority shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested or puts an end to the breach. The nature of such measures shall be communicated to the EEA Authority of the management company's host State.

(6) For the purposes of sub-regulation (4)–

- (a) “appropriate measures” includes the imposition of fines recoverable as a civil debt and the suspension or cancelling of any authorisation granted under these Regulations;
- (b) the nature of the “appropriate measures” shall be communicated to the EEA Authority of the management company's host State.

(7) Where Gibraltar is the host State and despite measures taken by the EEA Authority of the management company's home State or because such measures prove to be inadequate or are not available in the EEA State in question, the management company continues to refuse to provide the information requested by the Authority pursuant to this regulation or persists in breaching a legal or regulatory obligation in force in Gibraltar, the Authority may take either of the following measures–

- (a) after informing the EEA Authority of the management company's home State, take appropriate measures, including under regulations 113 and 114, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction in Gibraltar including, where the service provided in Gibraltar is the management of a UCITS, requiring the management company to cease managing that UCITS. To that end, the Authority shall take steps to ensure there is served on the management company the legal documents necessary for giving effect to those measures; or

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- (b) where the Authority considers that the EEA Authority of the management company's home State has not acted adequately, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.
- (8) Any measure adopted by the Authority pursuant to this regulation involving measures or penalties—
- (a) shall be properly justified and communicated to the management company concerned; and
- (b) is subject to the right of appeal to the Supreme Court.
- (9) Before following the procedure laid down in sub-regulations (3) to (7)—
- (a) the Authority may, in emergencies, take such precautionary measures as it may deem necessary to protect the interests of investors and others for whom services are provided; and
- (b) where paragraph (a) applies, the Commission, ESMA and the EEA Authority of the other EEA States concerned shall be informed regarding such measures at the earliest opportunity,
- (10) The Authority shall consult the EEA Authority of the UCITS home State before withdrawing the authorisation of the management company.
- (11) Where Gibraltar is the host State of a management company whose authorisation is being withdrawn and the UCITS is authorised under these Regulations, the Authority shall take appropriate measures to safeguard investors' interests, including decisions preventing the management company concerned from initiating any further transactions.
- (12) The Minister shall ensure that ESMA and the Commission are informed of the number and type of cases in which authorisations are refused under regulation 14 or an application under regulation 17 and of any measures taken in accordance with sub-regulation (7).

PART III

OBLIGATIONS REGARDING THE DEPOSITARY

Depositaries: general provisions.

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19.(1) An open-ended investment company and, for each of the common funds that it manages, a management company shall ensure that a single depositary is appointed in accordance with these Regulations.

(2) The appointment of the depositary shall be evidenced by a written contract which shall, among other things, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the UCITS for which it has been appointed as depositary, as laid down in these Regulations and in other relevant laws, regulations and administrative provisions.

(3) The depositary shall—

- (a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with these Regulations, the Companies Act and the fund's rules or instruments of incorporation;
- (b) ensure that the value of the units of the UCITS is calculated in accordance with these Regulations, the Companies Act and the fund's rules or instruments of incorporation;
- (c) carry out the instructions of the management company or an open-ended investment company, unless they conflict with these Regulations, the Companies Act or the fund's rules or instruments of incorporation;
- (d) ensure that in transactions involving the assets of the UCITS any consideration is remitted to the UCITS within the usual time limits;
- (e) ensure that the income of the UCITS is applied in accordance with these Regulations, the Companies Act and the fund's rules or instruments of incorporation.

(4) The depositary shall ensure that the cash flows of the UCITS are properly monitored, and, in particular, that all payments made by, or on behalf of, investors upon the subscription of units of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are—

- (a) opened in the name of the UCITS, of the management company acting on behalf of the UCITS, or of the depositary acting on behalf of the UCITS;

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- (b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive; and
- (c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

(5) Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of the entity referred to in sub-regulation (4)(b) and none of the own cash of the depositary shall be booked on such accounts.

(6) The assets of the UCITS shall be entrusted to the depositary for safekeeping as follows—

- (a) for financial instruments that may be held in custody, the depositary shall—
 - (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;
- (b) for other assets, the depositary shall—
 - (i) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management company acting on behalf of the UCITS holds the ownership based on information or documents

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provided by the UCITS or by the management company and, where available, on external evidence;

- (ii) maintain a record of those assets for which it is satisfied that the UCITS or the management company acting on behalf of the UCITS holds the ownership and keep that record up to date.

(7) The depositary shall provide the management company or the open-ended investment company, on a regular basis, with a comprehensive inventory of all of the assets of the UCITS.

(8) The assets held in custody by the depositary shall not be re-used by the depositary, or by any third party to which the custody function has been delegated, for their own account and, for this purpose, re-use comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

(9) The assets held in custody by the depositary are allowed to be reused only where—

- (a) the re-use of the assets is executed for the account of the UCITS;
- (b) the depositary is carrying out the instructions of the management company on behalf of the UCITS;
- (c) the re-use is for the benefit of the UCITS and in the interest of the unit holders; and
- (d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement.

(10) The market value of the collateral shall, at all times, amount to at least the market value of the re-used assets plus a premium.

(11) In the event of the insolvency of a depositary or any third party located within the EEA to which custody of UCITS assets has been delegated, the assets of a UCITS held in custody shall be unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary or third party.

Depositaries: delegation.

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19A.(1) The depositary shall not delegate to third parties the functions referred to in regulations 19(3) and (4).

(2) The depositary may delegate to third parties the functions referred to in regulation 19(6) only where—

- (a) the tasks are not delegated with the intention of avoiding the requirements laid down in these Regulations;
- (b) the depositary can demonstrate that there is an objective reason for the delegation;
- (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in regulation 19(6) may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it—

- (a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS which have been entrusted to it;
- (b) for custody tasks referred to in regulation 19(6)(a), is subject to—
 - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;
 - (ii) an external periodic audit to ensure that the financial instruments are in its possession;
- (c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;

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- (d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
- (e) complies with the general obligations and prohibitions laid down in regulations 19(2), (6) and (8) and 22.

(4) Despite sub-regulation (3)(b)(i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that sub-regulation, the depositary may delegate its functions to such a local entity

- (a) only to the extent required by the law of that third country,
- (b) only for as long as there are no local entities that satisfy the delegation requirements, and
- (c) only where—
 - (i) the investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
 - (ii) the open-ended investment company, or the management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

(5) The third party may, in turn, sub-delegate those functions, subject to the same requirements and, in such a case, regulation 21(4)(a) shall apply to the relevant parties with any necessary modification.

(6) For the purposes of this regulation, the provision of services as specified by Directive 98/26/EC of the European Parliament and of the Council by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

Eligibility for licensing as depositary.

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- 20.(1) A depositary may only offer services in Gibraltar to a UCITS where—
- (a) if the UCITS is authorised under these Regulations, the depositary has a registered office or is established in Gibraltar; or
 - (b) if the UCITS is authorised in another EEA State, the depositary has a registered office or is established in that State.
- (2) The depositary shall be—
- (a) a national central bank (if such a bank is established in Gibraltar);
 - (b) a credit institution authorised in accordance with Directive 2013/36/EU; or
 - (c) another legal person, authorised by the Authority to carry out depositary activities under these Regulations, which is subject to capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council and which has own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU.
- (3) A legal person within sub-regulation (2)(c) shall be subject to prudential regulation and ongoing supervision by the Authority and shall satisfy the following minimum requirements—
- (a) it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;
 - (b) it shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under these Regulations;
 - (c) it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;

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- (d) it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
- (e) it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the Authority to fulfil its supervisory tasks and to perform the enforcement actions provided for in these Regulations;
- (f) it shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures, including to perform its depositary activities;
- (g) all members of its management body and senior management, shall, at all times—
 - (i) be of sufficiently good repute; and
 - (ii) possess sufficient knowledge, skills and experience;
- (h) its management body shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks;
- (i) each member of its management body and senior management shall act with honesty and integrity.

(4) Open-ended investment companies or management companies acting on behalf of the UCITS that they manage, which, before 18 March 2016, appointed as a depositary an institution that does not meet the requirements laid down in sub-regulation (2), shall appoint a depositary that meets those requirements before 18 March 2018.

Liability of depositaries.

21.(1) A depositary is liable to the UCITS and to the unit-holders of the UCITS for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with regulation 19(6)(a) has been delegated.

(2) In the case of a loss of a financial instrument held in custody, the depositary shall return a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on

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behalf of the UCITS without undue delay, but the depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(3) A depositary is also liable to the UCITS, and to the investors of the UCITS, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations under these Regulations.

- (4) The liability of the depositary under sub-regulations (1) to (3)–
- (a) shall not be affected by any delegation under regulation 19A; and
 - (b) may not be excluded or limited by agreement and any agreement that purports to do so shall be void.

(5) Unit-holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company or the open-ended investment company provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.

Depositaries: duty of independence.

22.(1) No company shall act as–

- (a) both management company and depositary; or
- (b) both open-ended investment company and depositary.

(2) In carrying out their respective functions–

- (a) the management company and the depositary shall act–
 - (i) honestly;
 - (ii) fairly;
 - (iii) professionally;
 - (iv) independently; and
 - (v) solely in the interest of the UCITS and the investors of the UCITS;

- (b) the open-ended investment company and the depositary shall act—
 - (i) honestly;
 - (ii) fairly;
 - (iii) professionally;
 - (iv) independently; and
 - (v) solely in the interest of the investors of the UCITS.

(3) A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless—

- (a) the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks; and
- (b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.

Replacement of counterparties.

23.(1) The fund's rules shall lay down the conditions for the replacement of the management company and of the depositary and ensure the protection of unit-holders in the event of such a replacement.

(2) The constituting instrument of the open-ended investment company shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.

Disclosure to EEA Authorities.

23A.(1) The depositary shall make available to the Authority and any other EEA Authority which is its competent authority, on request, all information which it has obtained while performing its duties and that may be necessary for the Authority or, if different, its EEA Authorities or those of the UCITS or the management company.

(2) If the EEA Authorities of the UCITS or the management company are different from those of the depositary, the Authority shall without delay share the information received with those EEA Authorities.

PART IV

**OBLIGATIONS REGARDING OPEN-ENDED INVESTMENT
COMPANIES**

CHAPTER 1

CONDITIONS FOR TAKING UP BUSINESS

Requirement of authorisation.

24. Any person wishing to engage in an activity covered by section 3(2) of the Act may apply to the Authority for an Authorisation.

Legal form and registered office.

25.(1) No application under regulation 24 shall be accepted by the Authority unless the applicant is of a legal form referred to in section 3(2) of the Act.

(2) The registered office of an open-ended investment company authorised under these Regulations shall be situated in Gibraltar.

Licensing conditions.

26.(1) The Authority shall not grant an authorisation to an open-ended investment company that has not designated a management company unless the open-ended investment company has a sufficient initial capital of at least EUR 300,000; and where an open-ended investment company has not designated a management company authorised pursuant to these Regulations or elsewhere in the EEA, the following conditions apply—

- (a) the authorisation shall not be granted unless the application for authorisation is accompanied by a programme of operations setting out, at least, the organisational structure of the open-ended investment company;
- (b) the open-ended investment company shall appoint directors of sufficiently good repute and with sufficient experience in

relation to the type of business pursued by the open-ended investment company and, to that end—

- (i) the names of the directors and of every person succeeding them in office shall be communicated forthwith to the Authority;
- (ii) the conduct of an open-ended investment company's business shall be decided by at least two persons meeting such conditions,

and, for these purposes, “directors” means those persons who, by law or under the instruments of incorporation, represent the open-ended investment company, or who effectively determine the policy of the company;

- (c) where close links exist between the open-ended investment company and other natural or legal persons, the Authority shall grant authorisation only if those close links do not prevent the effective exercise of supervisory functions;
- (d) the Authority—
 - (i) shall refuse an authorisation where the laws, regulations or administrative provisions of a non EEA State governing one or more natural or legal persons with which the open-ended investment company has close links prevent the effective exercise of their supervisory functions, or difficulties exist with enforcement; and
 - (ii) shall require open-ended investment companies to provide it with any information the Authority may need.

(2) Where an open-ended investment company has not designated a management company, the open-ended investment company shall be informed within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

(3) An open-ended investment company may start business as soon as an authorisation has been granted.

(4) The Authority may withdraw an authorisation issued to an open-ended investment company subject to these Regulations only where that company—

- (a) does not—
 - (i) make use of the authorisation within 12 months;
 - (ii) expressly renounces the authorisation; or
 - (iii) cease the activity covered by these Regulations more than six months previously,unless the Authority has provided for authorisation to lapse in such cases;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) has seriously or systematically infringed the provisions of these Regulations; or
- (e) falls within any of the cases where regulations made by the Minister provide for withdrawal.

CHAPTER 2

OPERATING CONDITIONS

Application of regulations 10 to 11B.

27.(1) Regulations 10 to 11B apply to open-ended investment companies that have not designated a management company.

(2) For the purpose of sub-regulation (1), “management company” in regulations 10 to 11B shall be understood as “open-ended investment company”.

(3) Open-ended investment companies shall manage only assets of their own portfolio and shall not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

Prudential rules

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28.(1) The Authority shall with the consent of the Minister publish prudential rules which shall be binding on open-ended investment companies that have not designated a management company.

(2) Having regard also to the nature of the open-ended investment company, the Authority shall require that the open-ended investment company—

- (a) have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing;
- (b) have adequate internal control mechanisms including, in particular -
 - (i) rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital;
 - (ii) ensuring, at least, that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and
 - (iii) that the assets of the open-ended investment company are invested according to law and the instruments of incorporation.

29-33 *Omitted.*

PART V**MERGERS OF UCITS****CHAPTER 1****PRINCIPLE, AUTHORISATION AND APPROVAL****UCITS: Definition in Chapter.**

34. For the purposes of this Chapter, a UCITS includes investment compartments thereof.

Mergers.

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35. Subject to the conditions set out in this Chapter, and irrespective of the manner in which UCITS are constituted under section 3 of the Act, there shall be allowed by the Authority the cross-border and domestic merger of UCITS.

Prior authorisation of merger.

36.(1) Mergers of UCITS shall be subject to prior authorisation by the EEA Authority of the merging UCITS home State.

(2) Where Gibraltar is the home State of the merging UCITS, such UCITS shall provide the following information to the Authority—

- (a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;
- (b) an up-to-date version of the prospectus and the key investor information of the receiving UCITS if established in another EEA State;
- (c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with regulation 38, they have verified compliance of the particulars set out in regulation 37(1)(a), (f) and (g) with the requirements of these Regulations and the fund rules or instruments of incorporation of their respective UCITS; and
- (d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unit-holders.

(3) The information in sub-regulation (2) shall be provided in such a manner as to enable the Authority and the EEA Authority of the receiving UCITS home State to read them in English and in the official language or one of their official languages approved by that EEA Authority.

(4) Once the file is complete, the Authority shall immediately transmit copies of the information referred to in sub-regulation (2) to the EEA Authority of the receiving UCITS home State. The Authority shall consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

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(5) Where the Authority considers it necessary, it may require, in writing, that the information to unit-holders of the merging UCITS be clarified.

(6) Where Gibraltar is the home State of the receiving UCITS, and the Authority considers it necessary, it may require, in writing and no later than 15 working days of receipt of the copies of the complete information referred to in sub-regulation (2), that the receiving UCITS modify the information to be provided to its unit-holders.

(7) Where sub-regulation (6) applies, the Authority shall send an indication of its dissatisfaction to the EEA Authority of the merging UCITS home State. It shall inform the EEA Authority of the merging UCITS home State whether it is satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within 20 working days of being notified thereof.

(8) Where Gibraltar is the merging UCITS home State, the Authority shall authorise the proposed merger if the following conditions are met—

- (a) the proposed merger complies with all of the requirements of regulations 36 to 39;
- (b) in accordance with regulation 108, the receiving UCITS has been notified to market its units in all EEA States where the merging UCITS is either authorised or has been notified to market its units in accordance with regulation 108; and
- (c) the Authority and the EEA Authority of the receiving UCITS home State are both satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the EEA Authority of the receiving UCITS home State has been expressed.

(9) Where Gibraltar is the merging UCITS home State, the Authority -

- (a) if it considers that it does not have in its possession all the information required, it shall request additional information within 10 working days of receiving the information referred to in sub-regulation (2);
- (b) shall inform the merging UCITS, within 20 working days of submission of the complete information, in accordance with sub-regulation (2), whether or not the merger has been authorised,

and the Authority shall also inform the EEA Authority of the receiving UCITS home State of its decision.

(10) The Minister may, in accordance with the provisions of regulation 54(2), make regulations derogating from regulations 49 to 52 in respect of receiving UCITS.

Terms of merger.

37.(1) The Authority shall require that the merging and the receiving UCITS draw up common draft terms of merger, setting out the following particulars—

- (a) an identification of the type of merger and of the UCITS involved;
- (b) the background to and rationale for the proposed merger;
- (c) the expected impact of the proposed merger on unit-holders of both the merging and the receiving UCITS;
- (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in regulation 44(1);
- (e) the calculation method of the exchange ratio;
- (f) the planned effective date of the merger;
- (g) the rules applicable to the transfer of assets and the exchange of units respectively; and
- (h) in the case of a merger pursuant to paragraph (b) (and, where applicable, paragraph (a)) of the definition of “merger” in regulation 2(1), the fund rules or instruments of incorporation of the newly constituted receiving UCITS,

and the Authority shall not request any additional information to be included in the common draft terms of mergers.

(2) The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger.

CHAPTER 2

**THIRD-PARTY CONTROL, INFORMATION OF UNIT-HOLDERS
AND OTHER RIGHTS OF UNIT-HOLDERS****Duty to verify.**

38. The depositaries of the merging and receiving UCITS shall verify the conformity of the particulars set out in regulation 37(1) (a), (f) and (g) with the requirements of these Regulations, the fund rules or the statutes of incorporation of their respective UCITS.

Audits.

39.(1) Where Gibraltar is the merging UCITS home State, the UCITS shall entrust either a depositary or an independent auditor approved by the Authority to validate the following—

- (a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio, as referred to in regulation 44(1);
- (b) where applicable, the cash payment per unit; and
- (c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in regulation 44(1).

(2) The statutory auditors of the merging UCITS or the statutory auditor of the receiving UCITS shall be independent auditors for the purposes of sub-regulation (1).

(3) A copy of the reports of the independent auditor, or, where applicable, the depositary shall be made available on request and free of charge to unit-holders of both the merging UCITS and the receiving UCITS and to their respective EEA Authorities.

Information to unit holders.

40.(1) Merging and receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the proposal on their investment.

(2) The information required under sub-regulation (1)—

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- (a) shall be provided to unit-holders of the merging and of the receiving UCITS only after the EEA Authority of the merging UCITS home State has authorised the proposed merger, and where Gibraltar is the merging UCITS home State, where the Authority has authorised the proposed merger under regulation 36;
 - (b) shall be provided at least 30 days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge under regulation 42(1).
- (3) The information to be provided to unit-holders of the merging and of the receiving UCITS shall—
- (a) include appropriate and accurate information on the proposed merger such as to enable unit-holders to take an informed decision on the possible impact of the merger on their investment and to exercise rights under regulations 41 and 42;
 - (b) include the following—
 - (i) the background to and the rationale for the proposed merger;
 - (ii) the possible impact of the proposed merger on unit-holders, including but not limited to—
 - (aa) any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance; and
 - (bb) where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;
 - (iii) any specific rights unit-holders have in relation to the proposed merger, including but not limited to -
 - (aa) the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the depositary on request; and

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- (bb) the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge as specified in regulation 42(1) and the last date for exercising that right;
- (iv) the relevant procedural aspects and the planned effective date of the merger; and
- (v) a copy of the key investor information, referred to in regulation 93, of the receiving UCITS.

(4) Where the merging or the receiving UCITS has been notified in accordance with regulation 108, the information referred to in sub-regulation (3) shall be provided by the UCITS in the official language, or one of the official languages, of the relevant UCITS host State or in a language approved by its EEA Authority, in a manner that faithfully reflects the content of the original.

Approval by unit holders.

41.(1) Where approval by the unit-holders of mergers between UCITS is required, such approval shall not require more than 75% of the votes actually cast by unit-holders present or represented at the general meeting of unit-holders.

(2) Sub-regulation (1) shall be without prejudice to any quorum required under the Companies Act for the purpose, which shall not exceed the quorum required in respect of corporate entities not constituting UCITS.

Redemption and repurchase of units.

42.(1) The following provisions apply—

- (a) unit-holders of both the merging and the receiving UCITS have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units;
- (b) in the alternative to paragraph (a), such unit-holders may, where possible, request the conversion of their units into units in another UCITS with similar investment policies and managed by the same management company or by any other company with which the management company is linked by

common management or control, or by a substantial direct or indirect holding;

- (c) the rights set out in paragraphs (a) and (b)–
 - (i) shall become effective from the moment that the unit-holders of the merging and receiving UCITS have been informed of the proposed merger in accordance with regulation 40: and
 - (ii) shall no longer apply five working days before the date for calculating the exchange ratio referred to in regulation 44(1).

(2) Without prejudice to sub-regulation (1), and by way of derogation from regulation 99(1), for mergers between UCITS the Authority may require or allow the temporary suspension of the subscription, repurchase or redemption of units provided that such suspension is justified for the protection of the unit-holders.

CHAPTER 3

COSTS AND ENTRY INTO EFFECT

Cost of merger.

43. Except in cases where UCITS have not designated a management company, the Authority shall ensure that any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging or the receiving UCITS, or to any of their unit-holders.

Date of merger.

44.(1) The Minister shall make regulations–

- (a) determining the date on which domestic and cross-border mergers take effect as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments;
- (b) in the case of cross-border mergers, stipulating that the dates referred to in paragraph (a) are after the approval of the merger by unit-holders of the receiving UCITS or the merging UCITS.

(2) Where Gibraltar is the home State of the receiving UCITS, the Authority shall ensure that the entry into effect of the merger is made public through all appropriate means, and shall notify the same to the EEA Authority of the home States of the receiving and merging UCITS.

(3) A merger which has taken effect as provided for in sub-regulation (1) shall not be declared null and void.

Effect of merger.

45.(1) A merger effected in accordance with paragraph (a) of the definition of “merger” in regulation 2(1) has the following consequences–

- (a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and
- (c) the merging UCITS ceases to exist on the entry into effect of the merger.

(2) A merger effected in accordance with paragraph (b) of the definition of “merger” in regulation 2(1) has the following consequences–

- (a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, where applicable, to the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and
- (c) the merging UCITS ceases to exist on the entry into effect of the merger.

(3) A merger effected in accordance with paragraph (c) of the definition of “merger” in regulation 2(1) has the following consequences–

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- (a) the net assets of the merging UCITS are transferred to the receiving UCITS or, where applicable, the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS; and
- (c) the merging UCITS continues to exist until the liabilities have been discharged.

(4) The Minister shall make regulations establishing a procedure whereby the management company of the receiving UCITS confirms to the depositary of the receiving UCITS that transfer of assets and, where applicable, liabilities is complete, and where the receiving UCITS has not designated a management company, it shall give that confirmation to the depositary of the receiving UCITS.

PART VI

**OBLIGATIONS CONCERNING THE INVESTMENT POLICIES OF
UCITS**

UCITS with investment compartments.

46. Where a UCITS comprises more than one investment compartment, each compartment shall be regarded as a separate UCITS for the purposes of this Part.

Authorised investments.

47.(1) The investments of a UCITS shall comprise only one or more of the following—

- (a) transferable securities and money market instruments admitted to or dealt in on a regulated market as defined in section 2(1) of the Financial Services (Markets in Financial Instruments) Act 2006;
- (b) transferable securities and money market instruments dealt in on another regulated market in an EEA State which operates regularly and is recognised and open to the public;
- (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non EEA country or dealt in on another regulated market in a non EEA country

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which operates regularly and is recognised and open to the public provided–

- (i) that the choice of stock exchange or market has been approved by the Authority; or
 - (ii) it is provided for in law or the fund's rules or the instruments of incorporation of the open-ended investment company;
- (d) recently issued transferable securities, provided that–
- (i) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided–
 - (aa) the choice of stock exchange or market has been approved by the EEA Authority; or
 - (bb) is provided for in law or the fund's rules or the instruments of incorporation of the open-ended investment company; and
 - (ii) the admission referred to in sub-paragraph (i) is secured within a year of issue;
- (e) units of UCITS authorised according to the Directive or other collective investment undertakings within the meaning of section 3(2)(a) and (b) of the Act, whether or not established in an EEA State, provided that–
- (i) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the Authority to be equivalent to that laid down in Gibraltar law, and that cooperation between EEA Authorities is sufficiently ensured;
 - (ii) the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money

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market instruments are equivalent to the requirements of the Directive;

- (iii) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and
 - (iv) no more than 10% of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings;
- (f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided –
- (i) the credit institution has its registered office in an EEA State; or
 - (ii) where the credit institution has its registered office in a non EEA country, that it is subject to prudential rules considered by the Authority as equivalent to those laid down pursuant to the Financial Services (Banking) Act;
- (g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in paragraphs (a), (b) and (c) or financial derivative instruments dealt in over-the-counter (“OTC”) derivatives, provided that –
- (i) the underlying assets of the derivative consists of instruments covered by this regulation, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in its fund rules or instruments of incorporation;
 - (ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the Authority; and

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- (iii) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative; or
- (h) money market instruments other than those dealt in on a regulated market, as defined in regulation 2(1), if the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided they are—
 - (i) issued or guaranteed by a central, regional or local authority or central bank of an EEA State, the European Central Bank, the European Union or the European Investment Bank, a non EEA country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more EEA States belong;
 - (ii) issued by an undertaking any securities of which are dealt in on regulated markets referred to in paragraphs (a), (b) or (c);
 - (iii) issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by European Union law, or by an establishment which is subject to and complies with prudential rules considered by the Authority to be at least as stringent as those laid down by European Union law; or
- (iv) issued by other bodies belonging to the categories approved by the Authority, where Gibraltar is the UCITS home State, provided that—
 - (aa) investments in such instruments are subject to investor protection equivalent to that laid down in sub-paragraphs (i), (ii) or (iii);
 - (bb) the issuer is a company whose capital and reserves amount to at least EUR 10.000,000; and
 - (cc) the issuer presents and publishes its annual accounts in accordance with the provisions of the Companies (Accounts) Act 1999 is an entity which, within a group of companies

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which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of the group or to the securitisation vehicles which benefit from a banking liquidity line.

- (2) A UCITS shall not, however—
- (a) invest more than 10% of its assets in transferable securities or money market instruments other than those referred to in sub-regulation (1); or
 - (b) acquire either precious metals or certificates representing them,

but UCITS may hold ancillary liquid assets.

(3) An open-ended investment company may acquire movable or immovable property which is essential for the direct pursuit of its business.

Instruments of which the issue or issuer is regulated for the purpose of protecting investors and savings.

47A.(1) The reference in regulation 47(1)(h) to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, shall be understood as a reference to financial instruments which fulfil the following criteria—

- (a) the financial instrument fulfils one of the criteria set out in regulation 2A(2) and all the criteria set out in regulation 2B(1) and (2);
- (b) appropriate information is available for the instruments, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account subregulations (2), (3) and (4); and
- (c) the instruments are freely transferable.

(2) Where money market instruments are covered by regulation 47(1)(h)(ii) and (iv), for those which are issued by a local or regional authority of a Member State or by a public international body but not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate

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information as referred to in paragraph (b) of subregulation (1) of this regulation shall consist in the following—

- (a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;
- (b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;
- (c) the information referred to in paragraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer;
- (d) available and reliable statistics on the issue or the issuance programme.

(3) Where money market instruments are covered by regulation 47(1)(h)(iii), appropriate information as referred to in subregulation (1)(b) shall consist of the following—

- (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;
- (b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;
- (c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

(4) In the case of all money market instruments covered by regulation 47(1)(h)(i), except those referred to in subregulation (2) and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in subregulation (1)(b) shall consist of information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

Money market instruments: prudential rules.

47B. The reference in regulation 47(1)(h)(iii) to an establishment which is subject to, and complies with, prudential rules considered by the Authority to be at least as stringent as those laid down by European Union law shall be

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understood as a reference to an issuer which is subject to, and complies with, prudential rules and fulfils one of the following criteria—

- (a) it is located in the European Economic Area;
- (b) it is located in an OECD country belonging to the Group of Ten;
- (c) it has at least investment grade rating;
- (d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by European Union law.

Securitisation vehicles which benefit from a banking liquidity line.

47C. The reference in regulation 47(1)(h)(iv)—

- (a) to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations; and
- (b) to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with regulation 47(1)(h)(iii).

Financial indices.

47D.(1) The reference in regulation 47(1)(g) to financial indices shall be understood as a reference to indices which fulfil the following criteria—

- (a) they are sufficiently diversified, in that the following criteria are fulfilled—
 - (i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
 - (ii) where the index is composed of assets referred to in regulation 47(1), its composition is at least diversified in accordance with regulation 50;

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- (iii) where the index is composed of assets other than those referred to in regulation 47(1), it is diversified in a way which is equivalent to that provided for in regulation 50;
- (b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled—
 - (i) the index measures the performance of a representative group of underlying assets in a relevant and appropriate way;
 - (ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;
 - (iii) the underlying assets are sufficiently liquid, which allows users to replicate the index, if necessary;
- (c) they are published in an appropriate manner, in that the following criteria are fulfilled—
 - (i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
 - (ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with regulation 47(1) does not fulfil the criteria set out in subregulation (1), those financial derivatives shall, where they comply with the criteria set out in section 2B(1), be regarded as financial derivatives on a combination of the assets referred to in section 2B(1)(a) (i), (ii) and (iii).

Portfolio management.

- 48.(1) A management company or open-ended investment company shall—
- (a) employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their

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contribution to the overall risk profile of the portfolio of a UCITS;

- (aa) ensure that it does not rely solely and mechanistically on credit ratings issued by credit rating agencies for assessing the creditworthiness of the UCITS' assets;
- (b) employ a process for accurate and independent assessment of the value of OTC derivatives;
- (c) communicate to the Authority regularly in relation to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

(2) The Authority shall ensure that all information received under sub-regulation (1)(c) aggregated in respect of all the management or open-ended investment companies it supervises is accessible to ESMA in accordance with Article 35 of the Regulation (EU) No 1095/2010 and the European Systemic Risk Board (the "ESRB") established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board in accordance with Article 15 of that Regulation for the purpose of monitoring systemic risks at European Union level.

(2A) The Authority shall—

- (a) monitor the adequacy of credit assessment processes of management companies or open-ended investment companies;
- (b) assess the use of references to credit ratings issued by credit rating agencies in the UCITS' investment policies; and
- (c) where appropriate, encourage mitigation of the impact of references referred to in paragraph (b);

taking into account the nature, scale and complexity of a UCITS' activity, and with a view to reducing the sole and mechanistic reliance on credit ratings.

(3) The Authority may authorise a UCITS to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits which they lay down provided that—

- (a) that such techniques and instruments are used for the purpose of efficient portfolio management;
 - (b) when those operations concern the use of derivative instruments, the conditions and limits conform to the provisions laid down in these Regulations; and
 - (c) the operations do not cause the UCITS to diverge from its investment objectives as laid down in the UCITS' fund rules, articles or memorandum of association or prospectus.
- (4) A UCITS–
- (a) shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio;
 - (b) shall calculate the exposure referred to in paragraph (a) by taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions ;
 - (c) may invest, as a part of its investment policy and within the limit laid down in regulation 49(5), in financial derivative instruments provided that–
 - (i) the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in regulation 49;
 - (ii) the Authority may require that, when a UCITS invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in regulation 49;
 - (d) shall ensure that when transferable securities or money market instruments embed a derivative, the derivative shall be taken into account when complying with the requirements of this regulation.
- (5) In sub-regulation (4), paragraph (b) shall also apply to the matters set out in paragraphs (c) and (d).

Transferable securities and money market instruments embedding derivatives.

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48A.(1) The reference in regulation 48(4)(d) to transferable securities embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria set out in section 2A(1) and which contain a component which fulfils the following criteria—

- (a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;
- (b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;
- (c) it has a significant impact on the risk profile and pricing of the transferable security.

(2) Money market instruments which—

- (a) fulfil one of the criteria set out in regulation 2A(2) and all the criteria set out in regulation 2B (1) and (2); and
- (b) contain a component and fulfils the criteria set out in subregulation (1),

shall be regarded as money market instruments embedding a derivative.

(3) A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

Techniques and instruments for the purpose of efficient portfolio management.

48B.(1) The reference in regulation 48(3) to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria—

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- (a) they are economically appropriate in that they are realised in a cost-effective way;
- (b) they are entered into for one or more of the following specific aims–
 - (i) reduction of risk;
 - (ii) reduction of cost;
 - (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in regulation 49 of the Financial Services (Collective Investment Schemes) Regulations 2011;
- (c) their risks are adequately captured by the risk management process of the UCITS.

(2) Techniques and instruments complying with the criteria set out in subregulation (1) and relating to money market instruments shall be regarded as techniques and instruments for the purposes of effective portfolio management as referred to in regulation 48(3).

Investment restrictions.

49.(1) A UCITS shall invest no more than–

- (a) 5% of its assets in transferable securities or money market instruments issued by the same body; or
- (b) 20% of its assets in deposits made with the same body,

and the risk exposure to a counterparty of the UCITS in an OTC derivative transaction shall not exceed either–

- (i) 10% of its assets when the counterparty is a credit institution referred to in regulation 47(1)(f); or
- (ii) 5% of its assets, in other cases.

(2) The following provisions apply–

- (a) the Authority, with the approval of the Minister, may raise the 5% limit laid down in sub-regulation 1(a) to a maximum of

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10%, where the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5% does not exceed 40% of the value of its assets;

- (b) the limitation in paragraph (a) does not apply in relation to deposits or OTC derivative transactions made with financial institutions subject to prudential supervision; and
- (c) notwithstanding the individual limits laid down in sub-regulation (1), a UCITS shall not combine any of the following, where this would lead to investment of more than 20% of its assets in a single body—
 - (i) investments in transferable securities or money market instruments issued by that body;
 - (ii) deposits made with that body; or
 - (iii) exposures arising from OTC derivative transactions undertaken with that body.

(3) The Authority, with the approval of the Minister, may raise the 5% limit laid down in sub-regulation 1(a) to a maximum of 35% where the transferable securities or money market instruments are issued or guaranteed by an EEA State, by an EEA State's local authorities, by a non EEA country or by a public international body to which one or more EEA States belong.

(4) The following provisions apply in relation to bonds—

- (a) the Authority, with the approval of the Minister, may raise the 5% limit laid down in sub-regulation 1(a) to a maximum of 25% where bonds —
 - (i) are issued by a credit institution which has its registered office in an EEA State; and
 - (ii) that credit institution is subject by law to special public supervision designed to protect bond-holders; and
- (b) according to law, sums deriving from the issue of such bonds shall be invested in assets which—
 - (i) during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds; and

- (ii) in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest;
 - (c) where a UCITS invests more than 5% of its assets in the bonds referred to in subparagraphs (a) and (b) which are issued by a single issuer, the total value of these investments shall not exceed 80 % of the value of the assets of the UCITS;
 - (d) the Minister shall ensure ESMA and the Commission are sent–
 - (i) a list of the categories of bonds referred to in subparagraphs (a) and (b) together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in those subparagraphs, to issue bonds complying with the criteria set out in this regulation;
 - (ii) a notice specifying the status of the guarantees offered which shall be attached to those lists.
- (5) The transferable securities and money market instruments referred to in sub-regulations (3) and (4) shall not be taken into account for the purpose of applying the limit of 40% referred to in sub-regulation (2).
- (6) The limits provided for in sub-regulations (1) to (4) shall not be combined, and investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with sub-regulations (1) to (4) shall not exceed in total 35% of the assets of the UCITS.
- (7) Companies which are included in the same group for the purposes of consolidated accounts, as defined in Companies (Consolidated Accounts) Act or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this regulation.
- (8) The Authority, with the approval of the Minister, may allow cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20%.

Investment limit increases.

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50.(1) Without prejudice to the limits laid down in regulation 53, the Authority, with the approval of the Minister, may raise the limits laid down in regulation 49 to a maximum of 20% for investment in shares or debt securities issued by the same body when, according to the fund rules or articles or memorandum of association, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the Authority, on the following basis—

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

(2) The Authority, with the approval of the Minister, may raise the limit laid down in sub-regulation (1) to a maximum of 35 % where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to that limit is permitted only for a single issuer.

Index-replicating UCITS.

50A.(1) The reference in regulation 50(1) to replicating the composition of a stock or debt securities index shall be understood as a reference to replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments within the meaning of regulations 48(3) and 48B.

(2) The reference in regulation 50(1) to an index whose composition is sufficiently diversified shall be understood as a reference to an index which complies with the risk diversification rules of regulation 50.

(3) The reference in regulation 50(1) to an index which represents an adequate benchmark shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

(4) The reference in regulation 50(1) to an index which is published in an appropriate manner shall be understood as a reference to an index which fulfils the following criteria—

- (a) it is accessible to the public;

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- (b) the index provider is independent of the index-replicating UCITS.

(5) Subregulation (4)(b) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

Derogations from regulation 49.

51.(1) By way of derogation from regulation 49–

- (a) the Authority may authorise UCITS to invest in accordance with the principle of risk-spreading up to 100% of their assets in different transferable securities and money market instruments issued or guaranteed by an EEA State, one or more of an EEA State’s local authorities, a non EEA country, or a public international body to which one or more EEA States belong;
- (b) where Gibraltar is the UCITS home State, the Authority shall grant a derogation under paragraph (a) only if it considers that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in regulation 49;
- (c) such a UCITS shall hold securities from at least six different issuers, but securities from any single issuer shall not account for more than 30% of its total assets.

(2) The UCITS referred to in sub-regulation (1) shall–

- (a) make express mention in the fund rules or, in the case of an open-ended investment company, in the articles or memorandum of association of the company, of the EEA States, local authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 % of their assets; and
- (b) ensure that the fund rules or articles or memorandum of association referred to in paragraph (a) are approved by the Authority.

(3) Each UCITS referred to in sub-regulation (1) shall include a prominent statement in its prospectus and marketing communications drawing attention to such approval and indicating the EEA States, local

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authorities or public international bodies in the securities of which it intends to invest or has invested more than 35% of its assets.

Investments in other collective investment schemes.

52.(1) A UCITS may acquire the units of UCITS or other collective investment undertakings referred to in regulation 47(1)(e), provided that no more than—

- (a) 10% or;
- (b) with the Authority's written consent, 20%,

of its assets are invested in units of a single UCITS or other collective investment undertaking.

(2) Investments made in units of collective investment undertakings other than UCITS shall not exceed, in aggregate, 30% of the assets of the UCITS.

(3) Where a UCITS has acquired units of another UCITS or collective investment undertakings, the Authority may determine that the assets of the respective UCITS or other collective investment undertakings are not required to be combined for the purposes of the limits laid down in regulation 49.

(4) Where a UCITS invests in the units of other UCITS or collective investment undertakings that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company shall not charge subscription or redemption fees on account of the UCITS' investment in the units of such other UCITS or collective investment undertakings.

(5) A UCITS that invests a substantial proportion of its assets in other UCITS or collective investment undertakings shall—

- (a) disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS or collective investment undertakings in which it intends to invest;
- (b) indicate in its annual report the maximum proportion of management fees charged both to the UCITS itself and to the

other UCITS or collective investment undertaking in which it invests.

Shareholding restrictions.

53.(1) An open-ended investment company or a management company acting in connection with all the common funds which it manages and which fall within the scope of these Regulations shall not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

(2) The Authority shall ensure that open-ended investment companies shall take account of existing rules defining the principle stated in sub-regulation (1) in the law of other EEA States.

(3) A UCITS may acquire no more than—

- (a) 10% of the non-voting shares of a single issuing body;
- (b) 10% of the debt securities of a single issuing body;
- (c) 25% of the units of a single UCITS or other collective investment undertaking within the meaning of section 3 of the Act; or
- (d) 10% of the money market instruments of a single issuing body,

provided that the limits laid down in paragraphs (b), (c) and (d) may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.

(4) The Authority may waive the application of sub-regulations (1) and (2) as regards—

- (a) transferable securities and money market instruments issued or guaranteed by an EEA State or its local authorities;
- (b) transferable securities and money market instruments issued or guaranteed by a non EEA country;
- (c) transferable securities and money market instruments issued by a public international body to which one or more EEA States belong;

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- (d) shares held by a UCITS in the capital of a company incorporated in a non EEA country investing its assets mainly in the securities of issuing bodies having their registered offices in that country, where under the legislation of that country such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that country; or
- (e) shares held by an open-ended investment company or open-ended investment companies in the capital of subsidiary companies pursuing only the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf,

provided that the derogation referred to in paragraph (d) applies only–

- (i) if in its investment policy the company from the non EEA country complies with the limits laid down in regulations 49 and 52; and
- (ii) in sub-regulations (1) and (2),

and where the limits set in regulations 49 and 52 are exceeded, regulation 54 applies mutatis mutandis.

Derogations from Part: further provisions.

54.(1) UCITS are not required to comply with the limits laid down in this Part when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

(2) While ensuring observance of the principle of risk spreading, the Authority may allow recently authorised UCITS to derogate from regulations 49 to 52 for six months following the date of their authorisation.

(3) Where the limits referred to in sub-regulations (1) and (2) are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS shall adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

PART VII

COMMON PROVISIONS

Division 1 - Constituting instrument**Interpretation of “authorised scheme”.**

55. In this Part, “authorised scheme” shall be interpreted in accordance with section 2(1) of the Act.

Constituting instrument of an authorised scheme.

56.(1) Any power conferred by these Regulations on an authorised open-ended investment company, or any director of the company, or on the manager or depositary of an authorised scheme, may be restricted by the constituting instrument.

(2) The constituting instrument of a UCITS scheme may not be amended in such a way that the scheme ceases to be a UCITS scheme.

(3) The constituting instrument of an authorised scheme must entitle—

- (a) the shareholders of an open-ended investment company to have their shares redeemed or repurchased upon request;
- (b) the participants of an authorised unit trust to have their units redeemed or repurchased at a price related to the net value of the scheme property and determined in accordance with the constituting instrument, these regulations and any relevant Code of Practice.

(4) Subject to any restriction imposed by the Codes of Practice, the constituting instrument of an authorised scheme may be amended.

(5) No amendment to the constituting instrument of an authorised scheme that is a company may be made unless it has been approved by the shareholders of the company in general meeting.

(6) The provisions of a company’s constituting instrument are binding on the officers and depositary of the company and on each of its shareholders and all such persons (but no others) are to be taken to have notice of the provisions of the instrument.

Classes of unit in an authorised scheme.

57.(1) The constituting instrument of an authorised scheme may provide—

- (a) for different classes of unit to be issued; and

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- (b) in the case of an umbrella scheme, for different classes of unit to be issued for each sub-fund.

(2) A class of units shall not provide an advantage for the unit holders in that class if that would result in prejudice to the unitholders of any other class.

(3) If a class of units in an authorised scheme has different rights from another class in that scheme, the constituting instrument shall provide how the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class must be calculated.

(4) For an authorised scheme which is not an umbrella scheme, the constituting instrument must not provide for any class of units in respect of which—

- (a) the extent of the rights to participate in the property of the scheme property or distribution account would be determined differently from the extent of the corresponding rights for any other class of units; or
- (b) payments or accumulation of income or capital would differ in source or form from those of any other class of units.

(5) For a scheme which is an umbrella scheme, sub-regulation (4)(a) applies to classes of units in respect of each sub-fund as if each sub-fund was a separate scheme.

(6) Sub-regulations (4) and (5) do not prohibit a difference between the rights attached to one class of units and to another class of units that relates solely to—

- (a) the accumulation of income by way of periodical credit to capital rather than distribution;
- (b) charges and expenses that may be taken out of the scheme property or payable by the unitholders; or
- (c) the currency in which prices or values are expressed or payments made.

Guarantees and capital protection.

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

- (a) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between—
 - (i) unit holders and the manager or depositary, or
 - (ii) unit holders intended and not intended to benefit from the arrangement; and
- (b) where, in accordance with any statement required by these Regulations to be contained in the prospectus of an authorised scheme, action is required by the unit holders to obtain the benefit of any guarantee, the manager shall provide reasonable notice in writing to unit holders before such action is required.

Matters with respect to units and classes of units that may be provided for in Codes of Practice.

59.(1) Codes of Practice may, with respect to units and classes of units, provide for—

- (a) the requirements applicable to currency class units within the meaning of sub-regulation (2);
- (b) larger and smaller denomination shares in an open-ended investment company; and
- (c) the sub-division and consolidation of units.

(2) For the purposes of sub-regulation (1)(a), a currency class unit is a unit—

- (a) the price of which is calculated initially in a base currency; and
- (b) which is quoted in the currency of the designation of the class.

Division 2 – Prospectus

Publication and filing of prospectus.

60.(1) The manager of an authorised scheme must draw up and publish a prospectus complying with these Regulations.

- (2) The manager shall ensure that—
- (a) where the authorised scheme is an open-ended investment company, the prospectus has been approved by the directors of the company prior to its publication;
 - (b) the prospectus does not contain any provision which is unfairly prejudicial to the interests of unit holders generally or to the unit holders of any class of units;
 - (c) the prospectus does not contain any provision that conflicts with these Regulations or the Codes of Practice; and
 - (d) the prospectus is kept up to date and that revisions are made to it whenever appropriate.

(3) The manager of an authorised unit trust or, in the case of an open-ended investment company, the company itself, shall file a copy of the scheme's original prospectus, together with all revisions to the prospectus, with the Authority.

Application of regulation 60 to UCITS.

61. Regulation 60 only applies in relation to authorised schemes which are not constituted as a UCITS.

Availability of prospectus and supplementary information.

62.(1) The manager of an authorised unit trust or, in the case of an open-ended investment company, the company itself, shall supply a copy of the scheme's most recent prospectus free of charge to any person on request.

(2) The manager of an authorised UCITS scheme shall, on the request of a unitholder, provide to the unitholder information supplementary to the prospectus relating to—

- (a) the quantitative limits applying to the risk management of the scheme and the methods used in relation to those quantitative limits; and
- (b) any recent development of the risk and yields of the main categories of investment.

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(3) This regulation only applies in relation to authorised schemes which are not constituted as a UCITS.

False or misleading prospectus.

63.(1) The manager of an authorised scheme shall ensure that the prospectus of the authorised scheme does not contain any untrue or misleading statement or omit any matter required by the Act, these Regulations or the Codes of Practice to be included in it.

(2) The manager of an authorised scheme does not contravene sub-regulation (1) if—

- (a) at the time when the prospectus was first made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that—
 - (i) it continued to take such reasonable care until the time of the relevant acquisition of units in the scheme;
 - (ii) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers;
 - (iii) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
 - (iv) the person who acquired the units was not materially influenced or affected by that statement or omission in making the decision to invest.
- (b) before the acquisition a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the units in question or it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the units were acquired.

(3) For the purposes of this regulation—

- (a) a revised prospectus is treated as a different prospectus from the original prospectus; and

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- (b) a reference to the acquisition of units includes a reference to contracting to acquire units.

Projections.

64.(1) The Codes of Practices shall provide for—

- (a) the circumstances in which projections must be contained in a prospectus;
- (b) the methods by which projections must be calculated and set out, whether included in a prospectus pursuant to an obligation under paragraph (a) or otherwise.

(2) Sub-regulation (1) only applies in relation to authorised schemes which are not constituted as a UCITS.

Division 3 - Investment and Borrowing Powers

Scope of this Division.

65.(1) Except as otherwise provided, this Division applies to the manager and depositary of an authorised scheme.

(2) Except as otherwise provided, the Codes of Practice may modify the provisions in this Division with respect to authorised non-UCITS retail schemes or with respect to specified categories of authorised non-UCITS retail schemes.

(3) This regulation only applies in relation to authorised schemes which are not constituted as a UCITS.

Manager to ensure prudent spread of risk.

66.(1) The manager of an authorised scheme must ensure that, taking into account the investment objectives and policy of the scheme as stated in the most recently published prospectus, the scheme property of the scheme aims to provide a prudent spread of risk.

(2) The regulations in this Division relating to spread of investments do not apply in respect of an authorised scheme until the expiry of a period of six months after the date with effect from which the scheme is authorised or on which the initial offer commenced, if later, provided that sub-regulation (1) is complied with during that period.

(3) The Codes of Practice may not modify this regulation.

(3) This regulation only applies in relation to authorised schemes which are not constituted as a UCITS.

Investment powers.

67.(1) The scheme property of an authorised scheme must be invested only in accordance with the provisions of this Division that are applicable to that scheme, and up to any maximum limit specified, but the constituting instrument of the scheme may further restrict–

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

(2) Sub-regulation (1) only applies in relation to authorised schemes which are not constituted as a UCITS.

Valuation.

68.(1) In this Division, the value of the scheme property of an authorised scheme means the net value determined in accordance with the Codes of Practice, after deducting any outstanding borrowings, whether or not immediately repayable.

(2) When valuing the scheme property of an authorised scheme for the purposes of this Division–

- (a) the time as at which the valuation is being carried out (“the relevant time”) is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of the Codes of Practice;
- (b) initial outlay is to be regarded as remaining part of the scheme property; and
- (c) if the manager, having taken reasonable care, determines that the scheme will become entitled to any unrealised profit which

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has been made on account of a transaction in derivatives, that prospective entitlement is to be regarded as part of the scheme property.

(3) The provisions of this regulations apply only to collective investment schemes not constituted as a UCITS.

Eligible markets.

69.(1) For the purposes of these Regulations, a market is an eligible market if it is—

- (a) a regulated market;
- (b) a market in an EEA State which is regulated, operates regularly and is open to the public; or
- (c) a market falling within sub-regulation (2).

(2) A market not falling within sub-regulation (1)(a) or (b) is an eligible market if—

- (a) the manager of the authorised scheme, after consultation with and notification to the depositary and, in the case of an open-ended investment company, any other directors, decides that market is appropriate for the investment of, or dealing in, the scheme property;
- (b) the market is included in a list in the prospectus; and
- (c) the depositary has taken reasonable care to determine that—
 - (i) adequate custody arrangements can be provided for the investment dealt in on that market; and
 - (ii) all reasonable steps have been taken by the manager in deciding whether that market is eligible.

(3) A market must not be considered appropriate for the purposes of sub-regulation (2)(a), unless it—

- (a) is regulated;
- (b) operates regularly;

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- (c) is recognised as a market or exchange or as a self-regulating organisation by an overseas regulator;
- (d) is open to the public;
- (e) is adequately liquid; and
- (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

(2) This regulation only applies in relation to authorised schemes which are not constituted as a UCITS.

Risk management, derivatives.

70.(1) The manager of an authorised scheme must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of the scheme's derivatives and forwards positions and their contribution to the overall risk profile of the scheme.

(2) The following details of the risk management process must be notified by the manager to the Authority in advance of the use of the process as required by sub-regulation (1)–

- (a) the methods for estimating risks in derivative and forward transactions; and
- (b) the types of derivatives and forwards to be used within the scheme together with their underlying risks and any relevant quantitative limits.

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

(2) This regulation only applies in relation to authorised schemes which are not constituted as a UCITS.

Division 4 - Miscellaneous**Cancellation rights.**

71. The Codes of Practice shall specify–

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- (a) the circumstances in which certain specified persons or classes or descriptions of persons have a right to cancel a contract to become a participant in an authorised scheme;
- (b) the period within which a cancellation right may be exercised;
- (c) the method by which the cancellation right is to be exercised;
- (d) the provision of notice to a person of his rights, or potential rights, to cancel a contract under this regulation; and
- (e) the effect of the cancellation of a contract under this regulation and the obligations of the parties with respect to the exercise of such right.

Applications in respect of authorised schemes.

72. An application to the Authority for the authorisation of a collective investment scheme and any application permitted or required to be made by the Act or by these Regulations shall be in the approved form.

PART VIII

MASTER-FEEDER STRUCTURES

CHAPTER 1

SCOPE AND APPROVAL

Feeder UCITS.

73.(1) A feeder UCITS is a UCITS, or an investment compartment of a UCITS, which has been approved to invest, by way of derogation from section 3(2)(a) of the Act, regulations 47, 49, 52 and 53(3)(c), at least 85% of its assets in units of another UCITS or investment compartment thereof (the master UCITS).

(2) A feeder UCITS may hold up to 15 % of its assets in one or more of the following—

- (a) ancillary liquid assets in accordance with regulation 47(2);
- (b) financial derivative instruments, which may be used only for hedging purposes, in accordance with regulation 47(1)(g) and regulation 48(2) and (3);

- (c) movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an open-ended investment company.

(3) For the purposes of compliance with regulation 48(3), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under sub-regulation (2)(b) with either—

- (a) the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS; or
- (b) the master UCITS' potential maximum global exposure to financial derivative instruments provided for in the master UCITS' fund's rules or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

(4) A master UCITS is a UCITS, or an investment compartment thereof, which—

- (a) has, among its unit-holders, at least one feeder UCITS;
- (b) is not itself a feeder UCITS; and
- (c) does not hold units of a feeder UCITS.

(5) The following derogations for a master UCITS shall apply—

- (a) where a master UCITS has at least two feeder UCITS as unit-holders, section 3A(1)(a) and paragraph 15 of Schedule 2 shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
- (b) where a master UCITS does not raise capital from the public in an EEA State, other than Gibraltar, but only has one or more feeder UCITS in Gibraltar, Part XI and regulation 123(2)(b) shall not apply.

Feeder investment limits.

74.(1) Where Gibraltar is the home State of a feeder UCITS, the investment of a feeder UCITS into a given master UCITS which exceeds the limit

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applicable under regulation 52(1) for investments into other UCITS shall be subject to prior approval by the Authority.

(2) The feeder UCITS shall be informed within 15 working days following the submission of a complete file, whether or not the Authority has approved the feeder UCITS' investment into the master UCITS.

(3) The Authority shall grant approval if the feeder UCITS, its depositary and its auditor, as well as the master UCITS, comply with all the requirements set out in this Part, and for such purposes, the feeder UCITS shall provide to the Authority the following documents—

- (a) the fund rules or instruments of incorporation of the feeder UCITS and the master UCITS;
- (b) the prospectus and the key investor information referred to in regulation 93 of the feeder and the master UCITS;
- (c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in regulation 75(1);
- (d) where applicable, the information to be provided to unit-holders referred to in regulation 79(1);
- (e) where the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in regulation 76(1) between their respective depositaries; and
- (f) where the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in regulation 77(1) between their respective auditors; and
- (g) where the feeder UCITS is authorised in an EEA State other than Gibraltar, the feeder UCITS shall also provide a certificate in English by the Authority to the effect that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58(3)(b) and (c) of the Directive.

CHAPTER 2

COMMON PROVISIONS FOR FEEDER AND MASTER UCITS

General matters.

75.(1) A master UCITS shall provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in these Regulations and the feeder UCITS shall enter into an agreement with the master UCITS to achieve this purpose.

(2) A feeder UCITS shall not invest in excess of the limit applicable under regulation 52(1) in units of a master UCITS until the agreement referred to in sub-regulation (1) is effective, and that agreement shall be made available on request and free of charge, to all unit-holders.

(3) Where both the master and feeder UCITS are managed by the same management company, the agreement referred to in sub-regulation (1) may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this regulation.

(4) The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

(5) Without prejudice to regulation 99, where a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of the Authority, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units notwithstanding the conditions laid down in regulation 99(2) within the same period of time as the master UCITS.

(6) Where Gibraltar is the home State of the feeder UCITS, the feeder UCITS shall be liquidated whenever the master UCITS is liquidated, unless the Authority approves—

- (a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or
- (b) the amendment of its fund rules or instruments of incorporation in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS,

and without prejudice to the provisions of the Companies Act, the liquidation of a master UCITS shall take place no sooner than three months after the master UCITS has informed all of its unit-holders and the Authority of the binding decision to liquidate.

(7) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the EEA Authority of the feeder UCITS home State grants approval to the feeder UCITS to—

- (a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;
- (b) invest at least 85 % of its assets in units of another master UCITS not resulting from the merger or the division; or
- (c) amend its fund's rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

(8) No merger or division of a master UCITS is effective, unless the master UCITS has provided all of its unit-holders and the EEA Authority of its feeder UCITS home State with the information referred to, or comparable with that referred to, in regulation 40 by 60 days before the proposed effective date.

(9) Unless the EEA Authority of the feeder UCITS home State has granted approval pursuant to sub-regulation (7)(a), the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

CHAPTER 3

DEPOSITARIES AND AUDITORS

Master-feeder structures: depositaries.

76.(1) Where the master and the feeder UCITS have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

(2) The feeder UCITS shall not invest in units of the master UCITS until an agreement under sub-regulation (1) is effective.

(3) Where the requirements laid down in this Part are complied with, neither the depositary of the master UCITS nor that of the feeder UCITS are in breach of any statutory provision or rules of law restricting the disclosure of information or that relate to data protection and such compliance shall not

give rise to any liability on the part of such depositary or any person acting on its behalf.

(4) Feeder UCITS or, where applicable, the management company of a feeder UCITS, shall be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

(5) The depositary of the master UCITS shall immediately inform the Authority, the feeder UCITS or, where applicable, the management company, and the depositary of the feeder UCITS about any irregularities it detects with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

Master-feeder structures: auditors.

77.(1) Where the master and the feeder UCITS have different auditors, those auditors shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirements of sub-regulation (2). A feeder UCITS shall not invest in units of the master UCITS until such agreement is effective.

(2) In its audit report—

(a) the auditor of the feeder UCITS shall take into account the audit report of the master UCITS and, where the feeder and the master UCITS have different accounting years, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS;

(b) the auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

(3) Where the requirements laid down in this Part are complied with, neither the auditor of the master UCITS nor that of the feeder UCITS shall be in breach of any statutory provision or rule of law restricting the disclosure of information or that relate to data protection and such compliance shall not give rise to any liability on the part of an auditor or any person acting on its behalf.

CHAPTER 4

**COMPULSORY INFORMATION AND MARKETING
COMMUNICATIONS BY THE FEEDER UCITS**

Feeder UCITS: prospectuses.

78.(1) In addition to the information provided for in Part A of Schedule 1, the prospectus of the feeder UCITS shall contain the following information—

- (a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;
- (b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with regulation 73 (2);
- (c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;
- (d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to regulation 75(1);
- (e) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to regulation 75(1);
- (f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and
- (g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

(2) In addition to the information provided for in Part B of Schedule 1—

- (a) the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS; and

- (b) the annual and half-yearly reports of the feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.

(3) In addition to the requirements laid down in regulations 89 and 97, the feeder UCITS shall, where Gibraltar is its home State, send to the Authority the prospectus, the key investor information referred to in regulation 93 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS.

(4) A feeder UCITS shall disclose in any relevant marketing communications that it permanently invests 85% or more of its assets in units of such master UCITS.

(5) A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

CHAPTER 5

CONVERSION OF EXISTING UCITS INTO FEEDER UCITS AND CHANGE OF MASTER UCITS

Feeder UCITS: supplementary provision of information

79.(1) A feeder UCITS already pursuing activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide the following information to its unit-holders at least 30 days before the date referred to in paragraph (c)–

- (a) a statement that the Authority approved the investment of the feeder UCITS in units of such master UCITS;
- (b) the key investor information referred to in regulation 93 concerning the feeder and the master UCITS;
- (c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under regulation 52(1); and
- (d) a statement that the unit-holders have the right to request within 30 days the repurchase or redemption of their units

without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this sub-regulation.

(2) Where a feeder UCITS has been notified in accordance with regulation 108, the information referred to in sub-regulation (1) shall be provided in English.

(3) A feeder UCITS shall not invest in the units of the given master UCITS in excess of the limit applicable under regulation 52(1) before the period of 30 days referred to in sub-regulation (1) has elapsed.

CHAPTER 6

OBLIGATIONS AND ENFORCEMENT AUTHORITIES

Monitoring by feeder UCITS.

80.(1) A feeder UCITS shall monitor effectively the activity of the master UCITS and, in performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and auditor, unless there is reason to doubt their accuracy.

(2) Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit shall be paid into the assets of the feeder UCITS.

Master UCITS: supplementary regulatory requirements.

81.(1) Where Gibraltar is the home State of the master UCITS, the master UCITS shall immediately inform the Authority of the identity of each feeder UCITS which invests in its units, and where the master and feeder UCITS are established in different EEA States, the Authority shall immediately inform the EEA Authority of the feeder UCITS home State of such investment.

(2) The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

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(3) The master UCITS shall ensure the timely availability of all information that is required in accordance with these Regulations or other statutory provision or rule of law, the fund rules or the statutes of the company to the feeder UCITS or, where applicable, its management company, and to the EEA Authority, the depositary and the auditor of the feeder UCITS.

Master-Feeder structures: communication of decisions.

82.(1) Where a master UCITS and the feeder UCITS are established in Gibraltar, the Authority shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Part or of any information reported pursuant to regulation 121(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

(2) Where the master UCITS is established in Gibraltar and the feeder UCITS is established in a different EEA State, the Authority shall immediately communicate to the EEA Authority of the feeder UCITS home State any decision, measure, observation of non-compliance with the conditions of this Part or information reported pursuant to regulation 121(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

(3) Where the feeder UCITS is established in Gibraltar and the master UCITS is established in a different EEA State, the Authority shall, upon receipt of the information referred to in sub-regulation (2) from the EEA Authority of the master UCITS home State, immediately inform the feeder UCITS of the same.

PART IX**OBLIGATIONS CONCERNING INFORMATION TO BE
PROVIDED TO INVESTORS****CHAPTER 1****PUBLICATION OF A PROSPECTUS AND PERIODICAL REPORTS****Publications by management companies.**

83.(1) An open-ended investment company and, for each of the common funds it manages, a management company, shall publish the following—

- (a) a prospectus;

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

(2) The annual and half-yearly reports shall be published within the following time limits, with effect from the end of the period to which they relate—

- (a) four months in the case of the annual report; or
- (b) two months in the case of the half-yearly report.

Prospectuses.

84.(1) A prospectus shall include—

- (a) information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto;
- (b) a clear and easily understandable explanation of the fund's risk profile, independent of the instruments invested in; and
- (c) either—
 - (i) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or
 - (ii) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

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(2) A prospectus shall contain at least the information provided for in Part A of Schedule 1, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the prospectus in accordance with regulation 86(1).

(3) The annual report shall include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Part B of Schedule 1 as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

(3A) The annual report shall also include—

- (a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the open-ended investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;
- (b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in regulation 11A(3);
- (c) a description of how the remuneration and the benefits have been calculated;
- (d) the outcome of the reviews referred to in regulations 11B(1)(c) and (d) including any irregularities that have occurred;
- (e) material changes to the adopted remuneration policy.

(4) The half-yearly report shall include at least the information provided for in Chapters I to IV of Part B of Schedule 1, and where a UCITS has paid or proposes to pay an interim dividend, the figures shall indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

Prospectuses: supplementary provisions

85.(1) A prospectus shall indicate—

- (a) the categories of assets in which a UCITS is authorised to invest;

- (b) whether transactions in financial derivative instruments are authorised; and
- (c) where paragraph (b) applies, whether those operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile and such information shall be displayed in a prominent statement.

(2) Where a UCITS invests principally in any category of assets defined in regulation 47 other than transferable securities or money market instruments, or where a UCITS replicates a stock or debt securities index in accordance with regulation 50 its prospectus and, where necessary, its marketing communications shall include a prominent statement drawing attention to the investment policy.

(3) Where the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to that characteristic.

(4) Upon request by an investor, the management company shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the instrument categories.

Prospectuses: fund rules.

86.(1) Fund rules or the statutes of an open-ended investment company form an integral part of the prospectus and shall be annexed thereto.

(2) The documents referred to in sub-regulation (1) are not, however, required to be annexed to the prospectus where the investor is informed that, on request, he or she will be sent those documents or be apprised of the place where, in each EEA State in which the units are marketed, he or she may consult them.

Prospectus: updating of information.

87. The essential elements of the prospectus shall be kept up to date.

Auditing of annual report.

88. The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts, and the auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Prospectuses: Authority.

89. Where Gibraltar is the UCITS home State, UCITS shall send their prospectus and any amendments thereto, as well as their annual and half-yearly reports, to the Authority and, on request, to the EEA Authority of the management company's home State.

Prospectus: publication.

90.(1) A prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

(2) The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to the investors on request and free of charge.

(3) The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information referred to in regulation 93. A paper copy of the annual and half-yearly reports shall be delivered to the investors on request and free of charge.

CHAPTER 2

PUBLICATION OF OTHER INFORMATION

Changes in ownership of units.

91.(1) A UCITS shall make public, in an appropriate manner and at least twice a month, the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them.

(2) The Authority may, however, permit a UCITS to reduce the frequency to once a month on condition that such derogation does not prejudice the interests of the unit-holders.

Marketing.

92.(1) All marketing communications to investors shall be clearly identifiable as such.

(2) Marketing information shall be fair, clear and shall not be misleading.

(3) Any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information referred to in regulation 93.

(4) Marketing information shall—

- (a) indicate that a prospectus exists and that the key investor information referred to in regulation 93 is available ; and
- (b) specify where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

CHAPTER 3

KEY INVESTOR INFORMATION

Key investor information document.

93.(1) An open-ended investment company and, for each of the common funds it manages, a management company, shall draw up a short document containing key information for investors, and referred to in these Regulations as "key investor information". The words "key investor information" shall be clearly stated in that document, in one of the languages referred to in regulation 109(1)(b).

(2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

(3) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned in a manner comprehensible to the investor without any reference to other documents, that is to say—

- (a) identification of the UCITS and of the EEA Authority of the UCITS;

- (b) a short description of its investment objectives and investment policy;
- (c) past-performance presentation or, where relevant, performance scenarios;
- (d) costs and associated charges; and
- (e) a risk and reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

(4) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.

(4A) Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(5) Key investor information shall be written in a concise manner and in non-technical language. It is to be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

(6) Key investor information shall be used without alterations or supplements, except translation, in all EEA States where the UCITS is notified to market its units in accordance with regulation 108.

Status of key investor information.

94.(1) Key investor information shall–

- (a) constitute pre-contractual information;
- (b) be fair, clear and shall not be misleading; and

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(c) be consistent with the relevant parts of the prospectus.

(2) A person does not incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus, and key investor information shall contain a clear warning in this respect.

Provision of key investor information.

95.(1) An open-ended investment company and, for each of the common funds it manages, a management company selling UCITS directly or through another person acting on its behalf and under its full and unconditional responsibility, shall provide investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.

(2) An open-ended investment company and, for each of the common funds it manages, a management company not selling UCITS directly or through another natural or legal person acting on its behalf and under its full and unconditional responsibility to investors, shall provide key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request.

(3) Intermediaries selling or advising investors on potential investments in UCITS shall provide key investor information to their clients or potential clients.

(4) Key investor information shall be provided to investors free of charge.

Key investor information: medium of supply.

96.(1) Open-ended investment companies and, for each of the common funds they manage, management companies, may provide key investor information either in a durable medium or by means of a website. A paper copy shall be delivered to the investor on request and free of charge.

(2) Up-to-date versions of the key investor information shall be made available on the website of the open-ended investment company or management company.

Key investor information: supply to Authority.

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97.(1) Every UCITS that has Gibraltar as its home State shall send their key investor information, and any amendments thereto, to the Authority.

(2) The essential elements of key investor information shall be kept up to date by the UCITS.

PART X**GENERAL OBLIGATIONS OF UCITS****Borrowing powers.**

98.(1) The following shall not borrow—

- (a) an open-ended investment company;
- (b) a management company or depositary acting on behalf of a common fund.

(2) A UCITS may, however, acquire foreign currency by means of a “back-to-back” loan.

(3) By way of derogation from sub-regulation (1), the Authority may authorise a UCITS to borrow provided that such borrowing is—

- (a) on a temporary basis and represents—
 - (i) in the case of an open-ended investment company, no more than 10% of its assets; or
 - (ii) in the case of a common fund, no more than 10% of the value of the fund; or
- (b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an open-ended investment company, no more than 10 % of its assets.

(4) Where a UCITS borrows pursuant to sub-regulation (3) such borrowing shall not exceed 15 % of its assets in total.

Redemptions on request.

99.(1) A UCITS shall repurchase or redeem its units at the request of a unit-holder.

- (2) By way of derogation from sub-regulation (1)–
- (a) a UCITS may, in accordance with the Companies Act, the fund rules or the statutes of the open-ended investment company, temporarily suspend the repurchase or redemption of its units;
 - (b) the Authority may, where Gibraltar is the UCITS home State, order the suspension of the repurchase or redemption of units in the interest of the unit-holders or of the public.

(3) The temporary suspension referred to in sub-regulation (2)(a) shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.

(4) In the event of a temporary suspension under sub-regulation (2)(a), a UCITS shall, without delay, communicate its decision to the Authority and to the EEA Authorities of all EEA States in which it markets its units.

Asset valuation.

100. The rules for the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS shall be laid down in the fund rules or statutes of the open-ended investment company.

Distribution and reinvestment.

101. The distribution or reinvestment of the income of a UCITS shall be carried out in accordance with the law and with the fund rules or the statutes of incorporation of the open-ended investment company.

Issue of units.

102.(1) A UCITS' unit shall not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits.

(2) The payment referred to in sub-regulation (1) shall not preclude the distribution of bonus units.

Granting of loans.

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103.(1) Without prejudice to the application of regulations 47 and 48, the following shall not grant loans or act as a guarantor on behalf of third parties–

- (a) an open-ended investment company; or
- (b) a management company or depositary acting on behalf of a common fund.

(2) Sub-regulation (1) shall not prevent the undertakings referred to therein from acquiring transferable securities, money market instruments or other financial instruments referred to in regulation 47(1) (e), (g) and (h) which are not fully paid.

Uncovered sales.

104. The following shall not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in regulation 47(1) (e), (g) and (h)–

- (a) an open-ended investment company; and
- (b) a management company or depositary acting on behalf of a common fund.

Expenditure and remuneration.

105.(1) Fund rules shall set out the remuneration and the expenses a management company is empowered to charge a common fund and the method of calculation of such remuneration.

(2) The statutes of incorporation of an open-ended investment company shall prescribe the nature of the costs to be borne by the company.

PART XI**SPECIAL PROVISIONS APPLICABLE TO UCITS WHICH
MARKET THEIR UNITS IN GIBRALTAR****Cross-border marketing of units.**

106.(1) Where Gibraltar is a UCITS' host State, the UCITS may market its units in Gibraltar on notification to the Authority in accordance with regulation 108 and no additional requirements or administrative procedures shall be imposed on the UCITS concerned.

(2) The Authority shall publish electronically and keep up to date in a clear and unambiguous manner and in English full information on the statutory and regulatory provisions relevant to the marketing of units of UCITS established in another EEA State within Gibraltar and not falling within the ambit of the Directive.

(3) For the purposes of this Part, a UCITS includes investment compartments thereof.

Payments to unit holders.

107. A UCITS shall take the measures necessary to ensure that facilities are available for making payments to unit-holders repurchasing or redeeming units and making available the information UCITS are required to provide.

Cross border notifications.

108.(1) Where Gibraltar is the UCITS' home State, and such a UCITS proposes to market its units in another EEA State, it shall first submit a notification letter to the Authority which shall include—

- (a) information on arrangements made for marketing units of the UCITS in the host State, including, where relevant, in respect of share classes; and
- (b) in the context of regulation 13(1), an indication that the UCITS is marketed by the management company that manages the UCITS.

(2) A UCITS shall enclose with the notification letter referred to in sub-regulation (1) the latest version of the following—

- (a) its fund rules or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of regulation 109(1)(c) and (d); and
- (b) its key investor information referred to in regulation 93 translated in accordance with regulation 109(1)(b) and (d).

(3) The Authority shall—

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- (a) verify whether the documentation submitted by the UCITS in accordance with sub-regulations (1) and (2) is complete;
- (b) transmit the complete documentation referred to in sub-regulations (1) and (2) to the Authority of the EEA State in which the UCITS proposes to market its units, no later than 10 working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in sub-regulation (2);
- (c) enclose with the said documentation a certificate that the UCITS fulfils the conditions imposed by these Regulations;
- (d) immediately notify the UCITS of the transmission,

whereupon the UCITS may access the market of the UCITS host State as from the date of that notification.

(4) The notification letter referred to in sub-regulation (1) and the certificate referred to in sub-regulation (3) shall be provided in English, unless the UCITS home and host States agree to that notification letter and that certificate being provided in an official language of both States.

(5) The electronic transmission and filing of the documents referred to in sub-regulation (3) shall be accepted by the Authority.

(6) Where the Authority is notified that a UCITS proposes to market its units in Gibraltar pursuant to Article 93 of the Directive, it shall not request any additional documents, certificates or information other than those provided for in that article.

(7) The Authority shall ensure that—

- (a) the EEA Authority of the UCITS host State has access, by electronic means, to the documents referred to in sub-regulation (2) and, if applicable, to any translations thereof;
- (b) the UCITS keeps those documents and translations up to date,

and the UCITS shall notify any amendments to the documents referred to in sub-regulation (2) to the EEA Authority of the UCITS host State and shall indicate where those documents can be obtained electronically.

(8) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in

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accordance with sub-regulation (1) or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the EEA Authority of the host State before implementing the change.

Provision of information in host State.

109.(1) Where Gibraltar is the UCITS' home State, and that UCITS markets its units in a host State, it shall provide to investors within the territory of that State all information and documents it is required to provide to investors in Gibraltar pursuant to Part IX as follows—

- (a) without prejudice to the provisions of Part IX, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host State;
- (b) key investor information under regulation 93 shall be translated into the official language, or one of the official languages, of the UCITS host State or into a language approved by the EEA Authority of that State;
- (c) information or documents, other than key investor information under regulation 93, shall be translated into the official language, or one of the official languages, of the UCITS host State, into a language approved by the EEA Authority of that State or into a language customary in the sphere of international finance at the choice of the UCITS; and
- (d) translations of information or documents under paragraphs (b) and (c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) Where Gibraltar is the UCITS' host State, and that UCITS markets its units in Gibraltar, it shall provide to investors in Gibraltar all information and documents it is required to provide to investors in its home State pursuant to Chapter IX of the Directive.

Regulation 109: supplementary provisions.

110. Where regulation 109 applies—

- (a) the requirements of regulation 109 shall be applicable to any changes to the information and documents referred therein; and

- (b) the frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS under regulation 91 shall be subject to the provisions of the UCITS' home State.

Use of legal forms.

111. A UCITS may use the same reference to its legal form, whether open-ended investment company, common fund or unit trust, in its designation in a UCITS host State as it uses in its home State for the purpose of pursuing its activities.

**PART XIA
SMALL SCHEME MANAGERS****Scope of this Part.**

111A.(1) This Part provides for the authorisation and conduct of small scheme managers.

- (2) This Part does not apply to management companies.

Interpretation.

111B. In this Part—

“AIFM Regulations” means the Financial Services (Alternative Investment Fund Managers) Regulations 2013;

“managed scheme” means a collective investment scheme managed by a small scheme manager;

“small scheme manager” means a legal person which is—

- (a) a small AIFM and an external AIFM, both within the meaning of the AIFM Regulations; and
- (b) authorised as a small scheme manager in accordance with regulation 111D.

*Authorisation***Applications for authorisation.**

111C.(1) An application for authorisation as a small scheme manager shall—

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- (a) be made to the Authority in the form and manner that it may direct; and
- (b) contain or be supported by any information that the Authority may require for the purpose of determining the application.

(2) Without limiting sub-regulation (1)(b), the information to be provided under that sub-regulation by an applicant shall include the identity of any AIF (within the meaning of the AIFM Regulations) managed by the applicant and its investment strategy.

(3) While the Authority's decision in respect of an application is pending, the applicant shall give prompt written notice to the Authority of—

- (a) any alteration proposed by the applicant to the information it supplied to the Authority in relation to the application; or
- (b) the occurrence of any event which the applicant knows affects or may affect that information in any material respect.

Grant of authorisation.

111D.(1) The Authority may grant an authorisation under section 27 of the Act to a small scheme manager if the Authority is satisfied that the following conditions are met—

- (a) the small scheme manager is a legal person, the head office and registered office of which are in Gibraltar;
- (b) the small scheme manager will at all times—
 - (i) have the necessary resources and procedures for the proper performance of its business activities;
 - (ii) be able to meet its liabilities as they fall due and will maintain sufficient financial resources to ensure that its business can be wound down in an orderly manner;
- (c) at least two of the individuals who will conduct the business of the small scheme manager are ordinarily resident in Gibraltar;
- (d) the individuals who will conduct the business of the small scheme manager are—
 - (i) fit and proper persons with respect to the activity of managing collective investment schemes; and

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- (ii) sufficiently experienced in relation to schemes of the type which the small scheme manager manages or proposes to manage and the assets in which those schemes are or will be invested; and
- (e) the identity of any shareholders or members that have qualifying holdings in the small scheme manager, whether direct or indirect, have been disclosed to the Authority and it is satisfied that those shareholders or members are suitable, having regard to the need to ensure the sound and prudent management of the small scheme manager.

(2) The minimum level of the financial resources required under sub-regulation (1)(b)(ii) is £15,000.

(3) In applying for authorisation, an applicant shall make an assessment of what its financial resources should be in order to satisfy the requirement in sub-regulation (1)(b)(ii) (subject to the minimum £15,000 requirement) and propose this amount to the Authority during the application process.

(4) In granting an authorisation the Authority may require a small scheme manager to maintain financial resources at a level which is higher than—

- (a) the minimum amount specified in sub-regulation (2); or
- (b) the amount derived from the small scheme manager's assessment under sub-regulation (3).

(5) For the purposes of sub-regulation (1) “qualifying holding” has the meaning given in regulation 2(1), but as if the references in that regulation to “management company” were references to “small scheme manager”.

*Operating conditions***Ongoing authorisation conditions.**

111E.(1) A small scheme manager shall at all times comply with this regulation, regulations 111F to 111K and the authorisation conditions in regulation 111D.

(2) Without limiting section 30 of the Act, in granting an authorisation in accordance with this Part, the Authority may impose any conditions which it thinks appropriate to ensure that a small scheme manager complies with its obligations under sub-regulation (1) and may, at any time, vary or revoke any condition so imposed.

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(3) A small scheme manager shall from time to time, provide the Authority with information on—

- (a) the main instruments in which each of its managed schemes are trading;
- (b) the principal exposures and most important concentrations of the schemes that it manages.

(4) Any information provided under sub-regulation (3) must be sufficient to enable the Authority to monitor systemic risk effectively and, in providing that information, a small scheme manager must comply with the requirements of Commission Delegated Regulation (EU) No 231/2013 and have regard to any relevant guidance issued by the Authority.

(5) If there is a material change to any information provided in accordance with sub-regulation (3), the small scheme manager shall notify the Authority in writing of that change—

- (a) in the case of a change planned by the small scheme manager, at least one month before it is implemented; and
- (b) in any other case, immediately after the change occurs.

(6) A small scheme manager must assess regularly (and at least every six months) whether it has the financial resources necessary to comply with regulation 111D(1)(b)(ii) or (4) and, if at any time those resources fall below the level required, the small scheme manager shall—

- (a) notify the Authority of that fact as soon as reasonably practicable; and
- (b) before the end of the period of one month from the date on which the licensee first becomes aware of that fact, submit a realistic recovery plan for the Authority's approval.

(7) If a small scheme manager no longer falls within the definition of a small AIFM under the AIFM Regulations, it shall—

- (a) promptly notify the Authority in writing; and
- (b) within 30 days of ceasing to fall within that definition, apply for authorisation under the Financial Services (Alternative Investment Fund Managers) Regulations 2013.

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(8) A person who complies with sub-regulation (7) may continue to act as a small scheme manager until any application made in accordance with sub-regulation (7)(b) has been determined.

Notifications.

111F.(1) A small scheme manager shall give written notice to the Authority of—

- (a) any material changes to the conditions for initial authorisation (including, in particular, material changes to the information it was required to supply to the Authority); or
- (b) any event which it knows or suspects may affect such a matter to a material degree.

(2) Without limiting sub-regulation (1), the matters referred to in that sub-regulation include, in particular, any proposal by a small scheme manager to delegate to a third party any function which by virtue of these Regulations is to be undertaken by the small scheme manager.

(3) A small scheme manager shall obtain the consent of the Authority before—

- (a) implementing any alteration of the kind referred to in sub-regulation (1)(a) or (2); or
- (b) taking any action arising from an event of the kind referred to in sub-regulation (1)(b).

(4) If the Authority decides to reject or impose restrictions on a proposed alteration, it shall inform the small scheme manager within one month of receiving the proposal and, subject to sub-regulation (5), an alteration may be implemented if the Authority does not oppose it within that period.

(5) The Authority, by notice to the small scheme manager, may extend the period specified in sub-regulation (4) by up to one month where it considers that doing so is necessary because of the specific circumstances of the case.

(6) The Authority may only authorise a small scheme manager to delegate functions to a third party where the Authority is satisfied that—

- (a) doing so will not—
 - (i) hinder the effective supervision of the small scheme manager; or

- (ii) prevent the small scheme manager from acting, or its scheme from being managed, in the best interests of investors;
- (b) having regard to the nature of the functions to be delegated, the delegate—
 - (i) is qualified and capable of undertaking the functions in question;
 - (ii) if relevant, is subject to appropriate authorisation and regulation; and
 - (iii) does not have interests which may conflict with those of the small scheme manager or investors; and
- (c) the small scheme manager will at any time be able to—
 - (i) monitor effectively the activity of the delegate; and
 - (ii) withdraw the delegation with immediate effect when doing so is in the interest of investors.

(7) The liability of a small scheme manager under these Regulations is not affected by the delegation of any functions to third parties.

General principles.

111G. A small scheme manager must at all times—

- (a) act honestly and fairly, and conduct its business activities with due skill, care and diligence;
- (b) act in the best interests of its managed schemes, investors in those schemes and the integrity of the market;
- (c) have the resources and procedures necessary for the proper performance of its business activities and use them effectively;
- (d) ensure that relevant individuals are aware of the procedures to be followed for the proper discharge of their functions and responsibilities;
- (e) have clear and documented decision-making procedures and an organisational structure which—

- (i) allocate functions and responsibilities; and
- (ii) specify reporting lines;
- (f) have adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the small scheme manager; and
- (g) have effective arrangements for–
 - (i) internal reporting of information at all levels of the small scheme manager; and
 - (ii) providing information to relevant third parties.

Record Keeping.

111H.(1) A small scheme manager must at all times maintain records of–

- (a) its business and internal organisation (including, where relevant, any records provided by a scheme's administrator or any provider of safe-keeping functions) including–
 - (i) the main instruments in which its managed schemes are trading, including a breakdown of financial instruments and other assets, the schemes' investment strategies and their geographical and sectoral investment focus;
 - (ii) the markets of which each of its managed schemes is a member or where it actively trades;
 - (iii) the diversification of the portfolios of each of its managed schemes, including their principal exposures and most important concentrations;
 - (iv) for each portfolio transaction relating to its managed schemes, a record of information which is sufficient to reconstruct the details of the transaction;
- (b) subscriptions and, where relevant, redemptions of its managed schemes, including information on–
 - (i) the relevant scheme (if there is more than one);

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- (ii) the person giving or transmitting the subscription or redemption;
- (iii) the person receiving the subscription or redemption;
- (iv) the type of subscription or redemption;
- (v) the date and time of the subscription or redemption;
- (vi) the terms and means of payment;
- (vii) the date of execution of the subscription or redemption;
- (viii) the number of units, shares or equivalent amounts subscribed or redeemed;
- (ix) the subscription or redemption price for each unit, share or, where relevant, the amount of capital committed and paid;
- (x) the total subscription or redemption value of the units or shares;
- (xi) the gross value of the subscription or redemption including the charges for subscription or the net amount after charges for redemption.

(2) The records to be maintained under sub-regulation (1)(a)(iv) for each portfolio transaction on an execution venue shall include—

- (a) the name or other designation of the scheme and of the person acting for the account of the scheme;
- (b) the asset and, where relevant, the quantity;
- (c) the type of portfolio transaction;
- (d) the price;
- (e) the date and time of—
 - (i) any transaction and the name or other designation of the person to whom the transaction was transmitted;

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(ii) any decision to deal and of the execution of any transaction and the name of the person transmitting or executing the order;

(f) for executed transactions, the counterparty and execution venue identification; and

(g) for the revoked orders, the reasons for the revocation.

(3) The records to be maintained under sub-regulation (1)(a)(iv) for each portfolio transaction outside of an execution venue shall include—

(a) the name or other designation of the scheme;

(b) the legal and other documents that form the basis of the portfolio transaction including, in particular, the agreement as executed; and

(c) the price.

(4) The records to be maintained under sub-regulation (1)(b) shall be retained for a minimum of five years from the relevant subscription or redemption or for any longer period that the Authority may require.

Systems and controls.

111I. A small scheme manager must at all times—

(a) have systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking account of the nature of the information in question;

(b) have an adequate business continuity policy aimed at ensuring, in the event of an interruption to its systems and procedures, that—

(i) essential data and functions are preserved;

(ii) services and activities are maintained; and

(iii) where (i) or (ii) is not possible, data and functions are recovered, and services and activities are resumed, in a timely manner;

(c) have accounting policies and procedures which—

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- (i) comply with all applicable accounting standards and rules; and
- (ii) enable it to deliver audited financial reports which reflect a true and fair value of its financial position in a timely manner to the Authority, at the request of the Authority;
- (d) comply with all regulatory requirements applicable to the conduct of its business activities, so as to promote the best interests of its managed schemes, the investors in those schemes and the integrity of the market;
- (e) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage, monitor and (where applicable) disclose them; in order to prevent them from adversely affecting the interests of managed schemes and their investors and to ensure that its managed schemes are treated fairly;
- (f) treat investors fairly and, in particular, ensure that no investor in a scheme may obtain preferential treatment unless that preferential treatment is disclosed in the scheme's rules, offer document or instruments of incorporation;
- (g) be ultimately responsible for the proper valuation of a managed scheme's assets, and the calculation and publication of their net asset value; and
- (h) monitor and evaluate regularly the adequacy and effectiveness of its systems, internal control mechanisms and arrangements, and take appropriate measures to address any deficiencies.

Management, valuations and accounts.

111J.(1). A small scheme manager must at all times ensure that, for each managed scheme—

- (a) the investment strategy, liquidity profile and redemption policy are consistent;
- (b) appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the scheme can be performed in accordance with any relevant law or the scheme's rules, offer document or instruments of incorporation;

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- (c) the net asset value per unit or share of the scheme is calculated and disclosed to investors in accordance with any relevant law and the scheme's rules, offer document or instruments of incorporation;
- (d) the valuation procedures used provide—
 - (i) for assets to be valued and the net asset value per unit or share to be calculated at least once a year;
 - (ii) in the case of an open-ended scheme, for additional valuations and calculations to be carried out at a frequency which is appropriate to the assets held by the scheme and its issuance and redemption frequency; and
 - (iii) in the case of a closed-ended scheme, for the carrying out of additional valuations and calculations to be considered when the scheme's capital increases or decreases and, if not carried out, for the small scheme manager to record the reasons for not having done so;
- (e) the investors are informed of any valuations and calculations, as provided for in the scheme's rules, offer document or instruments of incorporation;
- (f) appropriate due diligence is undertaken in the selection and appointment of counterparties and service providers, taking account of the full range and quality of their services, by—
 - (i) exercising due skill, care and diligence before entering into any agreement; and
 - (ii) by continuing to do so on an ongoing basis after entering into any agreement; and
- (g) an audited annual report for each financial year is made available to the Authority, and provided to investors on request, no later than six months after the end of each financial year.

(2) Sub-regulation (1)(g) does not apply to a managed scheme which by law is exempt from the requirement to prepare audited accounts.

(3) Where a managed scheme is required to make public an annual financial report in accordance with Directive 2004/109/EC only the following additional information needs to be provided to investors on request—

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- (a) a balance sheet or statement of assets and liabilities;
 - (b) an income and expenditure account for the financial year;
 - (c) a report on the activities of the financial year; and
 - (d) any material changes in the information listed in regulation 111K(3) during the financial year covered by the report.
- (4) The information provided in a report under sub-regulation (1)(g) or (3) shall be—
- (a) prepared in accordance with the accounting standards of the jurisdiction in which the managed scheme is established; and
 - (b) audited by one or more persons who are authorised under the law of that jurisdiction to audit accounts in that jurisdiction.

Information for potential investors

Information to potential investors.

111K.(1) A small scheme manager shall, for any scheme it manages or markets, ensure that a potential investor is provided with the information in sub-regulation (3) in respect of the scheme (and is informed of any material changes to that information) before the potential investor invests in the scheme.

(2) Information provided under sub-regulation (1) must be provided in accordance with the rules, offer document or instruments of incorporation of the relevant managed scheme.

(3) The information that shall be provided to a potential investor in accordance with sub-regulation (1) is—

- (a) a description of the investment strategy and objective of the scheme;
- (b) if applicable, information on where—
 - (i) any master collective investment scheme is established; and
 - (ii) the underlying collective investment schemes are established;

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- (c) a description of the types of assets in which the scheme may invest;
- (d) the techniques it may employ and all associated risks;
- (e) any applicable investment restrictions;
- (f) the circumstances in which the scheme may use leverage, including—
 - (i) the types and sources of leverage permitted and the associated risks;
 - (ii) any restrictions on the use of leverage and any collateral and asset re-use arrangements; and
 - (iii) the maximum level of leverage which the small scheme manager is entitled to employ on behalf of the scheme;
- (g) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, the applicable law and the existence or otherwise of any legal instruments providing for the recognition and enforcement of judgements in Gibraltar or the territory where the scheme is established;
- (h) the identity of the small scheme manager, auditor and any other service provider and a description of—
 - (i) their respective duties and the investor's rights under the scheme's rules, offer document or instruments of incorporation; and
 - (ii) how the safeguarding of assets and monies is managed;
- (i) a description of any delegated management function and of any safe-keeping function, the identity of the delegate and any conflicts of interest that may arise from such delegation;
- (j) a description of the scheme's valuation procedure and, where relevant, the pricing methodology for valuing assets including the methods used in valuing hard-to-value assets;
- (k) a description of the scheme's liquidity risk management, including the redemption rights both in normal and in

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exceptional circumstances, and the existing redemption arrangements with investors;

- (l) a description of all fees, charges and expenses which are directly or indirectly borne by investors;
- (m) a description of how the small scheme manager ensures a fair treatment of investors and where a preferential right may be granted, fair disclosure of the nature of such rights and disclosure of any related potential conflicts of interest;
- (n) a description of how the small scheme manager ensures the safe-keeping of the assets of its managed schemes and the identity of any entity providing safe-keeping functions;
- (o) the latest audited annual report referred to in regulation 111J(1)(g);
- (p) the procedures and conditions for the issue and sale of units or shares;
- (q) the latest net asset value of the scheme or the latest market price of the unit or share of the scheme or, if it is an initial offer, the initial offer price;
- (r) the latest audited accounts of the scheme, where available; and
- (s) details of how changes can be made to the matters in—
 - (i) paragraph (a);
 - (ii) paragraphs (c) to (f); and
 - (iii) paragraphs (k) and (l).

Enforcement

Application of Part VI of the Act.

111L.(1) For the purpose of enforcing this Part, the Authority may act in accordance with the provisions of Part VI of the Act, which are to apply with any necessary modifications.

(2) Regulations 111M to 111P apply without limiting this regulation.

Suspension or revocation of authorisation.

111M.(1) The Authority may suspend or revoke an authorisation issued to a small scheme manager where—

- (a) the small scheme manager does not make use of the authorisation for 12 consecutive months;
- (b) the small scheme manager requests that the authorisation is revoked;
- (c) the small scheme manager no longer fulfils the conditions under which authorisation was granted;
- (d) the small scheme manager—
 - (i) obtained the authorisation by making false statements or by any other irregular means; or
 - (ii) has provided false, inaccurate or misleading information to the Authority since the authorisation was granted;
- (e) the small scheme manager has failed to comply with—
 - (i) a condition imposed upon it by the Authority; or
 - (ii) the notification requirements under regulation 111F;
- (f) the individuals who conduct the business of the small scheme manager have ceased to be fit and proper persons to do so;
- (g) the small scheme manager has infringed or is infringing—
 - (i) these Regulations or the Act; or
 - (ii) an enactment which seeks to prevent money laundering or the financing of terrorism;
- (h) the small scheme manager is operating in a manner which, in the opinion of the Authority, is detrimental to the interests of—
 - (i) one or more of its managed schemes;
 - (ii) participants in any of those schemes; or
 - (iii) the public interest; or

- (i) the small scheme manager falls within any case where any other law provides for suspension or revocation of an authorisation granted in accordance with this Part.

(2) A suspension under sub-regulation (1) may be—

- (a) for a specified period;
- (b) until the occurrence of a specified event; or
- (c) until specified conditions are complied with.

(3) In sub-regulation (2) “specified” means specified by the Authority in a decision notice under regulation 111N.

111N.(1) Before taking action under regulation 111M, the Authority must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Sub-regulation (1) does not apply if the Authority is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice must—

- (a) give the recipient not less than 14 days to make representations; and
- (b) specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the Authority.

(5) Sub-regulations (6) and (7) apply where the Authority has—

- (a) issued a warning notice; or

(b) dispensed with the requirement to give a warning notice in accordance with sub-regulation (2).

(6) After considering any representations made in accordance with sub-regulation (3), the Authority must issue—

(a) a decision notice stating that the Authority will take the action specified in the warning notice; or

(b) a discontinuance notice stating that the Authority does not propose to take that action.

(7) Subject to sub-regulation (8), a decision notice takes effect, and the specified action may be taken—

(a) at the end of the period for bringing an appeal if no appeal is brought; or

(b) when any appeal is finally determined or withdrawn.

(8) The Authority may apply to the Supreme Court for permission to take action under regulation 111M where a decision notice has not yet taken effect (whether or not a warning notice has been given).

Publication of enforcement action.

111O.(1) This regulation applies where the Authority has taken action under this Part in respect of a small scheme manager.

(2) The Authority may publish on its website, and by any other means that it considers appropriate, any sanction that will be imposed upon a person under a decision notice, unless disclosure would—

(a) seriously jeopardise the financial markets; or

(b) cause disproportionate damage to the parties involved.

(3) Sub-regulation (2) does not apply while an appeal could be brought or is pending unless the Authority—

(a) applies to the Supreme Court for permission to publish the decision notice pending an appeal or the outcome of an appeal; and

(b) is granted that permission by the Supreme Court.

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Appeals.

111P.(1) A person who is the subject of a decision notice under this Part may appeal against that decision to the Supreme Court.

(2) An appeal under this regulation shall be made within 28 days beginning with the date on which the decision notice is served.

Transitional arrangements.

111Q.(1) This regulation applies to a person who—

- (a) is registered under regulation 11 of the AIFM Regulations and was so registered immediately before the day on which this Part comes into operation; and
- (b) is not authorised as a small scheme manager in accordance with this Part.

(2) A person to whom sub-regulation (1) applies may act as a small scheme manager without being authorised in accordance with this Part—

- (a) for six months from the day on which this Part comes into operation; or
- (b) where within three months from that day the person applies for authorisation in accordance with this Part, until the application has been determined.

PART XII

**PROVISIONS CONCERNING THE AUTHORITIES RESPONSIBLE
FOR AUTHORISATION AND SUPERVISION**

Authority.

112.(1) The Financial Services Commission is the Authority for the purposes of these Regulations.

(2) The Authority—

- (a) is competent to supervise UCITS where Gibraltar is the home State including, where relevant, pursuant to regulation 16;

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- (b) is competent to supervise compliance with statutory provisions falling outside the scope of these Regulations and the requirements of regulations 107 and 109 where Gibraltar is the host State of a UCITS.

Powers of Authority.

113.(1) Part V of the Financial Services (Investment and Fiduciary Services) Act applies to these Regulations as it applies to that Act, and the powers therein contained shall be exercised—

- (a) directly;
- (b) in collaboration with other EEA Authorities;
- (c) under the responsibility of the Authority, by delegation to entities to which tasks have been delegated; or
- (d) by application to the competent judicial authorities.

(2) The provisions of sub-regulation (1) are to operate in relation to these Regulations so as confer on the Authority power to—

- (a) access any document in any form and receive a copy thereof;
- (b) require any person to provide information and, if necessary, to summon and question a person with a view to obtaining information;
- (c) carry out on-site inspections;
- (d) require—
 - (i) in so far as permitted by the laws of Gibraltar, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of a contravention and where such records may be relevant to an investigation into contraventions of these Regulations;
 - (ii) existing recordings of telephone conversations or electronic communications or other data traffic records held by UCITS, management companies, open-ended investment companies, depositaries or any other entities regulated under these Regulations;

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- (e) require the cessation of any practice that is contrary to the provisions of these Regulations;
- (f) request the freezing or the sequestration of assets;
- (g) request the temporary prohibition of professional activity;
- (h) require authorised open-ended investment companies, management companies or depositaries to provide information;
- (i) adopt any type of measure to ensure that open-ended investment companies, management companies or depositaries continue to comply with the requirements of these Regulations;
- (j) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public;
- (k) withdraw the authorisation granted to a UCITS, a management company or a depositary;
- (l) refer matters for criminal prosecution; and
- (m) allow auditors or experts to carry out verifications or investigations.

Offences.

114.(1) It is an offence for any person to be responsible for any act or omission contrary to the provisions of these Regulations or required to be done by the Authority pursuant to the provisions of these Regulations.

(2) Any person found guilty of an offence contrary to sub-regulation (1) is punishable on summary conviction to a fine not exceeding twice level 5 on the standard scale.

(3) The Authority may take into account an offence committed contrary to this regulation when deciding whether to grant, renew, revoke or suspend any authorisation under these Regulations.

(4) In this regulation, “person” does not include the Authority.

Complaints.

115.(1) The Arbitration Act applies for the settlement of disputes arising under these Regulations.

(2) The Authority shall facilitate the application of the Arbitration Act in the context of cross-border disputes.

Cooperation.

116.(1) The Authority shall cooperate with the EEA Authorities of other EEA States when necessary—

- (a) to carry out its duties under these Regulations; or
- (b) to assist the EEA Authorities of other EEA States in the exercise of their duties pursuant to the Directive.

(2) The Authority—

- (a) shall cooperate with ESMA for the purposes of the Directive, in accordance with Regulation (EU) No 1095/2010;
- (b) shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

(3) The Minister shall take the necessary measures to facilitate such cooperation.

(4) The Authority shall assist the EEA Authorities of other EEA States and, for the purpose, shall—

- (a) use its powers under these Regulations, including where the conduct under investigation does not constitute an infringement of any statutory provision or rule of law in Gibraltar;
- (b) immediately provide such information to the EEA Authorities of other EEA States on request as they may require to carry out their duties under the Directive.

(5) Where the Authority—

- (a) has grounds to believe that an act or omission contrary to the provisions of the Directive is being or has been carried out by an entity not subject to its supervision on the territory of another EEA State, it shall notify the EEA Authority of that EEA State in as specific a manner as possible;

- (b) has been notified by the EEA Authority of an EEA State of an act or omission by an entity contrary to the provisions of the Directive it shall take appropriate action and inform the notifying EEA Authority of the outcome of that action and of significant interim developments.

(6) The Authority may request the assistance of an EEA Authority—

- (a) in a supervisory activity;
- (b) for an on-the-spot verification; or
- (c) in an investigation,

on the territory of the latter within the framework of their powers under the Directive.

(7) Where the Authority receives a request with respect to an on-the-spot verification or investigation in Gibraltar, it shall forthwith communicate that request to the Minister who shall instruct the Authority to either—

- (a) carry out the verification or investigation itself;
- (b) allow the requesting EEA Authority to carry out the verification or investigation; or
- (c) allow auditors or experts to carry out the verification or investigation.

(8) Where sub-regulation (6) applies and the requested EEA Authority—

- (a) carries out the verification or investigation itself, the Authority may request that its officials accompany the officials carrying out the verification or investigation, but subject to the control of the requested EEA Authority;
- (b) allows the Authority to carry out the verification or investigation, the requested EEA Authority may for its part request that its own officials accompany the officials carrying out the verification or investigation.

(9) Where sub-regulation (7)(a) applies the requesting EEA Authority may request that its officials accompany the Authority when it is carrying

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out the verification or investigation, but subject to the control of the Authority appointed under these Regulations.

(10) Where sub-regulation (7)(b) applies, officials of the Authority shall accompany the officials of the requesting EEA Authority carrying out the verification or investigation.

(11) The Authority may refuse to exchange information or to act on a request for cooperation in carrying out an investigation or on-the-spot verification under this regulation only where—

- (a) such an investigation, on-the-spot verification or exchange of information might, in the Minister's view, adversely affect the sovereignty, security or public policy of Gibraltar;
- (b) judicial proceedings have already been initiated in respect of the same persons and the same actions in Gibraltar;
- (c) final judgment in respect of the same persons and the same actions has already been delivered in Gibraltar.

(12) The Authority shall notify the requesting EEA Authority of any decision taken under sub-regulation (11), with information about the motives for the decision.

(13) The Authority may bring to the attention of ESMA, situations where a request—

- (a) to exchange information as provided for in regulation 124 has been rejected or has not been acted upon within a reasonable time;
- (b) to carry out an investigation or on-the-spot verification as provided for in regulation 125 has been rejected or has not been acted upon within a reasonable time; or
- (c) for authorisation for its officials to accompany those of the Authority of the other EEA State has been rejected or has not been acted upon within a reasonable time.

Professional secrecy.

117.(1) Persons who work or who have worked for the Authority, including auditors and experts instructed by the Authority, are bound by the obligation of professional secrecy, and no confidential information received in the

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course of their duties may be divulged save in summary or aggregate form such that UCITS, management companies and depositaries (undertakings contributing towards UCITS' business activity) cannot be individually identified. The foregoing has no effect on the operation of criminal law.

(2) When a UCITS or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in the course of civil or commercial proceedings.

(3) Sub-regulation (1) does not prevent the Authority from exchanging information in accordance with these Regulations or other law applicable to UCITS or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy laid down in sub-regulation (1).

(4) The Authority may exchange information with the EEA Authority of another EEA State only where the EEA Authority of that EEA State has indicated that the information supplied will be used only for the purposes for which the Authority gives its consent.

(5) The Government may conclude cooperation agreements providing for exchange of information with non EEA countries as determined in this regulation and regulation 118(1) but only where the information disclosed is, in such non EEA countries—

- (a) subject to guarantees of professional secrecy at least equivalent to those set out in these Regulations ; and
- (b) intended for the performance of the supervisory task of the competent authorities or bodies in such non EEA countries.

(6) Where the information originates in another EEA State, it shall not be disclosed by the Authority without the express consent of the EEA Authority and in the EEA State which has supplied it and, where appropriate, solely for the purposes for which that EEA Authority gave its consent.

(7) When the Authority receives confidential information under this regulation, it may use the information only in the course of its duties for the purposes of—

- (a) checking that the conditions governing the taking-up of business of UCITS or of undertakings contributing towards

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their business activity are met and facilitating the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;

- (b) imposing penalties;
- (c) conducting administrative appeals against decisions by the Authority; and
- (d) pursuing court proceedings initiated under regulation 122(2).

(8) This regulation shall not prevent the Authority from exchanging information with the EEA Authorities of other EEA States in accordance with the Directive or other European Union legislation applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to ESMA in accordance with Regulation (EU) No 1095/2010 or the ESRB, provided that information shall be subject to the conditions of professional secrecy laid down in sub-regulation (1).

(9) Nothing in this regulation affects the performance by the Authority of its supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions.

(10) Information exchanged pursuant to this regulation shall be subject to the conditions of professional secrecy imposed in sub-regulation (1).

Exchange of information: special provisions.

118.(1) The Authority may exchange of information with—

- (a) authorities responsible for overseeing bodies involved in the liquidation and bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures;
- (b) authorities responsible for overseeing persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms or other financial institutions.

(2) Sub-regulation (1) applies subject to the following conditions being met—

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- (a) the information is used for the purpose of performing the task of overseeing referred to in sub-regulation (1);
- (b) the information received is subject to the conditions of professional secrecy imposed in regulation 117(1); and
- (c) where the information originates in another EEA State, it is not disclosed without the express consent of the EEA Authority that has disclosed it and, where appropriate, solely for the purposes for which that EEA Authority gave its consent.

(3) The Minister shall ensure there is communicated to ESMA, to the Commission and to the other EEA States the names of the authorities which may receive information pursuant to sub-regulation (1).

(4) The Minister may, with the aim of strengthening the stability and integrity of the financial system, authorise the exchange of information between the Authority and authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

(5) The Minister may exercise his discretion under sub-regulation (4) subject to the following conditions being met—

- (a) the information is used for the purpose of performing the task referred to in sub-regulation (4);
- (b) the information received is subject to the conditions of professional secrecy provided for in regulation 117(1); and
- (c) where the information originates in another EEA State, it is not disclosed without the express consent of the EEA Authority that has disclosed it and, where appropriate, solely for the purposes for which that EEA Authority gave its consent,

and for the purposes of paragraph (c), the authorities or bodies referred to in sub-regulation (4) shall communicate to the Authority the names and precise responsibilities of the persons to whom it is to be sent.

(6) Where the authorities or bodies referred to in sub-regulation (4) perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in that sub-regulation may be extended to such persons under the conditions stipulated in sub-regulation (5).

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(7) The Minister shall ensure there is communicated to ESMA, to the Commission and to other EEA States the names of the authorities or bodies which may receive information pursuant to sub-regulation (4).

Communications with central banks and clearing houses.

119.(1) The Authority may transmit to central banks and other bodies with a similar function in their capacity as monetary authorities, information intended for the performance of their tasks and information received in this context shall be subject to the conditions of professional secrecy imposed in regulation 117(1).

(2) The bodies referred to in sub-regulation (1) may communicate to the Authority such information as the Authority may need for the purposes of regulation 117(4) and information received in this context shall be subject to the conditions of professional secrecy imposed in regulation 117(1).

(3) Nothing in regulations 117 and 118 prevents the Authority from communicating the information referred to in regulation 117(1) to (4) to a clearing house providing clearing or settlement services for a market in Gibraltar provided that—

- (a) the Authority considers it necessary to communicate such information in order to ensure the proper functioning of such bodies in relation to defaults or potential defaults by market participants;
- (b) the information received in this context is subject to the condition of professional secrecy imposed under regulation 117(1); and
- (c) the information received under regulation 117(2) is not disclosed in the circumstances referred to in paragraph (a) save with the express consent of the Authority which supplied it.

(4) The Minister may authorise the disclosure of certain information to other Government departments responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments provided—

- (a) it is necessary for reasons of prudential control; and

- (b) that information received under regulation 117(2) and (5) is never disclosed in the circumstances referred to in this sub-regulation except with the express consent of the EEA Authority that disclosed the information.

Auditors' duty of disclosure.

120.(1) An auditor auditing or offering any other professional service to a UCITS or to an undertaking contributing towards the business activity of a UCITS, has a duty to report promptly to the Authority any facts or decisions of which he has become aware and liable to bring about any of the following—

- (a) a material breach of these Regulations or any statutory provision governing the activities of UCITS or any undertakings contributing towards the business activity of the UCITS;
- (b) the impairment of the continuous functioning of the UCITS or an undertaking contributing towards its business activity; or
- (c) a refusal to certify the accounts or the expression of reservations.

(2) An auditor has a duty to report any facts or decisions of which he becomes aware in the course of carrying out a task in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards its business activity within which he is carrying out that task.

Liability of auditor for disclosure.

121. The disclosure in good faith to the Authority, by an auditor of any fact or decision referred to in regulation 120(1) is not a breach of any restriction on disclosure of information imposed by contract or any statutory provision or rule of law and does not subject such persons to liability of any kind.

Submission of written reasons and right of appeal.

122.(1) The Authority shall give written reasons for any negative decision taken pursuant to these Regulations, including one to refuse an authorisation, and communicate them to applicants.

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(2) Any decision taken by the Authority pursuant to these Regulations or the Directive shall be properly reasoned and subject to a right of appeal in the Supreme Court, including where no decision is taken within six months of submission of an application for authorisation which provides all the information required.

Enforcement action against UCITS.

123.(1) The Minister may designate one or more of the following bodies who may take action before the Supreme Court in the interests of consumers to ensure that the provisions of these Regulations are executed, that is to say—

- (a) public bodies or their representatives;
- (b) consumer organisations having a legitimate interest in protecting consumers; or
- (c) professional organisations having a legitimate interest in protecting their members.

(2) The Authority—

- (a) shall take enforcement action (as defined in regulation 2) against a UCITS whose EEA home State is Gibraltar where it infringes these Regulations, the fund rules or any provision of its statutes;
- (b) shall take enforcement action (as defined in regulation 2) against a UCITS whose EEA host State is Gibraltar where it infringes any statutory provision or rule of law falling outside the scope of the Directive or the requirements set out in regulations 107 and 109.

(3) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the Authority to the EEA Authority of the UCITS host State and, if the management company of a UCITS is established in another EEA State, to the EEA Authority of the management company's home State.

(4) Where Gibraltar is the home State of a management company or a UCITS managed by such company, the Authority may take action against the management company if it infringes any provisions of these Regulations.

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(5) Where Gibraltar is a UCITS' host State, and the Authority has clear and demonstrable grounds for believing that the UCITS, the units of which are marketed within Gibraltar, is in breach of provisions of these Regulations which do not however confer powers on the competent authority of the host State, the Authority shall refer those findings to the EEA Authority of the UCITS home State.

(6) Where, despite measures taken by the EEA Authority in the UCITS home State or where such measures prove to be inadequate or the EEA Authority of the UCITS home State fails to act within a reasonable timeframe after a referral under sub-regulation (5), the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in that UCITS in Gibraltar, the Authority may, as a consequence—

- (a) after informing the EEA Authority of the UCITS home State, take all the appropriate measures needed in order to protect investors, including the imposition of fines recoverable as a civil debt and the possibility of preventing the UCITS concerned from carrying out any further marketing of its units within Gibraltar; or
- (b) if necessary, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010; and
- (c) ensure that the Commission and ESMA are informed without delay of any measure taken pursuant to paragraph (a).

(7) Where Gibraltar is the UCITS home State, the EEA Authority of the UCITS host State may serve upon the UCITS in Gibraltar the legal documents necessary for any measures which may be taken by that EEA Authority in regard to the UCITS pursuant to Article 108 of the Directive.

Management companies: cooperation by the Authority.

124.(1) Where, through the provision of services or by the establishment of branches, a management company operates in a number of host States, including Gibraltar, the Authority shall collaborate closely with the EEA Authorities of all the EEA States concerned as follows—

- (a) the Authority shall supply the EEA Authorities of all the EEA States concerned on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their

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supervision and all information likely to facilitate the monitoring of such companies;

- (b) where the Authority authorises the management company under these Regulations, it shall cooperate to ensure that the EEA Authority of the management company's host States collect the particulars referred to in regulation 18(2).

(2) The Authority shall inform the EEA Authority of a management company's home State of any measures taken by the Authority pursuant to regulation 18(6) involving measures or penalties imposed on a management company or restrictions on a management company's activities, where it is necessary for the purpose of the home state exercising powers of supervision conferred by the Directive.

(3) Where Gibraltar is the management company's home State, the Authority shall, without delay, notify the EEA Authority of the home State of the UCITS managed by that company of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Part II.

(4) Where Gibraltar is the UCITS' home State, the Authority shall, without delay, notify the EEA Authority of the home state of that UCITS' management company of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements of these Regulations.

Spot verifications by home EEA Authority.

125. Where a management company authorised in another EEA State pursues business in Gibraltar through a branch, the EEA Authority of the management company's home State may, after informing the Authority, themselves or through the intermediary they instruct for the purpose, carry out on-the-spot verification of the information referred to in regulation 124.

Spot verifications by Authority.

126. Regulation 125 shall not affect the right of the Authority, in discharging its responsibilities under these Regulations, to carry out on-the-spot verifications of branches established in Gibraltar.

Contraventions.

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126A.(1) The Authority may take any of the actions specified in regulations 126B to 126F if it is satisfied that a contravention has occurred.

(2) This regulation and regulations 126B to 126F apply without limiting—

- (a) section 33 of the Act or restricting the Authority to the enforcement action specified in that section;
- (b) any other regulatory or enforcement power conferred upon the Authority by or under the Act or these Regulations; or
- (c) the liability of any person for any offence under the Act or these Regulations, including any act or omission which constitutes an offence within the meaning of regulation 114(1) and also constitutes a contravention within the meaning of this regulation.

(3) For the purposes of these Regulations a “contravention” means a breach of an obligation under these Regulations “(other than one imposed by regulations 55 to 72 or Part XIA) by any person and, in the case of a UCITS, management company, open-ended investment company or depositary which is a legal person, includes any natural person who is a member of the management body of that legal person or otherwise responsible for the contravention.

(4) Without limiting sub-regulation (3), each of the following constitutes a contravention—

- (a) pursuing the activities of UCITS without obtaining authorisation, contrary to section 5(1) of the Act;
- (b) carrying on the business of a management company without obtaining prior authorisation, contrary to regulation 4(2);
- (c) carrying on the business of an open-ended investment company without obtaining prior authorisation, contrary to regulation 24;
- (d) failing to notify the Authority (or a relevant EEA Authority) in writing, contrary to regulation 8(1), when a qualifying holding in a management company is—
 - (i) acquired, directly or indirectly; or
 - (ii) increased so that—

- (aa) the proportion of the voting rights or capital held would reach or exceed 20%, 30% or 50%;
or
 - (bb) the management company would become the acquirer's subsidiary;
- (e) failing to notify the Authority (or a relevant EEA Authority) in writing, contrary to regulation 8(1), when a qualifying holding in a management company is—
 - (i) disposed of, directly or indirectly, or
 - (ii) reduced so that—
 - (aa) the proportion of the voting rights or capital held would fall below 20%, 30% or 50%; or
 - (bb) the management company would cease to be the disposer's subsidiary;
- (f) a management company obtaining authorisation through false statements or other irregular means, as provided for in regulation 5(5);
- (g) an open-ended investment company obtaining authorisation through false statements or other irregular means, as provided for in regulation 26(4)(b);
- (h) a management company, on becoming aware of an acquisition or disposal of holdings in its capital that causes holdings to exceed or fall below one of the thresholds in Article 11(1) of Directive 2014/65/EU, failing to inform the Authority (or a relevant EEA Authority) of that acquisition or disposal, contrary to regulation 8(1);
- (i) a management company failing to inform the Authority, at least once a year, of the names of shareholders and members possessing qualifying holdings and the size of each such holding, contrary to regulation 8(1);
- (j) a management company failing to comply with any rules or other requirements imposed upon it for the purpose of ensuring

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that it complies with the requirements of regulation 9(2)(a) or (b);

- (k) an open-ended investment company failing to comply with any procedures and arrangements imposed upon it in accordance with regulation 28;
- (l) a management company or open-ended investment company failing to comply with—
 - (i) requirements related to delegation of its functions to third parties imposed in accordance with regulations 10 and 27;
 - (ii) business conduct requirements imposed under the Act which give effect to the obligations in regulations 11 and 27;
- (m) a depositary failing to perform its tasks in accordance with regulations 19(3) to (10);
- (n) an open-ended investment company or, for each of the common funds that it manages, a management company, failing repeatedly to comply with obligations concerning—
 - (i) the investment policies of UCITS, as provided for in Part VI;
 - (ii) the information to be provided to investors, as provided for in Part IX;
- (o) a management company or open-ended investment company failing to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives, contrary to regulation 48(1);
- (p) a management company or open-ended investment company marketing units of UCITS that it manages in an EEA State other than Gibraltar failing to comply with the notification requirement in regulation 108(1).

Contraventions: public statement.

126B.(1) The Authority may publish a statement specifying—

- (a) the nature of any contravention, and
- (b) the identity of the person who has committed it.

(2) Publication under this regulation may take any form, or combination of forms, that the Authority thinks appropriate.

Contraventions: cease and desist order.

126C. The Authority may order a person—

- (a) to cease any conduct which constitutes a contravention, and
- (b) to desist from any repetition of that conduct.

Contraventions: prohibition order.

126D.(1) The Authority may by order (“a prohibition order”) prohibit a specified person from carrying out specified functions in relation to a management company or open-ended investment company.

(2) A prohibition order shall specify a period during which it has effect and an indefinite period may be specified in respect of repeated and serious contraventions.

Contraventions: regulatory action.

126E.(1) The Authority may by order suspend or revoke the authorisation of a UCITS or management company.

(2) A suspension under sub-regulation (1) shall specify a period during which it has effect.

Contraventions: civil penalties.

126F.(1) The Authority may by order impose a penalty for a contravention of an amount not exceeding whichever is the higher of the following—

- (a) where the amount of the benefit derived from the contravention can be determined, twice the amount of that benefit;
- (b) in the case of a legal person—
 - (i) EUR 5,000,000 (or the Sterling equivalent based upon the exchange rate as at 17 September 2014); or

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- (ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of a natural person, EUR 5,000,000 (or the Sterling equivalent based upon the exchange rate as at 17 September 2014).

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total turnover for the purpose of sub-regulation (1)(b)(ii) is the total annual turnover (or the corresponding type of income) according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(3) A penalty imposed under this regulation may be enforced in the same manner as if it were a debt owed to the Authority.

Contraventions: exercise of powers.

126G.(1) The Authority must ensure that the type and level of any penalty or sanction for a contravention is effective, proportionate and dissuasive, taking account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the contravention;
- (b) the degree of responsibility of the natural or legal person concerned;
- (c) the financial strength of the natural or legal person responsible, for example as indicated by the legal person's total turnover or the natural person's annual income;
- (d) in so far as they can be determined—
 - (i) the importance of the profits gained or losses avoided by the natural or legal person responsible;
 - (ii) the losses sustained by others as a result of the contravention; and
 - (iii) where applicable, the damage to the functioning of markets or the wider economy;

- (e) the level of cooperation with the Authority by the natural or legal person responsible;
- (f) previous contraventions by the natural or legal person;
- (g) measures taken after the contravention by the natural or legal person concerned to prevent its repetition.

Contraventions: warning notices.

126H.(1) Before taking action under these Regulations in respect of a contravention the Authority must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Sub-regulation (1) does not apply if the Authority is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice—

- (a) must give the recipient not less than 14 days to make representations; and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the Authority.

Contraventions: decision notices.

126I.(1) This regulation applies where the Authority has—

- (a) issued a warning notice, or

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- (b) dispensed with the requirement to give a warning notice in accordance with regulation 126H(2).

(2) After considering any representations made in accordance with regulation 126H the Authority must issue–

- (a) a decision notice stating that the Authority will take the action specified in the warning notice;
- (b) a discontinuance notice stating that the Authority does not propose to take that action; or
- (c) a combined notice consisting of a decision notice stating that the Authority will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(3) A decision notice takes effect, and the specified action may be taken–

- (a) at the end of the period for bringing an appeal if no appeal is brought, or
- (b) when any appeal is finally determined or withdrawn.

Contraventions: appeals.

126J.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within 28 days of the date of the decision notice.

Contraventions: interim orders.

126K. The Authority may apply to the Supreme Court for permission to take action under these Regulations where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Contraventions: publication of action.

126L.(1) Subject to sub-regulation (3), the Authority must publish on its website details of any decision taken under these Regulations in respect of a

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contravention, without undue delay after the person concerned is informed of the decision.

(2) The information published under sub-regulation (1) must include at least—

- (a) the type and nature of the contravention; and
- (b) the identity of the natural or legal person responsible for it.

(3) The Authority must take one of the steps in sub-regulation (4) where—

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (1)—
 - (i) the identity of the legal person involved; or
 - (ii) the personal data of the natural person involved; or
- (b) it considers that publication in accordance with that sub-regulation would jeopardise the stability of financial markets or an ongoing investigation.

(4) Those steps are—

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
- (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure—
 - (i) that the stability of the financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(5) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of

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time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(6) Sub-regulation (1) does not apply while an appeal could be brought or is pending.

(7) Despite sub-regulation (6), the Authority may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal and, if permission is granted, the Authority shall without undue delay—

- (a) publish the decision together with a statement which—
 - (i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; and
 - (ii) confirms whether it is the subject of an appeal;
- (b) amend the information published under paragraph (a)—
 - (i) if an appeal is submitted after its initial publication; or
 - (ii) to reflect the outcome of any appeal.

(8) Any decision published under this regulation shall remain on the Authority's website for at least five years but any personal data within a decision shall only remain on the website for so long as the Authority considers necessary, having regard to the Data Protection Act 2004.

(9) The Authority shall—

- (a) when it discloses any sanction or penalty to the public, at the same time report that sanction or penalty to ESMA;
- (b) inform ESMA of—
 - (i) any decision to impose a sanction or measure which, in accordance with sub-regulation (4)(c), has not been published (including any appeal in respect of such a sanction or measure and the outcome of that appeal); and
 - (ii) the final judgement in relation to any criminal sanction imposed for an offence which constitutes a contravention under these Regulations;

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- (c) provide ESMA annually with aggregated information regarding any sanctions or penalties imposed in respect of contraventions under these Regulations.

Cooperation in respect of contraventions.

126M.(1) In the exercise of its powers under regulations 126A to 126F, the Authority shall—

- (a) cooperate closely with other EEA Authorities, to ensure that its supervisory, investigative and enforcement powers are used effectively; and
- (b) coordinate its actions with those of other EEA Authorities, to avoid duplication and overlap when applying supervisory, investigative and enforcement powers in cross-border cases in accordance with regulation 116.

(2) The Authority may also cooperate with other EEA Authorities with respect to facilitating the recovery of pecuniary sanctions for infringements of these Regulations or the Directive.

(3) Without limiting regulation 116(11), the Authority may refuse to act on a request for information or cooperation where—

- (a) it has been informed that communication of relevant information might adversely affect the security of Gibraltar, particularly in respect of terrorism and other serious crimes;
- (b) compliance with the request is likely to affect adversely a criminal investigation or the Authority's investigation or enforcement activities;
- (c) judicial proceedings have already been initiated in Gibraltar in respect of the same actions and against the same persons; or
- (d) a final judgment has already been delivered in Gibraltar in relation to the same persons and for the same actions.

Reporting of contraventions.

126N.(1) Management companies, open-ended investment companies and depositaries shall establish appropriate procedures for their employees to report contraventions (including potential contraventions) internally through a specific, independent and autonomous channel.

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(2) The Authority must establish appropriate arrangements for the reporting of contraventions (including potential contraventions) by any person to the Authority.

(3) The arrangements established under sub-regulation (2) shall include—

- (a) secure communication channels for the reporting of contraventions;
- (b) specific procedures for the receipt and investigation of reported contraventions; and
- (c) arrangements for the protection of the personal data of the person who reports a contravention and any natural person who is allegedly responsible for a contravention which accord with the Data Protection Act 2004.

(4) The Authority shall treat information about the identity of a person who reports a contravention as confidential except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

(5) An employee of a management company, open-ended investment company or depositary who reports a contravention in accordance with sub-regulation (1) or arrangements established under sub-regulation (2)—

- (a) shall not be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting a contravention; and
- (b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported a contravention.

(6) An employee who has been subjected to a detriment contrary to sub-regulation (5)(b) may present a complaint to the Employment Tribunal as if the reporting of a contravention was a protected disclosure within the meaning of Part IVA of the Employment Act.

PART XIII

AUTHORISED PERSONS AND RESTRICTED ACTIVITIES

Activities deemed to constitute “restricted activities”.

127. The following activities are deemed to constitute restricted activities for the purposes of section 7(1)(b) of the Act—

- (a) acting as the depositary of a collective investment scheme that is not a common fund and that is not an open-ended investment company;
- (b) acting as the depositary of an experienced investor fund; and
- (c) acting as the depositary of a private scheme; and
- (d) acting as a depositary appointed for an Alternative Investment Fund in accordance with regulation 27(1) of the Financial Services (Alternative Investment Fund Managers) Regulations 2013, whether the depositary is—
 - (i) a credit institution of the kind specified in regulation 27(3)(a),
 - (ii) an investment firm of the kind specified in regulation 27(3)(b),
 - (iii) an institution of the kind specified in regulation 27(3)(c),
or
 - (iv) an institution of another kind which is permitted to act as a depositary in accordance with regulation 27(4) or (6),
- (e) acting as a small scheme manager under Part XIA.

Activities deemed not to constitute “restricted activity”.

128.(1) An activity is deemed not to constitute a restricted activity for the purposes of section 7(2) of the Act if the activity—

- (a) is specified by the Authority as an activity to which this regulation applies;
- (b) is carried on in a jurisdiction outside Gibraltar; and
- (c) in the opinion of the Authority, is regulated under and in accordance with a legislative and regulatory regime that

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provides at least equivalent protection to the legislative and regulatory regime in place in Gibraltar with respect to the activity.

(2) The following do not constitute the carrying on of the restricted activities in section 7(1)(a) of the Act—

- (a) acting as a manager of a non-UCITS collective investment scheme where—
 - (i) the scheme is a managed scheme within the meaning of Part XIA; and
 - (ii) the manager is authorised as a small scheme manager in accordance with that Part; or
- (b) acting as a manager of a non-UCITS collective investment scheme where the manager is authorised as an alternative investment fund manager in accordance with Part 4 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013.

PART XIV

PERMITTED EXCEPTIONS AND EXEMPTIONS

Arrangements deemed not to constitute a collective investment scheme.

129. For the purposes of section 3 of the Act (Meaning of collective investment scheme), an arrangement of the kind specified in Schedule 2 is deemed not to constitute a collective investment scheme.

Characteristics of private scheme.

130. A private scheme is a collective investment scheme—

- (a) that is not listed on a stock exchange; and
- (b) that is not authorised by its constituting instrument to have more than 50 participants.

Promotion of private schemes.

131.(1) Section 5(1) of the Act (Restrictions on promotion of a collective investment scheme) does not apply to the promotion of a private scheme

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where the scheme is promoted by way of an offer addressed exclusively to a restricted category of persons.

(2) For the purposes of sub-regulation (1), an offer is not addressed exclusively to a restricted category of persons unless–

- (a) the offer is addressed to an identifiable category of persons to whom it is directly communicated by the offeror or his appointed agent;
- (b) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer;
- (c) the number of persons, in Gibraltar or elsewhere, to whom the offer is communicated does not exceed 50; and
- (d) the offer is made in respect of units in a scheme that is, or on its establishment will be, a private scheme and that will remain as a private scheme for at least one year after the date that the offer is made.

Communications or advice not subject to restrictions on promotion.

132. Section 5(1) of the Act does not apply to communications or advice of such description or made or given in such circumstances as may be provided for in the Codes of Practice.

PART XV**RELATIONS WITH THIRD COUNTRIES****Application of the Financial Services (Markets in Financial Instruments) Act 2006.**

133.(1) The provisions of section 15 of the Financial Services (Markets in Financial Instruments) Act 2006 apply to relations between the Authority and non EEA States relating to matters falling within the scope of these Regulations and for these purposes–

- (a) the terms “investment firm” and “investment firms” referred to in section 15 of the Financial Services (Markets in Financial Instruments) Act 2006 shall be understood respectively as, “management company” and “management companies”; and

- (b) the term “providing investment services” referred to in section 15 of the Financial Services (Markets in Financial Instruments) Act 2006 shall be understood as “providing services”.

(2) The Minister shall ensure the Commission is informed of any general difficulties encountered by UCITS in marketing units in any non EEA State.

PART XVI

DEROGATIONS, TRANSITIONAL AND FINAL PROVISIONS

Application of regulations made under other Acts.

134. Regulations made under the Financial Services (Investment and Fiduciary Services) Act and the Financial Services (Markets in Financial Instruments) Act, 2006 apply to collective investment schemes and authorised persons unless disapplied, in whole or in part, or modified by the Minister.

Codes of Practice.

135. Codes of Practice issued by the Authority under section 55(1) of the Act may with the consent of the Minister provide for the following—

- (a) meetings of unit holders, including class meetings, and the serving of notices, including, but not limited to—
- (i) the convening and requisitioning of meetings of unit holders;
 - (ii) the giving and service of notices of meetings of unit holders;
 - (iii) proceedings at a meeting of unit holders, including the quorum, voting rights, the passing of resolutions, polls, proxies and adjournments;
 - (iv) the appointment of a chairman;
 - (v) minutes of meetings; and
 - (vi) the notice to be given of meetings;

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- (b) reports to be provided to unit holders;
- (c) the investment and borrowing powers of authorised funds;
- (d) the duties and responsibilities of the manager of an authorised scheme;
- (e) the duties and responsibilities of the depositary of an authorised scheme;
- (f) the issue, sale, redemption and cancellation of units;
- (g) the valuation of scheme property and the calculation of the price of units, including the treatment of dealing costs;
- (h) the records to be maintained with respect to an authorised scheme, including registers of unit holders;
- (i) the appointment and replacement of managers and depositaries;
- (j) the powers and duties of managers and depositaries;
- (k) payments out of scheme property;
- (l) accounting for, allocating and distributing the income of an authorised scheme;
- (m) independence of depositaries and managers;
- (n) restrictions on the names that may be utilised by collective investment schemes;
- (o) returns to be made, and information supplied, to the Authority.

Danish UCITS.

136. Pantebreve issued in Denmark in respect of Danish UCITS shall be treated as equivalent to the transferable securities referred to in regulation 47(1)(b).

Derogations: management companies.

137.(1) By way of derogation from regulations 19(1) and 29(1), the Authority may authorise those UCITS which, on 20 December 1985, lawfully had two or more depositaries to maintain that number of

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depositories where the Authority has guarantees that the functions to be performed under regulation 19(3) and regulation 29(3) will be performed in practice.

(2) By way of derogation from regulation 13, the Authority may authorise management companies to issue bearer certificates representing the registered securities of other companies.

Investment firms.

138.(1) Investment firms, as defined in section 2(1) of the Financial Services (Markets in Financial Instruments) Act 2006, authorised to carry out only the services provided for in Section A(4) and (5) of the Schedule to that Act, may obtain authorisation under these Regulations to manage UCITS as management companies, provided such investment firms first give up the authorisation obtained under the Financial Services (Markets in Financial Instruments) Act 2006.

(2) Management companies already authorised before 13 February 2004 under the provisions of the Financial Services (Collective Investment Schemes) Act 2005 to manage UCITS are deemed to be authorised for the purposes of this regulation provided they shall comply with regulations 5 and 6.

Repeal.

139.(1) The Financial Services (Collective Investment Schemes) Regulations 2005 are repealed.

(2) Nothing in this regulation affects the continued operation of the Financial Services (Experienced Investor Funds) Regulations 2005, or the Experienced Investor Funds (Fees) Regulations 2010.

Continuity of the law.

140. UCITS shall replace their simplified prospectus drawn up in accordance with the provisions of the Financial Services (Collective Investment Schemes) Act 2005 with key investor information drawn up in accordance with regulation 93 as soon as practicable and in any event no later than 1 July 2012, during which period, the simplified prospectus shall continue to have effect.

Schedules.

141. The Schedules have effect.

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SCHEDULE 1

Regulation 141

PART A

1.Information concerning the common fund	1.Information concerning the management company including an indication whether the management company is established in a EEA State other than the UCITS home state	1.Information concerning the open-ended investment company
1.1.Name	1.1.Name or style, form in law, registered office and head office if different from the registered office.	1.1.Name or style, form in law, registered office and head office if different from the registered office.
1.2.Date of establishment of the common fund. Indication of duration, if limited.	1.2.Date of incorporation of the company. Indication of duration, if limited.	1.2.Date of incorporation of the company. Indication of duration, if limited.
	1.3.If the company manages other common funds, indication of those other funds.	1.3.In the case of open-ended investment companies having different investment compartments, the indication of the compartments.
1.4.Statement of the place where the fund rules, if they are not annexed, and periodic reports may be		1.4.Statement of the place where the instruments of incorporation, if they are not annexed, and

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obtained.		periodical reports may be obtained.
1.5.Brief indications relevant to unit-holders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unit-holders.		1.5.Brief indications relevant to unit-holders 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 unit-holders.
1.6.Accounting and distribution dates		1.6.Accounting and distribution dates.
1.7.Names of the persons responsible for auditing the accounting information referred to in regulation 88.		1.7.Names of the persons responsible for auditing the accounting information referred to in regulation 88.
	1.8.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.	1.8.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.
	1.9.Amount of the subscribed capital with an indication of the capital paid-up	1.9.Capital

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<p>1.10.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,</p> <ul style="list-style-type: none"> • Characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, • original securities or certificates providing evidence of title; entry in a register or in an account, • indication of unit-holders' voting rights if these exist, <p>• circumstances</p>		<p>1.10.Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> • 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, <p>• circumstances in which winding-up of the open-ended investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders. </p>
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in which winding-up of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.		
1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.		1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.
1.12. Procedures and conditions of issue and sale of units.		1.12. Procedures and conditions of issue and sale of units.
1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended.		1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of open-ended investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.
1.14. Description of rules for determining and applying income.		1.14. Description of rules for determining and applying income.
1.15. Description of the common fund's investment objectives, including its financial		1.15. Description of the company's investment objectives, including its financial objectives

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<p>objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.</p>		<p>(e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.</p>
<p>1.16.Rules for the valuation of assets.</p>		<p>1.16.Rules for the valuation of assets.</p>
<p>1.17.Determination of the sale or issue price and the repurchase or redemption price of units, in particular:</p> <ul style="list-style-type: none"> • the method and frequency of the calculation of those prices, • information concerning the charges relating to the sale or issue and the repurchase or redemption of units, • the means, places and frequency of the publication of those prices. 		<p>1.17.Determination of the sale or issue price and the repurchase or redemption price of units, in particular:</p> <ul style="list-style-type: none"> • the method and frequency of the calculation of those prices, • information concerning the charges relating to the sale or issue and the repurchase or redemption of units, • the means, places and frequency of the publication of those prices [1].
<p>1.18.Information concerning the manner, amount and calculation of remuneration payable by the</p>		<p>1.18.Information concerning the manner, amount and calculation of remuneration payable</p>

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<p>common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties.</p>		<p>by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties.</p>
<p>[1] Open-ended investment companies within the meaning of regulation 29(5) shall also indicate –</p> <ul style="list-style-type: none"> • the method and frequency of calculation of the net asset value of units, • the means, place and frequency of publication of that value, • the stock exchange in the country of marketing the price on which determines the price of transactions effected outwith stock exchanges in that country. 		

2. Information concerning the depositary.

- 2.1 the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;
- 2.2 a description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;
- 2.3 a statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS–

- 3.1. Name or style of the firm or name of the adviser.
- 3.2. Material provisions of the contract with the management company or the open-ended investment company which may be relevant to the unit-holders, excluding those relating to remuneration.
- 3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information shall in any case be given in Gibraltar. In addition, where units are marketed in another EEA State, such information shall be given in respect of that EEA State in the prospectus published there.

5. Other investment information as follows—

5.1. Historical performance of the UCITS (where applicable) — such information may be either included in or attached to the prospectus.

5.2. Profile of the typical investor for whom the UCITS is designed.

6. Economic information—

Possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the assets of the UCITS.

PART B

INFORMATION TO BE INCLUDED IN THE PERIODIC REPORTS

I. Statement of assets and liabilities—

- transferable securities;

- bank balances;

- other assets;

- total assets;

- liabilities;

- net asset value.

II. Number of units in circulation

III. Net asset value per unit.

IV. Portfolio, distinguishing between–

- (a) transferable securities admitted to official stock exchange listing;
- (b) transferable securities dealt in on another regulated market;

recently issued transferable securities of the type referred to in regulation 47(1)(d);
- (c) other transferable securities of the type referred to in regulation 47(2)(a),

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS.

V. Statement of changes in the composition of the portfolio during the reference period.**VI. Statement of the developments concerning the assets of the UCITS during the reference period including the following–**

- income from investments;
- other income;
- management charges;
- depositary's charges;
- other charges and taxes;
- net income;
- distributions and income reinvested;
- changes in capital account;
- appreciation or depreciation of investments;
- any other changes affecting the assets and liabilities of the UCITS;

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- transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.

VII. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year–

- the total net asset value,

- the net asset value per unit.

VIII. Details, by category of transaction within the meaning of regulation 48 carried out by the UCITS during the reference period, of the resulting amount of commitments.

SCHEDULE 2

Regulation 141

PART A**ARRANGEMENTS DEEMED NOT TO CONSTITUTE
A COLLECTIVE INVESTMENT SCHEME**

The following are deemed not to constitute a collective investment scheme for the purposes of the Act or, where stated, for specified provisions of the Act—

1. Arrangements operated otherwise than by way of business.
2. Arrangements where each of the participants—
 - (a) carries on a business that does not involve any of the following—
 - (i) investment business within the meaning of section 3(2) of the Financial Services (Investment and Fiduciary Services) Act;
 - (ii) carrying on a restricted activity within the meaning of section 7(1) of the Act; and
 - (b) enters into the arrangements for commercial purposes related to that business.

This paragraph does not apply where the person will carry on the business in question by virtue of being a participant in the arrangements.

3. Arrangements where each of the participants is a body corporate in the same group as the operator.
4. Arrangements where—
 - (a) 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 the operator or of a body corporate in the same group as the operator;

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- (b) the property to which the arrangements relate consists of investments in or issued by a member of that group that fall within-
 - (i) paragraph 1 or 2 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act;
 - (ii) paragraph 4 or 5 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act, so far as relating to paragraphs 1 or 2 of that Schedule; or
 - (iii) rights to and interests in any investments specified in subparagraphs (i) or (ii).

- 5. Arrangements where the receipt of the contribution of each participant constitutes acceptance of a deposit within the meaning of section 3(1) of the Financial Services (Banking) Act by an institution which is either-
 - (a) licensed or recognised under the Financial Services (Banking) Act as a deposit taking business; or
 - (b) registered or recognised as a Building Society under the Building Societies Act.

- 6. Arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade mark, trade name or design or other intellectual property or the goodwill attached to it (“franchise arrangements”).

- 7. Contracts of insurance.

- 8. Arrangements where-
 - (a) the predominant purpose of the arrangement is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to other persons; and
 - (b) the property to which the arrangements relate does not consist of the currency of any country or territory and does not consist of or include any investment specified in Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act.

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9. Arrangements under which the rights or interests of the participants are represented by investments of one, and only one, of the following descriptions—

- (a) investments falling within paragraph 2 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act, which are issued by—
 - (i) a single body corporate other than an open-ended investment company; or
 - (ii) by a single issuer which is not a body corporate and which are guaranteed by the government of Gibraltar or of any other country or territory;
- (b) investments falling within subparagraph (i) or (ii) (“the former investments”) which are convertible into or exchangeable for investments falling within paragraph 1 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act, (“the latter investments”), provided that the latter investments are issued by the same person who issued the former investments or are issued by a single other issuer;
- (c) investments falling within paragraph 3 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act, issued by a single issuer; or
- (d) investments falling within paragraph 4 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act, which are issued, otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of Schedule 1 of the Financial Services (Investment and Fiduciary Services) Act, or within any of paragraphs (a), (b) or (c).

10. Arrangements which would otherwise not constitute a collective investment scheme by virtue of paragraph 9, are not to be regarded as constituting a collective investment scheme by reason only that the rights or interests of one or more participants (“the counterparty”) is a person—

- (a) whose ordinary business involves him in activities which are investment business within the meaning of section 3(2) of the Financial Services (Investment and Fiduciary Services) Act, or which fall with the meaning of carrying on a restricted activity under section 7(1) of the Act; and

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- (b) whose rights or interests in the arrangement are 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 the counterparty—

- (a) is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the arrangements or sums determined by reference to such amounts; and
- (b) makes payments, whether or not of the same amount and whether or not in the same currency as those referred to in paragraph (a), which are calculated in accordance with an agreed formula by reference to those amounts or sums.

11. 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.

12. Occupational pension schemes.

13. 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 Financial Services (Investment and Fiduciary Services) Act.

14. A society registered under the Friendly Societies Act.

PART B

Exclusions from the provisions of section 3A of the Act.

15. The following undertakings do not fall within the scope of section 3A of the Act—

- (a) collective investment undertakings of the closed-ended type;

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- (b) collective investment undertakings which raise capital without promoting the sale of their units to the public within the EEA or any part of it;
- (c) collective investment undertakings the units of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in third countries;
- (d) categories of collective investment undertakings prescribed by the Minister in regulations, for which the rules laid down in Part VI and regulation 98 are inappropriate in view of their investment and borrowing policies.

SCHEDULE 3

Section 141

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Functions included in the activity of collective portfolio management—

- Investment management.

- Administration—
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation and pricing (including tax returns);
 - (d) regulatory compliance monitoring;
 - (e) maintenance of unit-holder register;
 - (f) distribution of income;
 - (g) unit issues and redemptions;
 - (h) contract settlements (including certificate dispatch);
 - (i) record keeping.

- Marketing.