Subsidiary Legislation made under ss.59, 64, 83, 150, 337, 338, 340, 620, 621 and 627.

FINANCIAL SERVICES (UCITS) REGULATIONS 2020

LN.2020/053

Commencement **30.1.2020**

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2020/053 FINANCIAL SERVICES (UCITS) REGULATIONS 2020

In exercise of the powers conferred on the Minister by sections 5, 59, 64, 83, 150, 337, 338, 340, 620, 621 and 627 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (UCITS) Regulations 2020.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation

Interpretation.

3.(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Financial Services Act 2019;

"authorised open-ended investment company" means a UCITS that is an open-ended investment company;

"authorised common fund" means a UCITS that is a common fund;

"board of directors" means the board of directors of a management company;

"branch" means a place of business which–

(a) is part of a management company;

(b) has no legal personality; and

(c) provides services for which the management company has been authorised,

and all places of business established in the same EEA State by a management company with its head office in another EEA State must be regarded as a single branch;

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

"client" means any person or undertaking, including a UCITS, to whom a management company provides a service of collective portfolio management or services under regulation 15;

"close links" is a reference to two or more persons linked by either–

(a) participation, being the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking; or

(b) control, being the relationship between a parent undertaking and a subsidiary undertaking or a similar relationship between two or more persons;

"code of practice" means a code of practice issued by the GFSC under section 341 of the Act;

"collective investment scheme" has the meaning given in section 290 of the Act;

"Commission Regulation (EU) No 583/2010" means Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, as amended from time to time;

"Commission Regulation (EU) No 584/2010" means Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities, as amended from time to time;

"common fund"–

(a) means a collective investment scheme under which the property subject to the scheme is held on trust for the participants; and

(b) includes unit trusts;

"competent authority" means–

(a) in Gibraltar, the GFSC; and

(b) in another EEA State, the authority designated in that State under Article 97 of the UCITS Directive;

"constituting instrument" means–

(a) in the case of a common fund, a trust deed or binding agreement (as the case may be) made between the manager and the trustee;

(b) in the case of an authorised open-ended investment company, the memorandum and articles of association of the company, and

(c) in the case of any other collective investment scheme, any instrument to which the operator is a party that sets out any arrangements with any other person relating to any aspect of the operation or management of the scheme;

"counterparty risk" means the risk of loss for a UCITS resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;

"credit rating agency" has the meaning given in Article 3.1(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as amended from time to time;

"cross-border merger" means a merger of UCITS–

(a) at least two of which are established in different EEA States; or

(b) established in the same EEA State into a newly constituted UCITS established in a different EEA State;

"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;

"Directive 98/26/EC" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended from time to time;

"Directive 2006/73/EC" means Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, as amended from time to time;

"Directive 2010/43/EU" means Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, as amended from time to time;

"distribution account" means the account to which the income property of a collective investment scheme must be transferred as at the end of each accounting period, in accordance with the accounting provisions set out in any relevant code of practice;

"domestic merger" means a merger between UCITS established in Gibraltar where at least one of the merging UCITS has been notified under regulation 137;

"EEA UCITS management company" means an EEA firm which is a UCITS management company;

"Gibraltar UCITS management company" means a regulated firm which is a UCITS management company;

"home State" means–

(a) Gibraltar; or

(b) the EEA State,

in which a UCITS is authorised;

"host State" means

(a) Gibraltar; or

(b) an EEA State,

in which the units of a UCITS are marketed, other than its home State;

"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" means–

(a) all amounts, regardless of their actual designation, which, in accordance with an entity's legal structure, are regarded as equity capital subscribed by shareholders or other proprietors in so far as it has been paid up, plus share premium account accounts but excluding cumulative preferential shares; and

(b) all types of reserves shown separately in the entity's balance sheet and profit and losses brought forward as a result of the application of the final profit or loss;

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

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

"key investor information" must be interpreted in accordance with regulation 37;

"liquidity risk" means the risk that a position in a UCITS portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame, with the result that the ability of the UCITS to comply at any time with regulation 43(1) is compromised;

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

(a) the supervisory and the managerial functions; or

(b) if those functions are separated, only the managerial function;

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

"management company's home State" means–

(a) Gibraltar, in the case of a management company with a registered office in Gibraltar; or

(b) the EEA State in which the management company has its registered office;

"management company's host State" means–

(a) Gibraltar, in the case of a management company which has a branch or provides services in Gibraltar and has its registered office in an EEA State; or

(b) an EEA State in which a management company has a branch or provides services other than the management company's home State;

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

(a) in relation to a common fund, the person appointed as the manager of the scheme in accordance with the trust deed; or

(b) in relation to any other collective investment scheme, the person appointed to manage the scheme;

"market risk" means the risk of loss for a UCITS resulting from fluctuation in the market value of positions in the UCITS' portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's credit worthiness;

"money market instrument" has the meaning given in paragraph 8 of Schedule 23 to the Act;

"operational risk" means the risk of loss for a UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS;

"operator" means–

(a) in relation to a common fund with a separate trustee, the manager of the scheme;

(b) in relation to an open-ended investment company which is a UCITS scheme, the person appointed to manage the scheme; and

(c) in relation to any other open-ended investment company, the company itself;

"OTC derivative" means a derivative traded solely over the counter (OTC);

"own funds" has meaning given in Article 72 of the Capital Requirements Regulation;

"parent undertaking" is to be construed in accordance with section 276 of the Companies Act 2014;

"Part 7 permission" means permission under Part 7 of the Act;

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

"rebalancing of the portfolio" means a significant modification of the composition of the portfolio of a UCITS;

"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" must be construed accordingly;

"relevant person", in relation to a management company, means–

(a) a director, partner or equivalent, or manager of the management company;

(b) an employee of the management company and any other individual whose services are placed at the disposal and under the control of the management

company and involved in the provision by the management company of collective portfolio management;

(c) an individual who is directly involved in the provision of services to the management company by delegation to third parties, where the management company receives such services for the provision of collective portfolio management;

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

"scheme property" means–

(a) in the case of a common fund, the capital property and the income property, and

(b) in any other case, the property subject to the collective investment scheme;

"senior management" means the person or persons who effectively conduct the business of a management company in accordance with regulation 12(1)(b);

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

"subsidiary undertaking" is to be construed in accordance with section 276 of the Companies Act 2014;

"supervisory function" means the relevant persons or bodies responsible for the supervision of senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with obligations under the Act and these Regulations;

"synthetic risk and reward indicators" means synthetic indicators within the meaning of Article 8 of Commission Regulation (EU) No 583/2010;

"transferable securities" has the meaning given in paragraph 5 of Schedule 23 to the Act;

"UCITS" means a collective investment scheme which is authorised in accordance with Part 18 of the Act and these Regulations;

"UCITS scheme" has the meaning given in section 292 of the Act; and

"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) In these Regulations "merger" means an operation by which–

(a) one or more UCITS or investment compartments of UCITS (the "merging UCITS"), on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment of a UCITS, (the "receiving UCITS"), in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;

(b) two or more UCITS or investment compartments of UCITS (the "merging UCITS"), on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment of that UCITS, (the "receiving UCITS"), in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;

(c) one or more UCITS or investment compartments of UCITS (the "merging UCITS"), which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment of that UCITS, (the "receiving UCITS");

(3) For the purposes of the interpretation of "board of directors" in sub-regulation (1), where a management companies has a dual structure composed of a board of directors and a supervisory board, the term applies without affecting the supervisory board.

(4) For the purposes of the interpretation of "close links" in sub-regulation (1), the following provisions apply–

(a) a subsidiary undertaking of a subsidiary undertaking must be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

(b) situations in which two or more individuals or legal persons are permanently linked to the same person by a relationship of control must be regarded as constituting close links between such persons.

(5) For the purposes of the interpretation of "management body" in sub-regulation (1), where, by law, a management company, open-ended investment company or depositary has in place different bodies with specific functions, the requirements of these Regulations

directed at the management body or at the management body in its supervisory function must also, or must instead, apply to the members of those bodies of the management company, open-ended investment company or depositary to whom the applicable law assigns the respective responsibility.

(6) For the purposes of the interpretation of "management company" in sub-regulation (1), the regular business of a "management company" includes the functions in paragraph 93(3) of Schedule 2 to the Act.

(7) For the purposes of the interpretation of "qualifying holding" in sub-regulation (1), voting rights referred to in Articles 9 and 10 of the Transparency Directive must be taken into account.

(8) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Part 18 of the Act has the same meaning as it has for the purposes of that Part.

Overview.

4. These Regulations–

(a) supplement Parts 18 and 7 of the Act and the related Schedules concerning, respectively, the regulation of collective investment schemes and the carrying on of regulated activities related to such schemes; and

(b) give effect to provisions of the UCITS Directive and to Directive 2010/43/EU.

Application.

5. In their application to investment companies that have not designated a management company, the following provisions apply as if references in those provisions to "management company" were to "investment company"–

(a) regulation 104(1);

(b) Chapter 7 of Part 3; and

(c) Chapters 1, 7 and 8 of Part 4.

PART 2
AUTHORISATION CONDITIONS

Introduction.

6.(1) This Part includes provisions which supplement–

(a) Part 18 of the Act, in relation to the granting or varying of authorisation for collective investment schemes; and

(b) Part 7 of the Act, in relation to the giving or varying of permission to carry on the regulated activities in paragraphs 93 and 94 of Schedule 2 to the Act, of managing, or acting as depositary of, a UCITS.

(2) In granting or varying an authorisation under Part 18, or giving or varying Part 7 permission, the GFSC must ensure that the applicant meets, and will continue to meet, the requirements of the Act and these Regulations.

(3) An authorised collective investment scheme and a person with Part 7 permission to which these Regulations apply must at all times comply with the requirements of the Act and these Regulations.

Authorisation of collective investment scheme.

7.(1) Subject to this regulation, the GFSC may grant an application for the authorisation of a collective investment scheme if the GFSC is satisfied–

(a) that the scheme complies with the requirements of the Act and these Regulations in respect of the application and will, upon the grant of the authorisation, be in compliance with the requirements of the Act and these Regulations with respect to UCITS;

(b) in the case of a common fund, the manager and trustee is each fit and proper to act as manager or trustee, as the case may be; and

(c) in the case of an open-ended investment company, that the manager, the depositary and each director is fit and proper to act as manager, depositary or director, as the case may be.

(2) In considering whether to authorise a collective investment scheme under the Act, the GFSC must have regard to the need to protect the public against financial loss and the reputation of Gibraltar and, to that end, must consider–

(a) the general nature and specific attributes of the scheme to which the application relates and whether the purposes of the scheme are reasonably capable of being successfully carried into effect;

(b) the manner in which it is proposed to organise the operation of the scheme to which the application relates, the number of persons who will be responsible for carrying on each aspect of the operation of the scheme and the experience of and the relationship between the persons who will be so responsible;

(c) the adequacy of the systems of control and record keeping, having regard to the nature of the proposed scheme;

(d) whether the name of the scheme is undesirable or misleading;

(e) any written representations received from any member of the public in response to and within three weeks of the advertisement of the application; and

(f) any other factors which the GFSC considers appropriate.

(3) Where the GFSC authorises a collective investment scheme as a UCITS under the Act, it must issue a certificate of authorisation to the applicants which–

(a) states the date upon which the authorisation takes effect;

(b) if the scheme is authorised as a feeder fund or an umbrella fund, states that the scheme is so authorised; and

(c) states that the scheme complies with the conditions necessary for it to enjoy the rights conferred by the UCITS Directive.

(4) An authorised open-ended investment company is authorised to carry on, so far as it is a regulated activity–

(a) the operation of the scheme; and

(b) any activity in connection with, or for the purposes of, the operation of the scheme.

Scheme property of open-ended investment company to be entrusted to depositary.

8.(1) The scheme property of an authorised open-ended investment company must be entrusted for safekeeping to a depositary appointed for the purpose.

(2) Sub-regulation (1) does not prevent a depositary from–

(a) entrusting all or part of the scheme property in its safekeeping to a third party; or

(b) authorising a third party to whom it has entrusted scheme property to entrust all or part of the property to other specified persons.

Managers, trustees and depositaries of UCITS.

9.(1) A UCITS must have a manager that must be–

(a) a Gibraltar UCITS management company; or

(b) subject to the provisions of these Regulations, an EEA UCITS management company that has a place of business in Gibraltar.

(2) The trustee of an authorised common fund must be independent of the manager and be a person with Part 7 permission to carry on the regulated activity in paragraph 94A of Schedule 2 to the Act.

(3) An authorised open-ended investment company must have a depositary who must be a person–

(a) with Part 7 permission to carry on the regulated activity in paragraph 94 of Schedule 2 to the Act, of acting as the depositary of a UCITS; and

(b) independent of the manager and of the company and its directors.

(4) The trustee of an authorised common fund and the depositary of an authorised open-ended investment company must each–

(a) be a body corporate incorporated in Gibraltar or in another EEA State; and

(b) except where these Regulations otherwise provide, have a place of business in Gibraltar.

(5) The business and affairs of a manager or trustee of an authorised common fund and of a depositary of an authorised open-ended investment company must be administered in the jurisdiction in which the manager, trustee or depositary is incorporated.

(6) A common fund must not be authorised under the Act if–

(a) it is a UCITS scheme constituted under the laws of another EEA State; and

(b) the manager of the scheme is incorporated in that EEA State.

(7) The head office and registered office of an authorised open-ended investment company must be in Gibraltar.

Directors of authorised open-ended investment company.

10.(1) An authorised open-ended investment company must have at least one director and, if the company has only one director, that director must be a person with Part 7 permission to carry on the regulated activity in paragraph 94B of Schedule 2 to the Act.

(2) If an authorised open-ended investment company has more than one director, the combination of the directors' expertise must be such as is appropriate for the purposes of carrying on the business of the company.

Participants' rights with respect to redemption and repurchase.

11. A UCITS must meet one or both of the following requirements–

(a) participants are entitled to have their units redeemed, on request, at a price related to the net value of the scheme property and determined in accordance with the scheme's constituting instrument, these Regulations, any code of practice and any guidance notes issued under section 341 of the Act; or

(b) participants are entitled to sell their units on an investment exchange at a price not significantly different from that specified in paragraph (a).

Management companies

Giving permission to management companies.

12.(1) The GFSC must not give Part 7 permission to a management company unless the following conditions are met–

(a) it has an initial capital of at least €125,000;

(b) the persons who effectively conduct the business of the management company are of sufficiently good repute and sufficiently experienced in relation to the type of UCITS being managed or proposed to be managed;

(c) the conduct of the management company's business is to be decided by at least two persons meeting the conditions in paragraph (b);

(d) the application is accompanied by a programme of activity including the organisational structure of the management company; and

(e) the head office and the registered office of the management company are in Gibraltar.

(2) Where the net asset value of the portfolios of a management company exceeds €250,000,000, the management company must provide an additional amount of own funds which is equal to 0.02% of the amount by which the value of its portfolios exceeds €250,000,000.

(3) The total of the initial capital specified in sub-regulation (1) and any additional amount required to be held by a management company under sub-regulation (2) must not exceed €10,000,000.

(4) The GFSC may authorise a management company not to provide up to 50% of the additional amount of own funds required under sub-regulation (2) if the company benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office–

(a) in an EEA State; or

(b) in a non-EEA State where it is subject to prudential rules considered by the GFSC to be equivalent to those in force in Gibraltar.

(5) For the purpose of sub-regulation (2), the following are to be treated as the portfolios of a management company–

(a) common funds managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

(b) open-ended investment companies for which the management company is the designated management company; and

(c) other collective investment undertakings managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

(6) A management company must hold own funds equivalent to one quarter of its preceding financial year's fixed overheads.

(7) The GFSC may adjust the requirement in sub-regulation (6) if there has been a material change in the management company's business since the end of its preceding financial year.

(8) Where a management company has not completed a year's business, the requirement in sub-regulation (1) is to be read as a quarter of the fixed overheads projected in the management company's business plan, unless an adjustment to that plan is required by the GFSC.

Ongoing conditions of permission.

13.(1) The GFSC must require that–

(a) management companies comply at all times with conditions laid down in regulation 12; and

(b) the own funds of a management company do not fall below the level specified in regulation 12(1)(a),

(2) Where a management company fails to comply with sub-regulation (1), the GFSC may grant the management company reasonable time to rectify the situation.

Permission: supplementary provisions.

14.(1) The GFSC–

(a) must not give Part 7 permission to a management company until the GFSC has been informed of the identity of shareholders or members that have qualifying holdings and of the amounts of those holdings, whether direct or indirect;

(b) must refuse to give Part 7 permission where it is not satisfied as to the suitability of those shareholders or members, taking into account the need to ensure the sound and prudent management of a management company.

(2) Where the GFSC is evaluating whether or not to give Part 7 permission to a management company, it must consult the competent authority of any EEA State where the management company–

(a) is a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in that EEA State;

(b) is a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in that EEA State; or

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

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

Management companies: additional services.

15.(1) The GFSC may give management companies permission to provide the following services in addition to the management of UCITS–

(a) the management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors on a discretionary client-by-client basis, where such portfolios include one or more of the instruments in paragraph 46 of Schedule 2 to the Act; and

(b) as non-core services–

(i) investment advice regarding one or more of the instruments in paragraph 46 of Schedule 2 to the Act;

(ii) the safekeeping and administration of units in collective investment undertakings,

(2) The GFSC must not authorise management companies to provide only the services in sub-regulation (1)(b) or other non-core services without also authorising the company to provide the services in sub-regulation (1)(a).

(3) Paragraph 61(2) of Schedule 2 to the Act and regulations 14, 36, 40, 52 and 53 of the Financial Services (Investment Services) Regulations 2020 apply to the provision by management companies of the services in sub-regulation (1).

Discretionary portfolio management services.

16. Where the Part 7 permission of a management company covers discretionary portfolio management services–

(a) it is not authorised to invest all or a part of the investor's portfolio in units of collective investment undertakings it manages, unless it receives prior general approval from the client; and

(b) it is subject to Part 16 of the Act in respect of the services in regulation 15(1).

Open-ended investment companies

Authorisation of open-ended investment company.

17.(1) The GFSC must not authorise an open-ended investment company that has not designated a management company unless the open-ended investment company has a sufficient initial capital of at least €300,000.

(2) Without limiting sub-regulation (1), where an open-ended investment company has not designated a management company authorised under the Act or elsewhere in the EEA, the following conditions apply–

(a) authorisation must not be granted unless the application for authorisation is accompanied by a programme of operations setting out, at least, the organisational structure of the open-ended investment company;

(b) the open-ended investment company must appoint directors of sufficiently good repute and with sufficient experience in relation to the type of business pursued by the open-ended investment company and, to that end–

(i) the names of the directors and of every person succeeding them in office must be communicated promptly to the GFSC;

(ii) the conduct of an open-ended investment company's business must be decided by at least two persons meeting such conditions,

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

(c) where close links exist between the open-ended investment company and other individuals or legal persons, the GFSC may grant authorisation only if those close links do not prevent the effective exercise of supervisory functions;

(d) the GFSC–

(i) must refuse authorisation where the laws, regulations or administrative provisions of a non-EEA State governing one or more individuals or legal persons with which the open-ended investment company has close links

prevent the effective exercise of their supervisory functions, or difficulties exist with enforcement; and

(ii) must require open-ended investment companies to provide it with any information the GFSC may need.

(3) The GFSC may withdraw an authorisation issued to an open-ended investment company subject to these Regulations where–

(a) any of the following apply (unless the GFSC has provided for authorisation to lapse in such cases)–

(i) the company does not make use of the authorisation within 12 months;

(ii) the company expressly renounces the authorisation; or

(iii) the company has ceased to carry on the activity covered by these Regulations more than six months previously;

(b) the company has obtained the authorisation by making false statements or by any other irregular means;

(c) the company no longer fulfils the conditions under which authorisation was granted; or

(d) the company has seriously or systematically contravened the provisions of the Act or these Regulations.

PART 3
CONDUCT OF BUSINESS

Chapter 1
General

Exclusion clauses.

18. Any provision in the constituting instrument of a UCITS or in any prospectus or other document that purports to exempt the manager, trustee or custodian from liability for any failure to exercise due care and diligence in the discharge of functions in respect of the scheme, is void and of no effect.

Conduct of management companies.

19. A management company must at all times–

(a) act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;

(b) act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;

(c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;

(d) seek to avoid conflicts of interests and, when they cannot be avoided, ensure that the UCITS it manages are fairly treated; and

(e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

Investor complaints.

20. Management companies or, where relevant, open-ended investment companies–

(a) must take measures, in accordance with regulation 136, and establish appropriate procedures and arrangements to ensure that investor complaints are properly dealt with;

(b) must ensure that that no restrictions exist on investors exercising their legal rights where the management company is authorised elsewhere in the EEA;

(c) must ensure that investors can file complaints in the official language or one of the official languages of their EEA State;

(d) must establish appropriate procedures and arrangements to make information available at the request of the public or the GFSC.

Disputes.

21.(1) Any dispute arising under these Regulations may–

(a) be referred to arbitration under the Arbitration Act; or

(b) where the complainant is a consumer within the meaning of Part 14 of the Act, be referred to the Financial Services Ombudsman for investigation and resolution in accordance with that Part.

(2) The GFSC must facilitate the resolution of cross-border disputes in accordance with sub-regulation (1).

Chapter 2
Constituting instrument

Constituting instrument of UCITS.

22.(1) The constituting instrument of a UCITS may restrict the exercise of any power which is otherwise exercisable under the Act or these Regulations by an authorised open-ended investment company, a director of the company, or the manager or depositary of the UCITS.

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

(3) The constituting instrument of a UCITS must entitle–

(a) the shareholders of an open-ended investment company to have their shares redeemed or repurchased upon request; and

(b) the participants of an authorised unit trust to have their units redeemed or repurchased at a price related to the net value of the scheme property and determined in accordance with the constituting instrument, these Regulations and any relevant code of practice.

(4) Subject to any restriction imposed by any relevant code of practice, the constituting instrument of a UCITS may be amended.

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

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

Classes of unit in a UCITS.

23.(1) The constituting instrument of a UCITS 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 must not provide an advantage for the unitholders in that class if that would result in prejudice to the unitholders of any other class.

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

(4) For a UCITS 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 UCITS 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.

24. If there is any arrangement intended to result in a particular capital or income return from a holding of units in a UCITS, 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 by these Regulations to be contained in the prospectus of a UCITS, action is required by the unitholders to obtain the benefit of any guarantee, the manager must provide reasonable notice in writing to unitholders before such action is required.

Codes of practice: matters with respect to units and classes of units.

25.(1) A code 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.

(3) In sub-regulation (2) "base currency" means the currency identified in the constituting instrument of a collective investment scheme as the base currency of the scheme.

False or misleading prospectus.

26.(1) The manager of a UCITS must ensure that the prospectus of the UCITS does not contain any untrue or misleading statement or omit any matter required to be included in it by the Act, these Regulations or a code of practice.

(2) The manager of a UCITS 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 UCITS;

(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.

Chapter 3
Publication of prospectus and periodical reports

Publications by management companies.

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

(a) a prospectus;

(b) an annual report for each financial year; and

(c) a half-yearly report covering the first six months of the financial year.

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

(a) four months in the case of the annual report; or

(b) two months in the case of the half-yearly report.

Prospectuses.

28.(1) A prospectus must include–

(a) information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached to the investment;

(b) a clear and easily understandable explanation of the fund's risk profile, independent of the instruments invested in; and

(c) either–

(i) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or

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

(2) A prospectus must contain at least the information provided for in Part A of the Schedule, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the prospectus in accordance with regulation 30(1).

(3) The annual report must include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Part B of the Schedule as well as

any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

(4) The annual report must also include–

(a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the open-ended investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;

(b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in regulation 60(3);

(c) a description of how the remuneration and the benefits have been calculated;

(d) the outcome of the reviews referred to in regulation 61(1)(c) and (d) including any irregularities that have occurred;

(e) material changes to the adopted remuneration policy.

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

Prospectuses: supplementary provisions.

29.(1) A prospectus must indicate–

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

(b) whether transactions in financial derivative instruments are authorised; and

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

(2) Where a UCITS invests principally in any category of assets defined in regulation 81 other than transferable securities or money market instruments, or where a UCITS replicates a stock or debt securities index in accordance with regulation 90 its prospectus and, where

necessary, its marketing communications must include a prominent statement drawing attention to the investment policy.

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

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

Prospectuses: fund rules.

30.(1) Fund rules or the statutes of an open-ended investment company form an integral part of the prospectus and must be annexed to it.

(2) Sub-regulation (1) does not apply where the investor is informed that, on request–

(a) those documents will be sent to the investor; or

(b) the investor will be informed of the place where, in each EEA State in which the units are marketed, the investor may consult them.

Prospectus: updating of information.

31. The essential elements of the prospectus must be kept up to date.

Auditing of annual report.

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

Prospectuses: supply to GFSC.

33. Where Gibraltar is a UCITS' home State, the UCITS must send its prospectus and any amendments to it, as well as its annual and half-yearly reports, to the GFSC and, on request, to the competent authority of the management company's home State.

Prospectus: publication.

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

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

(3) The annual and half-yearly reports must be available to investors in the manner specified in the prospectus and in the key investor information referred to in regulation 37, but a paper copy of the annual and half-yearly reports must be delivered to investors on request and free of charge.

Chapter 4
Publication of other information

Changes in ownership of units.

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

(2) The GFSC may, however, permit a UCITS to reduce the frequency to once a month on condition that doing so does not prejudice the interests of the unitholders.

Marketing.

36.(1) All marketing communications to investors must be clearly identifiable as such and must be fair, clear and not misleading.

(2) Any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS must make no statement that contradicts or diminishes the significance of the information contained in the prospectus or the key investor information referred to in regulation 37.

(3) Marketing information must–

(a) indicate that a prospectus exists and that the key investor information referred to in regulation 37 is available; and

(b) specify where and in which language the information or documents may be obtained by investors or potential investors or how they may obtain access to them.

Chapter 5

Key investor information

Key investor information document.

37.(1) An open-ended investment company and, for each of the common funds it manages, a management company, must draw up a short document containing key information for investors ("key investor information") and the words "key investor information" must be clearly stated in the document, in one of the languages referred to in regulation 141(1)(b).

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

(3) Key investor information must provide information on the following essential elements in respect of the UCITS concerned in a manner comprehensible to the investor without any reference to other documents–

(a) identification of the UCITS and its competent authority;

(b) a short description of its investment objectives and investment policy;

(c) past-performance presentation or, where relevant, performance scenarios;

(d) costs and associated charges; and

(e) a risk and reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

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

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

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

(7) Key investor information must be used without alterations or supplements, except translation, in all EEA States where the UCITS is notified to market its units in accordance with regulation 137.

Status of key investor information.

38.(1) Key investor information must–

(a) constitute pre-contractual information;

(b) be fair, clear and not misleading; and

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

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

Provision of key investor information.

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

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

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

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

Key investor information: medium of supply.

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

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

Key investor information: supply to GFSC.

41.(1) Every UCITS that has Gibraltar as its home State must send their key investor information, and any amendments to it, to the GFSC.

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

Chapter 6
General obligations of UCITS

Borrowing powers.

42.(1) The following must not borrow–

(a) an open-ended investment company;

(b) a management company or depositary acting on behalf of a common fund.

(2) Despite sub-regulation (1), a UCITS may acquire foreign currency by means of a 'back-to-back' loan.

(3) Despite sub-regulation (1), the GFSC may authorise a UCITS to borrow where the borrowing is–

(a) on a temporary basis and represents–

(i) in the case of an open-ended investment company, no more than 10% of its assets; or

(ii) in the case of a common fund, no more than 10% of the value of the fund; or

(b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an open-ended investment company, no more than 10% of its assets.

(4) Where a UCITS borrows in accordance with sub-regulation (3) that borrowing must not exceed 15% of its assets in total.

Redemptions on request.

43.(1) A UCITS must repurchase or redeem its units at the request of a unitholder.

(2) Despite sub-regulation (1)–

(a) a UCITS may, in accordance with the Companies Act 2014, the fund rules or the statutes of incorporation of the open-ended investment company, temporarily suspend the repurchase or redemption of its units; and

(b) the GFSC may, where Gibraltar is the UCITS' home State, order the suspension of the repurchase or redemption of units in the interests of the unitholders or the public.

(3) Temporary suspension under sub-regulation (2)(a) must only be in exceptional cases, where the circumstances so require and where suspension is justified having regard to the interests of the unitholders.

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

Asset valuation.

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

Distribution and reinvestment.

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

Issue of units.

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

(2) Sub-regulation (1) does not preclude the distribution of bonus units.

Granting of loans.

47.(1) Without limiting regulations 81 and 86, the following must not grant loans or act as a guarantor on behalf of third parties–

(a) an open-ended investment company;

(b) a management company or depositary acting on behalf of a common fund.

(2) Sub-regulation (1) does not prevent those undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in regulation 81(1) (e), (g) and (h) which are not fully paid.

Uncovered sales.

48. The following must not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in regulation 81(1) (e), (g) and (h)–

(a) an open-ended investment company;

(b) a management company or depositary acting on behalf of a common fund.

Expenditure and remuneration.

49.(1) Fund rules must set out the remuneration and the expenses that a management company may charge a common fund and the method of calculating that remuneration.

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

Chapter 7
Rules of conduct

General principles

Duty to act in best interests of UCITS and their unitholders.

50.(1) A management company must treat unitholders of managed UCITS fairly and refrain from placing the interests of any group of unitholders above the interests of any other group of unitholders.

(2) For the purposes of sub-regulation (1), management companies must apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.

(3) For the purposes of sub-regulation (1), and in order to comply with the duty to act in the best interests of the unitholders, a management company must ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS it manages and it must be able to demonstrate that the UCITS portfolios have been accurately valued.

(4) For the purposes of sub-regulation (1), a management company must act in such a way as to prevent undue costs being charged to the UCITS and its unitholders.

Due diligence requirements.

51.(1) A management company must ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.

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

(a) ensure it has adequate knowledge and understanding of the assets in which the UCITS are invested;

(b) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS;

(c) formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out an investment when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment. Such analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;

(d) exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities, and subject to the following principles –

(i) before entering into such arrangements, the management company must take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and

(ii) the management company must establish methods for the on-going assessment of the standard of performance of the third party.

Handling of subscription and redemption orders

Reporting obligations in respect of executed subscription and redemption orders.

52.(1) A management company must, where it has carried out a subscription or redemption order from a unitholder, notify the unitholder, by means of a durable medium, confirming execution of the order as soon as possible and–

(a) no later than the first business day following execution; or

(b) where the confirmation is received by the management company from a third party, no later than the first business day following receipt of the confirmation from the third party,

unless the notice would contain the same information as a confirmation that is to be promptly dispatched to the unitholder by another person.

(2) The notice referred to in sub-regulation (1) must, where applicable, include the following information–

(a) the management company identification;

(b) the name or other designation of the unitholder;

(c) the date and time of receipt of the order and method of payment;

(d) the date of execution;

(e) the UCITS identification;

(f) the nature of the order (subscription or redemption);

(g) the number of units involved;

(h) the unit value at which the units were subscribed or redeemed;

(i) the reference value date;

(j) the gross value of the order including charges for subscription or net amount after charges for redemptions;

(k) a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

(3) For the purposes of sub-regulation (1)–

(a) where orders for a unitholder are executed periodically, a management company must either take the action set out in that sub-regulation or provide the unitholder, at least once every six months, with the information listed in sub-regulation (2) in respect of those transactions; and

(b) a management company must supply the unitholder, upon request, with information about the status of the order.

Best execution

Execution of decisions to deal on behalf of managed UCITS.

53.(1) A management company must act in the best interests of the UCITS it manages when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios.

(2) For the purposes of sub-regulation (1), a management company must take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order, and the relative importance of such factors must be determined by reference to the following criteria–

(a) the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or as the case may be in the fund rules or articles of association of the UCITS;

(b) the characteristics of the order;

(c) the characteristics of the financial instruments that are the subject of that order;

(d) the characteristics of the execution venues to which that order can be directed.

(3) For the purposes of sub-regulation (1) a management company must–

(a) establish and implement effective arrangements for complying with the obligation referred to in sub-regulation (2) in particular, it must establish and implement a policy to allow it to obtain, for UCITS orders, the best possible result;

(b) obtain the prior consent of the investment company on the execution policy and must make available appropriate information to unitholders on the policy established in accordance with this regulation and on any material changes to its policy;

(c) monitor on a regular basis the effectiveness of its arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies and must review the execution policy on an annual basis and whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS; and

(d) be able to demonstrate that it has executed orders on behalf of the UCITS in accordance with the management company's execution policy.

Placing orders to deal on behalf of UCITS with other entities for execution.

54.(1) A management company must act in the best interests of the UCITS it manages when placing orders to deal on behalf of the managed UCITS with other entities for execution, in the context of the management of their portfolios.

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

(a) a management company must take all reasonable steps to obtain the best possible result for the UCITS taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order, and the relative importance of such factors are to be determined by reference to regulation 53(2);

(b) a management company must establish and implement a policy to enable it to comply with the obligation in paragraph (a) which must identify, in respect of each class of instruments, the entities with which the orders may be placed and the management company must only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this regulation,

and management companies must make available to unitholders appropriate information on the policy established in accordance with paragraph (b) and on any material changes to this policy.

(3) A management company must–

(a) monitor on a regular basis the effectiveness of the policy established in accordance with sub-regulation (2)(b) and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies;

(b) review the policy on an annual basis or whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS; and

(c) be able to demonstrate that it has placed orders on behalf of the UCITS in accordance with the policy established in accordance with sub-regulation (2)(b).

Handling of orders

Handling orders: general principles.

55.(1) A management company must establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS and satisfying the following conditions–

(a) ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;

(b) execute otherwise comparable UCITS orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the UCITS require otherwise; and

(c) financial instruments or sums of money, received in settlement of the executed orders are promptly and correctly delivered to the account of the appropriate UCITS.

(2) For the purposes of sub-regulation (1), a management company must not misuse information relating to pending UCITS orders, and must take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Aggregation and allocation of trading orders.

56.(1) A management company must not carry out a UCITS order in aggregate with an order of another UCITS or another client or with an order on its own account, unless the following conditions are met–

(a) it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or clients whose order is to be aggregated;

(b) an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

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

(a) where a management company aggregates a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy;

(b) where a management company which has aggregated transactions for own account with one or more UCITS or other clients' orders, it must not allocate the related trades in a way that is detrimental to the UCITS or another client; and

(c) where a management company aggregates an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, it allocates the related trades to the UCITS or other client in priority over those for own account,

but where the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as established under sub-regulation (1)(b).

Inducements

Safeguarding the best interests of UCITS.

57.(1) A management company must not be regarded for the purpose of these Regulations as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of investment management and administration to the UCITS, it pays or is paid any fee or commission, or provides or is provided with, any non-monetary benefit, other than the following–

(a) a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;

(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied–

(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;

(ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;

(c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

(2) For the purposes of sub-regulation (1)(b)(i), a management company may disclose the essential terms of the arrangements relating to a fee, commission or non-monetary benefit in summary form, provided that the management company undertakes to disclose further details at the request of the unitholder and provided that it honours that undertaking.

PART 4
CORPORATE GOVERNANCE AND RISK MANAGEMENT

Chapter 1
Management companies

Internal requirements of management company.

58. The GFSC, having regard to the nature of the UCITS being managed, must require that every management company has–

(a) sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing;

(b) adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account;

(c) adequate internal control mechanisms ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected;

(d) adequate internal control mechanisms ensuring that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force; and

(e) such organisational structure as minimises the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS, or between two UCITS.

Delegation of responsibilities.

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

(a) the management company must inform the GFSC of the fact in a manner approved by the GFSC and the GFSC must, without delay, transmit the information to the competent authority of home State of any UCITS managed by that management company;

(b) the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of investors;

(c) when a delegation concerns investment management functions, the delegation of the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision, and must be in accordance with investment-allocation criteria periodically laid down by the management company;

(d) where a delegation concerns investment management functions and is given to a non-EEA undertaking, cooperation between the GFSC and the supervisory authorities of the State concerned must be to the satisfaction of the GFSC;

(e) where the delegation concerns the core function of investment management, it must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unitholders;

(f) measures must exist enabling the persons conducting the business of the management company to monitor effectively at any time the activity of the delegate;

(g) the delegation must not prevent persons conducting the business of the management delegate at any time from withdrawing the delegation with immediate effect when this is in the interest of investors;

(h) having regard to the nature of the functions to be delegated, the delegate must be qualified and capable of undertaking the functions in question;

(i) the UCITS' prospectuses must list the functions which the management company is allowed to delegate in accordance with this regulation; and

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

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

Management companies' remuneration policies.

60.(1) Management companies must establish and apply remuneration policies and practices that–

(a) are consistent with and promote sound and effective risk management; and

(b) do not–

(i) encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage; or

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

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

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

Remuneration policy principles.

61.(1) When establishing and applying the remuneration policies referred to in regulation 60, management companies must comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities–

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;

(b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;

(c) subject to sub-regulation (3), the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation;

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

(e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;

(f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;

(g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the

overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;

(h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;

(i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;

(j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;

(k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

(l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

(m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, in respect of any variable remuneration component–

(i) a substantial portion must consist of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this paragraph (and for this purpose a substantial portion means at least 50% unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company); and

(ii) the instruments which comprise that component must be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS;

(n) a substantial portion of the variable remuneration component is–

(i) deferred over a period (of not less than three years) which is appropriate in view of the holding period recommended to the investors of the UCITS concerned; and

(ii) correctly aligned with the nature of the risks of the UCITS in question;

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

(o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned;

(p) the total variable remuneration must generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in pay-outs of amounts previously earned, including through malus or clawback arrangements;

(q) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages and–

(i) if an employee leaves the management company before retirement, discretionary pension benefits must be held by the management company for a period of five years in the form of instruments referred to in paragraph (m); or

(ii) if an employee reaches retirement, discretionary pension benefits must be paid to the employee in the form of such instruments but subject to a five-year retention period;

(r) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

(s) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in these Regulations.

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

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

(a) do not perform any executive functions in the management company concerned; and

(b) have expertise in risk management and remuneration.

Remuneration committees.

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

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

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

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

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

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

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

Chapter 2
Depositaries

General obligations of depositaries.

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

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

(3) The depositary must–

(a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with the Act, these Regulations, the Companies Act 2014 and the fund's rules or instruments of incorporation;

(b) ensure that the value of the units of the UCITS is calculated in accordance with the Act, these Regulations, the Companies Act 2014 and the fund's rules or instruments of incorporation;

(c) carry out the instructions of the management company or an open-ended investment company, unless they conflict with the Act, these Regulations, the Companies Act 2014 or the fund's rules or instruments of incorporation;

(d) ensure that in transactions involving the assets of the UCITS any consideration is remitted to the UCITS within the usual time limits;

(e) ensure that the income of the UCITS is applied in accordance with the Act, these Regulations, the Companies Act 2014 and the fund's rules or instruments of incorporation.

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

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

(b) opened at an entity referred to in Article 18.1(a) to (c) of Directive 2006/73/EC; and

(c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

(5) Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, cash of the entity referred to in sub-regulation (4)(b) and the own cash of the depositary must not be booked on such accounts.

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

(a) for financial instruments that may be held in custody, the depositary must–

(i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

(ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;

(b) for other assets, the depositary must–

(i) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the management company and, where available, on external evidence;

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

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

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

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

(a) the re-use of the assets is executed for the account of the UCITS;

(b) the depositary is carrying out the instructions of the management company on behalf of the UCITS;

(c) the re-use is for the benefit of the UCITS and in the interest of the unitholders; and

(d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement.

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

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

(12) Despite sub-regulation (1), the GFSC may authorise those UCITS which, on 20 December 1985, lawfully had two or more depositaries to continue to do so where the GFSC has guarantees that the functions to be performed under sub-regulation (3) will be performed in practice.

Delegation by depositaries.

64.(1) The depositary must not delegate the functions in regulations 63(3) and (4) to third parties.

(2) The depositary may delegate the functions in regulation 63(6) to third parties only where–

(a) the tasks are not delegated with the intention of avoiding the requirements laid down in these Regulations;

(b) the depositary can demonstrate that there is an objective reason for the delegation; and

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions in regulation 63(6) may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it–

(a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS which have been entrusted to it;

(b) for custody tasks in regulation 63(6)(a), is subject to–

(i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

(ii) an external periodic audit to ensure that the financial instruments are in its possession;

(c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;

(d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

(e) complies with the general obligations and prohibitions laid down in regulations 63(2), (6) and (8) and 67.

(4) Despite sub-regulation (3)(b)(i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the

delegation requirements laid down in that sub-regulation, the depositary may delegate its functions to such a local entity–

(a) only to the extent required by the law of that third country;

(b) only for as long as there are no local entities that satisfy the delegation requirements; and

(c) only where–

(i) the investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation; and

(ii) the open-ended investment company, or the management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

(5) The third party may, in turn, sub-delegate those functions, subject to the same requirements and, in such a case, regulation 66(4)(a) applies to the relevant parties with any necessary modification.

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

Eligibility to act as depositary.

65.(1) A depositary may only offer services in Gibraltar to a UCITS where–

(a) if the UCITS is authorised under these Regulations, the depositary has a registered office or is established in Gibraltar; or

(b) if the UCITS is authorised in another EEA State, the depositary has a registered office or is established in that State.

(2) The depositary must be–

(a) a national central bank (if such a bank is established in Gibraltar);

(b) a credit institution authorised in accordance with the Capital Requirements Directive; or

(c) another legal person, authorised by the GFSC to carry out depositary activities under these Regulations–

(i) which is subject to capital adequacy requirements not less than those calculated in accordance with Article 315 or 317 (as the case may be) of the Capital Requirements Regulation; and

(ii) which has own funds of not less than the amount of initial capital under Article 28.2 of the Capital Requirements Directive.

(3) A legal person within sub-regulation (2)(c) must be subject to prudential regulation and ongoing supervision by the GFSC and must satisfy the following minimum requirements–

(a) it must have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;

(b) it must establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under the Act and these Regulations;

(c) it must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;

(d) it must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;

(e) it must arrange for records to be kept of all services, activities and transactions that it undertakes, which must be sufficient to enable the GFSC to perform its supervisory functions under the Act and these Regulations;

(f) it must take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures, including to perform its depositary activities;

(g) all members of its management body and senior management, must, at all times–

(i) be of sufficiently good repute; and

(ii) possess sufficient knowledge, skills and experience;

(h) its management body must possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks;

(i) each member of its management body and senior management must act with honesty and integrity.

Liability of depositaries.

66.(1) A depositary is liable to the UCITS and to the unitholders of the UCITS for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with regulation 63(6)(a) has been delegated.

(2) In the case of a loss of a financial instrument held in custody, the depositary must return a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without undue delay, but the depositary is not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

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

(4) The liability of the depositary under sub-regulations (1) to (3)–

(a) is not affected by any delegation under regulation 64; and

(b) may not be excluded or limited by agreement and any agreement that purports to do so is void.

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

Depositaries: duty of independence.

67.(1) A company must not act as–

(a) both management company and depositary; or

(b) both open-ended investment company and depositary.

(2) In carrying out their respective functions–

(a) the management company and the depositary must act–

(i) honestly;

(ii) fairly;

(iii) professionally;

(iv) independently; and

(v) solely in the interest of the UCITS and the investors of the UCITS;

(b) the open-ended investment company and the depositary must act–

(i) honestly;

(ii) fairly;

(iii) professionally;

(iv) independently; and

(v) solely in the interest of the investors of the UCITS.

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

(a) the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks; and

(b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.

Replacement of counterparties.

68.(1) The fund's rules must lay down the conditions for the replacement of the management company and of the depositary and ensure the protection of unitholders in the event of such a replacement.

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

Disclosure to EEA Authorities.

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

(2) If the competent authorities of the UCITS or the management company are different from those of the depositary, the GFSC must without delay share the information received with those authorities.

Chapter 3
Standard agreement between depositary and management company

Elements related to procedures to be followed by parties to agreement.

70.(1) The written agreement referred to in regulation 63(2) must include the following particulars related to the services provided, and procedures to be followed, by the parties to the agreement−

(a) a description of the procedures, including those related to the safe-keeping, to be adopted for each type of asset of the UCITS entrusted to the depositary;

(b) a description of the procedures to be followed where the management company envisages a modification of the fund rules or prospectus of the UCITS, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;

(c) a description of the means and procedures by which the depositary will transmit to the management company all relevant information that the management company needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the management company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;

(d) a description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;

(e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits;

(f) a description of the procedures by which the management company can review the performance of the depositary in respect of the depositary's contractual obligations.

(2) In this Chapter, the "parties to the agreement" means the depositary and the management company.

Elements related to exchange of information, confidentiality and money-laundering.

71.(1) Parties to the agreement referred to in regulation 63(2) must include the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement–

(a) a list of all the information that needs to be exchanged between the UCITS, its management company and the depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;

(b) the confidentiality obligations applicable to the parties to the agreement;

(c) information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

(2) The obligations referred to in sub-regulation (1)(b) must be drawn up by the parties to the agreement so as not to impair the ability of either the competent authority of a management company's home State or the competent authority of the UCITS' home State in gaining access to relevant documents and information.

Elements related to appointment of third parties.

72. Where the depositary or the management company envisage appointing third parties to carry out their respective duties, both parties to the agreement referred to in regulation 63(2) must include at least the following particulars in that agreement–

(a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the depositary or the management company to carry out their respective duties;

(b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;

(c) a statement that a depositary's liability as referred to in regulation 66 or 71 is not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Elements related to potential amendments and termination of agreement.

73. The parties to the agreement referred to in regulation 63(2) must include, in the agreement itself, the following particulars related to amendments and the termination of that agreement−

(a) the period of validity of the agreement;

(b) the conditions under which the agreement may be amended or terminated;

(c) the conditions which are necessary to facilitate transition to another depositary and, in case of such transition the procedure by which the depositary must send all relevant information to the other depositary.

Applicable law.

74. The parties to the agreement referred to in regulation 63(2) must specify that the law applicable to that agreement is that of the UCITS' home State.

Electronic transmission of information.

75. Where the parties to the agreement referred to in 65(5) agree to the use of electronic transmission for part or all of information that flows between them, that agreement must contain provisions ensuring that a record is kept of such information.

Scope of agreement.

76. An agreement referred to in regulation 63(2) may cover more than one UCITS managed by the management company and, in such a case, the agreement must list the UCITS covered.

Service level agreement.

77. The parties to the agreement must include details of means and procedures referred to in regulation 70(1)(c) and (d), either in the agreement referred to in regulation 63(2) or in a separate written agreement.

Chapter 4
Open-ended investment companies

Application of regulations 59 to 61.

78.(1) Regulations 59 to 61 apply to open-ended investment companies that have not designated a management company.

(2) For the purposes of sub-regulation (1), regulations 59 to 61 apply as if references in those regulations to "management company" were to “investment company”.

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

Prudential rules.

79.(1) The GFSC may, with the consent of the Minister, publish prudential rules which are binding on open-ended investment companies that have not designated a management company.

(2) Having regard also to the nature of the open-ended investment company, the GFSC must require that the open-ended investment company–

(a) have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing;

(b) have adequate internal control mechanisms including, in particular–

(i) rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital;

(ii) ensuring, at least, that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and

(iii) that the assets of the open-ended investment company are invested according to law and the instruments of incorporation.

Chapter 5
UCITS: Investment policies

UCITS with investment compartments.

80. Where a UCITS comprises more than one investment compartment, each compartment must be regarded as a separate UCITS for the purposes of this Chapter.

Authorised investments.

81.(1) The investments of a UCITS must comprise only one or more of the following–

(a) transferable securities and money market instruments admitted to or dealt in on a regulated market;

(b) transferable securities and money market instruments dealt in on another regulated market in an EEA State which operates regularly and is recognised and open to the public;

(c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-EEA country or dealt in on another regulated market in a non-EEA country which operates regularly and is recognised and open to the public provided–

(i) that the choice of stock exchange or market has been approved by the GFSC; or

(ii) it is provided for in law or the fund's rules or the instruments of incorporation of the open-ended investment company;

(d) recently issued transferable securities, provided that–

(i) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided–

(aa) the choice of stock exchange or market has been approved by the competent authority; or

(bb) is provided for in law or the fund's rules or the instruments of incorporation of the open-ended investment company; and

(ii) the admission referred to in sub-paragraph (i) is secured within a year of issue;

(e) units of UCITS authorised according to the UCITS Directive or other collective investment undertakings within the meaning of section 290(2) and (3) of the Act, whether or not established in an EEA State, provided that–

(i) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the GFSC to be equivalent to that laid down in Gibraltar law, and that cooperation between competent authorities is sufficiently ensured;

(ii) the level of protection for unitholders in the other collective investment undertakings is equivalent to that provided for unitholders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the UCITS Directive;

(iii) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and

(iv) no more than 10% of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings;

(f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided–

(i) that the credit institution has its registered office in an EEA State; or

(ii) where the credit institution has its registered office in a non-EEA country, that it is subject to prudential rules considered by the GFSC as equivalent to those provided under the Act;

(g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in paragraphs (a), (b) and (c) or

financial derivative instruments dealt in over-the-counter (OTC) derivatives, provided that–

(i) the underlying assets of the derivative consists of instruments covered by this regulation, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in its fund rules or instruments of incorporation;

(ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the GFSC; and

(iii) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative; or

(h) money market instruments other than those dealt in on a regulated market, if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided they are–

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

(ii) issued by an undertaking any securities of which are dealt in on regulated markets referred to in paragraphs (a), (b) or (c);

(iii) issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by European Union law, or by an establishment which is subject to and complies with prudential rules considered by the GFSC to be at least as stringent as those laid down by European Union law; or

(iv) issued by other bodies belonging to the categories approved by the GFSC, where Gibraltar is the UCITS' home State, provided that–

(aa) investments in such instruments are subject to investor protection equivalent to that laid down in sub-paragraphs (i), (ii) or (iii);

(bb) the issuer is a company whose capital and reserves amount to at least €10,000,000; and

(cc) the issuer presents and publishes its annual accounts in accordance with the provisions of the Companies Act 2014, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of the group or to the securitisation vehicles which benefit from a banking liquidity line.

(2) A UCITS must not–

(a) invest more than 10% of its assets in transferable securities or money market instruments other than those referred to in sub-regulation (1); or

(b) acquire either precious metals or certificates representing them,

but a UCITS may hold ancillary liquid assets.

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

Instruments where issue or issuer is regulated to protect investors and savings.

82.(1) The reference in regulation 81(1)(h) to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, must be understood as a reference to financial instruments which fulfil the following criteria−

(a) the financial instrument fulfils one of the criteria set out in paragraph 10 and all the criteria set out in paragraph 11 of Schedule 23 to the Act;

(b) appropriate information is available for the instruments, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account sub-regulations (2), (3) and (4); and

(c) the instruments are freely transferable.

(2) Where money market instruments are covered by regulation 81(1)(h)(ii) and (iv), for those which are issued by a local or regional authority of a Member State or by a public international body but not guaranteed by an EEA State or, in the case of an EEA State which is a federal State, by one of the members making up the federation, appropriate information as referred to in sub-regulation (1)(b) consists in the following−

(a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;

(b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;

(c) the information referred to in paragraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer;

(d) available and reliable statistics on the issue or the issuance programme.

(3) Where money market instruments are covered by regulation 81(1)(h)(iii), appropriate information as referred to in sub-regulation (1)(b) consists of the following−

(a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;

(b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;

(c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

(4) In the case of all money market instruments covered by regulation 81(1)(h)(i), except those referred to in sub-regulation (2) and those issued by the European Central Bank or by a central bank of an EEA State, appropriate information as referred to in sub-regulation (1)(b) consists of information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

Money market instruments: prudential rules.

83. The reference in regulation 81(1)(h)(iii) to an establishment which is subject to, and complies with, prudential rules considered by the GFSC to be at least as stringent as those laid down by European Union law must be understood as a reference to an issuer which is subject to, and complies with, prudential rules and fulfils one of the following criteria−

(a) it is located in the EEA;

(b) it is located in an OECD country belonging to the Group of Ten;

(c) it has at least investment grade rating; or

(d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by European Union law.

Securitisation vehicles which benefit from banking liquidity line.

84. The reference in regulation 81(1)(h)(iv)−

(a) to securitisation vehicles must be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations; and

(b) to banking liquidity lines must be understood as a reference to banking facilities secured by a financial institution which itself complies with regulation 81(1)(h)(iii).

Financial indices.

85.(1) The reference in regulation 81(1)(g) to financial indices must be understood as a reference to indices which fulfil the following criteria−

(a) they are sufficiently diversified, in that the following criteria are fulfilled−

(i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;

(ii) where the index is composed of assets referred to in regulation 81(1), its composition is at least diversified in accordance with regulation 90;

(iii) where the index is composed of assets other than those referred to in regulation 81(1), it is diversified in a way which is equivalent to that provided for in regulation 90;

(b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled−

(i) the index measures the performance of a representative group of underlying assets in a relevant and appropriate way;

(ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;

(iii) the underlying assets are sufficiently liquid, which allows users to replicate the index, if necessary;

(c) they are published in an appropriate manner, in that the following criteria are fulfilled–

(i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;

(ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with regulation 81(1) does not fulfil the criteria set out in sub-regulation (1), those financial derivatives must, where they comply with the criteria set out in paragraph 12(1) of Schedule 23 to the Act, be regarded as financial derivatives on a combination of the assets referred to in sub-paragraph (1)(a)(i) to (iii) of that paragraph.

Portfolio management.

86.(1) A management company or an open-ended investment company must–

(a) employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio of a UCITS;

(b) ensure that it does not rely solely and mechanistically on credit ratings issued by credit rating agencies for assessing the creditworthiness of the UCITS' assets;

(c) employ a process for accurate and independent assessment of the value of OTC derivatives;

(d) communicate to the GFSC regularly in relation to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

(2) The GFSC must ensure that all information received under sub-regulation (1)(d) aggregated in respect of all the management or open-ended investment companies it

supervises is accessible for the purpose of monitoring systemic risks at European Union level to–

(a) ESMA, in accordance with Article 35 of the ESMA Regulation; and

(b) ESRB, in accordance with Article 15 of the ESRB Regulation.

(3) The GFSC must–

(a) monitor the adequacy of credit assessment processes of management companies or open-ended investment companies;

(b) assess the use of references to credit ratings issued by credit rating agencies in the UCITS' investment policies; and

(c) where appropriate, encourage mitigation of the impact of references referred to in paragraph (b);

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

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

(a) such techniques and instruments are used for the purpose of efficient portfolio management;

(b) when those operations concern the use of derivative instruments, the conditions and limits conform to the provisions laid down in these Regulations; and

(c) the operations do not cause the UCITS to diverge from its investment objectives as laid down in the UCITS' fund rules, articles or memorandum of association or prospectus.

(5) A UCITS–

(a) must ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio;

(b) must calculate the exposure referred to in paragraph (a) by taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions;

(c) may invest, as a part of its investment policy and within the limit laid down in regulation 89(6), in financial derivative instruments provided that–

(i) the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in regulation 89;

(ii) the GFSC may require that, when a UCITS invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in regulation 89;

(d) must ensure that when transferable securities or money market instruments embed a derivative, the derivative must be taken into account when complying with the requirements of this regulation.

(6) In sub-regulation (5), paragraph (b) also applies to the matters set out in paragraphs (c) and (d).

Transferable securities and money market instruments embedding derivatives.

87.(1) The reference in regulation 86(4)(d) to transferable securities embedding a derivative must be understood as a reference to financial instruments which fulfil the criteria set out in paragraph 9 of Schedule 23 to the Act and which contain a component which fulfils the following criteria–

(a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;

(b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;

(c) it has a significant impact on the risk profile and pricing of the transferable security.

(2) Money market instruments which–

(a) fulfil one of the criteria set out in paragraph 10 and all the criteria set out in paragraph 11 of Schedule 23 to the Act; and

(b) contain a component and fulfils the criteria set out in sub-regulation (1),

must be regarded as money market instruments embedding a derivative.

(3) A transferable security or a money market instrument must not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument and such a component must be treated as a separate financial instrument.

Techniques and instruments for purpose of efficient portfolio management.

88.(1) The reference in regulation 86(3) to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management must be understood as a reference to techniques and instruments which fulfil the following criteria−

(a) they are economically appropriate in that they are realised in a cost-effective way;

(b) they are entered into for one or more of the following specific aims−

(i) reduction of risk;

(ii) reduction of cost;

(iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in regulation 89;

(c) their risks are adequately captured by the risk management process of the UCITS.

(2) Techniques and instruments complying with the criteria set out in sub-regulation (1) and relating to money market instruments must be regarded as techniques and instruments for the purposes of effective portfolio management as referred to in regulation 86(3).

Investment restrictions.

89.(1) A UCITS must invest no more than–

(a) 5% of its assets in transferable securities or money market instruments issued by the same body; or

(b) 20% of its assets in deposits made with the same body.

(2) The risk exposure to a counterparty of the UCITS in an OTC derivative transaction must not exceed–

(a) 10% of its assets when the counterparty is a credit institution referred to in regulation 81(1)(f); or

(b) 5% of its assets, in other cases.

(3) The following provisions apply–

(a) the GFSC, with the approval of the Minister, may raise the 5% limit laid down in sub-regulation (1)(a) to a maximum of 10%, where the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5% does not exceed 40% of the value of its assets;

(b) the limitation in paragraph (a) does not apply in relation to deposits or OTC derivative transactions made with financial institutions subject to prudential supervision; and

(c) despite the individual limits laid down in sub-regulations (1) and (2), a UCITS must not combine any of the following, where this would lead to investment of more than 20% of its assets in a single body–

(i) investments in transferable securities or money market instruments issued by that body;

(ii) deposits made with that body; or

(iii) exposures arising from OTC derivative transactions undertaken with that body.

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

(5) The following provisions apply in relation to bonds–

(a) the GFSC, with the approval of the Minister, may raise the 5% limit laid down in sub-regulation (1)(a) to a maximum of 25% where bonds–

(i) are issued by a credit institution which has its registered office in an EEA State; and

(ii) that credit institution is subject by law to special public supervision designed to protect bond-holders; and

(b) under that law sums deriving from the issue of such bonds must be invested in assets which–

(i) during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds; and

(ii) in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest;

(c) where a UCITS invests more than 5% of its assets in the bonds referred to in paragraphs (a) and (b) which are issued by a single issuer, the total value of these investments must not exceed 80% of the value of the assets of the UCITS;

(d) the Minister must ensure ESMA and the European Commission are sent–

(i) a list of the categories of bonds referred to in paragraphs (a) and (b) together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in those subparagraphs, to issue bonds complying with the criteria set out in this regulation;

(ii) a notice specifying the status of the guarantees offered which must be attached to those lists.

(6) The transferable securities and money market instruments referred to in sub-regulations (4) and (5) must not be taken into account for the purpose of applying the limit of 40% referred to in sub-regulation (3).

(7) The limits provided for in sub-regulations (1) to (5) must not be combined, and investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with sub-regulations (1) to (5) must not exceed in total 35% of the assets of the UCITS.

(8) Companies which are included in the same group for the purposes of consolidated accounts, as defined in the Companies Act 2014 or in accordance with recognised international accounting rules, must be regarded as a single body for the purpose of calculating the limits contained in this regulation.

(9) The GFSC, with the approval of the Minister, may allow cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20%.

Investment limit increases.

90.(1) Without affecting the limits in regulation 94, the GFSC, with the approval of the Minister, may raise the limits laid down in regulation 89 to a maximum of 20% for investment in shares or debt securities issued by the same body when, according to the fund rules or articles or memorandum of association, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the GFSC, on the following basis–

(a) its composition is sufficiently diversified;

(b) the index represents an adequate benchmark for the market to which it refers; and

(c) it is published in an appropriate manner.

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

Index-replicating UCITS.

91.(1) The reference in regulation 90(1) to replicating the composition of a stock or debt securities index must be understood as a reference to replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments within the meaning of regulations 86(3) and 88.

(2) The reference in regulation 90(1) to an index whose composition is sufficiently diversified must be understood as a reference to an index which complies with the risk diversification rules of regulation 90.

(3) The reference in regulation 90(1) to an index which represents an adequate benchmark must be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

(4) The reference in regulation 90(1) to an index which is published in an appropriate manner must be understood as a reference to an index which fulfils the following criteria–

(a) it is accessible to the public;

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

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

Derogations from regulation 89.

92.(1) By way of derogation from regulation 89–

(a) the GFSC may authorise UCITS to invest in accordance with the principle of risk-spreading up to 100% of their assets in different transferable securities and money market instruments issued or guaranteed by an EEA State, one or more of an EEA State's local authorities, a non-EEA country, or a public international body to which one or more EEA States belong;

(b) where Gibraltar is the UCITS' home State, the GFSC may grant a derogation under paragraph (a) only if it considers that unitholders in the UCITS have protection equivalent to that of unitholders in UCITS complying with the limits laid down in regulation 89;

(c) such a UCITS must hold securities from at least six different issuers, but securities from any single issuer must not account for more than 30% of its total assets.

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

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

(b) ensure that the fund rules or articles or memorandum of association referred to in paragraph (a) are approved by the GFSC.

(3) Each UCITS referred to in sub-regulation (1) must include a prominent statement in its prospectus and marketing communications drawing attention to such approval and indicating the EEA States, local authorities or public international bodies in the securities of which it intends to invest or has invested more than 35% of its assets.

Investments in other collective investment schemes.

93.(1) A UCITS may acquire the units of UCITS or other collective investment undertakings referred to in regulation 81(1)(e), if no more than–

(a) 10% of its assets; or;

(b) with the GFSC's written consent, 20% of its assets,

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

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

(3) Where a UCITS has acquired units of another UCITS or collective investment undertakings, the GFSC may determine that the assets of the respective UCITS or other collective investment undertakings are not required to be combined for the purposes of the limits laid down in regulation 89.

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

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

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

(b) indicate in its annual report the maximum proportion of management fees charged both to the UCITS itself and to the other UCITS or collective investment undertaking in which it invests.

Shareholding restrictions.

94.(1) An open-ended investment company or a management company acting in connection with all the common funds which it manages and which fall within the scope of these

Regulations must not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

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

(3) A UCITS may acquire no more than–

(a) 10% of the non-voting shares of a single issuing body;

(b) 10% of the debt securities of a single issuing body;

(c) 25% of the units of a single UCITS or other collective investment scheme within the meaning of section 292(1) of the Act; or

(d) 10% of the money market instruments of a single issuing body,

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

(4) The GFSC may waive the application of sub-regulations (1) and (2) in respect of–

(a) transferable securities and money market instruments issued or guaranteed by an EEA State or its local authorities;

(b) transferable securities and money market instruments issued or guaranteed by a non-EEA country;

(c) transferable securities and money market instruments issued by a public international body to which one or more EEA States belong;

(d) shares held by a UCITS in the capital of a company incorporated in a non-EEA country investing its assets mainly in the securities of issuing bodies having their registered offices in that country, where under the legislation of that country such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that country; or

(e) shares held by an open-ended investment company or open-ended investment companies in the capital of subsidiary companies pursuing only the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at unitholders' request exclusively on its or their behalf,

(5) Sub-regulation (4)(d) only applies if, in its investment policy, the company from a non-EEA country complies with the limits in sub-regulations (1) and (2) and regulations 89 and 93 and, where the limits in regulations 89 and 93 are exceeded, regulation 95 applies with the necessary modifications.

Derogations from this Chapter: further provisions.

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

(2) While ensuring observance of the principle of risk spreading, the GFSC may allow recently authorised UCITS to derogate from regulations 89 and 93 for six months following the date of their authorisation.

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

Chapter 6
Administrative procedures and control mechanism

General principles

General requirements: procedures and organisation.

96.(1) A management company must comply with the following requirements–

(a) it must establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(b) relevant persons of the management company must be aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) it must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;

(d) it must establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved;

(e) it must maintain adequate and orderly records of its business and internal organisation;

(f) it must take into account the nature, scale and complexity of its business and the nature and range of services and activities undertaken in the course of that business.

(2) A management company must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

(3) A management company must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to the company's systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its services and activities.

(4) A management company must establish, implement and maintain accounting policies and procedures that enable the management company, at the request of the GFSC, to deliver in a timely manner to the GFSC financial reports which reflect a true and fair view of the company's financial position and which comply with all applicable accounting standards and rules.

(5) A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with sub-regulations (1) to (4), and take appropriate measures to address any deficiencies.

Resources.

97.(1) A management company must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

(2) A management company must retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.

(3) A management company must ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly, and professionally.

(4) A management company must, for the purposes laid down in sub-regulations (1) to (3), take into account the nature, scale and complexity of its business and the nature and range of services and activities undertaken in the course of that business.

Administrative and accounting procedures

Complaints handling.

98.(1) A management company must establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors.

(2) All complaints and the measures taken for their resolution must be recorded by the management company.

(3) Investors must be able to file complaints free of charge and the information regarding procedures referred to in sub-regulation (1) must be made available to investors free of charge.

Electronic data processing.

99.(1) A management company must make appropriate arrangements for suitable electronic systems to permit a timely and proper recording of each portfolio transaction or subscription or redemption order in order to be able to comply with regulations 106 and 107.

(2) Management companies must take the necessary steps to ensure a high level of security during electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

Accounting procedures.

100.(1) A management company must–

(a) operate accounting policies and procedures as referred to in regulation 96(4) that ensure the protection of unitholders;

(b) keep UCITS accounting in such a way that all assets and liabilities of the UCITS can be directly identified at all times;

(c) where a UCITS has different investment compartments, maintain separate accounts for those investment compartments.

(2) A management company must operate accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS' home EEA State, so as to ensure that the calculation of the net asset value of each UCITS is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

(3) A management company must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the applicable rules referred to in regulation 44.

Internal control mechanisms

Control by senior management and supervisory function.

101.(1) A management company must, when allocating functions internally, ensure that senior management and, where appropriate, the supervisory function, are responsible for the management company's compliance with its obligations under these Regulations.

(2) For the purposes of sub-regulation (1), the management company must ensure that its senior management–

(a) is responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the instruments of incorporation of the investment company;

(b) oversees the approval of investment strategies for each managed UCITS;

(c) is responsible for ensuring that the management company has a permanent and effective compliance function, as referred to in regulation 102, even if this function is performed by a third party;

(d) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

(e) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

(f) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in regulation 114, including the risk limit system for each managed UCITS.

(3) For the purposes of sub-regulation (1), the management company must also ensure that its senior management and, where appropriate, its supervisory function–

(a) assesses and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations in these Regulations;

(b) takes appropriate measures to address any deficiencies.

(4) For the purposes of sub-regulation (1), management companies must ensure that–

(a) their senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

(b) their senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in sub-regulation (2)(b) to (e);

(c) the supervisory function, if any, receives on a regular basis written reports on the matters referred to in paragraph (a).

Permanent compliance function.

102.(1) A management company must–

(a) establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under these Regulations, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the GFSC to exercise its powers effectively under these Regulations;

(b) take into account the nature, scale and complexity of the business of the company, and the nature and range of services and activities undertaken in the course of that business;

(c) establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities–

(i) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph (a) and the actions taken to address any deficiencies in the management company's compliance with its obligations;

(ii) to advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company's obligations under these Regulations.

(2) To enable the compliance function referred to in sub-regulation (1) to discharge its responsibilities properly and independently, management companies must ensure that the following conditions are satisfied–

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;

(c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so,

but a management company must not be required to comply with paragraphs (c) or (d) where it is able to demonstrate that, in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that requirement is not proportionate and that its compliance function continues to be effective.

Permanent internal audit function.

103.(1) A management company must, where appropriate and proportionate in view of the nature, scale and complexity of the management company's business and the nature and range of collective portfolio management activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the management company.

(2) For the purposes of sub-regulation (1), the internal audit function must have the following responsibilities–

(a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the management company's systems, internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with paragraph (a);

(c) to verify compliance with the recommendations referred to in paragraph (b);

(d) to report in relation to internal audit matters in accordance with regulation 101(4).

Permanent risk management function.

104.(1) A management company must establish and maintain a permanent risk management function.

(2) The permanent risk management function referred to in sub-regulation (1) must be hierarchically and functionally independent from operating units, but the GFSC may permit a management company not to comply with that obligation where it is appropriate and proportionate in view of the nature, scale and complexity of the management company's business and of the UCITS it manages.

(3) For the purposes of sub-regulation (1), a management company must be able to demonstrate to the GFSC that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of regulation 86.

(4) The permanent risk management function referred to in sub-regulation (1) must–

(a) implement the risk management policy and procedures;

(b) ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with regulations 117 to 119;

(c) provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS;

(d) provide regular reports to the board of directors and, where it exists, the supervisory function, on–

(i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;

(ii) the compliance of each managed UCITS with relevant risk limit systems;

(iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

(e) provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;

(f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in regulation 120.

(5) The permanent risk management function must have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in sub-regulation (4).

Personal transactions.

105.(1) A management company must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7.1 of EUMAR or to other confidential information relating to UCITS or transactions with or for UCITS by virtue of an activity carried out by the person on behalf of the management company–

(a) entering into a personal transaction which fulfils at least one of the following criteria–

(i) that person is prohibited from entering into that personal transaction;

(ii) it involves the misuse or improper disclosure of confidential information;

(iii) it conflicts or is likely to conflict with an obligation of the management company under these Regulations or the MiFID 2 Directive;

(b) advising or procuring, other than in the proper course of his or her employment or contract for services, any other person to enter into a transaction in financial

instruments which, if a personal transaction of the relevant person, would be covered by paragraph (a) or by Article 25(2)(a) or (b) of Directive 2006/73/EC or would otherwise constitute a misuse of information relating to pending orders;

(c) disclosing, other than in the normal course of his or her employment or contract for services and, without limiting Article 10.1 of EUMAR, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will, or would be likely to, take either of the following steps–

(i) to enter into a transaction in financial instruments which, where a personal transaction of the relevant person would be covered by paragraph (a) or by Article 25(2)(a) or (b) of Directive 2006/73/EC, or would otherwise constitute a misuse of information relating to pending orders;

(ii) to advise or procure another person to enter into such a transaction,

provided that for the purposes of paragraph (b), where certain activities are performed by third parties, the management company must ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the management company promptly on request.

(2) The arrangements referred to in sub-regulation (1) must in particular be designed to ensure that–

(a) each relevant person covered by sub-regulation (1) is aware of the restrictions on personal transactions and of the measures established by the management company in connection with personal transactions and disclosure, in accordance with that sub-regulation;

(b) the management company is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the management company to identify such transactions;

(c) a record is kept of the personal transaction notified to the management company or identified by it, including any authorisation or prohibition in connection with such a transaction.

(3) Sub-regulations (1) and (2) do not apply to the following kinds of personal transactions–

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in UCITS or units in collective undertakings that are subject to supervision under the law of a EEA State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

(4) For the purposes of this regulation, "personal transaction" has the same meaning as in Article 11 of Directive 2006/73/EC.

Recording of portfolio transactions.

106.(1) A management company must ensure that for each portfolio transaction relating to UCITS, a record of information which is sufficient to reconstruct the details of the order and the executed transaction can be produced without delay.

(2) The record referred to in sub-regulation (1) must include–

(a) the name or other designation of the UCITS and of the person acting on account of the UCITS;

(b) the details necessary to identify the instrument in question;

(c) the quantity;

(d) the type of the order or transaction;

(e) the price;

(f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

(g) the name of the person transmitting the order or executing the transaction;

(h) where applicable, the reasons for the revocation of an order; and

(i) for executed transactions, the counterparty and execution venue identification and, for these purposes, an "execution venue" means a regulated market, a multilateral trading facility, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a non-EEA state to the functions performed by any of the foregoing.

Recording of subscription and redemption orders.

107.(1) A management company must take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt of any such order.

(2) The record referred to in sub-regulation (1) must include information on the following–

(a) the relevant UCITS;

(b) the person giving or transmitting the order;

(c) the person receiving the order;

(d) the date and time of the order;

(e) the terms and means of payment;

(f) the type of the order;

(g) the date of execution of the order;

(h) the number of units subscribed or redeemed;

(i) the subscription or redemption price for each unit;

(j) the total subscription or redemption value of the units;

(k) the gross value of the order including charges for subscription or net amount after charges for redemption.

Record-keeping requirements.

108.(1) A management company must retain the records referred to in regulations 106 and 107 for a period of at least five years or, in exceptional circumstances, such longer period as

the GFSC may determine by the nature of the instrument or portfolio transaction, where it is necessary to enable the GFSC to exercise its supervisory functions under these Regulations.

(2) Where–

(a) the authorisation of a management company expires, the GFSC may require the management company to retain the records referred to in sub-regulation (1) for the outstanding term of the five-year period;

(b) a management company transfers its responsibilities in relation to the UCITS to another management company, the GFSC may require that arrangements are made so that such records for the past five years are accessible to that company,

in default of which the GFSC may impose a penalty of £10,000 recoverable as a civil debt.

(3) The records referred to in this regulation must be retained in a medium that allows the storage of information in a way accessible for future reference by the GFSC, and in such a form and manner that the following conditions are met–

(a) the GFSC must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it must not be possible for the records to be otherwise manipulated or altered.

Chapter 7
Conflict of interests

Criteria for identification of conflicts of interest.

109.(1) In order to identify the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, a management company must take into account the question of whether the management company or a relevant person, or a person directly or indirectly linked by way of control to the management company, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise–

(a) the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;

(b) the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS interest in that outcome;

(c) the management company or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the UCITS;

(d) the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;

(e) the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.

(2) For the purposes of sub-regulation (1), when identifying the types of conflict of interests, a management company must take into account–

(a) the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS;

(b) the interests of two or more managed UCITS.

Conflicts of interest policy.

110.(1) A management company must establish, implement and maintain an effective conflicts of interest policy as follows–

(a) the policy must be set out in writing and be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business; and

(b) where the management company is a member of a group, the policy must take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

(2) The conflicts of interest policy established in accordance with sub-regulation (1) must include the following–

(a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts.

Independence in conflicts management.

111.(1) A management company must ensure that the procedures and measures provided for in regulation 110(2)(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

(2) The procedures to be followed and measures to be adopted in accordance with regulation 110(2)(b) must include the following where necessary and appropriate for the management company to ensure the requisite degree of independence–

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest; and

(f) where the adoption or the practice of one or more of the measures and procedures set out in paragraphs (a) to (e) does not ensure the requisite degree of independence, such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Management of activities giving rise to detrimental conflict of interest.

112.(1) A management company must keep up to date a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

(2) Where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unitholders will be prevented, senior management or other competent internal body of the management company must be promptly informed in order for them to ensure that management company acts in the best interests of the UCITS and of its unitholders.

(3) A management company must report situations referred to in sub-regulation (2) to investors by any appropriate durable medium and give reasons for its decision.

Strategies for exercise of voting rights.

113.(1) A management company must develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.

(2) The strategy referred to in sub-regulation (1) must determine measures and procedures for–

(a) monitoring relevant corporate events;

(b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS; and

(c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

(3) A summary description of the strategies referred to in sub-regulation (1) must be made available to investors, and details of the actions taken on the basis of those strategies must be made available to the unitholders free of charge and on their request.

Chapter 8
Risk management

Risk management policy.

114.(1) A management company must establish, implement and maintain an adequate and documented risk management policy which identifies the risks to which the UCITS it manages are or might be exposed.

(2) The risk management policy referred to in sub-regulation (1) must–

(a) comprise the procedures that are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity and counterparty risks and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages; and

(b) address the following elements–

(i) the techniques, tools and arrangements that enables the management company to comply with the obligations set out in regulations 116 and 117;

(ii) the allocation of responsibilities within the management company pertaining to risk management.

(3) For the purposes of sub-regulation (1), the risk management policy must state the terms, contents and frequency of reporting of the risk management function referred to in regulation 104 to the board of directors and to senior management and, where appropriate, to the supervisory function.

(4) For the purposes of sub-regulations (1) and (2), a management company must take into account the nature, scale and complexity of its business and of the UCITS it manages.

Assessment, monitoring and review of risk management policy.

115.(1) A management company must assess, monitor and periodically review–

(a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in regulations 116 and 117;

(b) the level of compliance by the management company with the risk management policy and with arrangements, processes and techniques referred to in regulations 116 and 117; and

(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

(2) For the purposes of sub-regulation (1), where Gibraltar is the management company's home State, the management company must notify the GFSC of any material changes to the risk management process.

(3) The requirements of sub-regulation (1) must be subject to review by the GFSC on an on-going basis and accordingly when giving Part 7 permission.

Measurement and management of risk.

116.(1) A management company must adopt adequate and effective arrangements, processes and techniques in order to–

(a) measure and manage at any time the risks which the UCITS it manages are or might be exposed to; and

(b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with regulations 117 and 119,

in a manner which is proportionate to the nature, scale and complexity of the business of the management company and of the UCITS it manages and consistent with the UCITS risk profile.

(2) For the purposes of sub-regulation (1), a management company must take the following actions for each UCITS it manages–

(a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

(b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;

(c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;

(d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in regulation 114 and ensuring consistency with the UCITS risk-profile;

(e) ensure that the current level of risk complies with the risk limit system as set out in paragraph (d) for each UCITS; and

(f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unitholders.

(3) For the purposes of sub-regulation (1), a management company must–

(a) employ an appropriate liquidity risk management process in order to ensure that each UCITS it manages is able to comply at any time with regulation 43(1);

(b) where appropriate, conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances; and

(c) ensure that for each UCITS it manages the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules, the instruments of incorporation or the prospectus.

Calculation of global exposure.

117.(1) A management company must calculate the global exposure of a managed UCITS as referred to in regulation 86(3) as either of the following–

(a) the incremental exposure and leverage generated by the managed UCITS through the use of financial derivative instruments including embedded derivatives pursuant to regulation 86(4)(d), which may not exceed the total of the UCITS net asset value;

(b) the market risk of the UCITS portfolio.

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

(a) must calculate the UCITS global exposure on at least a daily basis;

(b) may calculate global exposure by using the commitment approach, the value at risk approach or other advanced risk measurement methodologies as may be appropriate, and for these purposes, "value at risk" means a measure of the maximum expected loss at a given confidence level over a specific time period;

(c) must ensure that the method selected to measure global exposure is appropriate, taking into account the investment strategy pursued by the UCITS and the types and complexities of the financial derivative instruments used, and the proportion of the UCITS portfolio which comprises financial derivative instruments,

but where a UCITS employs techniques and instruments including repurchase agreements or securities lending transactions in order to generate additional leverage or exposure to market risk in accordance with regulation 86(2), a management company must take these transactions into consideration when calculating global exposure.

Commitment approach.

118.(1) Where the commitment approach is used for the calculation of global exposure, a management company must apply this approach to all financial derivative instrument positions including embedded derivatives as referred to in regulation 86(4)(d), whether used as part of the UCITS general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management as referred to in regulation 86(2).

(2) Where the commitment approach is used for the calculation of global exposure, a management company–

(a) must convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative (standard commitment approach); or

(b) may apply other calculation methods which are equivalent to the standard commitment approach.

(3) A management company must take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

(4) Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure need not be included in the commitment calculation.

(5) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS in accordance with regulation 42 need not be included in the global exposure calculation.

Counterparty risk and issuer concentration.

119.(1) A management company must ensure that counterparty risk arising from an over-the-counter (OTC) financial derivative instrument is subject to the limits set out in regulation 89.

(2) When calculating the UCITS exposure to a counterparty within the limits referred to in regulation 89(1), a management company –

(a) must use the positive mark-to-market value of the OTC derivative contract with that counterparty;

(b) may net the derivative positions of a UCITS with the same counterparty, provided that they are able to legally enforce netting agreements with the counterparty on behalf of the UCITS,

provided that netting is only permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.

(3) A management company may reduce the UCITS exposure to a counterparty of an OTC derivative transaction through the receipt of collateral which is sufficiently liquid to be sold quickly at a price that is close to its pre-sale valuation.

(4) A management company must take collateral into account in calculating exposure to counterparty risk as referred to in regulation 89 when the management company passes collateral to OTC counterparty on behalf of the UCITS, and collateral passed may be taken into account on a net basis only if the management company is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.

(5) A management company must calculate issuer concentration limits as referred to in regulation 89 on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach.

(6) With respect to the exposure arising from OTC derivatives transactions as referred to in regulation 89(2) a management company must include in the calculation any exposure to OTC derivative counterparty risk.

Procedures for assessment of value of OTC derivatives.

120.(1) A management company must verify that UCITS exposures to OTC derivatives are assigned fair values that do not rely only on market quotations by the counterparties of the OTC transactions and which fulfil the criteria set out in Article 8(4) of Directive 2007/16/EC.

(2) For the purposes of sub-regulation (1), a management company must–

(a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS exposures to OTC derivatives;

(b) ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment;

(c) ensure that the valuation arrangements and procedures are adequate and proportionate to the nature and complexity of the OTC derivatives concerned; and

(d) comply with the requirements set out in regulations 51(2)(d) and 97(2) and when arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties.

(3) For the purposes of sub-regulations (1) and (2), the risk management function must be appointed with specific duties and responsibilities.

(4) The valuation arrangements and procedures referred to in sub-regulation (2) must be adequately documented by a management company.

PART 5
REPORTING AND NOTIFICATION

Alteration of UCITS.

121.(1) The operator of a UCITS must give the GFSC written notice of any proposal to alter the UCITS, including a proposal to amend its constituting instrument or change its name.

(2) Without limiting sub-regulation (1), in the case of an authorised open-ended investment company, notice must be given to the GFSC of the following alterations–

(a) any proposed material alteration to the company's prospectus;

(b) any proposed reconstruction or amalgamation involving the company; or

(c) any proposal to wind up the affairs of the company.

(3) A notice under sub-regulation (1) of a proposal to amend the constituting instrument of a UCITS must be accompanied by a certificate of a barrister or solicitor of the Supreme Court of Gibraltar that the change will not affect the compliance of the constituting instrument with section 309(3)(a) and (4) of the Act or these Regulations.

Changes in manager, depositary, trustee or director.

122.(1) Written notice of any proposal to replace the manager of a UCITS must be given to the GFSC–

(a) in the case of an authorised common fund, by the trustee; and

(b) in the case of an open-ended investment company, by the depositary.

(2) The manager of a UCITS must give the GFSC written notice of any proposal to replace the trustee or, in the case of an open-ended investment company, the depositary of the scheme.

(3) The operator of an authorised open-ended investment company must give the GFSC written notice of any proposal to appoint a director of the company, whether as a replacement director or as an additional director, or to decrease the number of the company's directors.

Approval of proposals under regulations 121 and 122.

123.(1) A proposal to which regulation 121 or 122 applies must not be given effect unless the GFSC has given its written approval to the proposal.

(2) The GFSC must not approve a proposal to which regulation 122 applies unless it is satisfied that, if the change is made, the UCITS will continue to comply with those requirements of regulations 9 and 10 are relevant to the UCITS.

Auditors' duty of disclosure.

124.(1) An auditor auditing or offering any other professional service to a UCITS or to an undertaking contributing towards the business activity of a UCITS, has a duty to report promptly to the GFSC any facts or decisions of which the auditor has become aware and liable to bring about any of the following–

(a) a material breach of these Regulations or any statutory provision governing the activities of UCITS or any undertakings contributing towards the business activity of the UCITS;

(b) the impairment of the continuous functioning of the UCITS or an undertaking contributing towards its business activity; or

(c) a refusal to certify the accounts or the expression of reservations.

(2) An auditor has a duty to report any facts or decisions of which the auditor becomes aware in the course of carrying out a task in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards its business activity within which the auditor is carrying out that task.

Liability of auditor for disclosure.

125. The disclosure in good faith to the GFSC by an auditor of any fact or decision referred to in regulation 124(1) is not a breach of any restriction on disclosure of information imposed by contract or any statutory provision or rule of law and does not subject such the auditor to liability of any kind.

Reports on derivative instruments.

126.(1) Management companies must deliver to the GFSC on an annual basis, reports containing information which reflects a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions.

(2) The GFSC must review the regularity and completeness of information referred to in sub-regulation (1) and ensure that it has an opportunity to intervene where appropriate.

PART 6
FREEDOM OF ESTABLISHMENT OR TO PROVIDE SERVICES

Chapter 1
General

Responsibility for prudential supervision of management company.

127.(1) The prudential supervision of a management company is the responsibility of the competent authority responsible for authorising that company, whether or not the management company establishes a branch or provides services in another EEA State.

(2) Sub-regulation (1) applies without limiting the provisions of these Regulations conferring responsibility on the GFSC where Gibraltar is the host State of a management company.

Management companies authorised elsewhere in EEA.

128.(1) The GFSC must ensure that–

(a) a management company authorised in another EEA State may pursue in Gibraltar the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services; and

(b) where a management company authorised in another EEA State proposes only to market the units of the UCITS it manages in Gibraltar, as provided for in paragraph 93(3) of Schedule 2 to the Act, without establishing a branch or proposing to pursue any other activities or services, that the marketing is subject only to the requirements of Chapter 2.

(2) The establishment of a branch or the provision of services by a management company authorised in another EEA State is not subject to any requirement to apply for Part 7 permission, provide endowment capital or to any other measure having equivalent effect.

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

(a) regulation 129 or 130; and

(b) regulation 131 and 132.

(4) By way of derogation from this regulation, the GFSC may authorise management companies to issue bearer certificates representing the registered securities of other companies.

Cross-border notifications: management companies.

129.(1) In addition to meeting the conditions in regulations 15, 12 and 13, a management company wishing to establish a branch in another EEA State to pursue the activities for which it has Part 7 permission must notify the GFSC of its intention accordingly.

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

(a) the EEA State in which the management company plans to establish a branch;

(b) a programme of operations setting out the activities and services envisaged and the organisational structure of the branch, including a description of risk management processes and a description of procedures and arrangements in accordance with regulation 20 put in place by the management company;

(c) details of the address in the management company's host State from which documents may be obtained; and

(d) the names of those responsible for the management of the branch.

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

(a) communicate that information to the competent authority of the management company's host State;

(b) inform the management company of the communication referred to in paragraph (a);

(c) communicate details of any compensation scheme intended to protect investors to the competent authority of the management company's host State;

(d) where it refuses to communicate the information referred to in sub-regulation (2) to the competent authority of the management company's host State–

(i) give reasons for such refusal to the management company concerned within two months of receiving all the information; and

(ii) inform the management company that the refusal or failure to reply is subject to a right of appeal to the Supreme Court; and

(e) where a management company wishes to pursue the activity of collective portfolio management referred to in paragraph 93(3) of Schedule 2 to the Act, enclose with the documentation sent to the competent authority of the management company's host State–

(i) a certificate that the management company has been give Part 7 permission in accordance with the Act and these Regulations;

(ii) a description of the scope of the management company's permission; and

(iii) details of any restriction on the types of UCITS that the management company is permitted to manage.

(4) A management company–

(a) with Part 7 permission and pursuing activities through a branch in a host State must comply with Article 14 of the UCITS Directive as it applies in that State;

(b) authorised in another EEA State and pursuing activities in Gibraltar, must comply with the provisions of regulation 19.

(5) Where Gibraltar is the host State of a management company, the GFSC is responsible for supervising compliance with sub-regulation (4) and, before a branch of a management company starts business in Gibraltar, the GFSC must prepare for supervising the management company's compliance with these Regulations within two months of receiving a notification under Article 17 of the UCITS Directive.

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

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

(8) The GFSC must–

(a) inform the competent authority of the management company's host State of any change in the particulars communicated in accordance with sub-regulation (3)(a); and

(b) update the information contained in the certificate referred to in sub-regulation 3(c) and inform the competent authority of the management company's host State whenever there is a change in the scope of the management company's permission or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Provisions ancillary to regulation 129.

130.(1) A management company wishing to pursue the activities for which it has Part 7 permission for the first time under regulation 129, must communicate the following information to the GFSC−

(a) the EEA State in which the management company intends to operate;

(b) a programme of operations stating the activities and services referred to in regulation 15(1) envisaged which must include a description of the risk management process put in place by the management company; and

(c) a description of the procedures and arrangements taken in accordance with regulation 20.

(2) The following provisions apply–

(a) the GFSC must−

(i) within one month of receiving the information referred to in sub-regulation (1), forward it to the competent authority of the management company's host State; and

(ii) communicate to the competent authority of the management company's host State details of any applicable compensation scheme intended to protect investors;

(b) where a management company wishes to pursue the activity of collective portfolio management as referred to in paragraph 93(3) of Schedule 2 to the Act, the GFSC must enclose with the documentation sent to the competent authority of the management company's host State–

(i) a certificate that the management company has been given Part 7 permission in accordance with the Act and these Regulations;

(ii) a description of the scope of the management company's permission; and

(iii) details of any restriction on the types of UCITS that the management company is permitted to manage,

and despite regulations 132 and 137, the management company may then start business in its host State.

(3) A management company with Part 7 permission pursuing activities in another EEA State must comply with the provisions of regulation 19.

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

(a) the management company must give notice of the amendment in writing to the competent authority of its host State and to the GFSC before implementing the change;

(b) the GFSC must–

(i) update the information contained in the certificate referred to in sub-regulation (2); and

(ii) inform the competent authority of the management company's host State whenever there is a change in the scope of the management company's permission or in the details of any restriction on the types of UCITS that the management company is permitted to manage.

Portfolio management services.

131.(1) Where a management company pursues the activity of collective portfolio management in another EEA State on a cross-border basis by establishing a branch or under regulation 129, it must comply with the provisions of the Act, these Regulations, the Companies Act 2014 and all other relevant enactments relating to the management of the company including delegation arrangements, risk-management procedures, prudential rules and supervision procedures, and the management company's reporting requirements.

(2) The GFSC is responsible for supervising compliance with sub-regulation (1), which must not be applied so as to make compliance with the specified legislation by management

companies to which that sub-regulation applies more onerous than for management companies conducting their activities only in Gibraltar.

(3) A management company pursuing the activity of collective portfolio management on a cross-border basis in another EEA State by establishing a branch or in accordance with regulation 129, must comply with the provisions of the Act and these Regulations relating to the constitution and functioning of the UCITS that is to say, provisions applicable to–

(a) the setting up and authorisation of the UCITS;

(b) the issuance and redemption of units and shares;

(c) investment policies and limits, including the calculation of total exposure and leverage;

(d) restrictions on borrowing, lending and uncovered sales;

(e) the valuation of assets and the accounting of the UCITS;

(f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

(g) the distribution or reinvestment of the income;

(h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

(i) the arrangements made for marketing;

(j) the relationship with unitholders;

(k) the merging and restructuring of the UCITS;

(l) the winding-up and liquidation of the UCITS;

(m) where applicable, the content of the unitholder register;

(n) the levying of fees for the licensing and supervision of the UCITS; and

(o) the exercise of unitholders' voting rights and other unitholders' rights in relation to paragraphs (a) to (m).

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

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

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

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

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

Applications to manage UCITS in Gibraltar.

132.(1) A management company authorised in another EEA State applying to manage a UCITS established in Gibraltar must provide the GFSC with the following documentation–

(a) the written contract with the depositary referred to in regulation 63(2);

(b) information on delegation arrangements regarding functions of investment management and administration referred to in paragraph 93(3) of Schedule 2 to the Act,

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

(2) To ensure compliance–

(a) with these Regulations, the GFSC may ask the competent authority of the management company's home State for clarification and information regarding the documentation referred to in sub-regulation (1) and, based on the certificate referred to in regulations 129 and 130, as to whether the type of UCITS for

which authorisation is requested falls within the scope of the management company's authorisation;

(b) with provisions equivalent to these Regulations in a host State, the GFSC must respond to a request by the host State for clarification and information regarding matters equivalent to those referred to in paragraph (a), and where applicable, the GFSC must provide its opinion within ten working days of the initial request.

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

(a) the management company does not comply with rules falling under the responsibility of the GFSC pursuant to regulation 131;

(b) the management company is not authorised to manage the type of UCITS for which authorisation is requested; or

(c) the management company has not provided the documentation referred to in sub-regulation (1),

and before refusing an application under sub-regulation (1), the GFSC must consult the competent authority of the management company's home State.

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

Periodical reporting.

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

(2) Where Gibraltar is host State to a management company–

(a) the GFSC may require the management company to provide the information necessary for the monitoring of compliance with the relevant provisions of these Regulations and the UCITS Directive;

(b) the GFSC must ensure that the standard of compliance with the relevant provisions of these Regulations and the UCITS Directive required by such company is no more stringent than that expected of management companies authorised under these Regulations;

(c) the management company must ensure that procedures and arrangements referred to in regulation 20 enable the GFSC to obtain directly from the management company the information referred to in this sub-regulation.

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

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

(5) Where Gibraltar is the home State of the management company and the competent authority of the host State informs the GFSC of matters falling within sub-regulation (3), the GFSC must, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested or puts an end to the breach.

(6) The GFSC must inform the competent authority of the management company's host State of the nature of any appropriate measures taken under sub-regulation (5).

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

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

(b) where the GFSC considers that the competent authority of the management company's home State has not acted adequately, refer the matter to ESMA and request its assistance in accordance with Article 19 of the ESMA Regulation.

(8) For the purposes of this regulation "appropriate measures" includes

(a) the imposition of administrative penalties under section 157 of the Act; or

(b) the suspension or cancelation of any authorisation granted under the Act and these Regulations,

and the imposition of any appropriate measures must be undertaken in accordance with the applicable procedures in the Act or these Regulations.

(9) Before following the procedure laid down in sub-regulations (3) to (7)–

(a) the GFSC may, in emergencies, take such precautionary measures as it may deem necessary to protect the interests of investors and others for whom services are provided; and

(b) where paragraph (a) applies, the European Commission, ESMA and the competent authority of the other EEA States concerned must be informed regarding such measures at the earliest opportunity.

(10) The GFSC must consult the competent authority of the UCITS' home State before withdrawing the authorisation of the management company.

(11) Where Gibraltar is the host State of a management company whose authorisation is being withdrawn and the UCITS is authorised under these Regulations, the GFSC must take appropriate measures to safeguard investors' interests, including decisions preventing the management company concerned from initiating any further transactions.

(12) The Minister must ensure that ESMA and the European Commission are informed of the number and type of cases in which authorisations are refused under regulation 129 or an application under regulation 132 and of any measures taken in accordance with sub-regulation (7).

Chapter 2
Special provisions applicable to UCITS which market their units in Gibraltar

Cross-border marketing of units.

134.(1) Where Gibraltar is a UCITS' host State, the UCITS may market its units in Gibraltar on notifying the GFSC in accordance with regulation 137, and no additional requirements or administrative procedures must be imposed on the UCITS concerned.

(2) The GFSC must publish electronically and keep up to date information in English on the statutory and regulatory provisions relevant to the marketing in Gibraltar of units of UCITS established in another EEA State and not falling within the ambit of the UCITS Directive.

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

Information to be made available under regulation 134(2).

135.(1) The following categories of information on the relevant laws, regulations and administrative provisions must be made accessible in accordance with regulation 134(2)–

(a) the definition of the term "marketing of units of UCITS" or the equivalent legal term either as stated in national legislation or as developed in practice;

(b) requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions on the use of certain words or phrases;

(c) without limiting Chapters 3 to 5 of Part 3, details of any additional information required to be disclosed to investors;

(d) details of any exemptions from rules or requirements governing arrangements made for marketing applicable in Gibraltar for certain UCITS, certain share classes of UCITS or certain categories of investors;

(e) requirements for any reporting or transmission of information to the GFSC, and the procedure for lodging updated versions of required documents;

(f) requirements for any fees or other sums to be paid to the GFSC or any other statutory body in Gibraltar, either when marketing commences or periodically thereafter;

(g) requirements in relation to the facilities to be made available to unitholders as required by regulation 136;

(h) conditions for the termination of marketing of units of UCITS in Gibraltar by a UCITS situated in another EEA State;

(i) detailed contents of the information required to be included in Part B of the notification letter as referred to in Article 1 of Commission Regulation (EU) No 584/2010; and

(j) the e-mail address designated for the purpose of regulation 139.

(2) The information listed in sub-regulation (1) must be supplied in the form of a narrative description, or a combination of a narrative description and a series of references or links to source documents.

Payments to unitholders.

136. A UCITS must take the measures necessary to ensure that facilities are available for making payments to unitholders repurchasing or redeeming units and making available the information UCITS are required to provide.

Cross border notifications.

137.(1) Where Gibraltar is the UCITS' home State, and the UCITS proposes to market its units in another EEA State, it must first submit a notification letter to the GFSC which must include–

(a) information on arrangements made for marketing units of the UCITS in the host State, including, where relevant, in respect of share classes; and

(b) in the context of regulation 128(1), an indication that the UCITS is marketed by the management company that manages the UCITS.

(2) A notification letter must be accompanied by the latest version of–

(a) the fund rules or instruments of incorporation of the UCITS, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of regulation 141(1)(c) and (d); and

(b) its key investor information referred to in regulation 37, translated in accordance with regulation 141(1)(b) and (d).

(3) The GFSC must–

(a) verify whether the documentation submitted by the UCITS in accordance with sub-regulations (1) and (2) is complete;

(b) transmit the complete documentation to the competent authority of the EEA State in which the UCITS proposes to market its units, no later than ten working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in sub-regulation (2);

(c) enclose with the documentation a certificate that the UCITS fulfils the conditions imposed by the Act and these Regulations; and

(d) immediately notify the UCITS of the transmission,

and the UCITS may access the market of the UCITS' host State from the date of that notification.

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

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

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

(7) The GFSC must ensure that–

(a) the competent authority of the UCITS' host State has access, by electronic means, to the documents referred to in sub-regulation (2) and, if applicable, to any translations of them; and

(b) the UCITS keeps those documents and translations up to date,

and the UCITS must notify any amendments to the documents referred to in sub-regulation (2) to the competent authority of the UCITS' host State and must indicate where those documents can be obtained electronically.

(8) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with sub-regulation (1) or a change regarding share classes to be marketed, the UCITS must give written notice of the change to the competent authority of the host State before implementing it.

Host State access to documents.

138.(1) A UCITS must make a copy of each document referred to in regulation 137(2) available, in a commonly used an electronic format–

(a) on a website of the UCITS;

(b) on a website of the management company that manages that UCITS; or

(c) on another website designated by the UCITS in the notification letter submitted in accordance with regulation 137(1).

(2) A UCITS must give access to the chosen website to the competent authority of its host State.

Updates of documents.

139.(1) The GFSC must designate an e-mail address for the purpose of receiving notification of updates and amendments to the documents in regulation 137(2), and (7).

(2) A UCITS may notify any update or amendment to those documents by sending an e-mail to the e-mail address designated under sub-regulation (1), which either describes the update or amendment that has been made or includes, as an attachment, a new version of the document in a commonly used electronic format.

Development of common data processing systems.

140. In order to facilitate access by the competent authority of a UCITS' host State to the information or documents referred to in regulation 137(1), (2), (3) and (7), the GFSC may coordinate with the other competent authorities the establishment of sophisticated electronic data processing and central storage systems common to all EEA States.

Provision of information in host State.

141.(1) Where Gibraltar is the home State of a UCITS that markets its units in a host State, the UCITS must provide to investors within the territory of that State all information and documents it is required to provide to investors in Gibraltar under Chapters 3 to 5 of Part 3 as follows–

(a) without limiting those Chapters, the information or documents must be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS' host State;

(b) key investor information under regulation 37 must be translated into the official language, or one of the official languages, of the UCITS' host State or into a language approved by the competent authority of that State;

(c) information or documents, other than key investor information under regulation 37, must be translated at the choice of the UCITS into–

(i) the official language, or one of the official languages, of the UCITS' host State;

(ii) a language approved by the competent authority of that State; or

(iii) a language customary in the sphere of international finance; and

(d) translations of information or documents under paragraphs (b) and (c) must be produced under the responsibility of the UCITS and must faithfully reflect the content of the original information.

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

Regulation 141: supplementary provisions.

142. Where regulation 141 applies–

(a) the requirements of that regulation apply to any changes to the information and documents referred to in that regulation; and

(b) the frequency of publication of the issue, sale, repurchase or redemption price of units of UCITS under regulation 35 is subject to the provisions of the UCITS' home State.

Use of legal forms.

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

Chapter 3
Management companies

Management companies: cooperation by GFSC.

144.(1) Where, through the provision of services or by the establishment of branches, a management company operates in a number of host States, including Gibraltar, the GFSC

must collaborate closely with the competent authorities of all the EEA States concerned as follows–

(a) the GFSC must supply the competent authorities of all the EEA States concerned on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies;

(b) where Gibraltar is the management company's home State, the GFSC must cooperate to ensure that the competent authorities of the management company's host States collect the particulars referred to in regulation 133(2).

(2) The GFSC must inform the competent authority of a management company's home State of any measures taken by the GFSC under regulation 133(6) involving measures or penalties imposed on a management company or restrictions on a management company's activities, where it is necessary for the purpose of the home state exercising powers of supervision conferred by the UCITS Directive.

(3) Where Gibraltar is the management company's home State, the GFSC must, without delay, notify the competent authority of the home State of the UCITS managed by that company of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of these Regulations.

(4) Where Gibraltar is the UCITS' home State, the GFSC must, without delay, notify the competent authority of the home state of that UCITS' management company of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements of these Regulations.

Spot verifications by home competent authority.

145. Where a management company authorised in another EEA State pursues business in Gibraltar through a branch, the competent authority of the management company's home State may, after informing the GFSC, themselves or through the intermediary they instruct for the purpose, carry out on-the-spot verification of the information referred to in regulation 144.

Spot verifications by GFSC.

146. Regulation 145 does not affect the right of the GFSC, in discharging its responsibilities under these Regulations, to carry out on-the-spot verifications of branches established in Gibraltar.

PART 7
REGULATORY POWERS

GFSC's powers

Powers of GFSC.

147. For the purpose of supervising or ensuring compliance with these Regulations, the GFSC may exercise any powers it has under the Act and may also–

(a) require the provision of documents and data in any form and retain copies;

(b) require information from any person and, if necessary, summon and question a person with a view to obtaining information;

(c) require–

(i) existing recordings of telephone conversations, electronic communications or other data traffic records held by UCITS, management companies, open-ended investment companies, depositaries or other entities regulated under these Regulations; or

(ii) where permitted by the laws of Gibraltar, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of a contravention and where those records may be relevant to the investigation of that contravention;

(d) require the suspension of the issue, repurchase or redemption of units in the interest of the unitholders or of the public; or

(e) adopt any type of measure to ensure that open-ended investment companies, management companies or depositaries continue to comply with the requirements of these Regulations.

Enforcement action

Enforcement action against UCITS.

148.(1) In this regulation "enforcement action" means–

(a) the suspension or cancellation of an authorisation;

(b) the imposition of an administrative penalty under section 334 of the Act; or

(c) any other sanction which may be imposed on a UCITS in accordance with section 333 of the Act.

(2) The GFSC may take enforcement action against–

(a) a UCITS whose home State is Gibraltar where it contravenes the Act, these Regulations, the fund rules or any provision of its statutes; or

(b) a UCITS whose host State is Gibraltar where it contravenes any statutory provision or rule of law falling outside the scope of the UCITS Directive or the requirements set out in regulations 136 and 141.

(3) Where the GFSC withdraws authorisation from, or takes any other serious measure against, a UCITS or suspends the issue, repurchase or redemption of its units, the GFSC must without delay inform the competent authority of–

(a) the UCITS' host State; and

(b) the management company's home State, if the management company of the UCITS is established in another EEA State.

(4) The GFSC may take action against a management company for a contravention of the Act or these regulations if Gibraltar is the home State of the management company or a UCITS managed by that company.

(5) Where Gibraltar is a UCITS' host State and the GFSC has clear and demonstrable grounds for believing that the UCITS, the units of which are marketed within Gibraltar, is in breach of provisions of these Regulations which do not confer powers on the host State competent authority, the GFSC must refer those findings to the competent authority of the UCITS' home State.

(6) Where, despite measures taken by the competent authority in the UCITS' home State or where those measures prove to be inadequate or the competent authority of the UCITS' home State fails to act within a reasonable timeframe after a referral under sub-regulation (5), the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in that UCITS in Gibraltar, the GFSC may, as a consequence–

(a) after informing the competent authority of the UCITS' home State, take all the appropriate measures needed in order to protect investors, including–

(i) imposing administrative penalties, or

(ii) prohibiting the UCITS concerned from carrying out any further marketing of its units in Gibraltar; or

(b) if necessary, refer the matter to ESMA and request its assistance in accordance with Article 19 of the ESMA Regulation,

and the GFSC must ensure that the European Commission and ESMA are informed without delay of any measure taken pursuant to paragraph (a).

(7) Where Gibraltar is the UCITS' home State, the competent authority of the UCITS' host State may serve upon the UCITS in Gibraltar the legal documents necessary for any measures which may be taken by that competent authority in regard to the UCITS under Article 108 of the UCITS Directive.

(8) The Minister may designate one or more of the following bodies who may take action before the Supreme Court in the interests of consumers to ensure that the provisions of these Regulations are applied–

(a) public bodies or their representatives;

(b) consumer organisations having a legitimate interest in protecting consumers; or

(c) professional organisations having a legitimate interest in protecting their members.

Sanctions

Sanctioning powers.

149.(1) For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to a contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the following provisions of this Part.

(2) Sections 158 to 162 of the Act apply to any sanctioning action taken against a person to whom these Regulations apply by the GFSC in exercise of the following powers.

Additional persons subject to powers.

150.(1) In addition to the persons specified in section 147 and 148 of the Act, in respect of a contravention by a UCITS, management company, open-ended investment company or depositary which is a legal person, the GFSC may exercise the sanctioning powers set out in

Part 11 of the Act and in this Part against any individual who is a member of the management body of that legal person or otherwise responsible for the contravention.

(2) The GFSC may also exercise the power in section 152 of the Act to impose an administrative penalty on a person who–

(a) carries on the business of UCITS or of an open-ended investment company without authorisation or recognition, contrary to section 294 of the Act;

(b) carries on any of the following regulated activities without Part 7 permission–

(i) managing a UCITS, as set out in paragraph 93 of Schedule 2 to the Act;

(ii) acting as the depositary of a UCITS, as set out in paragraph 94 of that Schedule;

(iii) acting as the trustee of an authorised common fund, as set out in paragraph 94A of that Schedule; or

(iv) acting as the sole director of an authorised open-ended investment company, as set out in paragraph 94B of that Schedule; or

(c) fails to notify the GFSC, contrary to Part 9 of the Act, of–

(i) the acquisition of, or an increase in, control over a management company; or

(i) the disposal of, or a reduction in, control over a management company.

Additional power: management prohibition order.

151. The power of the GFSC to issue a prohibition order against a regulated individual in accordance with section 156 of the Act includes the power to–

(a) issue an order which prohibits the regulated individual from exercising management functions in any regulated firm which is a management company or open-ended investment company;

(b) issue an order which–

(i) applies to any individual who, at the time of the contravention of a regulatory requirement by the individual, was exercising a management

function in a management company or open-ended investment company; and

(ii) prohibits the individual from exercising management functions in any regulated firm which is a management company or open-ended investment company; or

(c) issue an order which–

(i) applies to any individual who, at the time of the contravention of a regulatory requirement by a management company or open-ended investment company, was exercising a management function in that company and was knowingly concerned in the contravention; and

(ii) prohibits the individual from exercising management functions in any regulated firm which is a management company or open-ended investment company.

Maximum amounts of administrative penalty.

152.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;

(b) in the case of a legal person–

(i) €5,000,000 (or the sterling equivalent); or

(ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, €5,000,000 (or the sterling equivalent).

(2) For the purposes of sub-regulation (1), a person who is not an authorised person or a regulated individual but who is nonetheless a person who may be subject to an administrative penalty under Part 11 of the Act as modified by these Regulations is a person to whom these Regulations apply.

(3) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting

Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover (or the corresponding type of income) according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(4) In sub-regulation (1) "the "sterling equivalent" means an equivalent amount in sterling based on the exchange rate on 17th September 2014.

Publication of sanctioning action.

153.(1) This regulation applies–

(a) where the GFSC has taken any sanctioning action under the Act or these Regulations in respect of a contravention of a regulatory requirement (other than measures of an investigatory nature); and

(b) instead of sections 616 to 617 of the Act.

(2) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(3) The information published must be limited to–

(a) the identity of the person against whom the action has been taken;

(b) the type and nature of the contravention; and

(c) the details of the sanctioning action taken.

(4) The GFSC must take one of the steps in sub-regulation (5) where–

(a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (2)–

(i) the identity of the legal person involved; or

(ii) the personal data of the individual involved; or

(b) it considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

(5) Those steps are–

(a) to defer publication until the reasons for non-publication cease to exist;

(b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or

(c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure–

(i) that the stability of the financial markets would not be put in jeopardy; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(6) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(7) Sub-regulation (2) does not apply while an appeal could be brought or is pending.

(8) Despite sub-regulation (7), the GFSC may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal and in such cases section 618 of the Act applies.

(9) The GFSC must ensure that any publication in accordance with this regulation is of proportionate duration and remains on its website for a minimum of five years, but that personal data is only retained on the website for so long as is necessary, in accordance with the data protection legislation.

(10) The GFSC must–

(a) inform ESMA of any sanctioning action taken but not published in accordance with sub-regulation (5)(c), including any related appeal and its outcome;

(b) if it has disclosed a sanctioning action or criminal sanction to the public, report that fact at the same time to ESMA; and

(c) provide ESMA annually with aggregated information regarding all sanctioning actions and measures taken in respect of contraventions by a person to whom these Regulations apply.

PART 8
MERGERS OF UCITS

2020/053 FINANCIAL SERVICES (UCITS) REGULATIONS 2020

Chapter 1
Principle, authorisation and approval

Definition of UCITS.

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

Mergers.

155. Subject to the conditions set out in this Chapter, and irrespective of the manner in which UCITS are constituted under section 290 of the Act, the GFSC must allow the cross-border and domestic merger of UCITS.

Prior authorisation of merger.

156.(1) Mergers of UCITS are subject to prior authorisation by the competent authority of the merging UCITS' home State.

(2) Where Gibraltar is the home State of the merging UCITS, the UCITS must provide the following information to the GFSC–

(a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;

(b) an up-to-date version of the prospectus and the key investor information of the receiving UCITS if established in another EEA State;

(c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with regulation 158, they have verified compliance of the particulars set out in regulation 157(1)(a), (f) and (g) with the requirements of these Regulations and the fund rules or instruments of incorporation of their respective UCITS; and

(d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unitholders.

(3) The information in sub-regulation (2) must be provided in a manner that enables the GFSC and the competent authority of the receiving UCITS' home State to read them in English and in the official language or one of their official languages approved by that competent authority.

(4) Once it is complete, the GFSC must immediately transmit copies of the information referred to in sub-regulation (2) to the competent authority of the receiving UCITS' home State.

(5) The GFSC must consider the potential impact of the proposed merger on unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders and, where the GFSC considers it necessary, may require that the information to unitholders of the merging UCITS be clarified.

(6) Where Gibraltar is the receiving UCITS' home State and the GFSC considers it necessary, it may require, in writing within 15 working days of receipt of the copies of the complete information referred to in sub-regulation (2), that the receiving UCITS modify the information to be provided to its unitholders.

(7) Where sub-regulation (6) applies, the GFSC must send an indication of its dissatisfaction to the competent authority of the merging UCITS' home State and inform that competent authority whether the GFSC is satisfied with the modified information to be provided to the unitholders of the receiving UCITS within 20 working days of being notified of it.

(8) Where Gibraltar is the merging UCITS' home State, the GFSC must authorise the proposed merger if the following conditions are met–

(a) the proposed merger complies with all of the requirements of regulations 156 to 159;

(b) in accordance with regulation 137, the receiving UCITS has been notified to market its units in all EEA States where the merging UCITS is either authorised or has been notified to market its units in accordance with regulation 137; and

(c) the GFSC and the competent authority of the receiving UCITS' home State are both satisfied with the proposed information to be provided to unitholders, or no indication of dissatisfaction from the competent authority of the receiving UCITS' home State has been expressed.

(9) Where Gibraltar is the merging UCITS' home State, the GFSC–

(a) if it considers that it does not have in its possession all the information required, must request additional information within ten working days of receiving the information referred to in sub-regulation (2);

(b) must inform the merging UCITS, within 20 working days of submission of the complete information, in accordance with sub-regulation (2), whether or not the merger has been authorised,

and the GFSC must also inform the competent authority of the receiving UCITS' home State of its decision.

Terms of merger.

157.(1) The GFSC must require that the merging and the receiving UCITS draw up common draft terms of merger, setting out the following particulars–

(a) an identification of the type of merger and of the UCITS involved;

(b) the background to and rationale for the proposed merger;

(c) the expected impact of the proposed merger on unitholders of both the merging and the receiving UCITS;

(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in regulation 164(1);

(e) the calculation method of the exchange ratio;

(f) the planned effective date of the merger;

(g) the rules applicable to the transfer of assets and the exchange of units respectively; and

(h) in the case of a merger of the kind in regulation 3(2)(b) (and, where applicable, regulation 3(2)(a)), the fund rules or instruments of incorporation of the newly constituted receiving UCITS,

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

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

Chapter 2
Third-party control, information of unitholders and other rights of unitholders

Duty to verify.

158. The depositaries of the merging and receiving UCITS must verify the conformity of the particulars set out in regulation 157(1) (a), (f) and (g) with the requirements of these Regulations and the fund rules or statutes of incorporation of their respective UCITS.

Audits.

159.(1) Where Gibraltar is the merging UCITS' home State, the UCITS must entrust either a depositary or an independent auditor approved by the GFSC to validate the following–

(a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio, as referred to in regulation 164(1);

(b) where applicable, the cash payment per unit; and

(c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in regulation 164(1).

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

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

Information to unitholders.

160.(1) Merging and receiving UCITS must provide appropriate and accurate information on the proposed merger to their respective unitholders so as to enable them to make an informed judgement of the impact of the proposal on their investment.

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

(a) must be provided to unitholders of the merging and of the receiving UCITS only after the competent authority of the merging UCITS' home State has authorised the proposed merger, and where Gibraltar is the merging UCITS' home State, where the GFSC has authorised the proposed merger under regulation 156; and

(b) must be provided at least 30 days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge under regulation 162(1).

(3) The information to be provided to unitholders of the merging and of the receiving UCITS must–

(a) include appropriate and accurate information on the proposed merger such as to enable unitholders to take an informed decision on the possible impact of the merger on their investment and to exercise rights under regulations 161 and 162; and

(b) include the following–

(i) the background to and the rationale for the proposed merger;

(ii) the possible impact of the proposed merger on unitholders, including but not limited to–

(aa) any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance; and

(bb) where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

(iii) any specific rights unitholders have in relation to the proposed merger, including but not limited to -

(aa) the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the depositary on request; and

(bb) the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge as specified in regulation 162(1) and the last date for exercising that right;

(iv) the relevant procedural aspects and the planned effective date of the merger; and

(v) a copy of the key investor information, referred to in regulation 37, of the receiving UCITS.

(4) Where the merging or the receiving UCITS has been notified in accordance with regulation 137, the information referred to in sub-regulation (3) must be provided by the UCITS in the official language, or one of the official languages, of the relevant UCITS' host State or in a language approved by its competent authority, in a manner that faithfully reflects the content of the original.

Approval by unitholders.

161.(1) Where approval by the unitholders of mergers between UCITS is required, such approval must not require more than 75% of the votes actually cast by unitholders present or represented at the general meeting of unitholders.

(2) Sub-regulation (1) is subject to any quorum required under the Companies Act 2014 for the purpose, which must not exceed the quorum required in respect of corporate entities not constituting UCITS.

Redemption and repurchase of units.

162.(1) The following provisions apply–

(a) unitholders of both the merging and the receiving UCITS have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units;

(b) in the alternative to paragraph (a), such unitholders may, where possible, request the conversion of their units into units in another UCITS with similar investment policies and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding;

(c) the rights set out in paragraphs (a) and (b)–

(i) become effective from the moment that the unitholders of the merging and receiving UCITS have been informed of the proposed merger in accordance with regulation 160; and

(ii) no longer apply five working days before the date for calculating the exchange ratio referred to in regulation 164(1).

(2) Without limiting sub-regulation (1) and despite regulation 43(1), for mergers between UCITS the GFSC may require or allow the temporary suspension of the subscription, repurchase or redemption of units where that such suspension is justified for the protection of the unitholders.

Chapter 3
Costs and entry into effect

Costs of merger.

163. Except in cases where UCITS have not designated a management company, the GFSC must ensure that any legal, advisory or administrative costs associated with the preparation and completion of the merger are not charged to the merging or the receiving UCITS, or to any of their unitholders.

Date of merger.

164.(1) The date on which a merger takes effect, and the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments, must be determined–

(a) in the case of a domestic merger, in accordance with the law of Gibraltar; and

(b) in the case of a cross-border merger, in accordance with the law of the receiving UCITS' home State.

(2) Where Gibraltar is the receiving UCITS' home State, the GFSC must ensure that, where applicable, those dates are after the approval of the merger by unitholders of the receiving UCITS or the merging UCITS.

(3) Where Gibraltar is the receiving UCITS' home State, the GFSC must

(a) ensure that the entry into effect of the merger is made public through all appropriate means; and

(b) must notify the competent authorities of the home States of the receiving and merging UCITS of the merger has entered into effect.

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

Effect of merger.

165.(1) A merger of the kind in regulation 3(2)(a) has the following consequences–

(a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

(b) the unitholders of the merging UCITS become unitholders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

(c) the merging UCITS ceases to exist on the entry into effect of the merger.

(2) A merger of the kind in regulation 3(2)(b) has the following consequences–

(a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

(b) the unitholders of the merging UCITS become unitholders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

(c) the merging UCITS ceases to exist on the entry into effect of the merger.

(3) A merger of the kind in regulation 3(2)(c) has the following consequences–

(a) the net assets of the merging UCITS are transferred to the receiving UCITS or, where applicable, the depositary of the receiving UCITS;

(b) the unitholders of the merging UCITS become unitholders of the receiving UCITS; and

(c) the merging UCITS continues to exist until the liabilities have been discharged.

(4) The management company of the receiving UCITS must confirm to the depositary of the receiving UCITS that transfer of assets and, where applicable, liabilities is complete.

(5) Where the receiving UCITS has not designated a management company, the receiving UCITS must give the confirmation in sub-regulation (4) to the trustee.

Chapter 4
Content of merger information

General rules regarding content of information to be provided to unitholders.

166.(1) Information to be provided to unitholders in accordance with regulation 160(1)–

(a) must be written in a concise manner and in non-technical language that enables unitholders to make an informed judgement of the impact of the proposed merger on their investment: and

(b) in the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, must explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other EEA State.

(2) The information to be provided to unitholders of the merging UCITS must–

(a) meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation; and

(b) draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading that document.

(3) The information to be provided to unitholders of the receiving UCITS pursuant to these Regulations must focus on the operation of the merger and its potential impact on the receiving UCITS.

Specific rules regarding content of information to be provided to unitholders.

167.(1) The information to be provided in accordance with regulation 160(3)(b)(ii) to unitholders of the merging UCITS must include–

(a) details of any differences in the rights of unitholders of the merging UCITS before and after the proposed merger takes effect;

(b) where the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

(c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;

(d) where the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

(e) where the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unitholders who previously held units in the merging UCITS;

(f) in cases where regulation 163 permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unitholders, details of how those costs are to be allocated;

(g) an explanation of whether the management or investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.

(2) Information to be provided in accordance with regulation 160(3)(b)(ii) to unitholders of the receiving UCITS must include an explanation of whether the management or investment company of the receiving UCITS expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

(3) Information to be provided in accordance with regulation 163(3)(b)(iii) must include–

(a) details of how any accrued income in the respective UCITS is to be treated; and

(b) an indication of how the report of the independent auditor or the depositary referred to in regulation 159(3) may be obtained.

(4) Where the terms of the proposed merger include provisions for a cash payment of the kind in regulation 3(2)(a) or (b), the information to be provided to unitholders of the merging UCITS must contain details of that proposed payment, including when and how unitholders of the merging UCITS will receive the cash payment.

(5) The information to be provided in accordance with regulation 160(3)(b)(iv) must include–

(a) where required by law, the procedure by which unitholders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

(b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently; and

(c) when the merger will take effect in accordance with regulation 164(1).

(6) Where by law, the merger proposal must be approved by unitholders, the information may contain a recommendation by the respective management company or board of directors of the investment company as to the course of action.

(7) The information to be provided to the unitholders of the merging UCITS must include–

(a) the period during which the unitholders are able to continue making subscriptions and requesting redemptions of units in the merging UCITS;

(b) the time when those unitholders not making use of their rights granted pursuant to regulation 162(1) within the relevant time limit, are able to exercise their rights as unitholders of the receiving UCITS;

(c) an explanation that in cases where the merger proposal must be approved by unitholders of the merging UCITS and the proposal is approved by the necessary majority, those unitholders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to regulation 162(1) within the relevant time limit, become unitholders of the receiving UCITS.

(8) Where a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Key investor information document.

168.(1) An up-to-date version of the key investor information of the receiving UCITS must be provided to existing unitholders of the merging UCITS.

(2) The key investor information of the receiving UCITS must be provided to existing unitholders of the receiving UCITS where it has been amended for the purpose of the proposed merger.

New unitholders.

169.(1) The information document and the up-to-date key investor information of the receiving UCITS must be provided to each purchaser or subscriber of units in either the merging or the receiving UCITS or other person requesting to receive copies of the fund rules or instruments of incorporation, prospectus or key investor information document of either UCITS.

(2) The information to be provided pursuant to sub-regulation (1) must be provided between the date when the information document pursuant to regulation 160(1) is provided to unitholders and the date when the merger takes effect.

Method of providing information to unitholders.

170.(1) The merging and receiving UCITS must provide the information pursuant to regulation 160(1) to unitholders on paper or in another durable medium.

(2) The information referred to in sub-regulation (1) may be provided to unitholders using a durable medium other than paper subject to the following conditions–

(a) the provision of the information is appropriate to the context in which the business between the unitholder and the merging or receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;

(b) the unitholder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.

(3) For the purposes of sub-regulations (1) and (2), the provision of information by means of electronic communications must be treated as appropriate to the context in which the business between the merging and receiving UCITS or their respective management companies and the unitholder is, or is to be, carried on where there is evidence that the unitholder has regular access to the Internet.

(4) For the purposes of sub-regulation (3), the provision by the unitholder of an e-mail address for the purposes of the carrying on of that business must be treated as evidence that the unitholder has regular access to the Internet.

PART 9
MASTER-FEEDER STRUCTURES

Chapter 1
General

Feeder UCITS.

171.(1) A feeder UCITS is a UCITS, or an investment compartment of a UCITS, which has been approved to invest, by way of derogation from section 290(2) of the Act and regulations 81, 89, 93 and 94(3)(c), at least 85% of its assets in units of another UCITS or an investment compartment of another UCITS (the master UCITS).

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

(a) ancillary liquid assets in accordance with regulation 81(2);

(b) financial derivative instruments, which may be used only for hedging purposes, in accordance with regulation 81(1)(g) and regulation 86(2) and (3);

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

(3) For the purposes of compliance with regulation 86, the feeder UCITS must calculate its global exposure related to financial derivative instruments by combining its own direct exposure under sub-regulation (2)(b) with either–

(a) the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS; or

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

Master UCITS.

172.(1) A master UCITS is a UCITS, or an investment compartment of a UCITS, which–

(a) has, among its unitholders, at least one feeder UCITS;

(b) is not itself a feeder UCITS; and

(c) does not hold units of a feeder UCITS.

(2) The following derogations for a master UCITS apply–

(a) where a master UCITS has at least two feeder UCITS as unitholders, section 292(1)(a) and (3) do not apply, giving the master UCITS the choice whether or not to raise capital from other investors;

(b) where a master UCITS does not raise capital from the public in an EEA State, other than Gibraltar, but only has one or more feeder UCITS in Gibraltar, Chapter 2 of Part 7 and regulation 148(2)(b) do not apply.

Feeder investment limits.

173.(1) Where Gibraltar is the home State of a feeder UCITS, the investment of a feeder UCITS into a given master UCITS which exceeds the limit applicable under regulation 93(1) for investments into other UCITS must be subject to prior approval by the GFSC.

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

(3) The GFSC must grant approval if the feeder UCITS, its depositary, its auditor and the master UCITS comply with the requirements set out in this Part, and for that purpose, the feeder UCITS must provide to the GFSC the following documents–

(a) the fund rules or instruments of incorporation of the feeder UCITS and the master UCITS;

(b) the prospectus and the key investor information referred to in regulation 37 of the feeder and the master UCITS;

(c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in regulation 174(1);

(d) where applicable, the information to be provided to unitholders referred to in regulation 178(1);

(e) where the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in regulation 175(1) between their respective depositaries; and

(f) where the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in regulation 176(1) between their respective auditors.

(4) Where the master UCITS' home State is not Gibraltar, the feeder UCITS must provide the GFSC with a certificate in English from the competent authority in the master UCITS' home State to the effect that the master UCITS is a UCITS, or an investment compartment of a UCITS, which fulfils the conditions set out in Article 58.3(b) and (c) of the UCITS Directive.

General matters.

174.(1) A master UCITS must provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements of these Regulations and the feeder UCITS must enter into an agreement with the master UCITS to achieve this purpose.

(2) A feeder UCITS must not invest in excess of the limit applicable under regulation 93(1) in units of a master UCITS until the agreement referred to in sub-regulation (1) is effective, and that agreement must be made available on request and free of charge, to all unitholders.

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

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

(5) Without limiting regulation 43, where a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of the GFSC, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units despite the conditions laid down in regulation 43(2) within the same period of time as the master UCITS.

(6) Where Gibraltar is the home State of the feeder UCITS, the feeder UCITS must be liquidated whenever the master UCITS is liquidated, unless the GFSC approves–

(a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or

(b) the amendment of its fund rules or instruments of incorporation in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS,

and without limiting the provisions of the Companies Act 2014, the liquidation of a master UCITS must take place no sooner than three months after the master UCITS has informed all of its unitholders and the GFSC of the binding decision to liquidate.

(7) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS must be liquidated, unless the competent authority of the feeder UCITS' home State grants approval to the feeder UCITS to–

(a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

(b) invest at least 85% of its assets in units of another master UCITS not resulting from the merger or the division; or

(c) amend its fund's rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

(8) No merger or division of a master UCITS is effective, unless the master UCITS has provided all of its unitholders and the competent authority of its feeder UCITS' home State with the information referred to, or comparable with that referred to, in regulation 160 by 60 days before the proposed effective date.

(9) Unless the competent authority of the feeder UCITS' home State has granted approval under sub-regulation (7)(a), the master UCITS must enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

Master-feeder structures: depositaries.

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

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

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

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

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

Master-feeder structures: auditors.

176.(1) Where the master and the feeder UCITS have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirements of sub-

regulation (2). A feeder UCITS must not invest in units of the master UCITS until such agreement is effective.

(2) In its audit report–

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

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

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

Feeder UCITS: prospectuses.

177.(1) In addition to the information in Part A of the Schedule, the prospectus of the feeder UCITS must contain the following information–

(a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;

(b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with regulation 171(2);

(c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

(d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules under regulation 174(1);

(e) how the unitholders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS under regulation 174(1);

(f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and

(g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

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

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

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

(3) In addition to the requirements laid down in regulations 33 and 41, the feeder UCITS must, where Gibraltar is its home State, send to the GFSC the prospectus, the key investor information referred to in regulation 37 and any amendment to it, as well as the annual and half-yearly reports of the master UCITS.

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

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

Feeder UCITS: supplementary provision of information.

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

(a) a statement that the GFSC approved the investment of the feeder UCITS in units of such master UCITS;

(b) the key investor information referred to in regulation 37 concerning the feeder and the master UCITS;

(c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under regulation 93(1); and

(d) a statement that the unitholders have the right to request within 30 days the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; and that right becomes effective from the moment the feeder UCITS has provided the information referred to in this sub-regulation.

(2) Where a feeder UCITS has been notified in accordance with regulation 137, the information referred to in sub-regulation (1) must be provided in English.

(3) A feeder UCITS must not invest in the units of the given master UCITS in excess of the limit applicable under regulation 93(1) before the period of 30 days referred to in sub-regulation (1) has elapsed.

Manner of providing information to unitholders.

179. A feeder UCITS must provide information to unitholders under regulation 178(1) in the manner prescribed by regulation 170.

Obligations and enforcement authorities

Monitoring by feeder UCITS.

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

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

Master UCITS: supplementary regulatory requirements.

181.(1) Where Gibraltar is the home State of the master UCITS, the master UCITS must immediately inform the GFSC of the identity of each feeder UCITS which invests in its units, and where the master and feeder UCITS are established in different EEA States, the

GFSC must immediately inform the competent authority of the feeder UCITS' home State of such investment.

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

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

Master-Feeder structures: communication of decisions.

182.(1) Where a master UCITS and the feeder UCITS are established in Gibraltar, the GFSC must immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Part or of any information reported under regulation 125(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

(2) Where the master UCITS is established in Gibraltar and the feeder UCITS is established in a different EEA State, the GFSC must immediately communicate to the competent authority of the feeder UCITS' home State any decision, measure, observation of non-compliance with the conditions of this Part or information reported under regulation 125(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

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

Chapter 2
Agreement and internal conduct of business rules between feeder UCITS and master UCITS

Content of agreement between master UCITS and feeder UCITS

Access to information.

183. The agreement between the master UCITS and the feeder UCITS referred to in regulation 174(1) must include the following with regard to access to information–

(a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment to them;

(b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with regulation 59;

(c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;

(d) what details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation and the agreement between the master UCITS and the feeder UCITS the master UCITS must notify the feeder UCITS of and their manner and timing;

(e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by regulation 171(3)(a);

(f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

Basis of investment and divestment by feeder UCITS.

184. The agreement between a master UCITS and a feeder UCITS referred to in regulation 174(1) in relation to the basis of investment and divestment by the feeder UCITS must include the following–

(a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Standard dealing arrangements.

185. The agreement between the master UCITS and the feeder UCITS referred to in regulation 174(1) in relation to standard dealing arrangements must include the following–

(a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

(d) where necessary, other appropriate measures to ensure compliance with the requirements of regulation 174(4);

(e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in regulation 174(6) and (7);

(g) procedures to ensure enquiries and complaints from unitholders are handled appropriately;

(h) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Events affecting dealing arrangements.

186. The agreement between a master UCITS and a feeder UCITS referred to in regulation 174(1) in relation to events affecting dealing arrangements must include the following–

(a) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS;

(b) arrangements for notifying and resolving pricing errors in the master UCITS.

Standard arrangements for audit report.

187. The agreement between a master UCITS and a feeder UCITS referred to in regulation 174(1) in relation to standard arrangements for the audit report must include the following–

(a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

(b) where the feeder UCITS and the master UCITS have different accounting years–

(i) arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time; and

(ii) which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with regulation 176(2)(a).

Changes to standing arrangements.

188. The agreement between a master UCITS and a feeder UCITS referred to in regulation 174(1) in relation to changes to standing arrangements must include the following–

(a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information document and if these details differ from the standard arrangements for notification of unitholders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;

(b) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;

(c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;

(d) the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;

(e) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Choice of law.

189.(1) Where a feeder UCITS and a master UCITS are established in Gibraltar, the agreement between the master UCITS and the feeder UCITS referred to in regulation 174(1) must provide that the law of Gibraltar applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of Gibraltar.

(2) Where a feeder UCITS and a master UCITS are established in different EEA States, the agreement between the master UCITS and the feeder UCITS referred to in regulation 174(1) must provide that the applicable law is either the law of the EEA State in which the feeder UCITS is established or that it is that of the EEA State in which the master UCITS is established and that both parties must agree to the exclusive jurisdiction of the courts of the EEA State whose law they have stipulated to be applicable to the agreement.

Content of internal conduct of business rules

Conflicts of interest.

190. A management company's internal conduct of business rules referred to in regulation 174(3) must include appropriate measures to mitigate conflicts of interest that may arise–

(a) between the feeder UCITS and the master UCITS; or

(b) between the feeder UCITS and other unitholders of the master UCITS,

to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet the requirements of regulations 19(d) and 58(e) and Chapter 7 of Part 4.

Basis of investment and divestment by feeder UCITS.

191. The management company's internal conduct of business rules referred to in regulation 174(3) in relation to the basis of investment and divestment by the feeder UCITS must include the following–

(a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Standard dealing arrangements.

192. A management company's internal conduct of business rules referred to in regulation 174(3) in relation to standard dealing arrangements must include the following–

(a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

(d) appropriate measures to ensure compliance with the requirements of regulation 174(4);

(e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in regulation 174(6) and (7);

(g) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Events affecting dealing arrangements.

193. A management company's internal conduct of business rules referred to in regulation 174(3) in relation to events affecting dealing arrangements must include the following–

(a) the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS;

(b) arrangements for notifying and resolving pricing errors in the master UCITS.

Standard arrangements for audit report.

194. A management company's internal conduct of business rules referred to in regulation 174(3) in relation to standard arrangements for the audit report must include the following–

(a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with regulation 176(2)(a).

Chapter 3
Liquidation, merger or division of master UCITS

Procedures in event of liquidation

Application for approval.

195.(1) No later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, a feeder UCITS must submit to the GFSC the following–

(a) where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with regulation 174(6)(a)–

(i) its application for approval for that investment;

(ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(iii) the amendments to its prospectus and its key investor information in accordance with regulations 33 and 41 respectively;

(iv) the other documents required pursuant to regulation 173(3);

(b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with regulation 174(6)(b)–

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(ii) the amendments to its prospectus and its key investor information in accordance with regulations 33 and 41 respectively;

(c) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) Despite sub-regulation (1), where a master UCITS informed the feeder UCITS of its binding decision to liquidate more than five months before the date at which the liquidation is to start, the feeder UCITS must submit to the GFSC its application or notification in accordance with sub-regulation (1)(a), (b) or (c) at the latest three months before that date.

(3) A feeder UCITS must inform its unitholders of its intention to be liquidated without undue delay.

Approval.

196.(1) A feeder UCITS must be informed whether the GFSC has granted the required approvals within 15 working days following the complete submission of documents referred to in regulation 195(1)(a) or (b) respectively.

(2) On receiving the GFSC's approval pursuant to sub-regulation (1), the feeder UCITS must inform the master UCITS of the fact.

(3) A feeder UCITS must take the necessary measures to comply with the requirements of regulation 178 as soon as possible after the GFSC has granted the necessary approvals pursuant to regulation 195.

(4) Where the payment of liquidation proceeds of a master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in either a different master UCITS pursuant to regulation 195(1)(a) or in accordance with its new investment objectives and policy pursuant to regulation 195(1)(b), the GFSC, where it is the competent authority of the feeder UCITS, must grant approval subject to the following conditions–

(a) the feeder UCITS must receive the proceeds of the liquidation–

(i) in cash; or

(ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;

(b) any cash held or received in accordance with this sub-regulation may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

(5) Where sub-regulation (4)(a)(ii) applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

Procedures in event of merger or division

Application for approval.

197.(1) No later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with regulation 174(8), a feeder UCITS must submit to the GFSC the following–

(a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS–

(i) its application for approval of that arrangement;

(ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(iii) where applicable, the amendments to its prospectus and its key investor information in accordance with regulations 33 and 41 respectively;

(b) where a feeder UCITS intends to become a feeder UCITS of another master UCITS as a result of the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division–

(i) its application for approval of that investment;

(ii) its application for approval of the proposed amendments to its fund rules or instruments of incorporation;

(iii) the amendments to its prospectus and its key investor information in accordance with regulations 33 and 41 respectively;

(iv) the other documents required under regulation 173(3);

(c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with regulation 174(6)(b)–

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(ii) the amendments to its prospectus and its key investor information document in accordance with regulations 33 and 41 respectively;

(d) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) The following should be taken into account for the purpose of sub-regulation (1)(a) and (b)–

(a) the expression "continues to be a feeder UCITS of the same master UCITS" refers to cases where -

(i) the master UCITS is the receiving UCITS in a proposed merger;

(ii) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division;

(b) the expression “becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS” refers to cases where–

(i) a master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unitholder of the receiving UCITS;

(ii) a feeder UCITS becomes a unitholder of a UCITS resulting from a division that is materially different to the master UCITS.

(3) Despite sub-regulation (1), where a master UCITS provided the information referred to in, or comparable with, regulation 160 to the feeder UCITS more than four months before the proposed effective date, the feeder UCITS must submit to the GFSC its application or notification in accordance with one of sub-regulation (1)(a) to (d) at the latest three months before the proposed effective date of the merger or division of the master UCITS.

(4) The feeder UCITS must inform its unitholders and the master UCITS of its intention to be liquidated without undue delay.

Approval.

198.(1) A feeder UCITS must be informed by the GFSC within 15 working days following the complete submission of the documents referred to in regulation 197(1)(a) to (c) respectively, whether it has granted the required approvals.

(2) Upon receipt of the information that the GFSC has granted approval according to sub-regulation (1), the feeder UCITS must inform the master UCITS of the fact.

(3) Further to the feeder UCITS being informed that the GFSC has granted it the necessary approvals pursuant to regulation 197(1)(b), the feeder UCITS must take the necessary measures to comply with the requirements of regulation 178 without undue delay.

(4) Where regulation 197(1)(b) and (c) apply, and the GFSC has not granted the necessary approvals required pursuant to regulation 197(1) by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is given effect, the feeder UCITS–

(a) must exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with regulations 162 and 174(7);

(b) must exercise the right referred to in paragraph (a) to ensure that the right of its own unitholders to request repurchase or redemption of their units in the feeder UCITS according to regulation 178(1)(d) is not affected,

but before exercising the right referred to in paragraph (a), the feeder UCITS must consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unitholders.

(5) Where a feeder UCITS requests repurchase or redemption of its units in the master UCITS it must receive one of the following–

(a) the repurchase or redemption proceeds in cash; or

(b) some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it,

provided that where paragraph (b) applies, the feeder UCITS may realise any part of the transferred assets for cash at any time.

(6) The GFSC, where it is the competent authority of the feeder UCITS, must grant approval on the condition that any cash held or received in accordance with sub-regulation (5) may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

Chapter 4
Depositaries and auditors

Depositaries

Content of information-sharing agreement between depositaries.

199. An information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in regulation 175(1) to (4) must include the following–

(a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;

(b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

(c) the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including–

(i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with regulation 174(4);

(ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;

(d) the coordination of accounting year-end procedures;

(e) details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation which the depositary of the master UCITS is to provide to the depositary of the feeder UCITS and the manner and timing of their provision;

(f) the procedure for handling ad hoc requests for assistance from one depositary to the other;

(g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

Choice of applicable law.

200.(1) Where a feeder UCITS and a master UCITS have concluded an agreement in accordance with regulation 174(1) to (3), the agreement between the depositaries of the master UCITS and the feeder UCITS must provide that the law of the EEA State applying to that agreement in accordance with regulation 189 also applies to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that EEA State.

(2) Where the agreement between a feeder UCITS and a master UCITS has been replaced by internal conduct of business rules in accordance with regulation 174(3), the agreement between the depositaries of the master UCITS and the feeder UCITS must provide–

(a) that the law applying to the information-sharing agreement between both depositaries is either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and

(b) that both depositaries agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

Reporting of irregularities by depositary of master UCITS.

201. The irregularities referred to in regulation 175(5) which the depositary of the master UCITS detects in the course of carrying out its function under the law and which may have a negative impact on the feeder UCITS must include, but are not limited to–

(a) errors in the net asset value calculation of the master UCITS;

(b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;

(c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;

(d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information document;

(e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information document.

Auditors

Information-sharing agreement between auditors.

202.(1) The information-sharing agreement referred to in regulation 176(1) between the auditor of the master UCITS and the auditor of the feeder UCITS must include the following–

(a) the identification of the documents and categories of information which are to be routinely shared between both auditors;

(b) whether the information or documents referred to in paragraph (a) are to be provided by one auditor to the other or made available on request;

(c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;

(d) the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;

(e) identification of matters that are to be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of regulation 176(2)(b);

(f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS.

(2) The agreement referred to in sub-regulation (1) must include provisions on the preparation of the audit reports referred to in regulations 32 and 176(2) and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

(3) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in sub-regulation (1) must include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by regulation 176(2)(a) and to provide it and drafts of it to the auditor of the feeder UCITS.

Choice of applicable law.

203.(1) Where a feeder UCITS and a master UCITS have concluded an agreement in accordance with regulation 174(1) to (3), the agreement between the auditors of the master UCITS and the feeder UCITS must provide that–

(a) the law of the EEA State applying to that agreement in accordance with regulation 189 also applies to the information-sharing agreement between both auditors; and

(b) both auditors agree to the exclusive jurisdiction of the courts of that EEA State.

(2) Where the agreement between a feeder UCITS and a master UCITS has been replaced by internal conduct of business rules in accordance with regulation 174(3), the agreement between the auditors of the master UCITS and the feeder UCITS must provide that–

(a) the law applying to the information-sharing agreement between both auditors is either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and

(b) both auditors agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

PART 10
MISCELLANEOUS AND FINAL PROVISIONS

Investment firms

Investment firms.

204. An investment firm which has Part 7 permission to carry on only the regulated activities in paragraphs 52 and 53 of Schedule 2 to the Act may, if it first gives up that

permission, be given Part 7 permission in accordance with these Regulations to manage UCITS as a management company.

Codes of practice: cancellation rights

Cancellation rights.

205. The codes of practice must 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 a UCITS;

(b) the period within which the 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 the person's rights, or potential rights, to cancel a contract referred to in paragraph (a); and

(e) the effect of the cancellation of a contract referred to in paragraph (a) and the obligations of the parties with respect to the exercise of such right.

Cooperation and information sharing

Cooperation.

206.(1) The GFSC must cooperate with the competent authorities of other EEA States when necessary–

(a) to carry out its duties under these Regulations and the UCITS Directive; or

(b) to assist the competent authorities of other EEA States in the exercise of their duties under the UCITS Directive.

(2) The GFSC–

(a) must cooperate with ESMA for the purposes of the UCITS Directive, in accordance with the ESMA Regulation; and

(b) must without delay provide ESMA with any information necessary it may require to carry out its duties, in accordance with Article 35 of the ESMA Regulation.

(3) For the purpose assisting the competent authority of another EEA State, the GFSC may–

(a) use its powers under the Act or these Regulations, including where the conduct under investigation does not constitute a contravention of the law of Gibraltar; and

(b) provide to that competent authority any information that it may request and which it requires to carry out its duties under the UCITS Directive.

(4) Where the GFSC–

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

(b) has been notified by the competent authority of an EEA State of an act or omission by an entity contrary to the UCITS Directive, it must take appropriate action and inform the notifying authority of the outcome of that action and of significant interim developments.

(5) The GFSC may request the assistance of the competent authority of another EEA State–

(a) in a supervisory activity;

(b) for an on-the-spot verification; or

(c) in an investigation,

on the territory of the latter within the framework of its powers under the UCITS Directive.

(6) Where the GFSC receives a request with respect to an on-the-spot verification or investigation in Gibraltar, it must promptly inform the Minister, who may instruct the GFSC–

(a) to carry out the verification or investigation itself;

(b) to allow the requesting authority to carry out the verification or investigation accompanied by officials of the GFSC; or

(c) to allow auditors or experts to carry out the verification or investigation.

(7) Where the GFSC requests assistance under sub-regulation (5) and the requested authority–

(a) carries out the verification or investigation itself, the GFSC may request that its officials accompany the officials carrying out the verification or investigation; or

(b) allows the GFSC to carry out the verification or investigation, that Authority may request that its own officials accompany the GFSC officials carrying out the verification or investigation.

(8) Where sub-regulation (6)(a) applies, the requesting authority may request that its officials accompany the GFSC when it is carrying out the verification or investigation.

(9) The GFSC must provide a reasoned decision in response to any request from the competent authority of another EEA State for cooperation or the exchange of information.

(10) The GFSC may refer to ESMA any situation where a request by the GFSC–

(a) to exchange information with the competent authority of another EEA State has been rejected or has not been acted upon within a reasonable time;

(b) to carry out an investigation or on-the-spot verification in another EEA State has been rejected or has not been acted upon within a reasonable time; or

(c) for authorisation for its officials to accompany those of the competent authority of another EEA State has been rejected or has not been acted upon within a reasonable time.

Exchange of information: special provisions.

207.(1) The GFSC may exchange information with–

(a) authorities responsible for overseeing bodies involved in the liquidation and bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures;

(b) authorities responsible for overseeing persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms or other financial institutions.

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

(a) the information is used for the purpose of performing the task of overseeing referred to in sub-regulation (1);

(b) the information received is subject to the conditions of the professional secrecy obligation in section 46 of the Act; and

(c) where the information originates in another EEA State, it is not disclosed without the express consent of the competent authority that has disclosed it and, where appropriate, solely for the purposes for which that competent authority gave its consent.

(3) The Minister may, with the aim of strengthening the stability and integrity of the financial system, authorise the exchange of information between the GFSC and authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

(4) The Minister may exercise the discretion under sub-regulation (3) subject to the following conditions being met–

(a) the information is used for the purpose of performing the task in sub-regulation (3);

(b) the information received is subject to the conditions of the professional secrecy obligation in section 46 of the Act; and

(c) where the information originates in another EEA State, it is not disclosed without the express consent of the competent authority that has disclosed it and, where appropriate, solely for the purposes for which that competent authority gave its consent,

and for the purposes of paragraph (c), the authorities or bodies in sub-regulation (3) must communicate to the GFSC the names and precise responsibilities of the persons to whom it is to be sent.

(5) Where the authorities or bodies in sub-regulation (3) perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the exchange of information under that sub-regulation may be extended to those persons under the conditions in sub-regulation (4).

(6) The Minister must ensure that ESMA, the European Commission and other EEA States are informed of the names of the authorities or bodies which may receive information under sub-regulation (1) or (3).

Communications with central banks and clearing houses.

208.(1) The GFSC may–

(a) transmit to central banks and other bodies with a similar function in their capacity as monetary authorities, any relevant information intended for the performance of their tasks; and

(b) receive from those banks or bodies relevant information which the GFSC may need for the purposes of performing its functions under the Act and these Regulations.

(2) Any information exchanged in accordance with sub-regulation (1) is subject to the conditions of the professional secrecy obligation in section 46 of the Act.

(3) The GFSC may provide relevant information to a clearing house providing clearing or settlement services for a market in Gibraltar where–

(a) the GFSC considers it necessary to communicate the information in order to ensure the proper functioning of such bodies in relation to defaults or potential defaults by market participants;

(b) the information received is subject to the condition of the professional secrecy obligation in section 46 of the Act; and

(c) if the information was received under sub-regulation (1)(b), it is disclosed with the express consent of the body that supplied it.

(4) The Minister may authorise the disclosure of information to other Government departments responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments where it is necessary for reasons of prudential control.

Cooperation in respect of contraventions.

209.(1) In the exercise of its powers in relation to contraventions of the Act or these Regulations, the GFSC must–

(a) cooperate closely with other competent authorities, to ensure that its supervisory, investigative and enforcement powers are used effectively; and

(b) coordinate its actions with those of other competent authorities, to avoid duplication and overlap when applying supervisory, investigative and enforcement powers in cross-border cases in accordance with regulation 206.

(2) The GFSC may also cooperate with other competent authorities with respect to facilitating the recovery of pecuniary sanctions for contraventions of these Regulations or the UCITS Directive.

(3) The GFSC may refuse to act on a request for information or cooperation where–

(a) it has been informed that complying with the request might adversely affect the security of Gibraltar, particularly in respect of terrorism and other serious crimes;

(b) complying with the request is likely to adversely affect the GFSC's own investigation or enforcement activities or a criminal investigation;

(c) judicial proceedings have already been initiated in Gibraltar in respect of the same action and against the same person; or

(d) a final judgment has already been delivered in Gibraltar in relation to the same action and against the same person.

Reporting of contraventions

Reporting of contraventions.

210.(1) Management companies, open-ended investment companies and depositaries must establish appropriate procedures for their employees to report contraventions (including potential contraventions) internally through a specific, independent and autonomous channel.

(2) The GFSC must establish appropriate arrangements for the reporting of contraventions (including potential contraventions) by any person to the GFSC.

(3) The arrangements established under sub-regulation (2) must include–

(a) secure communication channels for the reporting of contraventions;

(b) specific procedures for the receipt and investigation of reported contraventions; and

(c) arrangements for the protection of the personal data of the person who reports a contravention and any individual who is allegedly responsible for a contravention which accord with the Data Protection Act 2004.

(4) The GFSC must treat information about the identity of a person who reports a contravention as confidential except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

(5) An employee of a management company, open-ended investment company or depositary who reports a contravention in accordance with sub-regulation (1) or arrangements established under sub-regulation (2)–

(a) must not be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting a contravention; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported a contravention.

(6) An employee who has been subjected to a detriment contrary to sub-regulation (5)(b) may present a complaint to the Employment Tribunal as if the reporting of a contravention was a protected disclosure within the meaning of Part IVA of the Employment Act.

Danish UCITS

Danish UCITS.

211. Pantebreve issued in Denmark in respect of Danish UCITS must be treated as equivalent to the transferable securities referred to in regulation 81(1)(b).

Relations with third countries

Relations with third countries.

212. The Minister must ensure that the European Commission and ESMA are informed of any general difficulties which UCITS encounter in marketing units in any non-EEA State or which management companies encounter in establishing themselves or providing services or performing activities in any non-EEA State.

Consequential amendments and evocation

Consequential amendments.

213.(1) Schedule 2 to the Financial Services Act 2019 is amended as follows.

(2) In the index to the Schedule, after the entry "94. Acting as depositary of a UCITS." insert–

"94A. Acting as trustees of a UCITS.
94B. Acting as sole director of a UCITS.".

(3) after paragraph 94 insert–

"Acting as trustees of a UCITS.

94A.(1) Acting as the trustee of a UCITS that is a common fund authorised under Part 18 is a specified kind of activity.

(2) "Trustee", in relation to a common fund, means the person holding the property subject to the scheme on behalf of the participants.

Acting as sole director of a UCITS.

94B. Acting as the sole director of a UCITS that is an open-ended investment authorised under Part 18 is a specified kind of activity.".

Revocation.

214. The Financial Services (Collective Investment Schemes) (Appointment of Authority) Order 2005 is revoked.

SCHEDULE

Regulation 28

PART A

1. Information concerning the common fund	1. Information concerning the management company including an indication whether the management company is established in a EEA State other than the UCITS' home State.	1. Information concerning the open-ended investment company |
1.1. Name	1.1. Name or style, form in law, registered office and head office if different from the registered office.	1.1. Name or style, form in law, registered office and head office if different from the registered office.
1.2. Date of establishment of the common fund. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.
	1.3. If the company manages other common funds, indication of those other funds.	1.3. In the case of open-ended investment companies having different investment compartments, the indication of the compartments.
1.4. Statement of the place where the fund rules, if they are not annexed, and periodic reports may be obtained.		1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.
1.5. Brief indications relevant to unitholders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income		1.5. Brief indications relevant to unitholders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unitholders.

and capital gains paid by the common fund to unitholders.		

1.6. Accounting and distribution dates		1.6. Accounting and distribution dates.
1.7. Names of the persons responsible for auditing the accounting information referred to in regulation 32.		1.7. Names of the persons responsible for auditing the accounting information referred to in regulation 32.
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.
	1.9. Amount of the subscribed capital with an indication of the capital paid-up.	1.9. Capital
1.10. Details of the types and main characteristics of the units and in particular: the nature of the right (real, personal or other) represented by the unit, • Characteristics of the units: registered or bearer. Indication of any		1.10. Details of the types and main characteristics of the units and in particular: • original securities or certificates providing evidence of title; entry in a register or in an account, • characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,

denominations which may be provided for, • original securities or certificates providing evidence of title; entry in a register or in an account,		• indication of unitholders' voting rights,
• indication of unitholders' voting rights if these exist, • circumstances in which winding-up of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unitholders. •		• circumstances in which winding-up of the open-ended investment company can be decided on and winding-up procedure, in particular as regards the rights of unitholders.
1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.		1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.
1.12. Procedures and conditions of issue and sale of units.		1.12. Procedures and conditions of issue and sale of units.
1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in		1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption

which repurchase or redemption may be suspended.		may be suspended. In the case of open-ended investment companies having different investment compartments, information on how a unitholder may pass from one compartment into another and the charges applicable in such cases.
1.14. Description of rules for determining and applying income.		1.14. Description of rules for determining and applying income.
1.15. Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.		1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.
1.16. Rules for the valuation of assets.		1.16. Rules for the valuation of assets.
1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: • the method and frequency of the calculation of those prices,		1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: • the method and frequency of the calculation of those prices,

• information concerning the charges relating to the sale or issue and the repurchase or redemption of units, • the means, places and frequency of the publication of those prices.		• information concerning the charges relating to the sale or issue and the repurchase or redemption of units, • the means, places and frequency of the publication of those prices [1].
1.18. Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties.		1.18. Information concerning the manner, amount and calculation of remuneration payable by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties.

[1]
Open-ended investment companies within the meaning of section 291 of the Act must also indicate –

- the method and frequency of calculation of the net asset value of units,
- the means, place and frequency of publication of that value,
- the stock exchange in the country of marketing the price on which determines the price of transactions effected outwith stock exchanges in that country.

2. Information concerning the depositary.

2.1 the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;

2.2 a description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;

2.3 a statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS–

3.1. Name or style of the firm or name of the adviser.

3.2. Material provisions of the contract with the management company or the open-ended investment company which may be relevant to the unitholders, excluding those relating to remuneration.

3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unitholders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in Gibraltar. In addition, where units are marketed in another EEA State, such information must be given in respect of that EEA State in the prospectus published there.

5. Other investment information as follows–

5.1. Historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus.

5.2. Profile of the typical investor for whom the UCITS is designed.

6. Economic information–

Possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unitholder and those to be paid out of the assets of the UCITS.

PART B

INFORMATION TO BE INCLUDED IN THE PERIODIC REPORTS

I. Statement of assets and liabilities–

- transferable securities;

- bank balances;

- other assets;

- total assets;

- liabilities;

- net asset value.

II. Number of units in circulation

III. Net asset value per unit.

IV. Portfolio, distinguishing between–

(a) transferable securities admitted to official stock exchange listing;

(b) transferable securities dealt in on another regulated market;

(c) recently issued transferable securities of the type referred to in regulation 81(1)(d);

(d) other transferable securities of the type referred to in regulation 81(2)(a),

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS.

V. Statement of changes in the composition of the portfolio during the reference period.

VI. Statement of the developments concerning the assets of the UCITS during the reference period including the following–

- income from investments;

- other income;

- management charges;

- depositary's charges;

- other charges and taxes;

- net income;

- distributions and income reinvested;

- changes in capital account;

- appreciation or depreciation of investments;

- any other changes affecting the assets and liabilities of the UCITS;

- transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.

VII. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year–

- the total net asset value,

- the net asset value per unit.

VIII. Details, by category of transaction within the meaning of regulation 86 carried out by the UCITS during the reference period, of the resulting amount of commitments.