FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

Regulations made under s.53.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

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Amending enactments	Relevant current provisions	Commencement date

EU Legislation/International Agreements involved:
Directive No. 93/6/EEC
Directive No. 93/22/EEC
UCITS Directive

Financial Services (Collective Investment Schemes)

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

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FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

In the exercise of the powers conferred on him by section 53 of the Financial Services (Collective Investment Schemes) Act 2005 and all other enabling powers, the Minister has made the following regulations–

PART I
PRELIMINARY AND INTERPRETATION

Title.

1. These Regulations may be cited as the Financial Services (Collective Investment Schemes) Regulations 2006.

Interpretation.

2. In these Regulations, unless the context otherwise requires–

"approved bank" has the meaning given in regulation 26;

"approved derivative" means a derivative traded or dealt in on a derivative market that is an eligible market within the meaning of regulation 25.

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

"branch", in relation to an EEA UCITS management company, has the meaning given in regulation 4;

"Capital Adequacy Directive" means Council Directive 93/6/EEC on the capital adequacy of investments firms and credit institutions;

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

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

"competent authority", in relation to an EEA State, means the authority designated by that EEA State as the competent authority in accordance with Article 49 of the UCITS Directive;

"constituting instrument" means–

(a) in the case of an authorised unit trust, a trust deed 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 Banking Act, 1992;

"designated investment" means an investment designated by the Authority as a designated investment;

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

"dilution adjustment" means an adjustment to the price of a unit made by the manager of a collective investment scheme for the purposes of reducing dilution;

"dilution levy" means a charge of such amount or at such rate as is determined by the manager of a collective investment scheme to be made for the purposes of reducing the effect of dilution;

"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;

"eligible institution" means a credit institution or an investment firm, in either case, authorised by its Home State regulator;

"eligible market" has the meaning given in regulation 25;

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

"Host State", in relation to a Gibraltar UCITS management company, means the EEA State, other than Gibraltar, within the territory of

which, the management company has a branch or provides services;

"Host State regulator", in relation to a Gibraltar UCITS management company, means the competent authority of an EEA State, other than Gibraltar, in relation to the management company's exercise of its Directive rights in that EEA State;

"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" has the meaning given in regulation 70;

"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;

"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 Act, 1998;

"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;

"Investment Services Directive" means the Council Directive of 10 May 1993 on investment services in the securities field (No. 93/22/EEC) as amended;

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

"liquid capital" has the meaning given in regulation 70;

"manager", in relation to a collective investment scheme, means–

(a) in relation to a unit trust scheme, 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;

"money market instrument" has the meaning given in regulation 32;

"OTC" and "OTC Derivative" have the meaning given in regulation 26(9);

"own funds" has the meaning given in regulation 70;

"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" means a market that is entered on the list of regulated markets maintained by the Authority under section 25 of the Financial Services Act 1998;

"retail customer" means an individual who is acting for purposes which are outside his trade, business or profession;

"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 unit trust scheme, 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;

"transferable security" has the meaning given in regulation 3;

"UCITS management right" means–

(a) the entitlement of an EEA UCITS management company to establish a branch, or provide services, in Gibraltar, or

(b) the entitlement of a Gibraltar UCITS management company to establish a branch, or provide services, in an EEA State other than Gibraltar,

in accordance with the UCITS Directive;

"umbrella scheme" means a collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled separately in relation to separate parts of the scheme property.

(2) Subject to regulations 63 and 64, these Regulations do not apply to experienced investor funds, except to the extent that the EIF Regulations expressly provide otherwise.

Meaning of "transferable security".

3.(1) Subject to sub-regulations (2) and (4), a transferable security is an investment which is–

(a) a share;

(b) a debenture;

(c) a government and public security;

(d) a warrant; or

(e) a certificate representing certain securities.

(2) An investment is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.

(3) In applying sub-regulation (2) to an investment which is issued by a body corporate, and which is a share or a debenture, the need for any consent on the part of the body corporate or any members or debenture holders of it may be ignored.

(4) An investment is not a transferable security unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the investment.

Meaning of "branch".

4.(1) In relation to an EEA UCITS management company, "branch" means a place of business which–

(a) is part of an EEA UCITS management company;

(b) has no separate legal personality; and

(c) provides the services for which the EEA UCITS management company has been authorised.

(2) For the purposes of the UCITS Directive, all places of business set up in the same EEA State by an EEA UCITS management company with headquarters in another EEA State are to be regarded as a single branch.

PART II
PERMITTED EXCEPTIONS AND EXEMPTIONS

Arrangements deemed not to constitute a collective investment scheme.

5. For the purposes of section 3(4) of the Act (Meaning of collective investment scheme), an arrangement of the kind specified in Schedule 1 is deemed not to constitute a collective investment scheme.

Characteristics of private scheme.

6. 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.

7.(1) Section 6(1) of the Act (Restrictions on promotion of a collective investment scheme) does not apply to the promotion of a private scheme 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.

8. Section 6(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 III
AUTHORISED SCHEMES

Division 1 - Constituting instrument

Constituting instrument of an authorised scheme.

9.(1) The constituting instrument of an authorised scheme shall contain the matters specified in Schedule 2.

(2) 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.

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

(4) 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.

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

(6) 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.

(7) 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.

10.(1) The constituting instrument of an authorised scheme may provide–

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

(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.

11. 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) unitholders and the manager or depositary, or

(ii) unitholders intended and not intended to benefit from the arrangement; and

(b) where, in accordance with any statement required to be contained in the prospectus of an authorised scheme by paragraph 26(c)(iv) of Schedule 3, action is required by the unitholders to obtain the benefit of any guarantee, the manager shall provide reasonable notice in writing to unitholders before such action is required.

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

12.(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 and simplified prospectus

Publication and filing of prospectus.

13.(1) The manager of an authorised scheme must draw up and publish a prospectus complying with Schedule 3.

(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 unitholders generally or to the unitholders 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.

Availability of prospectus and supplementary information.

14.(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.

False or misleading prospectus.

16.(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

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

Preparation and publication of simplified prospectus.

15.(1) The manager of an authorised scheme must produce and publish a simplified prospectus in respect of the scheme that contains in summary form each of the matters specified in Schedule 4.

(2) The simplified prospectus shall be incorporated in a written document and may have the full prospectus attached to it.

(3) Without limiting sub-regulation (1), the manager of an authorised scheme must be satisfied on reasonable grounds that the simplified prospectus produced in respect of the scheme–

(a) includes all such information as is necessary to enable an investor to make an informed decision about whether to acquire units in the scheme;

(b) does not omit any key item of information;

(c) wherever possible is written in plain language which avoids technical language and jargon; and

(d) adopts a format and style of presentation which is clear and attractive to the average reader, so that it can be easily understood by him.

Revision of simplified prospectus.

16.(1) The manager of an authorised scheme shall–

(a) ensure that the simplified prospectus prepared in respect of the scheme is kept up to date; and

(b) forthwith revise the simplified prospectus on the occurrence of any material change.

(2) Without limiting sub-regulation (1), any change to the simplified prospectus of an authorised scheme that would be likely to influence an average investor in deciding whether to invest in the scheme or realise his investment is a material change for the purposes of this regulation.

Simplified prospectus to be filed.

17. The manager of an authorised scheme shall file the simplified prospectus in respect of the scheme and any revisions to it to with–

(a) the Authority; and

(b) the competent authority of each EEA state in which the scheme's units are to be marketed in the exercise of a right under the UCITS Directive.

Offering and provision of simplified prospectus.

18.(1) Subject to sub-regulation (4), when an authorised person sells, recommends or arranges for the sale of one or more units in an authorised scheme, it must offer the scheme's up-to-date simplified prospectus free of charge to any person that may become a participant in the scheme before a contract for the sale of units is concluded.

(2) Subject to sub-regulations (5) and (6), when an authorised person sells, recommends or arranges for the sale of one or more units in an authorised scheme to a retail customer in Gibraltar, it must provide the scheme's up-to-date simplified prospectus free of charge to that retail customer before he completes an application to become a participant in the scheme.

(3) For the avoidance of doubt, sub-regulation (2) applies when an authorised person recommends or arranges for the transfer of a holding from one sub-fund in a scheme to another sub-fund in the scheme.

(4) The requirement under sub-regulation (1) will be met by an authorised person in relation to a retail customer if it, or any other authorised person, provides the customer with a copy of the simplified prospectus in accordance with sub-regulation (2).

(5) Sub-regulation (2) does not apply to a UCITS management company when it sells units in a UCITS scheme without recommending or arranging for the sale of those units.

(6) Codes of Practice may provide that in certain specified circumstances where sub-regulation (2) would apply, sub-regulation (1) applies instead of sub-regulation (2).

Projections.

19. The Codes of Practices shall provide for–

(a) the circumstances in which projections must be contained in a prospectus and a simplified prospectus;

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

Division 3 - Investment and Borrowing Powers

Scope of this Division.

20.(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.

Manager to ensure prudent spread of risk.

21.(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.

Investment powers.

22.(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.

Valuation.

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

Scheme property of authorised schemes.

24.(1) The scheme property of an authorised scheme must, except where otherwise provided in this Part, consist only of any or all of the following–

(a) transferable securities;

(b) units in collective investment schemes permitted under regulation 28;

(c) approved money-market instruments permitted under regulation 32;

(d) derivatives and forward transactions permitted under regulation 34; and

(e) deposits permitted under regulation 39.

(2) For a scheme that is an authorised open-ended investment company, the scheme property may also include movable and immovable property that is necessary for the direct pursuit of the company's business.

(3) Transferable securities and money-market instruments held within an authorised scheme must be–

(a) admitted to or dealt in on a regulated market;

(b) dealt in on an eligible market within the meaning of regulation 25(1)(b);

(c) admitted to or dealt in on an eligible market within the meaning of regulation 25(1)(c); or

(d) for a money-market instrument, within regulation 32.

(4) Not more than 10% in value of the scheme property of an authorised scheme is to consist of transferable securities which do not fall within sub-regulation (3) or of money-market instruments, which do not fall within regulation 32.

Eligible markets.

25.(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;

(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.

Spread of investments, general.

26.(1) For the purposes of this regulation, companies included in the same group in accordance with international accounting standards, are regarded as a single body.

(2) In respect of an authorised scheme–

(a) not more than 20% in value of the scheme property shall consist of deposits with a single body; and

(b) not more than 5% in value of the scheme property shall consist of transferable securities or money-market instruments issued by any single body.

(3) The limit of 5% in sub-regulation (2)(b) is increased to 10% in respect of up to 40% in value of the scheme property.

(4) In applying sub-regulations (2)(b) and (3), securities are to be treated as equivalent to the underlying security.

(5) The exposure to any one counterparty in an OTC derivative transaction must not exceed 5% in value of the scheme property; this limit being raised to 10% where the counterparty is an approved bank.

(6) Not more than 20% in value of the scheme property is to consist of transferable securities and money-market instruments issued by the same group.

(7) Not more than 20% in value of the scheme is to consist of the units of any one collective investment scheme.

(8) In applying the limits in sub-regulations (3),(4),(5), (6) and (7), not more than 20% in value of the scheme property is to consist of any combination of two or more of the following:

(a) transferable securities or money-market instruments issued by ; or

(b) deposits made with; or

(c) exposures from OTC derivatives transactions made with;

a single body.

(9) For the purposes of this regulation–

(a) “OTC” means over the counter;

(b) “OTC derivative” means a derivative traded solely over the counter; and

(c) “approved bank" has the meaning specified in the Codes of Practice.

(10) This regulation does not apply to government and public securities.

Spread of investments, government and public securities.

27.(1) This regulation applies to government and public securities as defined in the Codes of Practice.

(2) Where no more than 35% in value of the scheme property is invested in government and public securities issued by any one body, there is no limit on the amount which may be invested in such securities or in any one issue.

(3) An authorised scheme may invest more than 35% in value of the scheme property in government and public securities issued by any one body provided that–

(a) the manager has before any such investment is made consulted with the depositary and as a result considers that the issuer of such securities is one which is appropriate in accordance with the investment objectives of the authorised scheme;

(b) no more than 30% in value of the scheme property consists of such securities of any one issue;

(c) the scheme property includes such securities issued by that or another issuer, of at least six different issues; and

(d) the disclosures in sub-regulation (4) have been made.

(4) Where it is intended that sub-regulation (3) may apply, the constituting instrument, and the most recently published prospectus, must prominently state–

(a) the fact that more than 35% of the scheme property is or may be invested in such securities issued by one issuer; and

(b) the names of the individual states, the local authorities or public international bodies issuing such securities in which the authorised scheme may invest over 35% of its assets.

(5) In this regulation, in relation to such securities–

(a) "issue", "issued" and "issuer" include "guarantee", "guaranteed" and "guarantor"; and

(b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.

Investment in collective investment schemes.

28. An authorised scheme must not invest in units in a collective investment scheme ("the second scheme") unless–

(a) the second scheme–

(i) satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive,

(ii) is a foreign recognised scheme,

(iii) is authorised as a non-UCITS retail scheme, provided that the requirements of article 19(1)(e) of the UCITS Directive are met, or

(iv) is authorised in another EEA State, provided that the requirements of article 19(1)(e) of the UCITS Directive are met; and

(b) the second scheme, where relevant, complies with regulations 29 and 30; and

(c) the second scheme has terms which prohibit more than 10% in value of the scheme property consisting of units in collective investment schemes; and

(d) no more than 30% of the value of the scheme is invested in second schemes falling within paragraph (a)(ii), (iii) and (iv).

Investment in associated collective investment schemes.

29. An authorised scheme must not invest in or dispose of units in another collective investment scheme ("the second scheme") if the second scheme is managed or operated by (or, for an authorised open-ended investment company, whose manager is) the manager of the investing authorised scheme or an associate of that manager, unless

(a) the prospectus of the investing scheme clearly states that the property of that investing scheme may include such units; and

(b) regulation 30 is complied with.

Investment in other group schemes.

30.(1) Where–

(a) an investment or disposal is made under regulation 29; and

(b) there is a charge in respect of such investment or disposal;

the manager of the scheme making the investment or disposal must pay the scheme the amounts referred to in sub-regulations (2) or (3) within four business days following the date of the agreement to invest or dispose.

(2) When an investment is made, the amount referred to in sub-regulation (1)(a) is either–

(a) any amount by which the consideration paid by the scheme for the units in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the units been newly issued or sold by it; or

(b) if such price cannot be ascertained by the manager of the authorised scheme, the maximum amount of any charge permitted to be made by the seller of units in the second scheme.

(3) When a disposal is made, the amount referred to in sub-regulation (1)(a) is any charge made for the account of the manager or operator of the second scheme or an associate of any of them in respect of the disposal.

(4) In this regulation–

(a) any addition to or deduction from the consideration paid on the acquisition or disposal of units in the second scheme, which is applied for the benefit of the second scheme and is, or is like, a dilution levy made in accordance with the Code of Practice, is to be treated as part of the price of the units and not as part of any charge; and

(b) any charge made in respect of an exchange of units in one sub-fund or separate part of the second scheme for units in another sub-fund or separate part of that scheme is to be included as part of the consideration paid for the units.

Investment in warrants and nil and partly paid securities.

31.(1) Where a scheme invests in a warrant, the exposure created by the exercise of the right conferred by that warrant must not exceed the limits specified in regulation 26 and regulation 27.

(2) A transferable security or a money-market instrument on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum

unpaid could be paid by the scheme, at the time when payment is required, without contravening the regulations in this Division.

Investment in money-market instruments.

32. An authorised scheme may invest in money-market instruments which are normally dealt in on the money market, are liquid and whose value can be accurately determined at any time, provided the money-market instrument is–

(a) within regulation 24(3); or

(b) a money-market instrument issued or guaranteed by–

(i) a central, regional or local authority or central bank of an EEA State, the European Central Bank, the European Union or the European Investment Bank, a non-EEA State or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more EEA States belong; or

(ii) an establishment subject to prudential supervision in accordance with criteria defined by Community law or an establishment which is subject to and complies with prudential regulations considered by the Authority to be at least as stringent as those laid down by Community law; or

(c) issued by a body, any securities of which are dealt in on an eligible market.

Derivatives, general.

33.(1) A transaction in derivatives or a forward transaction must not be effected for an authorised scheme unless–

(a) the transaction is of a kind specified in regulation 34; and

(b) the transaction is covered, as required by regulation 36.

(2) Where an authorised scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in regulation 26 and regulation 27 except as provided in sub-regulation (4).

(3) Where a transferable security or money-market instrument embeds a derivative, this must be taken into account for the purposes of complying with this regulation.

(4) Where a scheme invests in an index-based derivative, provided the relevant index falls within regulation 45, the underlying constituents of the index do not have to be taken into account for the purposes of regulation 26 and regulation 27.

(5) The relaxation in sub-regulation (4) is subject to the manager complying with regulation 21.

Permitted transactions (derivatives and forwards).

34.(1) A transaction in a derivative must–

(a) be in an approved derivative; or

(b) be one which complies with regulation 37.

(2) The underlying of a transaction in a derivative must consist of any one or more of the following to which the scheme is dedicated–

(a) transferable securities;

(b) money-market instruments permitted under regulation 32;

(c) deposits permitted under regulation 39;

(d) derivatives permitted under this regulation;

(e) collective investment scheme units permitted under regulation 28;

(f) financial indices;

(g) interest rates;

(h) foreign exchange rates; and

(i) currencies.

(3) A transaction in an approved derivative must be effected on or under the regulations of an eligible derivatives market.

(4) A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the constituting instrument of the scheme and the most recently published prospectus.

(5) A transaction in a derivative must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more transferable securities, money-market instruments, units in collective investment schemes or derivatives.

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

Transactions for the purchase of property.

35. A derivative or forward transaction which will or could lead to the delivery of property for the account of the scheme may be entered into only if–

(a) that property can be held for the account of the scheme; and

(b) the manager having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of these regulations or the Codes of Practice.

Requirement to cover sales.

36.(1) No agreement by or on behalf of an authorised scheme to dispose of property or rights may be made unless–

(a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the scheme by delivery of property or the assignment of rights; and

(b) the property and rights referred to in paragraph (a) are owned by the scheme at the time of the agreement.

(2) Sub-regulation (1) does not apply to a deposit.

OTC transactions in derivatives.

37.(1) A transaction in an OTC derivative under regulation 34(1)(b) must be–

(a) with a counterparty that is–

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

(ii) a person who is authorised by the Authority or by its Home State to enter into the transaction as principal, off-exchange; and

(b) on terms of the transaction in derivatives where, before the transaction is entered into, the depositary is satisfied that the counterparty has agreed with the authorised open-ended investment company or the manager–

(i) to provide a reliable and verifiable valuation in respect of that transaction at least daily and at any other time at the request of the authorised open-ended investment company or the manager; and

(ii) that it will, at the request of the authorised open-ended investment company or the manager, enter into a further transaction to close out that transaction at any time, at a fair value arrived at under the pricing model or other reliable basis agreed under (3).

(2) For the purposes of sub-regulation (1), a transaction in derivatives is capable of valuation only if the manager having taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy–

(a) on the basis of the pricing model which has been agreed between the manager and the depositary; or

(b) on some other reliable basis reflecting an up-to-date market value which has been so agreed.

Risk management, derivatives.

38.(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).

Investment in deposits.

39. An authorised scheme may invest in deposits only if the deposit–

(a) is with an approved bank;

(b) is–

(i) repayable on demand, or

(ii) has the right to be withdrawn; and

(c) matures in no more than 12 months.

Significant influence for authorised open-ended investment companies.

40.(1) An authorised open-ended investment company must not acquire transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that body corporate if–

(a) immediately before the acquisition, the aggregate of any such securities held by the authorised open-ended investment company gives the authorised open-ended investment company power to influence significantly the conduct of business of that body corporate; or

(b) the acquisition gives the authorised open-ended investment company that power.

(2) For the purpose of sub-regulation (1), an authorised open-ended investment company is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held by it, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

Significant influence for managers of authorised unit trusts.

41.(1) A manager of an authorised unit trust must not acquire, or cause to be acquired for an authorised unit trust of which it is the manager, transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the body corporate if–

(a) immediately before the acquisition, the aggregate of any such securities held for that authorised unit trust, taken together with any such securities already held for other authorised unit trusts of which it is also the manager, gives the manager power significantly to influence the conduct of business of that body corporate; or

(b) the acquisition gives the manager that power.

(2) For the purpose of sub-regulation (1), a manager is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held for all the authorised unit trusts of which it is the manager, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

Concentration.

42. An authorised scheme–

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

(i) do not carry a right to vote on any matter at a general meeting of the body corporate that issued them, and

(ii) represent more than 10% of those securities issued by that body corporate;

(b) must not acquire more than 10% of the debt securities issued by any single body;

(c) must not acquire more than 25% of the units in a collective investment scheme;

(d) must not acquire more than 10% of the money-market instruments issued by any single body; and

(e) need not comply with the limits in paragraphs (a), (b) and (c) if, at the time of acquisition, the net amount in issue of the relevant investment cannot be calculated.

Authorised schemes that are umbrella schemes.

43.(1) In relation to an authorised scheme which is an umbrella scheme, the provisions in this Division and the Codes of Practice apply to each sub-fund as they would for an authorised scheme, except the following regulations which apply at the level of the umbrella only–

(a) regulation 40;

(b) regulation 41; and

(c) regulation 42.

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

Schemes replicating an index.

44.(1) An authorised scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the investment policy of that scheme as stated in the most recently published prospectus is to replicate the composition of a relevant index which satisfies the criteria specified in regulation 45.

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

Relevant indices.

45.(1) The indices referred to in regulation are those which satisfy the following criteria–

(a) the composition is sufficiently diversified;

(b) the index is a representative benchmark for the market to which it refers; and

(c) the index is published in an appropriate manner.

Cover for transactions in derivatives and forward transactions.

46.(1) A transaction in derivatives or forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under sub-regulation (2).

(2) Exposure is covered globally if adequate cover from within the scheme property is available to meet the scheme's total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk, and the time available to liquidate any positions.

(3) Cash not yet received into the scheme property but due to be received within one month is available as cover for the purposes of sub-regulation (2).

(4) Property which is the subject of a transaction under regulations 49 to 51 is only available for cover if the manager has taken reasonable care to determine that it is obtainable, by return or re-acquisition, in time to meet the obligation for which cover is required.

(5) The total exposure relating to derivatives held in an authorised scheme may not exceed the net value of the scheme property.

Borrowing.

47.(1) Cash obtained from borrowing, and borrowing which the manager reasonably regards an eligible institution or an approved bank to be committed to provide, is not available for cover under regulation 46, except as provided in sub-regulation (2).

(2) Where, for the purposes of this section, the authorised open-ended investment company or the trustee for the account of the authorised unit trust on the instructions of the manager–

(a) borrows an amount of currency from an eligible institution or an approved bank; and

(b) keeps an amount in another currency, at least equal to the borrowing for the time being in paragraph (a), on deposit with the lender, or his agent or nominee;

then regulations 46 to 48 apply as if the borrowed currency, and not the deposited currency, were part of the scheme property.

Continuing nature of limits and requirements.

48.(1) The manager of an authorised scheme must, as frequently as necessary, re-calculate the amount of cover required in respect of derivatives and forward positions already in existence under regulations 46 to 48.

(2) Derivatives and rights under forward transactions may be retained in the scheme property only so long as they remain covered globally under regulation 46.

Stock lending: general.

49.(1) For the purposes of these Regulations, "stock lending" means the disposal of a designated investment subject to the obligation or right to reacquire the same or a similar designated investment from the same counterparty.

(2) The stock lending permitted by regulations 50 and 51 may be exercised by an authorised scheme when it reasonably appears to the authorised open-ended investment company or to the manager to be appropriate to do so with a view to generating additional income for the authorised scheme with an acceptable degree of risk.

Stock lending: requirements.

50.(1) An authorised open-ended investment company, or the depositary at the request of the authorised open-ended investment company, or the trustee of an authorised unit trust scheme at the request of the manager, may enter into a stock lending arrangement if–

(a) all the terms of the agreement under which securities are to be reacquired by the depositary for the account of the authorised open-ended investment company or by the trustee, are in a form which is acceptable to the depositary or to the trustee and are in accordance with good market practice;

(b) the counterparty is an authorised person or a person authorised by a Home State regulator; and

(c) collateral is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the collateral is–

(i) acceptable to the depositary,

(ii) adequate within regulation 51(1); and

(iii) sufficiently immediate within regulation 51(2).

(2) The counterparty for the purpose of sub-regulation (1) is the person who is obliged under the agreement referred to in sub-regulation (1)(a) to transfer to the depositary the securities transferred by the depositary under the stock lending arrangement or securities of the same kind.

Treatment of collateral.

51.(1) Collateral is adequate for the purposes of regulation 50 only if it is–

(a) transferred to the depositary or its agent;

(b) at least equal in value, at the time of the transfer to the depositary, to the value of the securities transferred by the depositary; and

(c) in the form of one or more of–

(i) cash,

(ii) government and public securities,

(iii) a certificate of deposit,

(iv) a letter of credit, or

(v) a readily realisable security.

(2) Collateral is sufficiently immediate for the purposes of regulation 50 if–

(a) it is transferred before or at the time of the transfer of the securities by the depositary; or

(b) the depositary takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the day of the transfer.

(3) The depositary must ensure that the value of the collateral at all times is at least equal to the value of the securities transferred by the depositary.

(4) The duty in sub-regulation (3) may be regarded as satisfied in respect of collateral, the validity of which is about to expire or has expired, where the depositary takes reasonable care to determine that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.

(5) Any agreement for transfer at a future date of securities or of collateral, or of the equivalent of either under regulations 49 to 50 may be regarded, for the purposes of a valuation under this Division or undertaken in accordance with the Codes of Practice, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the authorised scheme.

(6) Collateral transferred to the depositary is part of the scheme property for the purposes of these regulations, except in the following respects–

(a) it does not fall to be included in any valuation for the purposes of this Division or the Codes of Practice, because it is offset under sub-regulation (5) by an obligation to transfer; and

(b) it does not count as scheme property for any purpose of this Division other than regulations 49 to 50.

(7) Sub-regulations (5) and (6)(a) do not apply to any valuation of collateral itself for the purposes of regulations 49 to 50.

(8) There is no limit on the value of the scheme property which may be the subject of stock lending transactions within regulations 49 to 50.

Cash and near cash.

52.(1) Cash and near cash must not be retained in the scheme property except to the extent that this may reasonably be regarded as necessary in order to enable–

(a) the pursuit of the scheme's investment objectives;

(b) redemption of units;

(c) efficient management of the authorised scheme in accordance with its investment objectives; or

(d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the authorised scheme.

(2) During the period of the initial offer, the scheme property may consist of cash and near cash without limitation.

(3) For the purposes of these regulations, near cash is such money, deposits or investments as may be designated by the Authority as near cash.

General power to borrow.

53.(1) The authorised open-ended investment company or the trustee of an authorised unit trust scheme, on the instructions of the manager, may, in accordance with this regulation and regulation 54, borrow money for the use of the authorised scheme on terms that the borrowing is to be repayable out of the scheme property.

(2) Sub-regulation (1) is subject to the obligation of the authorised scheme to comply with any restriction in its constituting instrument.

(3) The authorised open-ended investment company or trustee may borrow under sub-regulation (1) only from an eligible institution or an approved bank.

(4) The manager must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the manager must have regard in particular to–

(a) the duration of any period of borrowing; and

(b) the number of occasions on which resort is had to borrowing in any period.

(5) In addition to complying with sub- regulation (4), the manager must ensure that no period of borrowing exceeds three months, whether in respect of any specific sum or at all, without the prior consent of the depositary.

(6) The depositary may only give its consent as required under sub-regulation (5) on such conditions as appear to the depositary appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

(7) This regulation does not apply to "back to back" borrowing under regulation 47(2).

(8) An authorised open-ended investment company must not issue any debenture unless it acknowledges or creates a borrowing that complies with sub-regulations (1) to (6).

Borrowing limits.

54.(1) The manager of an authorised scheme must ensure that the authorised scheme's borrowing does not, on any day, exceed 10% of the value of the scheme property.

(2) This regulation does not apply to "back to back" borrowing under regulation 47(2).

(3) In this regulation, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of derivatives) designed to achieve a temporary injection of money into the scheme property in the expectation that the sum will be repaid.

(4) For an authorised open-ended investment company, borrowing does not include any arrangement for the authorised open-ended investment company to pay to a third party any costs which the authorised open-ended investment company is entitled to amortise under the regulations or the Codes of Practice and which were paid on behalf of the authorised open-ended investment company by the third party.

Restrictions on lending of money.

55.(1) None of the money in the scheme property of an authorised scheme may be lent and, for the purposes of this prohibition, money is lent by an authorised scheme if it is paid to a person ("the payee") on the basis that it should be repaid, whether or not by the payee.

(2) The following are not lending for the purposes of sub- regulation (1)–

(a) acquiring a debenture; and

(b) the placing of money on deposit or in a current account.

(3) Sub-regulation (1) does not prevent an authorised open-ended investment company from providing an officer of the authorised open-ended investment company with funds to meet expenditure to be incurred by him for the purposes of the authorised open-ended investment company (or for the purposes of enabling him properly to perform his duties as an officer of the authorised open-ended investment company) or from doing anything to enable an officer to avoid incurring such expenditure.

Restrictions on lending of property other than money.

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

(2) Transactions permitted by regulations 49 to 51 are not to be regarded as lending for the purposes of sub-regulation (1).

(3) The scheme property must not be mortgaged.

(4) Nothing in this regulation prevents an authorised open-ended investment company or the depositary of an authorised open-ended investment company at the request of the company, or the trustee at the request of the manager, from lending, depositing, pledging or charging

scheme property for margin requirements where transactions in derivatives or forward transactions are used for the account of the authorised scheme in accordance with this Division.

General power to accept or underwrite placings.

57.(1) Any power in this Division to invest in transferable securities may be used for the purpose of entering into transactions to which this regulation applies, subject to compliance with any restriction in the constituting instrument of the scheme.

(2) This regulation applies to any agreement or understanding which–

(a) is an underwriting or sub-underwriting agreement; or

(b) contemplates that securities will or may be issued or subscribed for or acquired for the account of the authorised scheme.

(3) Sub-regulation (2) does not apply to–

(a) an option; or

(b) a purchase of a transferable security which confers a right to–

(i) subscribe for or acquire a transferable security, or

(ii) convert one transferable security into another.

(4) The exposure of an authorised scheme to agreements and understandings within sub-regulation (2) must, on any day, be–

(a) covered under regulation 46; and

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

Guarantees and indemnities.

58.(1) An authorised open-ended investment company or a depositary for the account of an authorised scheme must not provide any guarantee or indemnity in respect of the obligation of any person.

(2) None of the scheme property of an authorised scheme may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any person.

(3) The Codes of Practice may specify exemptions to sub-regulations (1) and (2).

Treatment of obligations.

59.(1) Where a regulation in this Division allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this Division, it must be assumed that the maximum possible liability of the authorised scheme under any other of those regulations has also to be provided for.

(2) Where a regulation in this Division permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered–

(a) it must be assumed that in applying any of those regulations, the authorised scheme must also simultaneously satisfy any other obligation relating to cover; and

(b) no element of cover must be used more than once.

Division 4 - Miscellaneous

Cancellation rights.

60. The Codes of Practice shall specify–

(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.

61. 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 IV
RECOGNISED SCHEMES

Notice to Authority - Recognised schemes.

62.(1) A notice of intention to invite persons in Gibraltar to become participants in a UCITS scheme given under section 35 of the Act shall contain the following information:

(a) the name of the scheme;

(b) the legal form of the scheme;

(c) the name and address of the operator of the scheme;

(d) the address of the place in Gibraltar for the service on the operator of notices or other documents;

(e) the name and address of any supervisory authority or authorities to which the operator is subject in the EEA State in which it is established;

(f) whether the operator intends to market the scheme in the Gibraltar in a manner which will involve it carrying on a regulated activity in Gibraltar;

(g) the name and address of the depositary of the scheme;

(h) the address in Gibraltar where the scheme facilities will be maintained;

(i) details of the arrangements for the marketing of units in Gibraltar, namely:

(i) the proposed commencement date,

(ii) whether the units will be sold by or through any employed sales force, authorised persons, or unsolicited calls;

(j) the attestation or certificate from the authorities of the EEA State in which the scheme is authorised which demonstrates that the scheme complies with the UCITS Directive;

(k) a copy of the instrument constituting the scheme;

(l) a copy of the prospectus and the simplified prospectus of the scheme; and

(m) a copy of the latest annual report and any subsequent half-yearly report.

(2) An application for the recognition of a foreign collective investment scheme to be recognised as a foreign scheme under section 39 of the Act shall be in the approved form.

PART V
AUTHORISED PERSONS AND RESTRICTED ACTIVITIES

Activities deemed to constitute "restricted activities".

63. 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 unit trust scheme 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;

Activities deemed not to constitute "restricted activity".

64. 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 provides at least equivalent protection to the legislative and

regulatory regime in place in Gibraltar with respect to the activity.

PART VI
MANAGEMENT COMPANIES

Division 1 – General

EEA UCITS management companies deemed to be authorised persons.

65.(1) An EEA UCITS management company shall not exercise a UCITS management right in Gibraltar unless

(a) it give its Home State Regulator notice of its intention to establish a branch, or provide services, in Gibraltar; and

(b) the Authority has received a notice from the EEA UCITS management company's Home State Regulator

(i) stating that the company is an EEA UCITS management company;

(ii) providing details of the branch to be established in Gibraltar, if applicable, and particulars of the services which the EEA UCITS management company is seeking to carry on in Gibraltar in the exercise of its UCITS management right; and

(iii) providing details of any compensation scheme which is intended to protect the branch's investors.

(2) Where sub-regulation (1) has been complied with, the EEA UCITS management company is deemed to be an authorised person for the purposes of section 8(2)(a) of the Act in respect of the particulars specified in its Home State Regulator's notice in accordance with sub-regulation (1)(ii).

Gibraltar UCITS management companies exercising a UCITS management right in an EEA State.

66.(1) A Gibraltar UCITS management company that intends to exercise a UCITS management right in an EEA State shall submit a notice to the Authority in the approved form.

(2) Unless the Authority has reason to doubt the adequacy of the Gibraltar UCITS management company's resources or structure, it will give the Host

State Regulator a consent notice within three months of receiving a completed application.

(3) A Gibraltar UCITS management company shall not exercise a UCITS management in an EEA State unless the Authority has provided the Host State Regulator with the consent notice in accordance with sub-regulation (2).

(4) A Gibraltar UCITS management company exercising a UCITS management right in an EEA State shall not–

(a) if it has established a branch, make any change in the branch details provided to the Authority in the notice submitted under sub-regulation (1); or

(b) make any change in its programme of operations, or the activities to be carried on under the UCITS management right;

in either case unless full details of the changes have been provided to the Authority and the Authority has provided the Host State Regulator with a notice consenting to the changes.

Restrictions on business for UCITS management companies.

67.(1) A Gibraltar UCITS management company must not engage in any activities other than–

(a) acting as the manager of an authorised fund or as the operator of any other collective investment scheme in respect of which it is subject to prudential supervision by the Authority;

(b) activities for the purposes of or in connection with those specified in paragraph (a);

(c) collective portfolio management, including but not limited to–

(i) investment management,

(ii) administration of a collective investment scheme, and

(iii) marketing,

(d) managing investments where the portfolio includes one or more of the following instruments–

(i) transferable securities,

(ii) units in collective investment schemes,

(iii) money-market instruments,

(iv) financial futures contracts, including equivalent cash-settled instruments,

(v) forward interest-rate agreements,

(vi) interest rate, currency and equity swaps, and

(vii) options to acquire or dispose of any instruments falling within sub-paragraphs (i) to (vi), including equivalent cash-settled instruments and options on currency and on interest rates;

(e) advising on investments where–

(i) the management company is authorised to undertake the activity specified in paragraph (d), and

(ii) each of the instruments is of a type specified in paragraph (d)(i) to (vii);

(f) safeguarding and administration of units where the management company is authorised to undertake the activity specified in paragraph (d).

(2) For the purposes of sub-regulation (1)(c)(ii), administration includes–

(a) legal and fund management accounting services;

(b) customer enquiries;

(c) valuation and pricing;

(d) regulatory compliance monitoring;

(e) maintenance of the unitholders' register;

(f) distribution of income;

(g) unit issues and redemptions;

(h) contract settlements, including certificate dispatch; and

(i) record keeping.

Simplified prospectus.

68.(1) A Gibraltar UCITS management company shall, for each UCITS scheme that it manages and in respect of which it is marketing units in another EEA state in the exercise of an EEA right, produce a simplified prospectus for the scheme containing the matters specified in Schedule 4.

(2) The simplified prospectus must be drawn up in the official language, or one of the official languages, of the EEA state for which it was prepared or in a language approved by the competent authority of that state.

(3) The simplified prospectus may, without alteration, be used for marketing purposes in the EEA State for which it was prepared and in which the units of the UCITS scheme are to be sold.

(4) Regulations 14(2) to 18 apply with respect to a simplified prospectus produced under this regulation with such modifications as are appropriate.

Accounting records.

69. A Gibraltar UCITS management company shall ensure that proper accounting records are kept in English to show and account for its own account transactions.

Division 2 – Financial Resource Requirements

Interpretation for this Division.

70. In this Division and in Schedule 5–

"Gibraltar UCITS management company with investment powers" means a Gibraltar UCITS management company that is authorised by the Authority to undertake discretionary portfolio management, whether or not such authorisation also includes the provision of investment advice and safekeeping and administration in relation to units of a collective investment scheme only;

"Gibraltar UCITS management company without investment powers" means a Gibraltar UCITS management company that is not authorised by the Authority to undertake discretionary portfolio management;

"initial capital" means capital calculated in accordance with Schedule 5, Table 5.1;

"liquid capital" means capital calculated in accordance with Schedule 5, Table 5.1;

"own funds" means capital calculated in accordance with Schedule 5, Table 5.1;

"qualifying property" has the meaning specified in regulation 76;

"qualifying undertaking" has the meaning specified in regulation 76;

"qualifying subordinated loan" has the meaning specified in regulation 75;

"relevant annual expenditure" has the meaning specified in regulation 74;

"scheme management activity" means the management by an operator of the property held for or within the scheme of which it is the operator, excluding the receiving and holding of client money and safeguarding and administering investments.

Requirements with respect to financial resources.

71.(1) A Gibraltar UCITS management company shall ensure that it maintains financial resources that are adequate to conduct its business, to meet its commitments and to withstand the risks to which its business is subject.

(2) Without limiting sub-regulation (1)–

(a) a Gibraltar UCITS management company shall ensure that, at all times, it has financial resources calculated in accordance with Schedule 5, Table 5.1, subject to the requirements specified in Table 5.2 of that Schedule, which equal or exceed its financial resources requirement calculated in accordance with regulation 72; and

(b) a Gibraltar UCITS management company with investment powers shall, in addition to complying with paragraph (a), ensure that, at all times, it has liquid capital calculated in accordance with Schedule 5, Table 5.1, subject to the requirements specified in Table 5.2 of that Schedule, which equals or exceeds its liquid capital resource requirement calculated in accordance with regulation 73.

(3) If, at any time, a Gibraltar UCITS management company is of the opinion that it does not comply with sub-regulation (1) or (2), it shall forthwith notify the Authority in writing.

(4) A Gibraltar UCITS management company that contravenes sub-regulation (3) commits an offence.

Financial resource requirement.

72.(1) The financial resources requirement for a Gibraltar UCITS management company is the greater of–

(a) subject to a maximum requirement of €10,000,000, initial capital equal to the minimum capital requirement plus any additional financial resource requirement applicable to the company; and

(b) 13/52 of its relevant annual expenditure calculated in accordance with regulation 74.

(2) For the purposes of sub-regulation (1)(a)–

(a) the minimum capital requirement is €125,000 or the equivalent in another currency; and

(b) the additional financial resource requirement equals 0.02% of the value of funds under management that exceed €250,000, or the equivalent in another currency.

Liquid capital resource requirement.

73. The liquid capital resource requirement for a Gibraltar UCITS management company with investment powers is the sum of–

(a) 13/52 of its relevant annual expenditure calculated in accordance with regulation 74; and

(b) in respect of the investment business which it is authorised to carry on, other than when undertaking scheme management activity, the sum of its–

(i) position risk requirement calculated in accordance with Schedule 5, Table 5.3,

(ii) counterparty risk requirement calculated in accordance with Schedule 5, Tables 5.4 to 5.7,

(iii) foreign exchange requirement calculated in accordance with Schedule 5, Table 5.8, and

(iv) other assets requirement calculated in accordance with Schedule 5, Table 5.9.

Relevant annual expenditure.

74.(1) Subject to sub-regulations (2) and (3), the relevant annual expenditure of a Gibraltar UCITS management company is the amount described as total expenditure in its most recently prepared set of annual financial statements less the following items, if they are included within such expenditure–

(a) staff bonuses, except to the extent that they are guaranteed;

(b) employees' and directors' shares in profits, except to the extent that they are guaranteed;

(c) other appropriations of profits;

(d) shared commissions and fees payable which are directly related to commissions and fees received;

(e) interest charges in respect of borrowing made to finance the acquisition of the company's readily realisable investments;

(f) interest paid to clients on client money;

(g) interest paid to counterparties;

(h) fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions;

(i) foreign exchange losses; and

(j) exceptional expenditure where adjustment for such items has been specifically allowed in writing by the Authority.

(2) Where the financial statements of a Gibraltar UCITS management company are for a period other than 12 months, the relevant annual expenditure is an amount calculated in accordance with sub-regulation (1) prorated to an equivalent annual amount.

(3) Where a Gibraltar UCITS management company has not been authorised long enough to prepare annual financial statements, its annual relevant expenditure must be calculated, in accordance with sub-regulation (1), on the basis of the forecast of its expenditure submitted with its application to the Authority for authorisation.

Qualifying subordinated loans.

75.(1) A long term qualifying subordinated loan is a loan to a Gibraltar UCITS management company–

(a) that is repayable only on maturity or on the expiration of a period of notice in accordance with paragraph (c) below or on the winding up of the company;

(b) in the event of the winding up of the company, the loan ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled; and

(c) either–

(i) the minimum original maturity of the loan is 5 years; or

(ii) the loan does not have a minimum or fixed maturity but requires 5 years notice of repayment.

(2) A Gibraltar UCITS management company may only take into account the paid-up amount of a long term qualifying subordinated loan in the calculation of its own funds and this amount must be amortised on a straight-line basis over the five years prior to the date of repayment.

(3) A short term qualifying subordinated loan is a loan to a Gibraltar UCITS management company that has the characteristics set out in sub-regulation (1), except that the minimum period set out in sub-regulation (1)(c) shall be two years.

(4) A Gibraltar UCITS management company must not make any payment of principal or interest which would result in a breach of regulation 71(2).

(5) A qualifying subordinated loan must be in the form specified by the Codes of Practice for the purposes of this regulation.

(6) A Gibraltar UCITS management company wishing to include a qualifying subordinated loan in its calculation of liquid capital must–

(a) provide the Authority with a copy of the agreement not less than 10 business days before the loan is to be made; and

(b) certify to the Authority that the loan agreement complies with the form of subordinated loan agreement specified by the Authority under sub-regulation (5).

(7) A Gibraltar UCITS management company including a qualifying subordinated loan in its calculation of liquid capital must not–

(a) secure all or any part of the loan;

(b) redeem, purchase or otherwise acquire any of the liabilities of the borrower in respect of the loan;

(c) amend or concur in amending the terms of the loan agreement;

(d) repay all or any part of the loan otherwise than in accordance with the terms of the loan agreement; or

(e) take or omit to take any action whereby the subordination of the loan or any part thereof might be terminated, impaired or adversely affected.

Qualifying property and qualifying undertakings.

76.(1) Qualifying property is any freehold or leasehold land and buildings purchased or secured by way of a mortgage (or other form of secured long-term arrangement) where the security for the liability is the property (and does not include any other allowable assets).

(2) The qualifying amount of qualifying property for the purposes of Schedule 5, Table 5.2 is the lowest of–

(a) 85 per cent of the current market value of the property (if known);

(b) 85 per cent of the net book value of the property; and

(c) the amount of the liability outstanding under mortgage or other secured long term arrangement, excluding any part of the liability repayable within one year.

(3) A qualifying undertaking is an arrangement between a Gibraltar UCITS management company and an approved bank which–

(a) is in the form prescribed by the Authority for the purposes of this regulation; and

(b) complies with the appropriate limitations set out in paragraph (7) of Part II to Table 5.2.2(1).

Large exposures.

77.(1) This section applies to a Gibraltar UCITS management company with investment powers with regard to large exposures in respect of its designated investment business other than when undertaking scheme management activity.

(2) A Gibraltar UCITS management company with investment powers must be able to monitor its individual large exposures, and the total of its large exposures, on a daily basis, and must recalculate its large exposures position in a full and detailed manner before executing any transaction which may result in a breach of the limits set out in sub-regulation (3).

(3) Subject to sub-regulation (4), a Gibraltar UCITS management company with investment powers must ensure that–

(a) each large exposure does not exceed 25 per cent of its own funds, or 20 per cent of its own funds where the exposure is to an associate of the company; and

(b) the aggregate of its large exposures does not exceed 800 per cent of its own funds.

(4) A Gibraltar UCITS management company with investment powers may exclude an exempt exposure from the calculation of its large exposures, and may reduce that calculation by an appropriate amount, where an exposure is a partially exempt exposure.

PART VII
GENERAL

Application of regulations made under other Acts.

78. Regulations made under the 1989 Act and the Financial Services Act 1998 apply to collective investment schemes and authorised persons unless disapplied, in whole or in part, or modified by the Authority with the consent of the Minister.

Codes of Practice.

79. Codes of Practice issued by the Authority under section 55(1) of the Act may provide for the following:

(a) meetings of unitholders, including class meetings, and the serving of notices, including, but not limited to–

(i) the convening and requisitioning of meetings of unitholders,

(ii) the giving and service of notices of meetings of unitholders,

(iii) proceedings at a meeting of unitholders, 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;

(b) reports to be provided to unitholders;

(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 unitholders;

(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.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

SCHEDULE 1

Regulation 5

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 1989 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;

(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 1989 Act,

(ii) paragraph 4 or 5 of Schedule 1 of the 1989 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 1989 Act.

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 1989 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 1989 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 1989 Act issued by a single issuer; or

(d) investments falling within paragraph 4 of Schedule 1 of the 1989 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 1989 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 1989 Act or which fall with the meaning of carrying on a restricted activity under section 7(1) of the Act; and

(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 1989 Act.

14. A body corporate, other than an open-ended investment company.

15. A society registered under the Friendly Societies Act.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006
SCHEDULE 2

Regulation 9

MATTERS TO BE INCLUDED IN THE CONSTITUTING INSTRUMENT OF AN AUTHORISED COLLECTIVE INVESTMENT SCHEME

The constituting instrument of an authorised collective investment scheme must include the following:

1. The name of the scheme.

2. A statement as to whether the scheme is a UCITS scheme or a non-UCITS retail scheme.

3. The type of scheme.

4. In the case of an open-ended investment company, a statement–

(a) that the head office of the company is in Gibraltar;

(b) that the company is an open-ended investment company;

(c) that the shareholders are not liable for the debts of the company;

(d) that the scheme property is entrusted to a depositary for safe keeping; and

(e) that charges or expenses of the company may be taken out of the scheme property.

5. A statement that, subject to the Act, these Regulations or the constituting instrument, the scheme has the power to invest in any securities market, or deal on any derivatives market, permitted by the Regulations.

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

7. A statement as to the base currency of the scheme.

8. A statement setting out the basis for the valuation and pricing of the scheme.

9. If the scheme is to be wound up after a certain period, a statement to that effect.

10. A statement–

(a) as to the object of the scheme, specifying in particular the types of investments and assets in which it and, if applicable, each sub-fund, may invest; and

(b) that the object of the scheme is to invest in property of that kind with the aim of spreading investment risk and giving unitholders the benefits of the results of the management of that property.

11. Where relevant in the case of a UCITS scheme, a statement as to the individual states or bodies in which over 35% of the value of the scheme may be invested in government and public securities.

12. A statement–

(a) specifying the classes of units that may be issued and, for a scheme that is an umbrella scheme, the classes that may be issued in respect of each sub-fund;

(b) if the rights of any class of unit differ, a statement describing those differences in relation to the different classes.

13. A statement setting out the basis on which the manager, and in the case of a unit trust, the trustee, may make a charge and recover expenses out of the scheme property.

14. Where relevant, a statement authorising the issue or cancellation of units to take place through the open-ended investment company or through the trustee directly.

15. Where relevant, a statement authorising payment for the issue or cancellation of units to be made by the transfer of assets other than cash.

16. Where relevant, the restrictions that will apply in relation to the sale and redemption of units as permitted by Codes of Practice.

17. The manner in which votes may be given at a meeting of unitholders.

18. A statement–

(a) identifying the person responsible for maintaining the register of unitholders, and

(b) authorising that person to charge for issuing any document that records, or amends, an entry in the register, other than on the issue or sale of units.

19. statement setting out the basis for the distribution or re-investment of income.

20. Where relevant, a provision for income equalisation.

21. A statement that where any holding of units by a unitholder is, or is reasonably considered by the manager to be, an infringement of any law, those units must be redeemed or cancelled.

22. A statement of the proportion of a larger denomination share represented by a smaller denomination share for any relevant unit class.

23. In the case of a unit trust–

(a) a statement that the trust deed is made under and is governed by the law of Gibraltar;

(b) a statement that the trust deed–

(i) is binding on each unitholder as if he had been a party to it; and

(ii) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms;

(c) a declaration that, subject to the provisions of the trust deed and any relevant provisions of the Act, these Regulations and the Codes of Practice–

(i) the scheme property, other than money standing to the credit of the distribution account, is held by the trustee on trust for the unitholders specifying the basis on which the beneficial interests of the unitholders are to be determined, and

(ii) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply in accordance with the relevant Code of Practice.

24. In the case of an open-ended investment company–

(a) a statement of the maximum and minimum sizes of the company's capital.

(b) provision for any matter relating to the procedure for the appointment, retirement and removal of any director of the company for which provision is not made in these Regulations or any Code of Practice; and

(c) the currency in which the accounts of the company are to be prepared.

25. In the case of an open-ended investment company, the constituting instrument must also contain provision as to the following matters—

(a) in the case of an umbrella scheme, the investment objectives applicable to each part of the scheme property that is pooled separately;

(b) the classes of shares that the company may issue indicating, in the case of an umbrella scheme, which class or classes of shares may be issued in respect of each part of the scheme property that is pooled separately;

(c) the rights attaching to shares of each class (including any provision for the expression in two denominations of such rights);

(d) if the company is to be able to issue bearer shares, share warrants to bearer or securities to bearer, a statement to that effect together with details of any limitations on the classes of the company's shares which are to include bearer shares;

(e) in the case of a company which is a participating issuer, a statement to that effect together with an indication of any class of shares in the company which is a class of participating securities;

(f) the form, custody and use of the company's common seal (if any).

The following apply with respect to the constituting instrument of an authorised open-ended investment company–

(a) For the purposes of paragraph 24, the size at any time of a company's capital is to be taken to be the value at that time, as determined in accordance with the Codes of Practice, of the scheme property of the company less the liabilities of the company.

(b) Once a company has been authorised as a scheme, no amendment may be made to the statements contained in the company's constituting instrument required under paragraph 4.

SCHEDULE 3

Regulation 13

INFORMATION, EXPLANATIONS AND OTHER MATTERS REQUIRED TO BE CONTAINED IN THE PROSPECTUS OF AN AUTHORISED SCHEME

The prospectus of an authorised scheme must be drawn up in the English language and shall contain the information, explanations and matters specified in this Schedule.

1. A statement that the document is the prospectus of the authorised scheme valid as at a particular date, which shall be the date of the document.

2. description of the scheme, including–

(a) its name; and

(b) whether it is an authorised open-ended investment company or an authorised unit trust.

3. A statement–

(a) that unitholders are not liable for the debts of the scheme;

(b) that, in the case of an open-ended investment company, the sub-funds of a scheme which is an umbrella fund are not 'ring fenced' and in the event of the umbrella fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, that the remaining liabilities may have to be met out of the assets attributable to other sub-funds;

4. The following particulars with respect to the scheme–

(a) in the case of an open-ended investment company–

(i) the address of its head office and the address of the place in Gibraltar for service on the company of notices or other documents required or authorised to be served on it, and

(ii) the maximum and minimum sizes of its capital;

(b) the date of and, if different, with effect from which, the scheme was authorised under Part III of the Act and details of its termination, if the duration of the scheme is limited;

(c) its base currency;

(d) the circumstances in which it may be wound up under these Regulations and a summary of the procedure for, and the rights of unitholders under, such a winding up.

5. Particulars of the investment and financial objectives of the scheme, including–

(a) the scheme's investment policy for achieving its investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;

(b) an indication of any limitations on its investment policy;

(c) the description of assets which the capital property may consist of;

(d) the proportion of the capital property which may consist of an asset of any description;

(e) the description of transactions which may be effected on behalf of the authorised scheme and an indication of any techniques and instruments or borrowing powers which may be used in the management of the authorised scheme;

(f) a list of the eligible markets through which the authorised scheme may invest or deal;

(g) for an open-ended investment company, a statement as to whether it is intended that the scheme will have an interest in any immovable property or movable property in accordance with regulation 24(2) for the direct pursuit of the open-ended investment company's business;

(h) where regulation 27(2) applies, a prominent statement as to the fact that more than 35% of the scheme property is or may be invested in government and public securities and the names of the individual states, local authorities or public international bodies in whose securities the authorised scheme may invest more than 35% of the scheme property;

(i) the policy in relation to the exercise of borrowing powers by the authorised scheme;

(j) for an authorised scheme which may invest in other schemes, the extent to which the scheme property may be invested in the units of schemes which are managed by the manager of the authorised scheme or by its associate;

(k) where a scheme invests principally in scheme units, deposits or derivatives, or replicates an index in accordance with regulation 44, a prominent statement regarding this investment policy;

(l) where derivatives transactions may be used in a scheme, a prominent statement as to whether these transactions are for the purposes of hedging or meeting the investment objectives or both and the possible outcome of the use of derivatives on the risk profile of the scheme;

(m) information concerning the profile of the typical investor for whom the scheme is designed;

(n) information concerning the historical performance of the scheme presented in accordance with the Codes of Practice;

(o) for a non-UCITS retail scheme which invests in immovables, a statement of the countries or territories of situation of land or buildings in which the authorised scheme may invest;

(p) for a UCITS scheme which invests a substantial portion of its assets in other schemes, a statement of the maximum level of management fees that may be charged to that UCITS scheme and to the schemes in which it invests;

(q) where the net asset value of a UCITS scheme is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect; and

(r) for a UCITS scheme, a statement that any unitholder may obtain on request the types of information, which must be listed, specified in the Codes of Practice.

6. Relevant details of the reporting, accounting and distribution information, including–

(a) the accounting and distribution dates;

(b) procedures for–

(i) determining and applying income (including how any distributable income is paid),

(ii) unclaimed distributions, and

(iii) if relevant, calculating, paying and accounting for income equalisation;

(c) the accounting reference date and when the long report will be published in accordance with the Codes of Practice; and

(d) when the short report will be sent to unitholders in accordance with the Codes of Practice.

7. Information as to–

(a) where there is more than one class of unit in issue or available for issue, the name of each such class and the rights attached to each class in so far as they vary from the rights attached to other classes;

(b) where the instrument constituting the scheme provides for the issue of bearer certificates, that fact and what procedures will operate for them;

(c) how unitholders may exercise their voting rights and what these amount to;

(d) where a mandatory redemption, cancellation or conversion of units from one class to another may be required, in what circumstances it may be required; and

(e) for an authorised unit trust, the fact that the nature of the right represented by units is that of a beneficial interest under a trust.

8. The following particulars of the manager of the authorised scheme–

(a) its name;

(b) the nature of its corporate form;

(c) the date of its incorporation;

(d) the address of its registered office;

(e) the address of its head office, if that is different from the address of its registered office;

(f) if neither its registered office nor its head office is in Gibraltar, the address of its principal place of business in Gibraltar;

(g) if the duration of its corporate status is limited, when that status will or may cease; and

(h) the amount of its issued share capital and how much of it is paid up.

9. In the case of an open-ended investment company, the names and positions in the company of the directors of the company and the manner, amount and calculation of the remuneration of the directors.

10. The following particulars of the depositary of the scheme–

(a) its name;

(b) the nature of its corporate form;

(c) the address of its registered office;

(d) the address of its head office, if that is different from the address of its registered office;

(e) if neither its registered office nor its head office is in Gibraltar, the address of its principal place of business in Gibraltar; and

(f) a description of its principal business activity.

11. If an investment adviser is retained in connection with the business of an authorised scheme–

(a) its name; and

(b) where it carries on a significant activity other than providing services to the authorised scheme as an investment adviser, what that significant activity is.

12. The name of the auditor of the authorised scheme.

13. The following relevant details with respect to contracts and other relationships with parties–

(a) for an open-ended investment company–

(i) a summary of the material provisions of the contract between the open-ended investment company and its manager, which may be relevant to unitholders including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity,

(ii) the main business activities of each of the directors, (other than those connected with the business of the company) where these are of significance to the company's business,

(iii) if any director is a body corporate in a group of which any other corporate director of the company is a member, a statement of that fact, and

(iv) the main terms of each contract of service between the company and a director in summary form;

(b) the names of the directors of the manager and the main business activities of each of the directors (other than those connected with the business of the authorised scheme) where these are of significance to the authorised scheme's business;

(c) a summary of the material provisions of the contract between the open-ended investment company or the manager of the authorised unit trust and the depositary which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;

(d) if an investment adviser retained in connection with the business of the authorised scheme is a body corporate in a group of which any director of the open-ended investment company or the manager of the authorised unit trust is a member, that fact;

(e) a summary of the material provisions of any contract between the manager of the scheme and, in the case of an open-ended investment company, the company, and any investment adviser which may be relevant to unitholders;

(f) if an investment adviser retained in connection with the business of the scheme has the authority of the manager or the open-ended investment company to make decisions on behalf of the manager or the open-ended investment company, that

fact and a description of the matters in relation to which it has that authority;

(g) what functions, if any, the manager has delegated and to whom; and

(h) in what capacity, if any, the manager acts in relation to any other collective investment schemes and the name of such schemes.

14. Details of–

(a) the address in Gibraltar where the register of unitholders, and where relevant the plan register is kept and can be inspected by unitholders; and

(b) the registrar's name and address.

15. In relation to each type of payment from the scheme property, details of–

(a) who the payment is made to;

(b) what the payment is for;

(c) the rate or amount where available;

(d) how it will be calculated and accrued;

(e) when it will be paid; and

(f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.

16. If, as permitted by the Codes of Practice, the manager and the depositary have agreed that all or part of any income expense payments may be treated as a capital expense–

(a) that fact;

(b) the policy for allocation of these payments; and

(c) a statement that this policy may result in capital erosion or constrain capital growth.

17. In the case of an open-ended investment company, an estimate of any expenses likely to be incurred by the company in respect of movable and immovable property in which the company has an interest.

18. In relation to the valuation and pricing of scheme property–

(a) a provision that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point;

(b) details of–

(i) how the value of the scheme property is to be determined in relation to each purpose for which the scheme property must be valued,

(ii) how frequently and at what time or times of the day the scheme property will be regularly valued for dealing purposes and a description of any circumstance in which the scheme property may be specially valued,

(iii) where relevant, how the price of units of each class will be determined for dealing purposes, and

(iv) where and at what frequency the most recent prices will be published; and

(c) if provisions in sub paragraphs (a) and (b) do not take effect when the instrument constituting the scheme or, where appropriate, the supplemental trust deed takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.

19. The following particulars with respect to dealing–

(a) the procedures, the dealing periods and the circumstances in which the manager will effect–

(i) the sale and redemption of units and the settlement of transactions, including the minimum number or value of units which one person may hold or which may be subject to any transaction of sale or redemption, for each class of unit in the scheme; and

(ii) any direct issue or cancellation of units by an open-ended investment company or by the trustee, as appropriate, through the manager;

(b) the circumstances in which the redemption of units may be suspended;

(c) whether certificates will be issued in respect of registered units;

(d) the circumstances in which the manager may arrange for, and the procedure for the issue or cancellation of units in specie;

(e) the investment exchanges, if any, on which units in the scheme are listed or dealt;

(f) the circumstances and conditions for issuing units in an authorised scheme which limit the issue of any class of units;

(g) the circumstances and procedures for the limitation or deferral of redemptions; and

(h) in a prospectus available during the period of any initial offer–

(i) the length of the initial offer period,

(ii) the initial price of a unit, which must be in the base currency,

(iii) the arrangements for issuing units during the initial offer, including the manager's intentions on investing the subscriptions received during the initial offer,

(iv) the circumstances when the initial offer will end,

(v) whether units will be sold or issued in any other currency, and

(vi) any other relevant details of the initial offer.

20. Details of what is meant by dilution including–

(a) a statement explaining–

(i) that it is not possible to predict accurately whether dilution is likely to occur, and

(ii) which of the policies permitted and specified in the Codes of Practice that the authorised scheme manager is adopting together with an explanation of how this policy

may affect the future growth of the authorised scheme; and

(b) if the manager may require a dilution levy or make a dilution adjustment, a statement of–

(i) the manager's policy in deciding when to require a dilution levy, including the authorised scheme manager's policy on large deals, or when to make a dilution adjustment,

(ii) the estimated rate or amount of any dilution levy or dilution adjustment based either on historical data or future projections, and

(iii) the likelihood that the manager may require a dilution levy or make a dilution adjustment and the basis (historical or projected) on which the statement is made.

21. The manager's normal basis of pricing.

22. Where relevant, a statement authorising the manager to make a preliminary charge and specifying the basis for and current amount or rate of that charge.

23. Where relevant, a statement authorising the manager to deduct a redemption charge out of the proceeds of redemption; and if the manager makes a redemption charge–

(a) the current amount of that charge or if it is variable, the rate or method of calculating it;

(b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the manager on request; and

(c) how the order in which units acquired at different times by a unitholder is to be determined so far as necessary for the purposes of the imposition of the redemption charge.

24. Details of–

(a) the address at which copies of the instrument constituting the scheme, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;

(b) the manner in which any notice or document will be served on unitholders;

(c) the extent to which and the circumstances in which, if any–

(i) the scheme is liable to pay or suffer tax on any appreciation in the value of the scheme property or on the income derived from the scheme property; and

(ii) deductions by way of withholding tax may be made from distributions of income to unitholders and payments made to unitholders on the redemption of units; and

(d) for a UCITS scheme, any possible fees or expenses not described in paragraphs 13 to 21, distinguishing between those to be paid by a unitholder and those to be paid out of scheme property.

25. In the case of a scheme which is an umbrella fund, the following information–

(a) that a unitholder is entitled to exchange units in one sub-fund for units in any other sub-fund (other than a sub-fund which has limited the issue of units);

(b) that in no circumstances will a unitholder who exchanges units in one sub-fund for units in any other sub-fund be given a right by law to withdraw from or cancel the transaction;

(c) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;

(d) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund; and

(e) for each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the scheme which is an umbrella fund.

26. For a scheme which is an umbrella fund, information required must be stated–

(a) in relation to each sub-fund where the information for any sub-fund differs from that for any other; and

(b) for the umbrella fund as a whole, but only where the information is relevant to the umbrella fund as a whole.

27. A prospectus of a UCITS scheme which is prepared for the purpose of marketing units in a EEA State other than Gibraltar, must give details as to–

(a) what special arrangements have been made–

(i) for paying in that EEA State amounts distributable to unitholders resident in that State;

(ii) for redeeming in that EEA State the units of unitholders resident in that State;

(iii) for inspecting and obtaining copies in that EEA State of the instrument constituting the scheme and amendments to it, the prospectus and the annual and half-yearly long report; and

(iv) for making public the price of units of each class; and

(b) how the open-ended investment company or the manager of an authorised unit trust will publish in that EEA State notice–

(i) that the annual and half-yearly long report are available for inspection;

(ii) that a distribution has been declared;

(iii) of the calling of a meeting of unitholders; and

(iv) of the termination of the authorised scheme or the revocation of its authorisation.

28. Such other information, explanations and matters as may be specified in the Codes of Practice.

29. Any other material information which is within the knowledge of the directors of an open-ended investment company or the manager of an authorised unit trust, or which the directors or manager would have obtained by making reasonable enquiries, including but not confined to, the following matters–

(a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised scheme and the

extent and characteristics of the risks accepted by so participating;

(b) a clear and easily understandable explanation of any risks which investment in the authorised scheme may reasonably be regarded as presenting for reasonably prudent investors of moderate means;

(c) if there is any arrangement intended to result in a particular capital or income return from a holding of units in the authorised scheme or any investment objective of giving protection to the capital value of, or income return from, such a holding–

(i) details of that arrangement or protection;

(ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;

(iii) a description of the risks that could affect achievement of that return or protection; and

(iv) details of the arrangements by which the manager will notify unitholders of any action required by the unitholders to obtain the benefit of the guarantee; and

(d) whether any notice has been given to unitholders of the manager's intention to propose a change to the scheme and if so, its particulars.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006
SCHEDULE 4

Regulation 15

MATTERS TO BE CONTAINED IN SIMPLIFIED PROSPECTUS

A simplified prospectus in respect of a collective investment scheme must contain the information, explanations and matters specified in this Schedule.

1. A brief presentation of the scheme, including:

   (a) when the scheme was created and details of the EEA State where the scheme has been registered or incorporated;

   (b) in the case of a scheme having different sub-funds, a statement to that effect;

   (c) where applicable, the name and contact details of the operator of the scheme;

   (d) where applicable, the expected period of existence of the scheme;

   (e) the name and contact details of the depositary of the scheme;

   (f) the name and contact details of the auditors of the scheme;

   (g) the name and brief details of the financial group (e.g. a bank) promoting the scheme;

2. Investment information concerning the scheme, including:

   (a) a short description of the scheme's objectives including:

      (i) a concise and appropriate description of the outcomes sought for any investment in the scheme which should include a statement as to whether there is any arrangement intended to result in a particular capital or income return from the units or any investment objective of giving protection to their capital value or income return and, if so, details of that arrangement or protection,

      (ii) a clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees which should include an explanation of what is to happen when an investment is encashed before the expiry of any related guarantee or protection, and

(iii) a statement, where relevant, that the scheme is intended to track an index or indices, and sufficient information to enable investors both to identify the relevant index or indices and to understand the extent or degree of tracking pursued;

(b) a brief description of the scheme's investment policy, including:

(i) the main categories of eligible financial instruments which are the object of investment,

(ii) whether the scheme has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets, e.g. investments in emerging countries' financial instruments,

(iii) where relevant, a warning that, whilst the actual portfolio composition is required to comply with the broad legal and statutory regulations and limits, risk-concentration may occur in regard of certain tighter asset classes, economic and geographic sectors,

(iv) if the scheme invests in bonds, an indication of whether they are corporate or government, their duration and the ratings requirements,

(v) if the scheme uses financial derivative instruments, an indication of whether this is done in pursuit of the scheme's objectives, or for hedging purposes only,

(vi) whether the scheme's management style makes some reference to a benchmark, and in particular whether the scheme has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this; and

(vii) whether the scheme's management style is based on a tactical asset allocation with high frequency portfolio adjustments;

The information referred to above may be set out as a single item in the simplified prospectus (e.g. for the information on index tracking), provided that the information so combined does not lead to confusion of the objectives and policies of the

scheme. The order of the information items may be adapted to reflect the scheme's specific investment objectives and policy.

(c) a brief assessment of the scheme's risk profile by sub-fund, including:

(i) a statement to the effect that the value of investments may fall as well as rise and that investors may get back less than they put in,

(ii) a statement that details of all the risks actually mentioned in the simplified prospectus may be found in the full prospectus,

(iii) a description in words of any risk investors have to face in relation to their investment, but only where such risk is relevant and material, based on risk impact and probability, including a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the scheme such as:

Specific risks.

(A) the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk),

(B) the risk that an issuer or a counterparty will default (credit risk);

(C) only where strictly relevant, the risk that a settlement in a transfer system does not take place as expected because a counterparty does not pay or deliver on time or as expected (settlement risk);

(D) the risk that a position cannot be liquidated in a timely manner at a reasonable price (liquidity risk),

(E) the risk that the investment's value will be affected by changes in exchange rates (exchange or currency risk),

(F) only where strictly relevant, the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the depositary or of a sub-depositary (custody risk),and

(G) risks related to a concentration of assets or markets; and

Horizontal risk factors.

(H) performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties,

(I) risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns,

(J) exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider,

(K) inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers,

(L) inflation risk, and

(M) lack of certainty that environmental factors, such as a tax regime, will persist;

In order to avoid conveying a misleading image of the relevant risks, the information items should be presented so as to prioritise, based on scale and materiality, the risks so as to better highlight the individual risk profile of the scheme.

(d) the historical performance of the scheme (where applicable) and a warning that this is not an indicator of future performance (which may be either included in or attached to the simplified prospectus), including:

(i) the scheme's past performance, as presented using a bar chart showing annual returns for the last ten full consecutive years.

(ii) if a scheme is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the scheme should include a comparison with the past performance of the benchmark according to which the scheme is managed or the performance fee is calculated.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006
SCHEDULE 5

Regulation 70

FINANCIAL RESOURCE REQUIREMENTS GIBRALTAR UCITS MANAGEMENT COMPANIES

Interpretation of terms for this Schedule

In this Schedule–

"category A body" means –

(a) the Government or central bank of a zone A country,

(b) the European Communities, or

(c) the government or central bank of any other country, provided that the receivable in question is denominated in that country's national currency;

"category B body" means –

(a) the European Investment Bank or a multi-lateral development bank,

(b) the regional government or local authority of a zone A country,

(c) an investment company or credit institution authorised in a zone A country, or

(d) a clearing house or exchange recognised by the Authority, or

(e) an investment firm or credit institution authorised in any other country which applies a financial supervision regime at least equivalent to the Capital Adequacy Directive (No. 93/6/EEC);

"credit institution" has the meaning specified in the Banking Act, 1992;

"investment firm" has the meaning specified in the Financial Services Act, 1998;

"zone A country" means –

(a) any EEA State,

(b) any country which is a full member of of the Organisation for Economic Co-operation and Development, or

(c) any country which has concluded special lending arrangements with the International Monetary Fund's general arrangements to borrow,

that has not, at any time in the previous five years, rescheduled its external sovereign debt.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

Table 5.1 – Calculation of Initial Capital, Own Funds, Financial Resources and Liquid Capital

Financial Resources	Category	Applicable paragraphs in Part II
TIER 1		
(1) Paid up ordinary share capital		2
(2) Share premium account		
(3) Audited reserves	**A**	
(4) Non-cumulative preference shares		
(5) Investments in own shares		
(6) Intangible assets		3
(7) Material current year losses	**B**	4
(8) Material holdings in credit and financial institutions		5
Initial capital = A minus B	**C**	1(b)
TIER 2		1
(9) Revaluation reserves		
(10) Fixed term cumulative preference share capital	**D**	1(a)
(11) Long term qualifying subordinated loans		1(a), 6
(12) Other cumulative preference share capital and debt capital		
(13) Qualifying arrangements		7
Own funds = C plus D	**E**	
TIER 3		
(14) Illiquid assets	**F**	10
Financial resources = E minus F	**G**	
(15) Short-term qualifying subordinated loans and excess Tier 2 capital	**H**	1(e), 9
(16) Qualifying property		11

Liquid capital = (G+H)

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

Table 5.2 – Requirements applicable to calculation by Gibraltar UCITS management company of its financial resources in accordance with Table 5.1

1. Ratios

(a) the total of fixed term cumulative preference shares (item 10) and long term qualifying subordinated loans (item 11) that may be included in Tier 2 capital is limited to 50 per cent of Tier 1 capital (however, see subparagraph (d) below);

(b) Tier 1 capital must equal or exceed €125,000 at all times;

(c) Tier 2 capital must not exceed 100 per cent of Tier 1 capital;

(d) Capital which would otherwise qualify as Tier 2 capital but for the operation of paragraphs (a) and (c) may be treated as Tier 3 capital (liquid capital) for Gibraltar UCITS management companies with investment powers subject to sub-paragraph (e) below; and

(e) the total of the excess of Tier 2 capital so treated as Tier 3 capital and short term qualifying subordinated loans (item 15) may not exceed 250 per cent of an amount equal to Tier 1 capital less the other assets requirements calculated in accordance with Table 5.9.

2. Non Corporate Entities

(a) In the case of partnerships or sole traders, the following terms should be substituted, as appropriate, for items 1 to 4 in Tier 1 capital:

(i) partners' capital accounts (excluding loan capital);

(ii) partners' current accounts (excluding unaudited profits and loan capital);

(iii) proprietor's account (or other term used to signify the sole trader's capital but excluding unaudited profits).

(b) Loans other than qualifying subordinated loans shown within partners' or proprietors' accounts must be classified as Tier 2 capital under item 12.

3. Intangible assets (Item 6)

Intangible assets comprise:

(a) formation expenses to the extent that these are treated as an asset in the company's accounts;

(b) goodwill, to the extent that it is treated as an asset in the company's accounts; and

(c) other assets treated as intangibles in the company's accounts.

4. Material current year losses (Item 7)

Losses in current year operating figures must be deducted when calculating Tier 1 capital if such losses are material. For this purpose profits and losses must be calculated quarterly, as appropriate. If this calculation reveals a net loss it shall only be deemed to be material for the purposes of this Table if it exceeds 10 per cent of the company's Tier 1 capital.

5. Material holdings in credit and financial institutions (Item 8)

Material holdings comprise:

(a) where the company holds more than 10 per cent of the equity share capital of the institution, the value of that holding and the amount of any subordinated loans to the institution and the value of holdings in qualifying capital items or qualifying capital instruments issued by the institution;

(b) in the case of holdings other than those mentioned in (a) above, the value of holdings of equity share capital in, and the amount of subordinated loans made to, such institutions and the value of holdings in qualifying capital items or qualifying capital instruments issued by such institutions to the extent that the total of such holdings and subordinated loans exceeds 10 per cent of the company's own funds calculated before the deduction of item 8.

6. Long term qualifying subordinated loans (Item 11)

Loans having the characteristics prescribed by regulation 75(1) may be included in item 11, subject to the limits set out in paragraph (1) above.

7. Qualifying arrangements (Item 13)

A company may only include a qualifying undertaking or other arrangement in item 13 if it is a qualifying capital instrument or a qualifying capital.

8. Interim profits

Non-trading book interim profits may only be included in Tier 1 of the calculation if they have been independently verified by the company's external auditors.

For this purpose, the external auditor should normally undertake at least the following:

(a) satisfy himself that the figures forming the basis of the interim profits have been properly extracted from the underlying accounting records;

(b) review the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the company in drawing up its annual financial statements;

(c) perform analytical review procedures on the results to date, including comparisons of actual performance to date with budget and with the results of prior periods;

(d) discuss with management the overall performance and financial position of the company;

(e) obtain adequate comfort that the implications of current and prospective litigation, all known claims and commitments, changes in business activities and provisions for bad and doubtful debts have been properly taken into account in arriving at the interim profits; and

(f) follow up problem areas of which the auditors are already aware in the course of auditing the company's financial statements.

A company wishing to include interim profits in Tier 1 capital in a financial return should submit to the Authority with the financial return a verification report signed by its external auditor which states whether the interim results are fairly stated.

Profits on the sale of capital items or arising from other activities which are not directly related to the investment business of the company may also be included within the calculation of liquid

capital if they can be separately verified by the company's auditors. In such a case, such profits can form part of the company's Tier 1 capital as audited profits.

9. Short term qualifying subordinated loans (Item 15)

Loans having the characteristics prescribed by regulation 75(3) may be included in item 15 subject to the limits set out in paragraph (1) above. Tier 2 capital which exceeds the ratios prescribed by paragraph (1)(a) and (c) may be included in item 15 subject to paragraph (1) above.

10. Illiquid assets (Item 14)

Illiquid assets comprise:

(a) tangible fixed assets;

Note: In respect of tangible fixed assets purchased under finance leases the amount to be deducted as an illiquid asset shall be limited to the excess of the asset over the amount of the related liability shown on the balance sheet.

(b) holdings in, including subordinated loans to, credit or financial institutions which may be included in the own funds of such institutions unless they have been deducted under item 8;

(c) any investment in undertakings other than credit institutions and other financial institutions where such investments are not readily realisable;

(d) any deficiency in net assets of a subsidiary;

(e) deposits not available for repayment within 90 days (except for payments in connection with margined futures or options contracts);

Note: Where cash is placed on deposit with a maturity of more than 90 days but is repayable on demand subject to the payment of a penalty, then this is not required to be deducted as an illiquid asset but a deduction is required for the amount of the penalty.

(f) loans, other debtors and accruals not falling due to be repaid

within 90 days or which are more than one month overdue by reference to the contractual payment date;

(g) physical stocks (except where subject to the position risk requirement as set out in Table 5.3); and

(h) prepayments to the extent that the period of prepayment exceeds thirteen weeks.

(i) if not otherwise covered, any holding in eligible capital instruments of an insurance undertaking, insurance holding company, or reinsurance undertaking that is a subsidiary or participation. Eligible capital instruments include ordinary share capital, cumulative preference shares, perpetual securities and long-term subordinated loans, that are eligible for insurance undertakings.

11. Qualifying property (Item 16)

This item comprises the qualifying amount calculated in accordance with regulation 76.

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2006

Table 5.3 - Position Risk Requirement

PART I

CALCULATION OF REQUIREMENT

A Gibraltar UCITS management company's position risk requirement is determined by calculating on a daily mark to market basis, the sum of the weighted value of each position held by the company. The weighted value for each position must be calculated by multiplying its current market value by the appropriate factor set out in Part II of this table.

Note: This requirement does not attach to items deducted in full as illiquid assets.

PART II

WEIGHTINGS

Instrument		**Requirement**		
A. Debt	**Maturity**	0-2 years	2-5 years	> 5 years
Central Government		2%	5%	13%
Qualifying debt securities				
• fixed rate		8%	8%	15%
• floating rate		10%	10%	15%
Non-qualifying debt securities				
		10%	20%	30%
• fixed rate		30%	30%	30%
• floating rate				

B. Equities	
• Traded on a recognised	25%

or designated investment exchange.	
• Other.	100%
C. Stock position in physical commodities	
• Physical positions associated with company's investment business	30% of realisable value
D. Derivatives	
• Exchange traded futures and written options	4 x initial margin requirement.
• OTC futures and written options	Apply the appropriate percentage shown in Sections A, B, & C above to the market value of the underlying position.
• Purchased options	Apply the appropriate percentage shown in Sections A, B & C above to the market value of the underlying position but the result may be limited to the market value of the option.
• Contracts for differences	20% of the market value of the contract.
E. Other investments	
• units in regulated collective investment schemes	25% of realisable value (see Section F).
• with profit life policies	20% of surrender value.
• other	100% of the value of investment or underlying instrument.
F. Determination of disallowed value of units	

The disallowed value of units held in a unit trust manager's box is the difference between**:**

(a) the amount at which stocks of units in the box are valued in the balance sheet; and

(b) the adjusted value of the units, being the value of the units calculated at cancellation prices less the value calculated at cancellation prices of the units multiplied by the following percentages based on the types of investments in the individual unit trust schemes:

Quoted, fixed or floating rate interest bearing securities:	3%
Equities:	
USA, Japan, Canada	5%
Europe	6%
Far East and other	10%

Note

This can be illustrated as follows:

100 units, comprising Far East equities, with unit cancellation price of 100 pence.

	£	£
Balance sheet value		104
Value of cancellation price	100	
Less £100 x 10%	10	90
Disallowed		14

Note: The percentages in the requirement column are applied to the market value (unless otherwise stated) of gross positions i.e. both longs and shorts in each category; netting and off-setting are prohibited. The long or short position in a particular instrument is the net of any long or short positions held in that same instrument.

Table 5.4 - Counterparty Risk Requirement (CRR)

1. Receivables	In the case of receivables due to the company in the

	form of fees, commission, interest, dividends and margin in exchange-traded futures or options contracts, which are directly related to items included in the trading book, the CRR is calculated as follows: CRR = A x RF, where A = the amount of the sum due; and RF = the appropriate risk factor derived from Table 5.5. **Note:** This requirement attaches only to balances arising from proprietary activity falling within the definition of the trading book. **Note:** This requirement does not attach to items deducted in full as illiquid assets.
2. Delivery of cash against documents	Where a company enters into a trading book transaction and the transaction is to be settled by delivery of cash against documents, the company's CRR in respect of that transaction is calculated as follows: CRR = (SP – MV) x RF, where SP = agreed settlement price; MV = current market value; RF = the appropriate risk factors derived from Table 5.5. The CRR should only be calculated where the difference between SP and MV would involve a loss if borne by the company.
3. Free deliveries	Where a company enters into a trading book transaction and the company pays for the securities before it receives documents of title or delivers documents of title before receiving payment, the CRR in respect of that transaction is calculated as follows: CRR = V x RF, where V = (i) the full amount due to

			the company (i.e. the contract value) where the company has delivered securities to a counterparty and has not received payment; or
			(ii) the market value of the securities, where the company has made payment to a counterparty for securities and has not received documents of title; and
	RF	=	the appropriate risk factor derived from Table 5.5.
4. Settlement outstanding 30 days or more	In the case of trading book transactions entered into by a company where the company pays for the securities before it receives documents of title or delivers documents of title before receiving payment and settlement has not been effected within 30 days of falling due, CRR = V.		
5. Repos/Stock Lending and Reverse Repos/Stock Borrowing	Where a company enters into a transaction based on securities included in the trading book under the terms of a repurchase agreement or a securities lending agreement the company's CRR in respect of that transaction is calculated as follows:		
	CRR	=	V x RF, where
	R	=	the appropriate risk factor derived from Table 5.5; and
	for repos/stock lending:		
	V	=	the excess of the market value of the securities over the value of the collateral provided under the agreement, if the net figure is positive;
	or for reverse repos/stock borrowing:		
	V	=	the excess of the amount

			paid or the collateral given for the securities received under the agreement, if the net figure is positive.
6. OTC derivatives	In the case of a transaction entered into by a company as principal in an OTC derivative the CRR is calculated as follows:		
	CRR	=	A x RF, where
	A	=	the appropriate credit equivalent amount derived from Table 5.7; and
	RF	=	the appropriate risk factor derived from Table 5.5.

	This calculation shall not apply to contracts for interest rate and foreign exchange which are traded on a recognised investment exchange or designated investment exchange where they are subject to a daily margin requirement and foreign exchange contracts with an original maturity of 14 calendar days or less. A company may net off contracts with the same counterparty in the same OTC derivative contract for settlement on the same date in the same currency provided that the company is legally entitled under the terms of the contracts with such a counterparty to net such contracts by novation.

Table 5.5 - Counterparty Risk Factor – Cash Settlements

Number of working days after due settlement date	Risk Factor
0-4	0%
5-15	8%
16-30	50%
31-45	75%
46 or more	100%

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Table 5.6 - Couterparty Risk Requirement

Type of counterparty	Risk Weighting	Solvency Ratio	Risk Factor
1. A counterparty which is, or the contract of which is, explicitly guaranteed by a category A body.	NIL	8%	NIL
2. A counterparty which is, or the contract of which is, explicitly guaranteed by a category b body.	20%	8%	1.6%
3. Any other counterparty.	100%	8%	8%

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Table 5.7 - OTC Derivatives Calculation Of Credit Equivalent Amount

A. By attaching current market values to contracts (marking to market), obtain the current replacement cost of all contracts with positive values.

B. To obtain a figure for potential future credit exposure, the notional principal amounts or values underlying the company's aggregate positions are multiplied by the following percentages:

Residual Maturity	Interest-Rate Contracts	Foreign-Exchange Contracts
One year or less	NIL	1%
More than one year	0.5%	5%

C. The credit equivalent amount is the sum of current replacement cost and potential future credit exposure.

Note: Except in the case of single-currency "floating/floating interest rate" swaps in which only the current replacement cost will be calculated, bought OTC equity options and covered warrants shall be subject to the treatment accorded to exchange rate contracts.

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Table 5.8 - Foreign Exchange Requirement

Calculation of Requirement

(1) A company's foreign exchange requirement is determined by calculating the excess of its foreign exchange position (FEP) above 2 per cent of its own funds and multiplying this excess by 8 per cent.

(2) The FEP is the greater of:

(a) the total in the reporting currency of the net short positions in each currency other than the reporting currency**;** and

(b) the total in the reporting currency of the net long positions in each currency other than the reporting currency;

where the conversion to the reporting currency is performed using spot rates.

Note: For this purpose, long and short positions in the same currency can be netted to produce the net position.

(3) In calculating the FEP, a company must include relevant foreign exchange items.

EXCHANGE POSITION FOR HEDGING PURPOSES

Any positions which the company has taken in order to hedge against the adverse effect of exchange rates on an item already deducted in the calculation of liquid capital may not be excluded from the calculation of net open currency positions.

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Table 5.9 – Other Assets Requirement

PART I

CALCULATION OF REQUIREMENT

The requirement to be met in respect of the assets set out in Part II of this Table, other than those to which position risk requirements and counterparty risk requirements apply or which have been deducted in full as illiquid assets, and in respect of off-balance sheet items set out in Part II of this Table, must be calculated as follows:

A = AV x RF where

A = the amount of the requirement;

AV = the current asset value; and

RF = the appropriate risk factor derived from Part II of this Table.

PART II

RISK FACTORS

Assets and Off-Balance Sheet Items	**Risk Factor**
Assets	
Cash at bank and in hand and equivalent items	NIL
Assets secured by acceptable collateral including deposits and certificates of deposit with lending institutions	NIL
Amount due from trustees of authorised unit trust schemes **Note:** This only applies to Gibraltar UCITS management companies in relation to authorised unit trust schemes that they manage.	NIL
Amount due from depositaries of authorised open ended investment companies.	NIL

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Note: This only applies to Gibraltar UCITS management companies in relation to authorised open ended investment companies that they operate.	
Other receivables due from or explicitly guaranteed by or deposits with category A bodies	NIL
Other receivables due from or explicitly guaranteed by or deposits with category B bodies	1.6%
Pre-payments and accrued income.	8%
All other assets	8%

OFF-BALANCE SHEET ITEMS	
Full Risk Items e.g.	
Charges granted against assets Guarantees given	8% x counterparty weight
Medium Risk Items e.g.	
Undrawn credit facilities granted by the Gibraltar UCITS management company with an original maturity of more than one year	4% x counterparty weight
Low Risk Items e.g.	
Undrawn credit facilities granted by the company with an original maturity of one year or less	NIL

Note

(1) In determining the appropriate other assets requirement (OAR) for guarantees given in a group context, a company should follow the calculation below:

(a) Categorise the guarantee agreements into:

(i) those with the character of credit substitutes; or

(ii) those not having the character of credit substitutes; or

(iii) agreements t(b) Calculate the weighted value.

(i) For guarantees falling under (1)(a)(i), the weighted value will be 100% of the estimated current year liability under the guarantee.

(ii) For guarantees falling under (1)(a)(ii) the weighted value will be 50% of the estimated current year liability under the guarantee.

(iii) For guarantees falling under (1)(a)(iii), the weighted value will be nil.

(c) The OAR is calculated as:

Weighted value x 8% x counterparty weighting o provide guarantee

(2) For the purpose of this requirement, in assessing whether the guarantee has the characteristics of a credit substitute the following factors should be considered:

(a) whether the agreements allow for periodic or ad-hoc calling of funds;

(b) have the guarantees been drawn upon on a regular basis;

(c) whether companies in the group rely on such guarantees to meet their working capital or regulatory capital requirements.s.

(3) Where a company is part of a group including other companies regulated by the Authority which together have entered into cross group guarantee arrangements which give rise to an OAR, the estimate of the potential liability under the guarantee may be apportioned between the regulated entities for the purpose of calculating each company's OAR.