



Jersey

**COLLECTIVE INVESTMENT FUNDS  
(RECOGNIZED FUNDS) (RULES) (JERSEY)  
ORDER 2003**

**Official Consolidated Version**

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Jersey

## COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (RULES) (JERSEY) ORDER 2003

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Jersey

## **COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (RULES) (JERSEY) ORDER 2003<sup>1</sup>**

**THE ECONOMIC DEVELOPMENT COMMITTEE**, in pursuance of Articles 11, 14 and 20 of the [Collective Investment Funds \(Jersey\) Law 1988](#), and on the recommendation of the Jersey Financial Services Commission, orders as follows –

Commencement [[see endnotes](#)]

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### **1 Interpretation**

The rules set out in the Schedule to this Order, which shall have effect in accordance with their tenor, may be cited as the Collective Investment Funds (Recognized Funds) Rules 2003.

### **2 Citation**

This Order may be cited as the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003.

## SCHEDULE<sup>2</sup>

(Article 1)

### COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) RULES 2003

#### PART 1

#### INTRODUCTION

##### 1.01 Interpretation

- 1 Schedule 4 to these Rules (Glossary) has effect for the interpretation of the expressions referred to in it.
- 2 In these Rules, unless the context otherwise requires –
  - “collective investment fund” shall have the same meaning as in the Law;
  - “company”, except in Article 1.02, means a recognized fund which is a body corporate;
  - “constitutional documents” means in relation to –
    - (a) a unit trust, the trust instrument and fund rules, if any;
    - (b) a company, its memorandum and articles of association or their equivalent and fund rules, if any; and
    - (c) a recognized fund other than a unit trust or company, such documents as shall be prescribed by the Minister pursuant to the Law;
  - “custodian” means, in relation to a company, the person entrusted with the safekeeping of the property of the fund pursuant to the constitutional documents;
  - “depository” means in relation to –
    - (a) a unit trust, the trustee;
    - (b) a company, its custodian; and
    - (c) a recognized fund other than a unit trust or company, such person as shall be prescribed by the Minister pursuant to the Law;
  - “depository agreement” means any agreement pursuant to which a depository is appointed as depository of a recognized fund;
  - “fund rules” means rules governing a recognized fund or a constituent part of a recognized fund adopted pursuant to –
    - (a) in relation to a unit trust, the trust instrument;
    - (b) in relation to a company, its articles of association or their equivalent; and

(c) in relation to a recognized fund other than a unit trust or company, such documents as shall be prescribed by the Minister pursuant to the Law;

“management agreement” means any agreement pursuant to which a manager is appointed as manager of a recognized fund;

“manager” means in relation to –

- (a) a unit trust or company, the person appointed as manager pursuant to the constitutional documents or management agreement; and
- (b) a recognized fund other than a unit trust or company, such person as shall be prescribed by the Minister pursuant to the Law;

“open-ended investment company” means a collective investment fund in the form of a company the units of which –

- (a) the unitholders are entitled under the company’s constitutional documents to have bought back or redeemed, directly or indirectly, out of the property of the company or out of property provided by or at the instigation of the company and at a price related to the net value of the property of the company to which the units in question relate; or
- (b) the company ensures are capable of being sold by unitholders on an investment exchange at a price not significantly different from that referred to in paragraph (a);

“pool” means a recognized fund or a constituent part of an umbrella fund, as the case may be;

“recognized fund” means a collective investment fund in respect of which there is a recognized fund certificate;

“trust instrument” means an instrument in writing constituting a unit trust and made between the manager and the trustee, as amended or supplemented in writing;

“trustee” means the person who, in relation to a unit trust, holds the property of the fund on trust for the unitholders pursuant to the constitutional documents;

“unit” shall have the same meaning as in the Law;

“unit trust” means a recognized fund, and where the context otherwise requires another collective investment fund, in the form of a trust the units of which –

- (a) the unitholders are entitled under the trust’s constitutional documents to have bought back or redeemed, directly or indirectly, out of the property of the trust or out of property provided by or at the instigation of the trustee and at a price related to the net value of the property of the trust to which the units in question relate; or
- (b) the trustee or the manager ensures are capable of being sold by unitholders on an investment exchange at a price not significantly different from that referred to in paragraph (a).

3 A reference in any Article or other division of these Rules to a numbered or lettered paragraph, sub-paragraph, clause or section by number or letter, without further identification, is a reference to the paragraph, sub-paragraph, clause or section of that number or letter in the Article or other division in which it appears.

4 In these Rules, unless the context otherwise requires, a reference to an enactment, including an enactment of the United Kingdom, is a reference to that enactment as

amended, extended or applied by or under any other enactment, and to any enactment which repeals and re-enacts the first mentioned enactment with or without further amendment.

- 5 Any note contained in these Rules forms part of them.

## 1.02 Holding company, subsidiary and group

- 1 For the purposes of this Article “company” shall have its natural meaning and for the purposes of these Rules a company is, subject to paragraph 4, deemed to be a subsidiary of another if (but only if) –
- a. that other either –
    - (i) is a member of it and controls the composition of its board of directors,
    - (ii) holds more than half in nominal value of its equity share capital, and accordingly is its holding company; or
  - b. the first-mentioned company is a subsidiary of any company which is that other’s subsidiary.
- 2 For the purposes of paragraph 1 the composition of a company’s board of directors is deemed to be controlled by another company if (but only if) that other company by the exercise of some power exercisable by it without the consent or concurrence of another person can appoint or remove the holders of all or the majority of the directorships.
- 3 For the purposes of paragraph 2 the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied –
- a. that person cannot be appointed to it without the exercise in that person’s favour by the other company of that power;
  - b. that person’s appointment to the directorship follows necessarily from that person’s appointment as director of the other company; or
  - c. that the directorship is held by the other company itself or by a subsidiary of it.
- 4 In determining whether one company is a subsidiary of another –
- a. any shares held or power exercisable by the other in a fiduciary capacity are held to be treated as not held or exercisable by it;
  - b. subject to sub-paragraph c. any shares held or power exercisable –
    - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity), or
    - (ii) by, or by a nominee for, a subsidiary of the other (not being a subsidiary which is concerned only in a fiduciary capacity),are to be treated as held or exercisable by the other;
  - c. any shares held or power exercisable by, or by a nominee for, the other or its subsidiary are to be treated as not held or exercisable by the other if the shares are held or the power exercisable as above mentioned by way of security only.

- 5 For the purposes of these Rules a company is deemed to be another's holding company, if (but only if) the other is its subsidiary, and a group company in relation to a company means any other company that is its holding company or subsidiary and any other company that is a subsidiary of that holding company.

### **1.03 Application**

- 1 These Rules shall apply to recognized funds and to applications for recognized fund certificates.



## PART 2

### CONSTITUTION AND GENERAL REQUIREMENTS

#### 2.01 The constitution

- 1 A recognized fund does not qualify for the grant of a recognized fund certificate unless the fund is constituted by constitutional documents that –
  - a. conform with Schedule 1; and
  - b. (subject to a. above) contains no provision that conflicts with or is inconsistent with the requirements of any enactment, including these Rules.
- 2 Any power conferred on the manager, the depositary, the directors or the company, or on them together, in these Rules is subject to any express prohibition or restriction contained in the constitutional documents, the management agreement or depositary agreement, as the case may be.
- 3 Part 5 (Investment and borrowing powers) has effect in relation to any recognized fund subject to any prohibition or restriction imposed by the constitutional documents.
- 4 The constitutional documents must not include any provision that is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units.
- 5 The constitutional documents may provide that, if the holding of any units by a unitholder or the beneficial ownership of units by any person is or has caused (or in the reasonable opinion of the manager of the unit trust or the directors is or might cause) an infringement of any law or governmental regulation or a pecuniary or other disadvantage, including a tax disadvantage, on the part of the recognized fund, the unitholders or the unitholders of units of any class, then the units so held shall be transferred, repurchased or cancelled and, if the constitutional documents contain such a provision, they shall also provide the procedure for that transfer, repurchase or cancellation.

#### 2.02 Public availability of constitutional documents

- 1 The manager shall make available a copy of the constitutional documents (and of any supplements or amendments to the constitutional documents) together with the management agreement and depositary agreement, as the case may be, for inspection free of charge by any member of the public in accordance with paragraph 2.
- 2 The copy shall be made available at all times during ordinary office hours by the manager at the principal place of business in Jersey where it carries on the business of acting as the manager of recognized funds.
- 3 A copy made available under this Article shall be made available in English.
- 4 The manager shall allow any person to obtain (on payment of a reasonable fee) a copy of any document made available pursuant to this Article.

## 2.03 Units

The interests of the unitholders in a pool shall consist of units (including fractions of a unit) each unit representing one undivided share of entitlement in the property of the pool; but this general rule is modified in the circumstance of the pool consisting of more than one class of units as to which see Article 2.04.

## 2.04 Classes of unit

- 1 Classes of units may include –
  - a. income units, in which the income is allocated periodically to unitholders under Article 9.05;
  - b. accumulation units, in which the income is credited periodically to capital under Article 9.04;
  - c. roll-up units, with respect to which income is not distributed periodically to unitholders but is retained and forms part of the property of the pool; or
  - d. any other of class of unit approved by the Commission,and the pool will consist of income units only unless otherwise specified in (or the manager or directors otherwise decide pursuant to a power contained in) the constitutional documents.
- 2 If any class of units in a recognized fund has different rights from any other class of units in the recognized fund, the constitutional documents shall provide how the proportion of the value of the property of the fund and the proportion of income available for allocation attributable to each such class shall be calculated.
- 3 Without prejudice to the provisions of paragraph 1 and with the exception of units issued to a functionary for the purposes of operating a recognized fund –
  - a. in relation to any pool, the constitutional documents must not provide for any class of unit in respect of which –
    - (i) the extent of the rights to participate in the capital property, income property or distribution account would be determined differently from the extent of the corresponding rights for any other class of unit, or
    - (ii) payments or accumulation or retention of income or capital would differ in source or form from those of any other class of unit;
  - b. the prohibitions in paragraph a. shall not be regarded as breached by reason of any difference between the rights attached to one class of unit and another class of unit that relates solely to –
    - (i) the accumulation or roll-up of income whether by way of periodical credit to capital or continual accretion rather than distribution, and/or
    - (ii) charges and expenses that may be taken out of the property of the fund or payable by the unitholder, and/or
    - (iii) the currency in which prices or values are expressed or payments made, and/or
    - (iv) differences in rights approved by the Commission pursuant to Article 2.04.1(d).

## 2.05 Categories of recognized fund

- 1 A recognized fund must belong to one only of the following categories –
  - a. a securities fund;
  - b. a money market fund;
  - c. a futures and options fund;
  - d. a geared futures and options fund;
  - e. a property fund;
  - f. a warrant fund;
  - g. a feeder fund;
  - h. a fund of funds;
  - i. an umbrella fund.
- 2 A “securities fund” is a pool dedicated to transferable securities, excluding a pool that is a warrant fund, a feeder fund or a fund of funds.
- 3 A “money market fund” is a pool dedicated to –
  - a. deposits; and
  - b. instruments creating or evidencing indebtedness which are not transferable securities,whether with or without securities which are transferable securities.
- 4 A “futures and options fund” is a pool dedicated to approved and other derivatives (where most or all of the transactions are fully covered by cash, securities or other derivatives), whether with or without transferable securities.
- 5 A “geared futures and options fund” is a pool dedicated to approved and other derivatives (where most or all of the extent of investment is limited by the amount of property available to be put up as initial outlay), whether with or without transferable securities.
- 6 A “property fund” is a pool dedicated to permitted immovables and property related assets, whether with or without transferable securities.
- 7 A “warrant fund” is a pool which would be a securities fund within paragraph 2 above except that it is permitted to invest entirely in warrants.
- 8 A “feeder fund” is a pool dedicated to a single regulated collective investment fund or, in the case of a regulated collective investment fund having more than one constituent part (or its equivalent) or class of unit, dedicated to a single constituent part (or its equivalent) or class thereof, or dedicated to an eligible investment trust.
- 9 A “fund of funds” is a pool dedicated to a number of regulated collective investment funds.
- 10 An “umbrella fund” is a recognized fund in the form of an umbrella fund each of the constituent parts of which belongs to any one of the categories a to h in paragraph 1 above.
- 11 A pool may not change from one category to another, nor may its objectives be changed so as to achieve that effect except with the prior consent of the Commission and the approval of the unitholders.

- 12 In the case of a company which is an umbrella fund, any of its constituent parts which is a futures and options fund, a geared futures and options fund or a property fund, or any such additional category of pool as may be prescribed from time to time by the Commission, shall invest in a manner acceptable to the Commission.

## **2.06 Functionaries independent**

- 1 In the case of a unit trust, the manager and depositary must be persons who are independent of each other.
- 2 In the case of an open-ended investment company, the depositary must be a person who is independent of that company and the manager.
- 3 Subject to paragraph 4 and without prejudice to the generality of paragraphs 1 and 2, in the case of a recognized fund which became a recognized fund prior to the date of the coming into force of these Rules, the manager and depositary may be bodies corporate having the same ultimate holding company, which is incorporated and resident outside Jersey, if the Commission is satisfied that the following conditions have been complied with –
  - a. that the manager and depositary are subsidiaries of a corporate group with aggregate capital resources, comprising paid-up share capital and reserves, in excess of £1,000,000,000;
  - b. that neither the manager nor the depositary is a subsidiary of the other;
  - c. that no person is a director or other officer or employee of both the manager and the depositary;
  - d. that the depositary has undertaken to report to the Commission all contraventions by the manager of the requirements of the Law or of any Regulations or Orders made thereunder (including these Rules) applicable to a recognized fund and all breaches by the manager of the obligations imposed upon the manager by the constitutional documents;
  - e. that guarantees or undertakings or both, satisfactory to the Commission, of any liabilities of the depositary and the proper performance by the depositary of its obligations in respect of the recognized fund have been given by a holding company of the depositary.
4. If the manager or depositary of a recognized fund is replaced following the date of the coming into force of these Rules, the manager and depositary of that fund shall cease to have the same ultimate holding company.

## **2.07 Status of functionaries**

- 1 In the case of a recognized fund, the manager and depositary must –
  - a. each be a company incorporated in Jersey;
  - b. each have its affairs administered in Jersey; and
  - c. each have a place of business in Jersey.
- 2 In the case of an open-ended investment company, the company must be a company incorporated in Jersey and have a place of business in Jersey.

## 2.08 Name and purpose of recognized fund

The name of a recognized fund and the name of any constituent part thereof must not be undesirable or misleading and the purposes of the fund or constituent part must be reasonably capable of being successfully carried into effect.

## 2.09 Repurchase of units

The unitholders must be entitled to have their units repurchased or cancelled in accordance with the terms of the constitutional documents at a price related to the net value of the property to which the units relate and determined in accordance with those terms; but a recognized fund shall be treated as complying with this Article if the constitutional documents and the management agreement require the manager and the directors to ensure that a unitholder is able to sell his or her units on an investment exchange at a price not significantly different from that mentioned in this Article.

## 2.10 Alteration of funds, etc.

- 1 The manager of a unit trust, or in the case of a company its directors, shall give written notice to the Commission of –
  - a. any proposed alteration of the constitutional documents or management agreement;
  - b. in the case of a company, any proposed alteration of the depositary agreement;
  - c. any proposal to replace the depositary or the manager;
  - d. any proposal to alter the composition of the board of directors of the recognized fund;
  - e. any proposal of a scheme of arrangement as described in Article 11.05.1 (Amalgamation) or Article 11.06.1 (Reconstruction); and
  - f. any election to change from one basis of unit pricing to another in accordance with Article 4.10,and any notice given in respect of a proposed alteration involving a change in a document referred to in (a) or (b) shall be accompanied by a certificate, satisfactory to the Commission, signed by an Advocate or Solicitor of the Royal Court to the effect that the change will not affect the compliance of the document with the requirements of these Rules.
- 2 The directors or depositary, as the case may be, shall give written notice to the Commission of any proposal to give to the manager notice of removal under Article 7.16.
- 3 Effect shall not be given to any proposal referred to in paragraph 1 or 2 unless –
  - a. the Commission has approved the proposal; or
  - b. one month has elapsed since the date on which the notice was given without the Commission having notified the parties that gave the notice to it that the proposal is not approved.

**2.11 Restriction on activities of manager**

- 1 The manager of a recognized fund shall not engage in any activities other than those mentioned in paragraph 2.
- 2 Those activities are –
  - a. acting as manager of –
    - (i) a unit trust,
    - (ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body, or
    - (iii) any other fund under which the contributions of the unitholders and the profits or income out of which payments are to be made to them are pooled;
  - b. activities for the purposes of or in connection with those mentioned in subparagraph a.

**2.12 Avoidance of exclusion clauses**

Any provision contained in the constitutional documents, or in any contract made with the recognized fund or its depositary, or otherwise shall be void insofar as it would have the effect of exempting the manager, or the depositary, or any officer of the recognized fund from liability for any failure to exercise due care and diligence in the discharge of his or her functions in respect of the recognized fund.

## PART 3

### PROSPECTUS

#### 3.01 Preparation of a prospectus

- 1 A document (“prospectus”) stating prominently at the head of the first page or on the cover page that the document is a prospectus prepared in accordance with these Rules shall be prepared by the manager and, in the case of a company, shall be approved by the directors of the company.
- 2 A prospectus shall contain the matters specified in Schedule 2 and may contain any other matter which does not conflict with and is not inconsistent with the requirements of any enactment, including these Rules.

#### 3.02 Publication of prospectus

- 1 The manager of a recognized fund and, in the case of a company, the company –
  - a. shall not market units in that recognized fund unless –
    - (i) a prospectus has been prepared in English and approved in accordance with Article 3.01,
    - (ii) arrangements have been made for the prospectus to be available in sufficient numbers to enable the manager or company, as the case may be, to satisfy those who accept the offer referred to in sub-paragraph b., and
    - (iii) a copy of that document has been sent –
      - (A) to the Commission, and
      - (B) to the depositary;
  - b. subject to paragraph 2, shall not effect any sale of units in the recognized fund to any person until it has offered that person free of charge a copy of the prospectus in English.
- 2 The requirement in paragraph 1b. to offer a copy of the prospectus before effecting a sale of units does not apply if the sale is effected otherwise than in the course of a conversation conducted face to face or by telephone, but the manager or the company, as the case may be, must send free of charge a copy of the prospectus to the purchaser if the purchaser asks for it.

#### 3.03 False or misleading prospectus

- 1 The manager and, in the case of a company, the directors of the company are responsible for the accuracy of the prospectus.
- 2 A person shall not be responsible under paragraph 1 if the prospectus is published without the person’s knowledge or consent and, on becoming aware of publication, the person forthwith gives notice to the Commission that it was so published.

- 3 A person who is responsible under paragraph 1 for the accuracy of any prospectus shall, subject to paragraphs 4 and 5 –
  - a. ensure that the prospectus does not contain any untrue or misleading statement or omit any matter required by these Rules to be included in it; and
  - b. without prejudice to any liability incurred apart from this Article, be liable to pay compensation to any person who has acquired any units in the recognized fund and suffered loss in respect of them as a result of any such statement or omission.
- 4 A person is not in breach of paragraph 3a. and shall not incur liability under paragraph 3b. if at the time when the prospectus was prepared or, in the case of a director, approved he or she reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading, or that the omission was proper, and that –
  - a. he or she continued in that belief until the time of the relevant acquisition of units in the recognized fund;
  - b. the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers;
  - c. he or she had already taken all such steps as it was reasonable for him or her to have taken to secure that a correction was brought to the attention of potential purchasers; or
  - d. the person who acquired the units was not materially influenced or affected by that statement or omission in making his or her decision.
- 5 A person is also not in breach of paragraph 3a. and shall not incur liability under paragraph 3b. if –
  - a. 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;
  - b. the person took all such steps as it was reasonable for him or her to take to secure such publication and reasonably believed that it had taken place before the units were acquired;
  - c. the person who acquired the units knew at the time that the statement was false or misleading or of the omission; or
  - d. the issue arose only because of a failure to revise the prospectus, and that the person reasonably believed at the time of the failure that there was no change or new matter such as to call for a revision of the prospectus under Article 3.04.1.
- 6 For the purposes of this Article a revised prospectus shall be treated as a different prospectus from the prospectus to which the revision was made.
- 7 References in this Article to the acquisition of units include references to contracting to acquire them.

### **3.04 Revision of prospectus**

- 1 a prospectus shall be –
  - a. revised immediately upon the occurrence of any materially significant change in the matters stated therein or upon the arising of any materially



significant new matter which ought to be stated therein in advance of an annual review so far as is necessary to take account of that change or matter; and

- b. reviewed at least once in every 12 months, and revised to take account of any change or any new matter, other than one which reasonably appears to the manager and, in the case of a company, the directors to be insignificant.
- 2 A revision of a prospectus may take the form of a complete substitution for the previous prospectus or of a supplement to that prospectus but, whichever it is, the date as at which the revision was made must be prominently displayed.
  - 3 Without prejudice to paragraph 6 of Article 3.03, references in these Rules to a prospectus prepared in accordance with Article 3.01 include references to a prospectus revised in accordance with this Article.
  - 4 This Article is subject to the procedural requirements affecting certain amendments to a prospectus in other Articles in these Rules.

**PART 4****PRICING AND DEALING****SECTION A****INITIAL OFFERS AND UNITISATIONS****4.01 Introduction to this Part and to Section A**

- 1 Units in a pool may be created or cancelled only by the trustee or company and, subject to Articles 4.05 and 4.09.8, only upon receipt by the trustee, or the company and the depositary, as the case may be, of written instructions given by, or an application made by, the manager (which for the purposes of this Part in relation to any recognized fund shall be termed “creation instructions” and “cancellation instructions”). Creation instructions or cancellation instructions may be given at any time.
- 2 A pool shall have the choice, subject to Section D, of operating on an historic or forward pricing basis and subject to Article 4.10.1 of operating on a single pricing or a dual pricing basis.
- 3 Articles 4.02 – 4.04 apply to the setting up of a new pool by way of an initial offer, and apply during the period of such an offer.
- 4 The period of the initial offer is not to exceed 21 days and an initial offer must, subject to Article 4.04, be kept open for the period of the initial offer.

**4.02 Creation of units: initial offer**

- 1 During the period of the initial offer and on the business day after it, units in the pool may be created by the trustee or company under paragraph 2 or 4.
- 2 The manager may give creation instructions at the beginning of the first business day in the period.
- 3 At or before the beginning of that day, the manager must irrevocably choose, in respect of that initial offer, to proceed either under paragraph 4a. (“up and running”) or under paragraph 4b. (“pay over and wait”) and must notify the manager’s choice to the depositary and the company.
- 4 Where on any business day during the period the manager assumes any obligation for the sale of units, the manager must, depending on the manager’s choice under paragraph 3, either –
  - a. give creation instructions, at the beginning of the next business day, to create units in such number at least as will enable the manager immediately to fulfil that obligation, whether from the units so created or from other units; or
  - b. proceed as follows –

- (i) pay to the depositary (in any case where the purchaser has sent a remittance) on the day of receipt of the remittance or on the next business day, the total amount, and
  - (ii) as soon as the period of the initial offer has come to an end, give creation instructions to create units in such number at least as will enable the manager to fulfil the manager's obligations for the sale of units whether from the units so created or from other units.
- 5 The creation instructions shall state the number of units to be created, expressed either as a number of units or as an amount in value (or as a combination of the 2).
- 6 The trustee, or company, must or may respectively (subject to Article 4.11), create units on receipt of creation instructions given under this Article, and must not, during an initial offer, create units otherwise.

#### **4.03 Initial price**

- 1 The price for each unit created during the period of the initial offer payable by the manager to the depositary shall be the initial price of that unit.
- 2 For this purpose, "initial price" means such amount as may be determined by the manager (or in the case of a company its directors), and notified to the depositary as being the amount, exclusive of the manager's preliminary charge, if any, which may be paid by a potential unitholder to the manager for units on an initial offer.
- 3 The amount which may be charged by the manager by way of preliminary charge shall comply with Article 8.02.
- 4 A unit is treated as created during the period of the initial offer if the manager had agreed to the sale of it or received an order for it to be sold before the close of the offer, and it was created only afterwards.
- 5 During the period of the initial offer, the manager shall not as agent agree to create units (as to which see Article 4.21 below) at a price which is other than the initial price to which may be added, for the account of the manager, any preliminary charge permitted under Article 8.02.
- 6 The initial price of units shall be expressed in the currency of the class of units: but, during the period of the initial offer, a currency other than that currency may be used if the manager is satisfied that the rate of exchange between the 2 currencies is not likely to result in any material prejudice to the interests of unitholders or potential unitholders.
- 7 Where the initial offer is made outside Jersey, there may be added to the initial price of units so offered an amount sufficient to cover additional duty or taxation leviable in that country and the cost of the remittance of money to Jersey.

#### **4.04 Compulsory termination of initial offer**

- 1 If the manager has reason to believe that if the current price of a unit were to be calculated by reference to a valuation taken forthwith, it would be likely to vary from the initial price of that unit by 2% or more of the initial price, the manager may carry out such a valuation.
- 2 If –

- a. the manager carries out such a valuation and it shows a variation of 2% or more; or
- b. the manager has reason to believe as mentioned in paragraph 1, but does not forthwith carry out a valuation for the purpose of that paragraph, then the period of the initial offer comes to an end and the manager must forthwith refrain from –
  - (i) agreeing to sell units at the initial price, and
  - (ii) arranging for the trustee or company to create units at the initial price except to fulfil an obligation to sell or an order for the purchase of units at that price which it has already assumed or received.

#### **4.05 Creation of units: unitization**

- 1 This Article applies in the case of a unitization, that is, arrangements for a newly formed pool under which –
  - a. the whole or part of the property of a body corporate (or a collective investment fund) becomes the first property of the pool; and
  - b. the holders of shares (or units) in the body corporate (or collective investment fund) being wound-up or property of which is being transferred become the first unitholders in the pool.
- 2 The trustee, or in the case of a company its directors with the agreement in writing of the depositary, alone shall have power, not dependent on an instruction by the manager, to determine to create units, having regard to the terms of any arrangements relating to the unitization to which he, she or the company is a party; and in exercising the power conferred by this paragraph, any particular number of units may be created in exchange for assets other than money only if the depositary is satisfied that to do so is not likely to result in any material prejudice to the interests of unitholders or potential unitholders.
- 3 Upon such a determination, units shall be created in favour only of the holders of shares or units referred to in paragraph 1b.

## SECTION B

### CREATION AND CANCELLATION

#### 4.06 Introduction

- 1 Articles 4.07 – 4.12 apply to creation and cancellation –
  - a. in an ongoing pool; and
  - b. where specifically stated, in relation to an initial offer and a unitization.
- 2 In this Section, a “valuation point” means the valuation point fixed by the manager under Article 4.28, whether on a periodic basis or for a particular valuation and where a valuation point falls outside normal business hours in Jersey, it shall be deemed (for the purposes of this Article and Articles 4.07.2 and 4.10) to be 9.00 am on the following business day; and a “notified point” means a subsequent moment, within 2 hours of a valuation point, and arrived at under paragraph 3 below.
- 3 If the manager wishes regularly to have a notified point, the manager may notify the trustee or the company of the manager’s intention, indicating the period of time not exceeding 2 hours after the valuation point at which the manager wishes the notified point to occur; and any change in the period is ineffective unless agreed upon by the depositary.

#### 4.07 Creation instructions

- 1 Where the manager wishes new units to be created, and complies with Article 4.10, the manager may give creation instructions which shall state the number to be created, expressed either as a number of units or as an amount in value (or as a combination of the 2).
- 2 Where at any valuation point, the manager has any outstanding obligation to sell units, then the manager must give creation instructions, before –
  - a. 2 hours have elapsed since the valuation point; or
  - b. the next valuation point (if it is to occur within 2 hours of the last valuation point),to create units in such number at least as will enable the manager immediately to fulfil that obligation, (whether from the units so created or from other units owned by the manager immediately before the valuation point (or notified point if there is one)).

#### 4.08 Creation of units

- 1 Subject to paragraph 2 and to Article 4.11 units must be created on receipt of and in accordance with creation instructions given by the manager under Article 4.07, and must not, after an initial offer, be created otherwise.
- 2 The units may be created in exchange for assets other than money, but only –

- a. if the depositary is satisfied that acquisition of the assets in exchange for the number of units to be created is not likely to result in any material prejudice to the interests of unitholders or potential unitholders; and
  - b. in a case governed by Article 11.05 (amalgamation) or 11.06 (reconstruction) the depositary is satisfied that the resolution concerned in relation to the recognized fund of which he or she is depositary has been duly carried or else is not required.
- 3 On the creation of units, the manager shall, within the period specified in paragraph 4 –
  - a. pay the price of the units (if it remains unpaid) to the depositary in cash or in cleared funds; or
  - b. in the case of an exchange under paragraph 2, ensure transfer to the depositary of the assets to be taken in exchange.
- 4 The period expires at the close of business on the 4th business day next after the relevant instructions were given by the manager.
- 5 In a case within paragraph 2 (exchange) the manager must ensure that an enforceable right in the assets is created in favour of the depositary with effect from the creation of the units, even if the legal ownership is not then transferred.
- 6 Paragraphs 2-5 above apply to an initial offer, but not to a unitization.

#### **4.09 Cancellation of units**

- 1 Where the manager wishes units to be cancelled, and complies with Article 4.10, the manager may give cancellation instructions which shall state the number to be cancelled, expressed either as a number of units or as an amount in value (or as a combination of the 2).
- 2 Where, at any moment of giving cancellation instructions, the manager has any outstanding obligation to sell units, the manager may not give cancellation instructions if or to the extent that the manager's so doing would prevent the manager immediately from fulfilling any such obligation which had been assumed before the valuation point (or notified point if there is one).
- 3 Subject to Article 4.11 below units must be cancelled on receipt of cancellation instructions given by the manager, but subject to paragraph 8 may not be cancelled otherwise.
- 4 Where cancellation instructions are given at a time which is less than 2 hours after the last valuation point, and there have been received but not yet executed cancellation instructions previously given under paragraph 3, the later cancellation instructions must enable both or all sets of instructions to be executed simultaneously.
- 5 On the cancellation of units and on delivery to the depositary of such evidence of the title to those units as he or she may reasonably require, the depositary shall, within the period specified in paragraph 6, pay the price of the units to the unitholder or the manager as the case may be.
- 6 The period expires at the close of business on the 4th business day next after the cancellation of the units; but, where the manager has not ensured that the property of the pool includes or will include sufficient cash in the appropriate currency (or a

sufficient facility to borrow without infringing any restriction in Part 5) within that period, the period is extended, for any relevant currency, until the shortage is rectified.

- 7 Paragraph 5 does not apply where units are cancelled following a request for repurchase or cancellation of units by the unitholder, for property transferred or sold under Article 4.27.
- 8 Nothing in this Article shall prevent or restrict the right of a pool to redeem all the units in issue on a date, or on the occurrence of any event specified in its constitutional documents, as the case may be, and in accordance with any provisions so specified.

#### 4.10 Price of a unit

- 1 Subject to paragraphs 8 and 9, the constitutional documents may state that units are to be priced on a single price basis or that they are to be priced on a dual price basis. On the dual price basis a different valuation of the property of the pool is required to price a unit on creation to that required to price a unit on cancellation. Subject to paragraph 8, a change from one basis to the other in respect of any pool is permissible provided the constitutional documents permit such change in accordance with these Rules. The manager, or in the case of a company its directors may elect to make such change by notice given to the Commission in accordance with Article 2.10, and effect shall not be given thereto until the requirements of Article 2.10.3 have been satisfied and the proposed change and date of its implementation has been incorporated in a revised prospectus in accordance with Article 3.04 and 90 days have elapsed since the unitholders were notified in writing by the manager of the change to the prospectus and of the date when it is to come into effect.
- 2 Subject to paragraph 4, the price of a unit of any class shall be calculated as follows –
  - a. take the proportion, attributable to the units of the class in question, of the value of the property of the pool in accordance with Section F (excluding the distribution account and the unclaimed payments account), calculated by reference to the most recent valuation of the property of the pool;
  - b. compute the number of units of the relevant class in issue immediately before the valuation in a;
  - c. divide the total at a. by the number of units at b;
  - d. express the result in the base currency or, when appropriate, the currency of designation of the class of units in question, or else comply with paragraph 3; and
  - e. express the price in a form that is accurate to at least 4 significant figures.
- 3 A currency other than a currency referred to in 2d. above may be used if the manager is satisfied that the rate of exchange between the 2 currencies is not likely to result in any material prejudice to the interests of unitholders or potential unitholders.
- 4 A method of calculation other than that at paragraph 2 may be used as long as the manager is sure that it is bound to produce the same result.

- 5 Where a creation or cancellation is made at a time which is less than 2 hours after the last valuation point and before the next valuation point, it must be made by reference to the price of the relevant class of units calculated (or being calculated) for the last valuation point.
- 6 Any creation or cancellation to be made more than 2 hours after the last valuation point must be made by reference to the price of the relevant class of units next to be calculated and made only after the next valuation point has been reached.
- 7 In the case of a money market fund, in determining the price at which units may be created, issued, cancelled, or repurchased the manager may take into account interest, original issue discount, and other receipts minus expenses and other outgoings that shall accrue between the relevant valuation point and the date on which settlement of the transaction is to take place in accordance with the constitutional documents provided that the policy of the manager shall be disclosed in the prospectus.
- 8 The constituent parts of an umbrella fund must all be priced on either a dual or a single price basis.
- 9 All pools shall, within 3 years following the coming into force of these Rules, operate on a single pricing basis.

#### **4.11 Refusal to create or cancel units**

- 1 Subject to paragraphs 2 and 3 –
  - a. on receipt by a company of creation instructions or cancellation instructions the company may forthwith give written notice to the manager stating that the company refuses to create or cancel, as the case may be, all or such number of the units requested to be created or cancelled as is specified in the notice; and
  - b. on receipt by the depositary of creation instructions or cancellation instructions the depositary may forthwith give written notice to the manager stating that the depositary refuses to create or cancel, as the case may be, all or such number of the units requested to be created or cancelled as is specified in the notice,and the consequence of the giving of either such notice shall be that the number of units shall not be created or cancelled.
- 2 Neither a company nor the depositary may give such notice in relation to the creation of units for the purposes of a unitization and, in any other case may give it only if –
  - a. in a case where the company proposes to give such notice, the directors are of the opinion; or
  - b. in a case where the depositary proposes to give such notice, it is of the opinion,that it is not in the interests of participants for the units the subject of the notice to be created or cancelled as the case may be.
- 3 A company or trustee shall not create or cancel units of any class, and the depositary shall not consent to their creation or cancellation, during any period in which repurchase of units of that class is suspended.



- 4 This Article also applies to an initial offer.

#### **4.12 Modification to number of units created or cancelled**

- 1 After a creation instruction or cancellation instruction has been complied with, it may be modified, and appropriate consequential adjustments may be made by way of payment of money as between the manager and the depositary, provided that the requirements of this Article are satisfied.
- 2 The manager may make a modification under this Article only with the agreement of the depositary; and the depositary may not agree unless it is reasonably satisfied –
  - a. that the purpose of the modification is to rectify the consequences of an error in the instruction which related to the number of units held by, or proposed to be created or cancelled in connection with the sale or repurchase of units to or by, the manager; and
  - b. that, in view of the quality of the manager's control systems, the circumstance that resulted in the error in question is an isolated one, and is unlikely to recur.
- 3 A modification under this Article shall be of no effect unless the consequential adjustments are completed by the end of the business day next following the relevant valuation point, or, if the depositary agrees, within the payment period applicable to the original instruction under Article 4.08.3 or 4.09.5.

### **SECTION C**

#### **SALE AND REPURCHASE**

#### **4.13 Introduction**

- 1 Articles 4.14 to 4.25 apply to sale and repurchases –
  - a. in an ongoing pool; and
  - b. where specifically stated, in relation to an initial offer and a unitization.
- 2 Those Articles also apply in similar manner to creations and cancellations of units effected or to be effected by the trustee or company acting through the manager as agent.
- 3 A currency other than the base currency may be used if the manager is satisfied that the rate of exchange between the 2 currencies is not likely to result in any material prejudice to the interests of unitholders or potential unitholders.

#### **4.14 Manager's obligation to sell**

- 1 Subject to the pool having units in issue, the manager must at all times during the dealing day be willing to sell units in the pool; and the manager must, at the request in writing of any person, agree to sell units of at least one class in respect of that pool to that person at a price arrived at under these Rules.

- 2 Paragraph 1 above does not apply –
  - a. if the manager has reasonable grounds, relating to the circumstances of the person concerned, for refusing to sell units to the person;
  - b. if the number or value of the units sought to be sold is less than any number or value stated in the prospectus as the minimum number or value to be purchased or held; or
  - c. (in the case of a property fund) if the manager believes on reasonable grounds that the number or value of units sought to be sold would lead to the holding by any one person (or by any one person and any other person appearing to the manager to be acting in concert with that person) of more units than any number stated in the prospectus as the maximum number to be purchased or held.
- 3 Units must be sold in the base currency, unless the person concerned requests and the manager agrees that the units should be sold in another currency.
- 4 This Article applies during an initial offer, but not during a unitization.
- 5 This Article is subject to Part 13 (Suspension and termination).

#### **4.15 Sale price parameters: dual pricing basis**

- 1 In the case of a pool in relation to which the dual pricing basis has been adopted, except in the case of a large deal, the manager's price for sale of units shall not exceed the maximum sale price, that is a price fixed by the manager and notified (or, for a sale at a forward price, next to be notified) to the depositary: and that maximum sale price itself must not exceed the total of –
  - a. the relevant creation price; and
  - b. the current preliminary charge.
- 2 In the case of an initial offer, the manager's price for sale of units shall not exceed the sum of the initial price and any preliminary charge permitted under Article 8.02.
- 3 In the case of a large deal, the manager's price for sale may exceed the maximum sale price but must not exceed the limit above which the maximum sale price could not have been fixed.
- 4 The manager's price for sale shall not be less than the minimum repurchase price under Article 4.19.1.
- 5 In applying this Article to dealings after a valuation point but before the price relating to that point has been fixed and notified, the maximum sale price will be the one next to be notified in respect of that point, or, where relevant, the next point.

#### **4.16 Sale price parameters: single pricing basis**

- 1 In the case of a pool in relation to which the single pricing basis has been adopted the manager's price for sale of units shall not exceed the price fixed by the manager and notified (or, for an issue at a forward price, next to be notified) to the depositary to which may be added –

- a. any preliminary charge permitted under Article 8.02; and
- b. any dilution levy permitted under Article 4.25.

#### **4.17 Manager's obligation to repurchase**

- 1 Subject to Article 4.27 the manager must at all times during the dealing day be willing to repurchase units in the pool; and, accordingly, must at the request in writing of any unitholder agree to repurchase units owned by that unitholder at a price arrived at under these Rules.
- 2 Paragraph 1 above does not apply –
  - a. if the number or value of the units sought to be repurchased is –
    - (i) less than the entirety of the unitholder's holding, and
    - (ii) less than any number or value stated in the prospectus as the minimum number to be repurchased;
  - b. if the number or value of the units of any class sought to be repurchased would result in the unitholder holding less than any number or value stated in the prospectus as the minimum number to be held of the relevant class;
  - c. if the manager ensures that the unitholder is able to sell his or her units on an investment exchange at a price not significantly different from the price at which they would have been repurchased;
  - d. to the extent that the power to refuse in paragraph 3 applies; or
  - e. in the case of an initial offer or unitization.
- 3 Units must be repurchased in the base currency or, at the request of the unitholder, in any other currency which is acceptable to the manager.
- 4 This Article is subject to Part 13 (Suspension and termination).

#### **4.18 Payment on repurchase**

- 1 On agreeing to repurchase units, the manager shall, within the period specified in paragraph 2 pay the appropriate proceeds of repurchase (less, where applicable, the cost of remitting the sum outside Jersey) to the unitholder.
- 2 The period expires at the close of business on the 4th business day next after –
  - a. the valuation point immediately following receipt by the manager of the request to repurchase; or
  - b. the time when the manager has all duly executed instruments and authorizations as effect (or enable the manager to effect) transfer of title to the units,whichever is the later.
- 3 This Article does not apply where the manager is not repurchasing units in the usual sense but is buying them as principal on an approved market in accordance with a power in the constitutional documents, which envisages that settlement will be in accordance with the rules of that market.

- 4 Nothing in this Article shall require a manager to part with money in respect of a repurchase of units where the manager has not yet received the money due on the earlier sale of those units, or where the manager considers it necessary or appropriate to carry out or complete identification procedures in relation to the unitholder or another person pursuant to a statutory, regulatory or other obligation.
- 5 There may be deducted from what would otherwise be the proceeds of repurchase of a unit any repurchase charge permitted under Article 8.07.

#### **4.19 Repurchase price parameters: dual pricing basis**

- 1 In the case of a pool in relation to which the dual pricing basis has been adopted, except in the case of a large deal, the manager's price for repurchase of units shall not be less than the relevant minimum repurchase price already notified (or, for a repurchase at a forward price, next to be notified) to the depositary.
- 2 The minimum repurchase price shall not be less than the relevant cancellation price.
- 3 In the case of a large deal, the manager's price for repurchase may be less than the minimum repurchase price but must not be less than the relevant cancellation price.
- 4 In the case of an umbrella fund, except in the case of a large deal and then in accordance with Article 4.15.3, the maximum price at which units in one constituent part may be had in exchange for units in another such part shall not exceed the relevant maximum sale price (less any preliminary charge) of the new units; and the minimum price at which the old units may be taken in exchange shall not be less than the equivalent minimum repurchase price except in the case of a large deal and then in accordance with Article 4.19.3. Any charge on exchange of units shall be in accordance with Article 8.08.
- 5 The manager's price for repurchase of units shall not exceed the relevant creation price under Article 4.15.1a.
- 6 In applying this Article to dealings after a valuation point but before the price relating to that point has been notified, the minimum repurchase price will be the one next to be notified in respect of that point, or where relevant, the next point.

#### **4.20 Repurchase price parameters: single price basis**

- 1 In the case of a pool in relation to which the single pricing basis has been adopted the amount to be paid by the manager as the proceeds of repurchase of a unit shall not be less than the price fixed by the manager and notified (or, for a repurchase at a forward price, next to be notified) to the depositary less –
  - a. any repurchase charge permitted under Article 8.07; and
  - b. any dilution levy permitted under Article 4.25.
- 2 In the case of an umbrella fund, the maximum price at which units in one constituent part may be had in exchange for units in another such part shall not exceed the relevant sale price of the new units as required to be notified to the depositary under Article 4.16.1 to which may be added any dilution levy permitted under Article 4.25; and the minimum price at which the old units may be taken in exchange shall not be less than the price required to be notified to the depositary

under this Article less any dilution levy permitted under Article 4.25. Any charge on exchange of units shall be in accordance with Article 8.08.

#### **4.21 Creation and cancellation through the manager when not acting as principal**

- 1 This Article applies where the trustee or company has appointed the manager (with the manager's consent) to act as its agent in connection with the creation or cancellation by the trustee or the company of units, either generally or in relation to any particular person or class of persons.
- 2 At the request of any person to whom the appointment relates, the manager is obliged to arrange for units to be created under this Article in any case where the manager is obliged to sell them under Article 4.14.
- 3 At the request of any person to whom the appointment relates, the manager is obliged to arrange for units to be cancelled under this Article in any case where the manager is obliged to repurchase them under Article 4.17.
- 4 The amount to be paid for a unit must be the total of –
  - a. the price next to be notified to the depositary;
  - b. for the account of the trustee or the company, any dilution levy permitted under Article 4.25; and
  - c. if the manager wishes and if not already incorporated in a. above, a preliminary charge not exceeding the current charge permitted under Article 8.02.
- 5 The amount to be paid on cancellation must be the total of –
  - a. the price next to be notified to the depositary;
  - b. less, for the account of the trustee or the company, any dilution levy permitted under Article 4.25; and
  - c. less any charge for the manager's benefit if and to the extent that the manager would have been entitled to make such a deduction on repurchasing the units in question in accordance with Article 8.07.
- 6 The manager shall not make any charge in connection with the creation or cancellation of units under this Article which is not contemplated by this Article.
- 7 Where the manager, for the trustee or company, has agreed with a unitholder to arrange the creation or cancellation of any units, the manager must, at the start of the next business day, supply a report of the manager's transactions to the trustee or depositary and company, who shall then treat that report as if it were creation instructions or cancellation instructions.
- 8 Where the manager has agreed to arrange the cancellation of units for the trustee or company, the manager shall pay the purchase price as if Article 4.18 applied to the transaction, and as if the units to be cancelled following the purchase by the trustee or company were being transferred to the manager.

#### **4.22 Notification of prices to the depositary**

- 1 Forthwith upon completion of a valuation under Section F (whether regular or otherwise) the manager shall notify the depositary of –

- a. in relation to a pool which is priced on a single pricing basis the price of a unit or unit of each class (as the case may be) and the amount or rate of any dilution levy applicable in respect of any creation, sale, repurchase or cancellation of units; and
  - b. in relation to a pool which is priced on a dual pricing basis –
    - (i) the creation price,
    - (ii) the cancellation price,
    - (iii) the maximum sale price, and
    - (iv) the minimum repurchase price.
- 2 The prices to be notified under paragraph 1 are those relevant to deals based on prices determined at that valuation point.
  - 3 Any notification under paragraph 1 shall include a statement of the number of units owned by the manager at that valuation point (or notified point if there is one).

#### **4.23 Publication of prices**

- 1 This Article applies unless the manager is excused from dealing with the public under these Rules.
- 2 Where the manager holds himself or herself out as willing –
  - a. to sell or repurchase units (or units of any class); or
  - b. to act as agent under Article 4.21,the manager must make public the prices of units of each of those classes including, in the case of a pool which has adopted a dual pricing basis, maximum sale and minimum repurchase prices and must make public the current preliminary charge, if any.
- 3 The prices to be made public under paragraph 2 are to be the price or prices last notified to the depositary under Article 4.22 or, in the case of publication in a newspaper, last notified before the relevant newspaper ceased to accept material for publication in the relevant edition.
- 4 Where the manager is authorized to make a charge by way of deduction from the proceeds of repurchase, the manager must include in any publication required by paragraph 2 a note to indicate that fact.
- 5 Except in respect of any class of units that is marketed predominantly outside of the United Kingdom the prices to be made public under paragraph 2 above must be published in at least one national newspaper in the United Kingdom.
- 6 Where the manager holds himself or herself out as willing to sell and repurchase units (or as the case may be to act as agent under Article 4.21) in any other jurisdiction, the manager must also comply with paragraph 2 above in that jurisdiction in the manner provided for in the law of that jurisdiction.
- 7 The manager shall disclose the cancellation price, orally or in writing, to any person who requests it in person at, or by any communication addressed to, the manager's principal place of business, and the manager must have arrangements to enable the manager accordingly to disclose, free of charge, at all times during the dealing day, the price last notified to the depositary.

**4.24 Instructions etc. by manager**

- 1 Any instruction or notification given (or report supplied), including the creation instructions and the cancellation instructions, under this Part by the manager to the depositary or company –
  - a. must be recorded by the manager, at the time when it is given or supplied;
  - b. must be sent in a form which enables the recipient to know or record the time of receipt; and
  - c. may be communicated in any form other than by word of mouth.
- 2 Instructions are given to the recipient within any period under this Part if they are received within that period, and instructions received after the expiry of any period are treated as given after that expiry.
- 3 This Article also applies, with the necessary modifications, to any notice or notification given by the depositary or the company to the manager.

**4.25 Dilution levy**

- 1 In relation to a pool which has adopted a single pricing basis the manager shall have the power to require either or both of –
  - a. the payment of a dilution levy in respect of the creation or sale of units or any class of units; and
  - b. the deduction of a dilution levy in respect of the repurchase or the cancellation of units or any class of units.
- 2 Any such payment or deduction shall become due at the same time as payment becomes due in respect of the relevant creation, sale, repurchase or cancellation.
- 3 A dilution levy may be imposed only in a manner that is, so far as practicable, fair to all unitholders and potential unitholders, but the imposition of a dilution levy (or a higher dilution levy) in respect of large deals in a manner described in the prospectus current at the time of the deal shall not be considered unfair.
- 4 If the manager receives a dilution levy in respect of any unit sold by it, it shall forthwith pay it to the depositary to become part of the property of the pool, except to the extent that it has already been paid by the manager to the depositary on the creation of the unit to the manager.
- 5 If the manager deducts a dilution levy from the proceeds of repurchase of a unit repurchased by it, it shall forthwith pay it to the depositary to become part of the property of the pool, but if the same unit shall be cancelled, any dilution levy that would otherwise then be deducted from the proceeds of cancellation shall be reduced to the extent that it has already been paid by the manager to the depositary on the repurchase.

**SECTION D****FORWARD AND HISTORIC PRICING****4.26 Introduction**

- 1 In relation to the sale and repurchase of units, the manager may, subject to this Article, operate on the basis of forward prices or on the basis of historic prices, and the manager's power to choose, or the manager's duty to operate on one basis only, is conditioned by Table 4.1 below.
- 2 Paragraph 1 is disappplied in relation to certain categories of pool (geared futures and options funds, property funds and warrant funds) later in these Rules.

**Table 4.1 – Forward or Historic Pricing****RULES****Notes**

- 1 In this table "F Only" means that any price agreed upon must be a forward price; "H" means that any price agreed upon must be a historic price unless the manager is required by the Table to deal at a forward price. "General" means "in relation to all sales and repurchases agreed upon during the remainder of the relevant dealing period (except those that are agreed upon individual deviations)"; and an "individual deviation" is a decision, in relation to a particular transaction, covered by the rules in Section 3 of the Table.
- 2 This table does not apply to an initial offer or on unitization.

**Section 1 General**

- 1 Manager's choice. The manager must express in the prospectus a choice for H or else for F Only.
- 2 If the manager's current choice under 1 is F Only, all the manager's deals must be at a forward price.
- 3 A manager may not choose H if the manager's normal arrangements for valuation envisage valuation more than one business day apart.
- 4 The remainder of this table applies to a manager with a current choice of H.
- 5 He or she may at any time elect for F Only in respect of the rest of the then current dealing period.
- 6 He or she may bind himself or herself, in the prospectus, to switch from H to F Only at a certain point in each dealing period.
- 7 An election for (or switch to) F Only will last until the end of the dealing period and will then lapse.



- 8 For general purposes, repurchases must be on the same basis as sales.

## **Section 2 General duty to adopt forward pricing**

- 9 Market movement. F Only applies once the manager knows or has reason to believe that the property of the pool, if valued under these Rules, would exceed the 2% tolerance (that is if there would be a 2% or greater difference between the value of the property of the pool and the last calculated value (taking that as 100% for this purpose)), but decides not to carry out an additional valuation under Article 4.28.
- 10 Valuation taking over 2 hours. F Only applies if new prices have not been notified to the depositary after 2 hours (or such longer period as the depositary may agree with the manager generally or in any specific case) from the valuation point.
- 11 Rule 10 does not apply if, within 2 hours of the valuation point, the manager has notified the depositary of the basis (creation or cancellation) on which the next prices will be fixed, and of the spread (reckoned in percentage or money terms) between the maximum sale price and the minimum repurchase price.
- 12 F Only under rules 9 and 10 will start when the relevant moment arrives, will last until the end of the dealing period and will then lapse.

## **Section 3 Individual deviations**

- 13 Rules 14 to 17 apply in relation to an individual transaction without affecting the general position arrived at under Sections 1 and 2 above.
- 14 Request. F Only applies if the applicant for sale or repurchase so requests.
- 15 Large deals. F Only applies, if the manager so decides, in the case of a large deal (or the later transactions which are part of a large deal).
- 16 Postal deals. F Only applies if the order or offer reaches the manager through the post or any other form of one-way communication (fax etc.).
- 17 Creation or cancellation through the manager when not acting as principal. F Only applies in the case of a sale or purchase under Article 4.21.

## **Section 4 Notification**

- 18 The manager must notify the depositary, and in the case of a company the company, of the fact and time of any adoption of F Only under rule 5 or Section 2.

## SECTION E

### “IN SPECIE” CANCELLATION

#### 4.27 In specie cancellation

- 1 If a unitholder requests the repurchase or cancellation of units the manager may arrange that in lieu of payment of the price for the units in cash the trustee or company shall cancel the units and transfer property of the pool or, if required by the unitholder, the net proceeds of sale of the relevant property of the pool to him or her, provided that –
  - a. the prospectus contains a statement describing the circumstances in which the manager is permitted to arrange for, and describing the procedures for, a cancellation of units in the manner described above;
  - b. the manager gives written notice to the unitholder before the proceeds of cancellation would otherwise become payable in cash, that in lieu of such payment it will arrange that the depositary will transfer property of the pool (or the net proceeds of the sale of the relevant property of the pool) to the unitholder; and
  - c. the property of the pool to be transferred (or sold) is selected by the manager, in consultation with the trustee or with the company and the depositary, and the selection is made with a view to achieving no more advantage or disadvantage to the unitholder requesting cancellation of his or her units than to the continuing unitholders.
- 2 Notwithstanding paragraph 1, the manager shall not, when acting as a principal, cancel units other than for payment in cash.

## SECTION F

### VALUATION

#### 4.28 Valuation of the property of the recognized fund

- 1 **REGULAR VALUATION.** For the purposes of determining in accordance with these Rules the price at which units of any class in a pool may be created, cancelled, sold or repurchased, the manager shall carry out a valuation of the property of the pool at each valuation point for the pool.
- 2 An investment included in the property of the pool for which different prices are quoted according to whether it is being bought or sold shall, in the case of a pool which has adopted a single price basis, be valued at its mid-market price and, in the case of a pool which has adopted a dual price basis, shall be valued in 2 parts, one being at its offered or buying price (plus any fiscal charges or commissions or other charges that were paid or would be payable on the acquisition of the investment or other part of the property of the pool) and the other being at its bid or selling price

- (less any fiscal charges or commissions or other charges that were paid or would be payable on the disposal of the investment or other part of the property of the pool).
- 3 Any part of the property of the pool which is not an investment shall be valued at a fair value.
  - 4 For the purposes of the preceding paragraphs, in the case of a pool which has adopted a single price basis there shall be excluded from the value of an investment or other part of the property of the pool any fiscal charges or commissions or other charges that were paid or would be payable on the acquisition or disposal of the investment or other part of the property of the pool.
  - 5 There must be at least 2 valuation points in each calendar month and if there are only 2 valuation points in any calendar month they must be 2 weeks or more apart.
  - 6 Paragraph 5 does not apply to a warrant fund and there must be at least one valuation point for them on each business day.
  - 7 The frequency of regular valuation points shall be specified in the prospectus.
  - 8 Notwithstanding paragraphs 5, 6 and 7, no valuation points are required during the period of any initial offer (but see Article 4.04).
  - 9 **ADDITIONAL VALUATION.** The manager may determine to have an additional valuation point and to carry out an additional valuation of the property of the pool at any time if it considers it desirable to do so.
  - 10 Prior to any additional valuation point the manager shall inform the depositary of it.
  - 11 **ADDITIONAL OR SPECIAL REQUIREMENTS.** Part 12 provides additional or special requirements relating to the valuation of fund property for certain categories of recognized fund.

## PART 5

### INVESTMENT AND BORROWING POWERS

#### 5.01 Introduction

Each of Sections B to J below applies only to recognized funds or pools of the kind mentioned in the title to the relevant Section.

#### SECTION A

#### GENERAL

#### 5.02 Investment powers: general

- 1 Subject to this Part, the property of a pool may comprise any property the holding of which is consistent with the relevant dedication in Article 2.05 and in addition the property of a recognized fund may include movable or immovable property that is necessary for the direct pursuit of the recognized fund's business of investing in the first mentioned property.
- 2 The property of a pool may be invested only in accordance with this Part and within any relevant upper limit (such as "up to 10%") in this Part.
- 3 The constitutional documents may restrict –
  - a. the descriptions of asset in which the property of the pool may be invested;
  - b. the proportion of the capital property attributable to the pool to be invested in assets of any description;
  - c. the descriptions of transactions permitted; or
  - d. the borrowing powers in relation to the pool,and any such restrictions shall be observed as if they were included in this Part.
- 4 Restrictions from time to time included in a prospectus pursuant to paragraph 9 of Schedule 2 (and Article 11.04) shall be observed as if they were included in this Part.

#### 5.03 Valuation

- 1 For the purpose of this Part, the value of the property of the pool means the net asset value, that is the net value of the property of the pool after deducting –
  - a. any outstanding borrowings whether immediately due to be repaid or not; and
  - b. in the case of a property fund, any capital sum outstanding on a hypothec or mortgage of an immovable.

- 2 Subject to paragraphs 3 and 4, Section F of Part 4 (Valuation) shall apply to any valuation of the property of the pool for the purposes of this Part.
- 3 In applying Part 4 for the purposes of this Part –
  - a. the cancellation basis only is required in the case of a pool which is valued on a dual price basis and in the case of a pool which is valued on a mid-market price basis, that basis shall apply;
  - b. the time as at which the valuation is being carried out for the purposes of this Part (the “relevant time”) is treated as if it were a valuation point; and
  - c. valuation solely for the purposes of this Part does not count as a valuation under Part 4, nor does the relevant time at b. of itself count as a valuation point for the purposes of anything in Part 4.
- 4 Part 4 may be affected by specific provisions in this Part, such as valuation of permitted immovables or Article 5.61 (stocklending).
- 5 Where a pool has paid any sum by way of initial outlay under Section D, E or K, the initial outlay is regarded as remaining part of the property of the pool, for the purposes of this Part only, even if it is not so regarded under Part 4.
- 6 Where the manager reasonably believes that the pool will become entitled to any unrealised profits which have been made on account of a derivatives transaction, that prospective entitlement is regarded as part of the property of the pool for the purposes of this Part only.

#### **5.04 Part to be construed as a whole**

- 1 In relation to any provision in this Part, whereby investment is permitted to be carried out or retained only if possible obligations arising out of the transaction would not cause any breach of any limit in these Rules (examples being Articles 5.15.1 (warrants), 5.15.2 (nil or partly paid securities) and 5.67.5 (underwriting)) it is to be assumed –
  - a. in applying any of those provisions, that the maximum possible liability of the pool under any other such provision has also to be provided for; but
  - b. in relation to the value of the property of the pool itself, that any relevant investment included in that property is valued in accordance with Part 4.
- 2 In relation to any provision in this Part, whereby investment is permitted to be carried out or retained under one Section if the transaction in question and other similar transactions are “covered”, it is to be assumed –
  - a. in applying any of those provisions, that the pool must also simultaneously satisfy any other obligation relating to cover arising under another Section; and
  - b. that no element of cover is used more than once.

#### **5.05 Transferable security**

- 1 In these Rules, “transferable security” means any investment falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act, unless paragraph 2 or 4 below applies.

- 2 An investment is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- 3 In applying paragraph 2, where a security is issued by a body corporate and is an investment falling within paragraph 1 or 2 of Schedule 1 to the Financial Services Act, the need for any consent on the part of the body or any members or debenture holders of it may be ignored.
- 4 A security is not a transferable security if the liability of the holder of it to contribute to the debts of the issuer is not limited to any amount for the time being unpaid by the holder of it in respect of it.

#### **5.06 Approved security**

- 1 A transferable security is an “approved security” if –
  - a. it is admitted to official listing in a member state;
  - b. it is traded on or under the rules of an eligible securities market (otherwise than by virtue of the specific permission of the market authority); or
  - c. it is recently issued within the meaning of paragraph 2.
- 2 A transferable security is recently issued if –
  - a. it was issued, within the last 12 months, on terms that an application for listing would be made to an exchange or market;
  - b. the application at a. has not been refused;
  - c. the manager is not aware of any reason why the application might be refused; and
  - d. acceptance of the application at a. would bring the security within paragraph 1a. or b. above.

#### **5.07 Warrants**

In these Rules, “warrants” includes, in addition to an investment falling within paragraph 4 of Schedule 1 to the Financial Services Act, any other transferable security (not being a nil paid or partly paid security) which is –

- a. listed on an eligible securities market; and
- b. akin to an investment within that paragraph in that it involves a down payment by the then holder and a right later to surrender the instrument and to pay more money in return for a further transferable security.

#### **5.08 Derivative and approved derivative**

- 1 In these Rules “derivative” means an option, or a future or a contract for differences.
- 2 In these Rules, “approved derivative” means a derivative which is traded or dealt in on an eligible derivatives market.
- 3 Off-exchange derivatives transactions are defined later, in Article 5.23.
- 4 An investment is not a derivative if it is a transferable security.

### 5.09 Eligible securities and derivatives markets

- 1 A securities market is eligible for the purposes of these Rules, if it is a market established in a member state on which transferable securities admitted to official listing in the member state are dealt in or traded.
- 2 A securities market not falling within paragraph 1 or a derivatives market is, at any time, eligible for the purposes of these Rules if –
  - a. the manager or directors, after consultation with the depositary, have decided, in accordance with paragraphs 3 and 4, to choose that market as one which is appropriate for the purpose of investment of or dealing in the property of the pool beyond, where appropriate, any limit which under these Rules, would otherwise apply;
  - b. that decision is notified in writing to the depositary and has not been revoked; and
  - c. the market is included in a list in the prospectus.
- 3 For the purposes of paragraph 2, a market may be considered to be appropriate if it –
  - a. is regulated;
  - b. operates regularly;
  - c. is recognized; and
  - d. is open to the public.
- 4 In exercising the choice in paragraph 2, regard shall in particular be had –
  - a. to the need for adequate liquidity in the market;
  - b. to the arrangements relevant to the market for unimpeded transmission of income and capital to or to the order of investors; and
  - c. to any relevant guidance issued by the Commission, whenever issued.

### 5.10 Permitted immovable and approved immovable

These concepts, relevant only to Section F (property funds) below, are defined in that Section.

## SECTION B

### SECURITIES FUNDS

#### 5.11 Securities funds: general

- 1 Subject to this Section, to Sections A (general) and K (efficient portfolio management) and to the subsequent Sections of this Part, the property of the pool of a securities fund shall consist of transferable securities.
- 2 Up to 10% in value of the property of the pool may consist of transferable securities which are not approved securities, but there is no limit on the value of the property which may consist of approved securities.
- 3 Up to 5% in value of the property of the pool may consist of transferable securities which are units in collective investment funds but only if they fall within Article 5.14 below.
- 4 Investment under paragraph 3 counts towards the limit in paragraph 2 (except where the units are approved securities).
- 5 Articles 5.12 and 5.13 (spread) do not apply until –
  - a. the expiry of a period of 6 months after the date on which the pool is authorized (or on which the initial offer commenced if later); or
  - b. the date when the value of the property of the pool first exceeds £1,000,000 (or the equivalent in the base currency) (or on which the initial offer ends, if later),whichever is the earlier, but the manager and the trustee or the directors shall ensure, so far as practicable, during that period that the pool is invested with the aim of spreading risk.

#### 5.12 Spread: general

- 1 This Article does not apply to Government and other public securities as defined in Article 5.13.5.
- 2 Up to 5% in value of the property of the pool may consist of transferable securities issued by any one issuer.
- 3 In applying paragraph 2, investments within paragraph 5 of Schedule 1 to the Financial Services Act (certificates representing securities) are treated as equivalent to the underlying security.
- 4 The figure of 5% in paragraph 2 may be regarded as 10% in respect of up to 40% of the value of the property of the pool.

#### 5.13 Spread: Government and other public securities

- 1 This Article applies to Government and other public securities only and in this Article they are described as “such securities”.



- 2 As long as 35% or less of the property of the pool is invested in such securities issued by any one issuer, there is no limit on the amount which may be invested in –
  - a. such securities; or
  - b. such securities issued by any one issuer or of any one issue.
- 3 Where, however, the property of the pool is invested as to more than 35% in such securities issued by any one issuer, then –
  - a. up to 30% of the property of the pool may consist of such securities of any one issue;
  - b. the property of the pool must include such securities issued by that or another issuer of at least 6 different issues; and
  - c. the disclosures in paragraph 4 must have been duly made.
- 4 Where it is intended or anticipated that paragraph 3 may apply, the constitutional documents, and the most recently published prospectus, must clearly state –
  - a. the fact that more than 35% of the property of the pool is or may be invested in Government and other public securities issued by one issuer; and
  - b. the identity of the issuer.
- 5 In these Rules, “Government and other public securities” means transferable securities which are investments falling within paragraph 3 of Schedule 1 to the Financial Services Act which are issued by or on behalf of –
  - a. the Government of the United Kingdom, of Northern Ireland, or of a member state other than the United Kingdom;
  - b. a local authority in the United Kingdom or in any other member state;
  - c. the Government of any of the countries listed in paragraph 6; or
  - d. an international organization of which the United Kingdom or another member state is a member,and also includes any investment which would have been such an investment had it been issued, as opposed to merely guaranteed, by a Government or local authority specified in a., b. or c. above.
- 6 The countries relevant for paragraph 5c. above are –
  - a. Australia;
  - b. Canada;
  - c. Japan;
  - d. New Zealand;
  - e. Switzerland;
  - f. United States of America.
- 7 In paragraphs 2, 3 and 4 (but not in paragraph 5) above, in relation to Government and other public securities –
  - a. issue, issued and issuer include guarantee, guaranteed and guarantor; and
  - b. an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other terms of the issue.

### 5.14 Investment in collective investment funds

- 1 A securities fund may invest in units in a collective investment fund only if the second fund –
  - a. is either –
    - (i) a recognized fund,
    - (ii) a collective investment fund that complies with the conditions necessary for it to enjoy the rights conferred by the UCITS Directive,
    - (iii) a recognized scheme, or
    - (iv) a collective investment fund the units of which are approved securities;
  - b. is dedicated to investing funds raised from the public in transferable securities or money market fund assets, as defined in Article 5.18;
  - c. operates on the principle of risk spreading; and
  - d. has terms which –
    - (i) prohibit more than 5% in value of the property of the collective investment fund consisting of units in collective investment funds, and
    - (ii) have the effect that the only units in which the collective investment fund may invest are units in collective investment funds themselves falling within this Article.
- 2 In relation to investment under this Article into a constituent part, or its equivalent, of a collective investment fund which is an umbrella fund, that constituent part, or its equivalent, shall be treated as a separate collective investment fund and such constituent part, or its equivalent, must meet all of the requirements of paragraph 1.

### 5.15 Investment in warrants and in nil paid or partly paid securities

- 1 A warrant falls within any power of investment only if it is reasonably foreseeable that the right to subscribe conferred by the warrant could be exercised by the pool without contravening these Rules.
- 2 A transferable security on which any sum is unpaid falls within any power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the pool, at the time when payment is required, without contravening these Rules.
- 3 Up to 5% of the value of the property of the pool may consist of warrants: but there is no similar limit in respect of securities on which any sum is unpaid.
- 4 A warrant, as defined in Article 5.07, which is an investment falling within paragraph 5 of Schedule 1 to the Financial Services Act which is akin to an investment falling within paragraph 4 of that Schedule may not be included in the property of the pool unless it is listed on an eligible securities market.

### 5.16 Significant influence

- 1 A recognized fund may only acquire transferable securities issued by a body corporate carrying rights to vote at a general meeting of that body if –

- a. immediately before the acquisition the aggregate number of any such securities of that body held by the recognized fund does not give the recognized fund power significantly to influence the conduct of business of that body; and
  - b. the acquisition will not give the recognized fund that power.
- 2 For the purpose of paragraph 1 a recognized fund shall be taken to have power significantly to influence the conduct of business of a body corporate if it can, by virtue of the transferable securities held by it, exercise or control the exercise of 20% or more of the votes cast at a general meeting of that body (disregarding for this purpose any temporary suspension of voting rights in respect of the securities of that body).
- 3 A recognized fund must not hold –
  - a. transferable securities which do not carry rights to vote at a general meeting of the body corporate that issued them and represent more than 10% of the issued share capital of that body corporate; or
  - b. more than 10% of the units of a collective investment fund.

#### **5.17 Investment in collective investment funds managed by manager etc.**

Units in a collective investment fund do not fall within Article 5.14 if the collective investment fund is managed or operated by the manager or an associate of the manager of the investing fund, unless –

- a. the instrument constituting the collective investment fund states that its investment will be restricted to a particular geographic area or economic sector or other specific investment objective;
- b. the constitutional documents of the investing recognized fund and its prospectus clearly state that the property of the pool may include such units; and
- c. Article 5.70 (investment in other group collective investment funds) is complied with.

## SECTION C

### MONEY MARKET FUNDS

#### 5.18 Money market funds: general

- 1 Subject to this Section and to any other Sections of this Part, the property of the pool of a money market fund shall consist of “money market fund assets”.
- 2 For this purpose, “money market fund assets” means any of the following –
  - a. cash and near cash;
  - b. bills of exchange accepted by an eligible institution, if repayable within 12 months;
  - c. investments within paragraph 2 of Schedule 1 to the Financial Services Act (debentures) which are –
    - (i) repayable within 12 months,
    - (ii) not subordinated, and
    - (iii) either approved securities within Article 5.06.1a. or 5.06.1b. above (on-exchange), or else are issued by an eligible institution otherwise than in return for a deposit in a. above; and
  - d. a deposit which would be within a. above (near cash) except that it is repayable within 6 months (instead of immediately and without payment of a penalty exceeding 7 day’s interest calculated at ordinary commercial rates);
  - e. units in one or more regulated collective investment funds or a constituent part, or its equivalent, thereof each of which is either a money market fund or which is of a category that is equivalent to a money market fund.
- 3 Article 5.20 (spread) does not apply until –
  - a. the expiry of a period of 6 months after the date on which the money market fund is authorized (or on which the initial offer commenced if later); or
  - b. the date when the value of the property of the pool first exceeds £1,000,000 (or the equivalent in the base currency of the money market fund) (or on which the initial offer ends, if later),whichever is the earlier, but the manager and the trustee or the directors shall ensure, so far as practicable, during that period that the pool is invested with the aim of spreading risk.

#### 5.19 Investment limits

- 1 This Article is subject to Article 5.18.
- 2 At least 35% in value of the property of the pool must consist of instruments or deposits which are –
  - a. redeemable or repayable within 2 weeks; or

- b. capable of being transferred without the consent of a third party (any issuer being regarded as a third party for this purpose).
- 3 Up to 80% in value of the property of the pool may consist of transferable securities.

## 5.20 Spread

- 1 Up to 5% in value of the property of the pool may consist of instruments issued by any one issuer; but this limit does not apply to instruments which are Government and other public securities.
- 2 Article 5.13 shall apply to Government and other public securities.
- 3 Up to 10% in value of the property of the pool may be kept on deposit with any one person.
- 4 For the purposes of paragraph 3, the depositary and its associates are regarded as one person, and the manager and its associates as another.
- 5 The figure of 10% in paragraph 3 may be regarded as 20% if the person is an eligible institution being an institution which has, or in the case of an eligible institution within the terms of sub-paragraph a. or e. of the definition of “eligible institution” in Schedule 4 having a subsidiary or holding company which is an eligible institution which has, capital which is shareholders’ funds of an amount, as most recently quoted in “The Banker” magazine published by Financial Times Information Limited, of US\$ 1,000,000,000 or more, provided that the amount of the aggregate of the deposits of all pools of the recognized fund do not exceed 10% of that person’s issued capital and reserves as shown in its most recently published annual accounts.
- 6 Paragraphs 3, 4 and 5 do not apply to a money market fund with respect to any deposit which is less than £1,000,000 (or the equivalent amount in the base currency).

## 5.21 Other provisions

The following Articles apply to money market funds –

- a. 5.15.2 (investment in nil paid or partly paid securities);
- b. 5.16 (significant influence).

**SECTION D****FUTURES AND OPTIONS FUNDS****5.22 Futures and options funds: general**

- 1 Subject to this Section and to any other Sections of this Part, the property of the pool of a futures and options fund shall consist of any or all of the following –
  - a. transferable securities available to a securities fund;
  - b. derivatives under this Section;
  - c. forward transactions in currencies or gold under this Section;
  - d. cash or near cash (to which no limit applies);
  - e. units in collective investment funds under Article 5.24; and
  - f. gold.
- 2 In respect of investment within paragraph 1a., Section B above (securities funds) shall apply as if the futures and options fund were a securities fund, but subject to any specific modification in this Section.
- 3 In respect of investment within paragraph 1b. or c., a derivatives or forward transaction may be effected under this Section only if –
  - a. the transaction is of the kind specified in Article 5.23 (permitted transactions); and
  - b. the transaction is fully covered, as required by Article 5.25 (cover for derivatives and forward transactions), or else the subject of deposit arrangements, as required by Article 5.27.
- 4 Up to 10% in value of the property of the pool may be used for derivatives transactions in the form of uncovered purchased options (taking the current market value of the option as its value for this purpose), but the manager must deduct from that figure of 10% any percentage of the value of the property of the pool invested in transferable securities in the form of warrants.
- 5 Up to 10% in value of the property of the pool may be held in the form of gold.
- 6 Spread. Up to 10% in value of the property of the pool may be kept as cash on deposit with any one person.
- 7 For the purposes of paragraph 6, the depositary and the depositary's associates are regarded as one person, and the manager and the manager's associates as another.
- 8 The figure of 10% in paragraph 6 may be regarded as 20% if the person is an eligible institution being an institution which has, or in the case of an eligible institution within the terms of sub-paragraph a. or e. of the definition of "eligible institution" in Schedule 4 having a subsidiary or holding company which is an eligible institution which has, capital which is shareholders' funds of an amount, as most recently quoted in "The Banker" magazine published by Financial Times Information Limited, of US\$ 1,000,000,000 or more, provided that the amount of the aggregate of the deposits of all pools of the recognized fund do not exceed 10%

of that person's issued capital and reserves as shown in its most recently published annual accounts.

- 9 Paragraphs 6, 7 and 8 do not apply to a futures and options fund with respect to any deposit which is less than £1,000,000 (or the equivalent amount in the base currency).

### 5.23 Permitted transactions (derivatives and forwards)

- 1 A derivatives transaction under this Section must be –
- a. in an approved derivative (as defined in Article 5.08.02);
  - b. one which complies with paragraphs 5 to 8 (off- exchange); or
  - c. a “synthetic future” which complies with paragraphs 9 and 10.
- 2 Any transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
- 3 Any forward transaction must be with an approved counterparty which is within paragraph 6 (eligible institutions, listed money market institutions, etc.).
- 4 No more than 5% of the value of the property of the pool may be directed to initial outlay in respect of off-exchange transactions with any one counterparty.
- 5 **OFF-EXCHANGE.** Any derivatives transaction under paragraph 1.b. must be –
- a. a future or an option or a contract for differences resembling an option;
  - b. with an approved counterparty under paragraph 6;
  - c. on approved terms under paragraph 7; and
  - d. capable of valuation under paragraph 8.
- 6 A counterparty to a derivatives transaction is approved for the purposes of paragraph 5 only if it is –
- a. an eligible institution;
  - b. a person included in the list maintained by the Bank of England for the purposes of section 43 of the Financial Services Act (listed money market institutions); or
  - c. an authorized person who is regulated by a recognized self-regulating organization (or by the Financial Services Authority) or a person registered and regulated by the Commission in respect of investment business of a kind which includes the writing or purchasing of off-exchange futures or options as principal.
- 7 The terms of a derivatives transaction are approved for the purposes of paragraph 5 only if, before the transaction is entered into, the depositary is satisfied that the counterparty has agreed with the manager –
- a. to provide a valuation in respect of that transaction, on a buying and selling basis, or a mid-market price basis, as the case may be, –
    - (i) at least once a week, and
    - (ii) at any other time at the request of the manager; and

- b. that he or she will, at the request of the manager, enter into a further transaction to close out that transaction at a price which is reasonably related to the “fair value” price (that is at a price corresponding with the value at which the derivative would be valued on the dual pricing basis, or the single pricing basis (as appropriate) under Part 4).
- 8 A derivatives transaction is capable of valuation for the purposes of paragraph 5 only if the manager reasonably believes that, throughout the time of the life of the derivative (if the transaction is entered into), the manager will be able to value the investment concerned with reasonable accuracy on the basis of a pricing model which has been agreed between the manager and the depositary, or on some other reliable basis reflecting an up-to-date market value which has been so agreed.
- 9 “Synthetic futures”. For the purposes of this Section, the manager may, in the 2 ways described in paragraph 10, create out of 2 options something in the nature of a composite derivative.
- 10 The 2 ways referred to in paragraph 9 are that –
- a. a bought call option coupled with a written put option will create a synthetic bought future; and
- b. a bought put option coupled with a written call option will create a synthetic sold future,
- provided that the 2 options –
- (i) are bought and written, whether simultaneously or not, on a single eligible derivatives market;
- (ii) relate to the same underlying security or other asset;
- (iii) give the purchasers of the options the same rights of exercise (whether at the same price or not); and
- (iv) will expire, if not exercised, together.
- 11 A derivatives or forward transaction which will or could lead to delivery of property to the depositary may be entered into only if –
- a. such property can be held by the pool (or else the transaction is a bought future or bought call option); and
- b. the manager reasonably believes that delivery of the property pursuant to the transaction will not occur or will not lead to a breach of these Rules.
- 12 A transaction permitted under this Article may at any time be closed out.

#### **5.24 Investment in collective investment funds**

- 1 Up to 5% in value of the property of the pool may consist of units in collective investment funds or constituent parts, or their equivalent, of umbrella funds each of which –
- a. is a regulated collective investment fund or constituent part, or its equivalent, thereof which is either a futures and options fund or a money market fund or a fund of a category that is equivalent to the category of one of such funds;
- b. is within Article 5.14; or
- c. would be within Article 5.14, if 5.14.1b. read as follows –





- covered on the basis of the higher of the cover requirements of the options which make up the synthetic future;
- b. “synthetic cash” (that is where a position in a derivative offsets an exposure in property to the point where that exposure has effectively been neutralised, and the effect of the combined holding of both property and the position in the derivative is the same as if the pool had received or stood to receive the value of the property in cash) is available to provide cover for a transaction as if it were cash.
- 6 Cash not yet received into the property of the pool but due to be received within one month is available as cover for the purposes of paragraphs 2b. and 3.
- 7 Subject to paragraph 5, to the extent that property of the pool has been used for cover in respect of one exposure (whether under this Section or otherwise), it is not available for cover in respect of another.
- 8 Property is not available for cover if it is the subject of a transaction under Section L (stocklending), unless the manager reasonably believes that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.
- 9 Examples of the cover requirements are as follows –
- a. A bought put option (or a written call option) on 1000 ordinary £1 shares (fully paid) of ABC plc has to be covered by an existing holding in the recognized fund of 1000 ordinary £1 shares (fully paid) of ABC plc (paragraph 2a. above).
- b. A bought call option (or written put option) on 1000 ordinary £1 shares (fully paid) of ABC plc has to be covered by cover (in the form of cash or an allowable substitute for cash or transferable securities) which is sufficient in amount to meet the purchase of the shares on exercise of the option (paragraph 2b. above).
- c. A sold contract for differences on short-dated sterling has to be covered by cash or near cash or transferable securities, the values of which together at least match the notional principal of the contract (e.g. a LIFFE short sterling contract, or a successive series of such contracts, is covered by £500,000) (paragraphs 2b. and 7 above).
- d. A sold future on the FT-SE 100 Index may be covered by holdings of equities, (or a combination of cash (or near cash) and call options on that future) which satisfy the test of appropriateness for cover in paragraph 3 in relation to that future, and the values of which together at least match the current mark to market valuation of the future (e.g. if the multiplier per full index point is £25, and if the eventual obligation under the future is currently at 2800, the valuation of the futures position is  $2800 \times £25 = £70,000$ ) (paragraph 3 above and Article 5.26).
- e. Where the manager of a pool, which has holdings in “blue chip” U.K. shares, wishes to switch exposure to the US market, and decides to sell a FT-SE index future to the value of those shares (this transaction satisfying the test of appropriateness for cover in paragraph 3), then the sterling “synthetic cash” position created may thereupon be used as cover for a S&P 500 index future provided that the manager ensures that the cover remains sufficient (e.g. by reference to the sterling/US dollar exchange rate) (paragraphs 3 and 5b. above).

## 5.26 Derivatives covering derivatives

- 1 Where the manager proposes to use a position resulting from a derivatives transaction as cover (whether in whole or in part) for the exposure of another derivatives transaction, Article 5.25 shall have effect as modified by this Article.
- 2 In this Article “countervailing” means that one of the 2 derivatives has an exposure which, in terms of risk, is equal and opposite to the exposure of the other, and “offset” means that there is an equal and opposite coverage in terms of risk.
- 3 On the basis that the requirements of Article 5.25 about the amount and right kind of assets used as cover are satisfied, the following Table contains the rules for the purposes of paragraph 1.

**Table 5.1 – Derivatives covering derivatives: ground rules**

### RULES

- 1 A derivative of one type provides cover for a countervailing derivative of the same type (e.g. a bought future covers a sold future, and a bought call option covers a written call option).
- 2 A derivative of one type provides cover for a countervailing derivative of a different type if, but only if, –
  - a. the right under one offsets and is offset by the obligation under the other; or
  - b. rule 6 applies.
- 3 In applying rules 1 and 2, differences between the derivatives in terms of price, maturity and exercise price may be ignored, except where rule 4 applies.
- 4 Rule 1 above does not apply if an opportunity to exercise the right under the one derivative will become available to the pool only after the first date on which the potential obligation under the other may become an actual obligation.
- 5 Where, under rule 1, the manager decides that a written option and a purchased option should provide mutual cover, the manager must arrange for the depositary to deposit and set aside with an eligible institution (and the manager may not use for the purposes of providing cover under these Rules) the whole amount of the difference between the exercise value of the 2 options (that is the amount which would be payable by or to the pool on exercise of the options) inclusive of any margin requirements of the exchange.
- 6 A written option provides cover for, and is covered by, a countervailing future only if the option is in the money to the purchaser of the option; but if the written option is out of the money to the purchaser, then both it and the future must each be separately covered under Article 5.25.
- 7 A contract for differences may be included in these rules if and to the extent that it has the characteristics of a future or an option.

## 5.27 Deposit arrangements (for purchased options) and borrowing

- 1 **Deposit arrangements.** Where the manager proposes to purchase an uncovered option in reliance on Article 5.22.4, the manager must arrange for the depositary to deposit and set aside with an eligible institution (and the manager must not use for

the purposes of providing cover under these Rules) any amount by which 5% of the exercise value of the option (that is the amount which would be payable by the recognized fund on exercise of the option) exceeds the amount paid by way of premium.

- 2 The amount to be deposited and set aside may be in cash or else in Government and other public securities (which are to be valued for this purpose at the current mark to market valuation).
- 3 **Borrowing.** Cash obtained by borrowing, and borrowings which the manager reasonably regards an eligible institution to be committed to provide, are available for cover under Article 5.25, as long as the normal limits on borrowing (as to which see Articles 5.63 and 5.64) are observed.
- 4 Where, for the purposes of this Section, the depositary –
  - a. borrows for the pool an amount of currency from an eligible institution; and
  - b. keeps an amount in another currency, at least equal to the borrowing for the time being in a., on deposit with the lender (or the lender's agent or nominee),

then this Section shall apply as if the borrowed currency, and not the deposited currency, were part of the property of the pool, and the normal limits on borrowing under Articles 5.63 and 5.64 do not apply to that borrowing.

## 5.28 Continuing nature of limits and requirements

- 1 The manager must, at each valuation point (and more frequently if necessary), re-calculate the amount of cover required in respect of derivatives and forward positions already in existence under this Section, and derivatives and rights under forward transactions under this Section may be retained in the property of the pool only so long as they remain covered both individually and globally under Article 5.25 (or, where relevant, the deposit requirements in Article 5.27 are complied with).
- 2 If at any time –
  - a. any fact or matter relating to the recognized fund or its economic environment; or
  - b. the aggregate of all outstanding derivatives or forward positions under this Section,

is such that at least one of the relevant transactions (assuming it did not exist) could not then properly have been effected, either in that size or at all, the manager must forthwith on becoming aware of that fact take such steps as are necessary to rectify the situation, whether by closing out or providing additional cover or otherwise.

**SECTION E****GEARED FUTURES AND OPTIONS FUNDS****5.29 Geared futures and options funds: general**

- 1 Subject to this Section and to any other Sections of this Part, the property of the pool of a geared futures and options fund shall consist of any or all of the following –
  - a. transferable securities available to a securities fund;
  - b. derivatives or forward transactions which are covered on the basis available to a futures and options fund;
  - c. derivatives under this Section;
  - d. forward transactions in currencies or gold under this Section;
  - e. cash or near cash (to which no limit applies);
  - f. units in collective investment funds under Article 5.32; and
  - g. gold.
- 2 In respect of investment within paragraph 1a., Section B above (securities funds) shall apply as if the pool were a securities fund, but subject to any special modification in this Section.
- 3 In respect of derivatives and forward transactions under paragraph 1b., Section D above (futures and options funds), except Article 5.24, shall apply as if the pool were a futures and options fund, but subject to any special modifications in this Section.
- 4 In respect of derivatives within paragraph 1c. –
  - a. any derivatives transaction must be in an approved derivative, or else one which complies with Article 5.23.5 to 8 (off-exchange); and
  - b. any transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
- 5 In respect of transactions within paragraph 1d., this Section, except paragraph 4 above and Article 5.30.5, shall apply as if any forward transaction were a derivatives transaction; and the transaction must be with a counterparty which is within Article 5.23.6 (eligible institutions, listed money market institutions, etc.).
- 6 Up to 10% in value of the property of the pool may be held in the form of gold.
- 7 The depositary of a geared futures and options fund does not have power to borrow whether by virtue of this Section or Section K or otherwise.

**5.30 Limits on investment in initial outlay**

- 1 Subject to paragraph 3, up to 20% in value of the property of the pool at any time may be devoted to initial outlay in any derivatives transactions which are at any time outstanding.

- 2 In these Rules, “initial outlay” means the amount which the pool is required to pay, transfer or deposit as a fidelity deposit or otherwise in order to obtain rights under a derivatives transaction; and, for these purposes, –
- a. regard shall be had to the rules of any relevant eligible derivatives market relating to margin, initial margin, premium etc.;
  - b. any increase in margin or initial margin, if required by such a market, is regarded as initial outlay from then on;
  - c. any decrease in margin or initial margin, if allowed by such a market, ceases to be initial outlay from then on;
  - d. variation margin (that is an additional sum required to be paid to retain the rights following a movement in prices etc.) is not initial outlay;
  - e. premium which may become payable in the future pursuant to the transaction in respect of an option is regarded as initial outlay from the outset;
  - f. in the case of a purchased option, the amount mentioned in paragraph 4 is to be regarded as initial outlay;
  - g. in the case of a written off-exchange option, the amount mentioned in paragraph 5 is to be regarded as initial outlay;
  - h. in the case of an off-exchange future, the amount mentioned in paragraph 6 is to be regarded as initial outlay; and
  - i. in the case of a forward transaction, the amount mentioned in paragraph 7 is to be regarded as initial outlay.
- 3 Up to 10% in value of the property of the pool may be used for initial outlay on derivatives transactions in the form of purchased options without it counting towards the 20% in paragraph 1, but the manager must deduct from the figure of 10% any percentage of the value of the property of the pool invested in transferable securities in the form of warrants.
- 4 Where an option is purchased for the account of the pool, the manager shall ascertain the amount, if any, by which 5% of the exercise value of the option (that is the amount which would be payable or receivable by the pool on exercise of the option) exceeds the amount paid by way of premium.
- 5 Where an off-exchange option is written for the account of the pool the manager shall ascertain at the outset and at each valuation the sum of –
- a. 5% of the exercise value of the option (that is the amount which would be payable by the purchaser of the option, on exercise of the option); and
  - b. the amount, if any, by which the option is “in the money” to the purchaser of the option.
- 6 Where a transaction in an off-exchange future is entered into for the account of the pool, the manager shall ascertain at the outset and at each valuation the amount which is the sum of –
- a. 5% of the value of the amount of property to be bought or sold pursuant to the contract; and
  - b. the amount, if any, by which the future would cause a loss to the pool if it were to be closed out.

- 7 Where a forward transaction is entered into for the account of the pool, the manager shall ascertain at the outset and at each valuation the amount which is 5% of the value of the forward contract (that is the amount of currency or of gold to be purchased or sold pursuant to the transaction at the current valuation in the currency or one of the currencies relevant for the purposes of the transaction) for each period of 3 months (or part thereof) between the date of the latest valuation and the date of maturity.
- 8 The manager shall arrange for the depositary to deposit and set aside with an eligible institution (and the manager must not use for the purposes of providing cover under these Rules) the amounts for the time being required by paragraphs 4, 5, 6 and 7.
- 9 The amounts to be deposited and set aside may be in cash or else in Government and other public securities (which are to be valued for this purpose at the current mark to market valuation).

### 5.31 Spread

- 1 Subject to Article 5.30 there is no limit on the value of the property of the pool which may be devoted to initial outlay in respect of derivatives on or related to any one category of underlying security, commodity or factor.
- 2 Notwithstanding paragraph 1, the manager must exercise reasonable prudence in relation to the diversification of the property of the pool so far as it is devoted to derivatives, account being taken of the extent to which diversification is already achieved by use of derivatives which by their nature are broadly diversified (such as, for instance, derivatives related to a broadly based index).
- 3 Up to 5% in value of the property of the pool may be devoted to initial outlay in respect of off-exchange transactions with any one counterparty.
- 4 In paragraph 2, “diversification” relates to diversification in terms of geographical sectors, economic sectors, currencies, commodities, maturity of instruments, exercise price under instruments and any other form of spreading of risk undertaken by a reasonably prudent investment manager.
- 5 Up to 10% in value may be kept as cash on deposit with any one person.
- 6 For the purposes of paragraph 5, the depositary and the depositary’s associates are regarded as one person, and the manager and the manager’s associates as another.
- 7 The figure of 10% in paragraph 5 may be regarded as 20% if the person is an eligible institution being an institution which has, or in the case of an eligible institution within the terms of sub-paragraph a. or e. of the definition of “eligible institution” in Schedule 4 having a subsidiary or holding company which is an eligible institution which has, capital which is shareholders’ funds of an amount, as most recently quoted in “The Banker” magazine published by Financial Times Information Limited, of US\$ 1,000,000,000 or more, provided that the amount of the aggregate of the deposits of all pools of the recognized fund do not exceed 10% of that person’s issued capital and reserves as shown in its most recently published annual accounts.
- 8 Paragraphs 5, 6 and 7 do not apply to a geared futures and options fund with respect to any deposit which is less than £1,000,000 (or the equivalent amount in the base currency).

### 5.32 Investment in collective investment funds

1. Up to 5% in value of the property of the pool may consist of units in collective investment funds or constituent parts, or their equivalent, of umbrella funds each of which –
  - a. is a regulated collective investment fund or constituent part, or its equivalent, thereof which is either a futures and options fund or a geared futures and options fund or a money market fund or a fund of a category that is equivalent to the category of one of such funds;
  - b. is within Article 5.14; or
  - c. would be within Article 5.14, if 5.14.1b. read as follows –
    - “b. is dedicated to investing funds raised from the public –
      - (i) in approved or other derivatives (where most or all of the transactions in derivatives are fully covered by cash, securities and other derivatives), whether with or without transferable securities or covered forward transactions in currency or gold, or
      - (ii) in approved and other derivatives (where the extent of investment is limited by the amount of the property of the pool available to be put up as initial outlay), whether with or without transferable securities and whether with or without investment within (i) above.”
2. Units in a collective investment fund or constituent part, or its equivalent, of an umbrella fund do not fall within paragraph 1 above if the fund is managed or operated by the manager or an associate of the manager of the investing pool, unless –
  - a. the constitutional documents of the investing pool and its prospectus clearly state that the property of the investing pool may include such units; and
  - b. Article 5.70 (investment in other group collective investment funds) is complied with.

### 5.33 Delivery of property pursuant to a derivatives transaction

1. When entering into any derivatives transaction as a result of which any investment or asset may become part of the property of the pool, the manager must comply with paragraph 2 (where the investment or asset is one of which the property of the pool could in some measure consist) or with paragraph 3 (in any other case).
2. Where this paragraph applies, the manager must reasonably believe that the transaction will not result in any breach of these Rules –
  - a. either because it can readily be closed out; or
  - b. because the investment or asset concerned will at the expected time be included within the property of the pool in a manner which conforms with these Rules.
3. Where this paragraph applies, the manager must reasonably believe that the transaction can readily be closed out.



- 4 Where, in the event the belief in paragraph 2 or 3 proves unjustified, and the manager decides with the consent of the depositary, pursuant to Article 7.13, that it is in the interests of the unitholders that the property should temporarily be acquired, then the property concerned may, notwithstanding anything else in these Rules, form part of the property of the pool until the position can be rectified.

## SECTION F

### PROPERTY FUNDS

#### 5.34 Property funds: general

- 1 Subject to this Section and to any other Sections of this Part, the property of the pool of a property fund shall consist of any or all of the following –
  - a. approved immovables;
  - b. property related assets, as defined in Article 5.36 below;
  - c. Government and other public securities;
  - d. units in collective investment funds under paragraph 5.
- 2 Up to 80% in value of the property of the pool may consist of approved immovables, but this limit is subject to paragraph 6 below.
- 3 Up to 80% in value of the property of the pool may consist of transferable securities, but these must be property related assets which are approved securities or else separately permitted within paragraph 4, 5 or 6 below.
- 4 Up to 35% in value of the property of the pool may consist of Government and other public securities.
- 5 Up to 5% in value of the property of the pool may consist of units in collective investment funds under Article 5.37 below.
- 6 Up to 10% in value of the property of the pool may, under Article 5.36.2 below, consist of shares which are property related assets but are not approved securities but any shares included pursuant to this paragraph must be included within the 80% limit in paragraph 2, which may therefore on occasion produce a limit of 70% for approved immovables.
- 7 Up to 5% in value of the property of the pool may consist of transferable securities within paragraph 3 which are warrants: but these must be property related assets which are approved securities.

#### 5.35 Permitted and approved immovables

- 1 In these Rules “permitted immovable” means any interest in any land or building which falls within paragraph 2 (excluding immovable property of the type referred to in Article 5.02.1); and an approved immovable is a permitted immovable –
  - a. which is regarded as transferable or having marriage value within paragraph 3 or 4;
  - b. which is accessible within paragraph 5;
  - c. which has a good root of title within paragraph 6;
  - d. which is unencumbered (or adequately unencumbered) within paragraph 7; and

- e. which has been or is to be bought promptly and at a reasonable price within paragraph 8.
- 2 An interest in land or a building qualifies for this purpose if –
- a. it is in Jersey or in England and Wales or in Northern Ireland a freehold or leasehold interest, or in Scotland any interest or estate in or over land or heritable right including a long lease, (or the equivalent in any other country or territory);
- b. the land or building is situated in Jersey, the United Kingdom, another member state or a country listed in paragraph 9; and
- c. where the interest is leasehold (or its equivalent) it has an unexpired term of 20 years or more,
- and furniture, fittings or other contents of any building may for this purpose be regarded as part of it.
- 3 An immovable is regarded as transferable if the manager has received a report from an appropriate valuer (as to which see paragraph 10) valuing the immovable (with and without any relevant subsisting mortgage) and stating that, in the valuer's opinion, the immovable would, if acquired for the pool, be capable of being disposed of reasonably expeditiously at that valuation.
- 4 An immovable is regarded as having marriage value if the manager has received a report from an appropriate valuer valuing the immovable and stating that –
- a. it is adjacent to or contiguous with an immovable included in the property of the pool; and
- b. in the valuer's opinion, the total value of the immovable, if acquired for the pool, and of the other immovable in a., would be at least equal to the sum of the price payable for the immovable and the existing value of the other immovable in a.
- 5 An immovable is regarded as accessible if the manager (after consulting the depositary in any case of substantial doubt) is satisfied that reasonable access to it is assured.
- 6 An immovable is regarded as having a good root of title if the manager (after taking such advice as appears to the manager appropriate) reasonably believes that the title to the immovable is a good marketable title.
- 7 An immovable is regarded –
- a. as unencumbered if there is no subsisting hypothec or mortgage over or on it; and
- b. as adequately unencumbered if the only hypothecs or mortgages over or on it are one or more approved mortgages within Article 5.39 which secures or together secure on the immovable repayment of a sum or sums not exceeding 50% of the value at paragraph 3, (that is that part of the value which is valued on the assumption that the immovable is not hypothecated or mortgaged).
- 8 An immovable is regarded as bought promptly and at a reasonable price if –
- a. it is bought or agreed by enforceable contract to be bought within 6 months after receipt of a report by the manager within paragraph 3 or paragraph 4;

- b. at the time of the purchase or agreement it would not reasonably have been apparent to the manager that the report could no longer reasonably be relied upon; and
  - c. it is bought at no more than 105% of the valuation in the report.
- 9 The countries or territories relevant for paragraph 2(b) above are –
- a. Australia;
  - b. Austria;
  - c. Canada;
  - d. Finland;
  - e. Japan;
  - f. New Zealand;
  - g. Norway;
  - h. Sweden;
  - i. Switzerland;
  - j. United States of America.
- 10 In these Rules, a person is an appropriate valuer if –
- a. the person has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
  - b. the person is or is qualified to be the standing independent valuer of a property fund or is reasonably considered by the pool's standing independent valuer to hold equivalent qualifications;
  - c. the person is independent of the manager, depositary, company and each of the directors of the company, in the sense required for a standing independent valuer under Article 12.06 below; and
  - d. neither the person nor any partner (if any) nor fellow director (if any) of the person has been engaged, whether as principal or as agent, in relation to the finding of the immovable for the pool or the finding of the recognized fund for the immovable.

### 5.36 Property related assets

- 1 In these Rules, property related assets means –
- a. investments falling within paragraph 1, 2 or 4 of Schedule 1 to the Financial Services Act which are issued by a property company; or
  - b. investments falling within paragraph 5 of that Schedule which confer rights in respect of an investment within a. above,
- and “property company” means a body corporate a substantial activity of which relates to permitted immovables (whether by way of investing in, dealing in, developing, redeveloping or refurbishing them and whether directly or indirectly).
- 2 Even if not approved securities, property related assets may qualify for investment purposes (under Article 5.34.6) if –

- a. they are investments falling within paragraph 1 of Schedule 1 to the Financial Services Act;
  - b. they are transferable securities; and
  - c. they are shares in a body corporate at least 75% of whose total assets (before deduction of liabilities and as shown in the most recently published accounts) consist of permitted immovables.
- 3 Up to 5% in the value of the property of the pool may consist of investments of the type referred to in paragraph 2 issued by any one issuer; but that figure may be regarded as 10% if –
- a. the pool owns at least 90% of the rights to vote which are exercisable in all circumstances at general meetings of the body corporate;
  - b. the shares are or were bought within 6 months after receipt by the manager or the company of –
    - (i) a report from an appropriate valuer relating to permitted immovables owned by the body corporate, indicating that they are transferable (as at Article 5.35.3) or have marriage value (as at Article 5.35.4), and
    - (ii) a report, on the value of any assets other than permitted immovables, from a person then qualified to be an auditor of a company under the relevant legislation;
  - c. at the time of the purchase it would not have been reasonably apparent to the manager that the report at b(i) or (ii) could no longer reasonably be relied on; and
  - d. the shares were bought at no more than 105% of the total of the values in the reports at b(i) and (ii).

### 5.37 Investment in collective investment funds

- 1 A property fund may invest in units in a collective investment fund or constituent parts, or their equivalent, of an umbrella fund only if the second fund –
  - a. is a regulated collective investment fund or constituent part, or its equivalent, thereof;
  - b. complies or is treated as complying with Article 2.09 of these Rules (repurchase or cancellation of units at price related to valuation); and
  - c. is dedicated to approved immovables, with or without transferable securities which are property related assets or Government and other public securities or is a money market fund or a fund of a category that is equivalent to the category of such a fund.
- 2 Units in a collective investment fund or constituent part, or its equivalent, of an umbrella fund do not fall within paragraph 1 above if the fund is managed or operated by the manager or an associate of the manager of the investing pool, unless –
  - a. the constitutional documents of the investing pool and its prospectus clearly state that the property of the investing pool may include such units; and
  - b. Article 5.70 (investment in other group collective investment funds) is complied with.

**5.38 Property related limits**

- 1 Up to 10% in value of the property of the pool may consist of approved immovables which are leasehold interests (or the equivalent: see Article 5.35.2a) having an unexpired term of less than 60 years.
- 2 Up to 25% in value of the property of the pool may consist of approved immovables which are unoccupied and non-income producing or in course of substantial development, redevelopment or refurbishment.

**5.39 Mortgaged property**

- 1 Up to 15% in value of that part of the property of the pool which for the time being consists of immovables may consist of mortgaged immovables.
- 2 An immovable subject to one or more hypothecs or mortgages may be retained in the pool only so long as the hypothec or mortgage or each of the hypothecs or mortgages is an approved mortgage, the total sums outstanding under which do not exceed 50% of the value of the immovable (assuming for this purpose that the immovable is not hypothecated or mortgaged).
- 3 In these Rules, a hypothec or mortgage is an approved mortgage only if the depositary reasonably believes that the hypothec or mortgage can be discharged on demand or within 28 days by repayment of all the money secured by the hypothec or mortgage (including, where appropriate, any additional sum provided for under the hypothec or mortgage) and that the hypothec or mortgage is “non-recourse” in nature, that is that there is no property on which the hypothec or mortgage is secured, whether immediately or contingently, other than the approved immovable in question.

**5.40 Spread**

- 1 Up to 15% in value of the property of the pool may consist of any one immovable.
- 2 In paragraph 1 “one immovable” includes adjacent or contiguous immovables.
- 3 The figure of 15% in paragraph 1 may be regarded as 25% once the immovable has been included in the property of the pool in compliance with that paragraph.
- 4 Up to 5% in value of the property of the pool may consist of property related assets issued (or conferring rights to investments issued) by any one issuer.
- 5 The figure of 5% in paragraph 4 may be regarded as 10% in respect of up to 40% of the value of the property of the pool.
- 6 Up to 20% of the income receivable in any accounting period may derive from members of any one group; but there is no restriction on the income receivable from any Government or body within Article 5.13 (issuers of Government and other public securities).

**5.41 Initial periods**

- 1 During the period of the initial offer, no immovable may be –
  - a. bought or leased; or
  - b. agreed, by enforceable contract, to be bought or leased,

unless it appears to the manager and to the depositary that more than £5 million (or the equivalent amount in the base currency) has been paid or agreed to be paid for units to be issued or sold.

- 2 Subject to paragraphs 3 and 4, during the first 2 years starting with the date on which the recognized fund receives a recognized fund certificate valid in relation to the pool (or on which the period of the initial offer commenced, if later) –
  - a. Articles 5.38.1 and 5.40 do not apply; and
  - b. the obligation, derived from Article 5.34, that (unless properly held or invested elsewhere) at least 20% in value of the property of the pool must consist of approved immovables does not apply.
- 3 Paragraph 2 ceases to apply if, at any time during the 2 year period, 6 months have elapsed from the first date on which the property of the pool exceeds £15 million in value (or the equivalent amount in the base currency).
- 4 Paragraph 2 postpones the application of Article 5.40.4 (spread of property related assets) for a maximum of 6 months only from the date there mentioned, and not of 2 years.
- 5 This Article applies, where there is no initial offer, as if –
  - a. the period of the process of unitization; or
  - b. the period of 21 days after the date on which persons are first invited to become unitholders,were the period of the initial offer.

#### **5.42 Grant of options, mortgages etc.**

- 1 No option may be granted to buy any immovable comprised in the property of the pool, whether under Section K below (efficient portfolio management) or otherwise.
- 2 No hypothec or mortgage other than an approved mortgage may be created on or over any such immovable.

#### **5.43 Other provisions**

The following Articles apply to property funds –

- a. 5.15 (investment in warrants and in nil or partly paid securities);
- b. (subject to Article 5.36.3) 5.16 (significant influence).

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**SECTION G****WARRANT FUNDS****5.44 Warrant funds**

- 1 Subject to this Section and to any other Sections of this Part, the property of the pool of a warrant fund shall consist of property which could be the property of the pool of a securities fund, except that up to 100% in value of the property of the pool may consist of warrants.
- 2 Accordingly, Section B above applies to a warrant fund as it applies to a securities fund, except that Article 5.15 does not apply.

**SECTION H****FEEDER FUNDS****5.45 Feeder funds: general**

- 1 Subject to Section A above and to Sections M and N below, the property of the pool of a feeder fund –
  - a. shall consist of units in a single recognized fund or other regulated collective investment fund or another collective investment fund acceptable to the Commission, or else;
  - b. shall consist of shares in or debentures of a single eligible investment trust (as to which see Article 5.46); and
  - c. may include cash and near cash for the purposes of redemption of units of the pool or for the purposes of efficient management of the pool or for other purposes consistent with and ancillary to the pool.
- 2 A feeder fund under Article 5.45.1a may not invest in –
  - a. a geared futures and options fund;
  - b. a property fund;
  - c. a warrant fund;
  - d. a feeder fund;
  - e. a fund of funds, unless the fund of funds is prevented by its constitutional documents from investing in any fund within a, b or c;
  - f. any constituent part, or its equivalent, of an umbrella fund which is invested as if it were a pool within a, b, c, d or e;
  - g. a regulated collective investment fund which would, if authorized, fall within any of a to f.



**5.46 Feeder funds investing in eligible investment trusts**

- 1 An investment trust is an eligible investment trust for the purposes of Article 5.45.1b. only –
  - a. if it is acceptable to the Commission and it fulfils the initial condition in paragraph 2; and
  - b. as long as the depositary of the feeder fund has, at any time in the last 6 months, been reasonably satisfied as to the matters in paragraph 3.
- 2 The initial condition is that, at the date on which the recognized fund certificate is granted or amended to be valid in relation to the feeder fund, the property of the investment trust included net assets worth at least £25 million (or, if the base currency of the feeder fund is not sterling, the equivalent in that base currency).
- 3 The matters of which the depositary must be or have been reasonably satisfied are –
  - a. at least 70% of the income of the investment trust received during either or both of –
    - (i) the last completed accounting period, and
    - (ii) the first half of the current accounting period,consisted of income derived from approved securities;
  - b. (apart from transactions for hedging purposes) the property of the investment trust either –
    - (i) cannot be invested in derivatives, or
    - (ii) can be invested in derivatives only on the footing of cover to at least the extent required of a futures and options fund under Article 5.25;
  - c. not more than 5% of the property of the investment trust consists of warrants;
  - d. not more than 5% of the property of the investment trust consists of transferable securities issued by any one issuer, except that the figure of 5% may be regarded as 15% in respect of up to 30% in value of the property of the investment trust;
  - e. the feeder fund owns not more than 20% of the units or shares (or of any class of units or shares) in or of the debentures (or of any class of debentures) of the investment trust;
  - f. the borrowing of the investment trust does not exceed 50% of the market value of the shares of the investment trust at the mid value unit or share price for the time being;
  - g. the units or shares in (or debentures of) the investment trust are regularly offered for purchase and sale by at least 3 market makers who are recognized or registered as members of an eligible securities market; and
  - h. the investment trust has no limit on its duration.

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**SECTION I****FUNDS OF FUNDS****5.47 Funds of funds: general**

- 1 Subject to this Section and to any other Sections of this Part, the property of the pool which is a fund of funds shall consist of units in recognized funds and/or other regulated collective investment funds.
- 2 A fund of funds may not invest in –
  - a. a feeder fund;
  - b. a fund of funds;
  - c. any constituent part, or its equivalent, of an umbrella fund which is a pool constituting a. or b; or
  - d. a regulated collective investment fund which would, if it were a recognized fund, fall within a or b.
- 3 Up to 20% in value of the property of the pool may consist of units in any one pool or other regulated collective investment fund.

**5.48 Eligible combinations of funds**

- 1 A fund of funds may invest in units in any one or more pools within, and/or one or more regulated collective investment funds which, if they were recognized funds, would be within, any one of Sections B, C, D, E, F, or G.
- 2 A fund of funds may invest in units in one or more money market funds and/or one or more regulated collective investment funds which, if they were recognized funds, would be money market funds (within Section C above) and in units in any one or more pools within, and/or one or more regulated collective investment funds which, if they were recognized funds, would be within, any one of the other Sections mentioned in paragraph 1.
- 3 As in the case of a recognized fund where each constituent part of an umbrella fund is a pool, each separate part or sub fund of any other regulated collective investment fund equivalent to an umbrella fund shall also be treated for the purposes of this Article and Article 5.47.3 as if it were a separate pool.

## SECTION J

### UMBRELLA FUNDS

#### 5.49 Umbrella funds: general

- 1 Subject to paragraphs 2 and 3, each of the constituent parts of an umbrella fund shall be invested in a manner which complies with the limits expressed in any one of Sections B to I above.
- 2 No constituent part of an umbrella fund may be invested in units in another constituent part of the same umbrella fund.
- 3 No constituent part of an umbrella fund may be invested in accordance with Section D, E or F above unless the Commission has granted permission in writing for it to do so and, on an application made to it in connection with this paragraph and after being furnished with all such information as it may require, the Commission may grant permission for the constituent part to be invested in accordance with the relevant Section either unconditionally or subject to such conditions as it considers appropriate, or may refuse to grant permission.

## SECTION K

### EFFICIENT PORTFOLIO MANAGEMENT

#### 5.50 Efficient portfolio management: general

- 1 This Section applies to any pool.
- 2 In the application of this Section to a feeder fund or fund of funds, Articles 5.51.2.c. and 5.52.2.b. do not apply.
- 3 This Section is subject to any restriction in the constitutional documents or in the prospectus.

#### 5.51 Appropriate transactions

- 1 This Section enables the manager or the company to enter into transactions of the kind specified in Article 5.54 (permitted transactions) for the purpose of efficient portfolio management, but only when each of the following 2 conditions is satisfied –
  - a. the transaction is economically appropriate to that purpose, as required by Article 5.52; and
  - b. the transaction is fully covered, as required by Article 5.55.
- 2 The purpose of efficient portfolio management is to achieve one or more of the following in respect of the pool –
  - a. the reduction of risk;

- b. the reduction of cost; and
  - c. the generation of additional capital or income for the recognized fund with no, or with an acceptably low level of, risk.
- 3 The purpose in paragraph 2 relates to –
- a. property of the pool;
  - b. property (whether precisely identified or not) which is to be or is proposed to be acquired for the pool; and
  - c. anticipated cash receipts of the pool, if due to be received at some time and likely to be received within one month.

### 5.52 Economic appropriateness

- 1 Any transaction under this Section must be one which (alone or in combination with one or more others) is reasonably believed by the manager to be economically appropriate to the efficient portfolio management of the pool.
- 2 This means that the manager must reasonably believe that –
- a. for transactions undertaken to reduce risk or cost (or both), the transaction (alone or in combination) will diminish a risk or cost of a kind or level which it is sensible to reduce; and
  - b. for transactions undertaken to generate additional capital or income, the pool is certain (or certain barring events which are not reasonably foreseeable) to derive a benefit from the transaction.
- 3 Where, for example, the manager wishes to achieve a switch in exposure, the manager may do so, rather than through sale and purchase of the property of the pool, by use of derivatives (a technique commonly called “tactical asset allocation”) if the transactions concerned reasonably appear to the manager to satisfy paragraphs 1 and 2a.
- 4 A transaction may not be entered into under this Section if its purpose could reasonably be regarded as speculative.
- 5 Where the transaction relates to the actual or potential acquisition of transferable securities, then the manager must intend that the scheme should invest in transferable securities within a reasonable time; and the manager must thereafter ensure that, unless the position has itself been closed out, that intention is realised within that reasonable time.

### 5.53 Generation of additional capital or income

- 1 There is an acceptably low level of risk, for the purposes of Article 5.51.2c, in any case where the manager reasonably believes that the pool is certain (or certain barring events which are not reasonably foreseeable) to derive a benefit –
- a. on a basis set out in paragraph 2 or 3; or
  - b. pursuant to Section L (stocklending).
- 2 The first basis is that the pool takes advantage of pricing imperfections in relation to the acquisition and disposal (or disposal and acquisition) of rights in relation to

the same or equivalent property, being property which the pool holds or may properly hold.

- 3 The second basis is that the pool receives a premium for the writing of a covered call option or a covered put option, even if that benefit is obtained at the expense of surrendering the chance of yet greater benefit.

#### **5.54 Permitted transactions**

- 1 A transaction under this Section must be –
  - a. a derivatives transaction; or
  - b. a forward transaction in a currency (or, where the property of the pool may include gold, in gold).
- 2 A derivatives transaction under paragraph 1.a. must be –
  - a. in an approved derivative (as defined in Article 5.08.2);
  - b. one which complies with Articles 5.23.5 to 8 (off-exchange); or
  - c. a “synthetic future” which complies with Articles 5.23.9 and 10.
- 3 Any transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
- 4 Any forward transaction must be with an approved counterparty which is within Article 5.23.6 (eligible institutions, listed money market institutions, etc.).
- 5 No more than 5% of the value of the property of the pool may be directed to initial outlay in respect of off-exchange transactions with any one counterparty.
- 6 A derivatives or forward transaction which would or could lead to delivery of property to the depositary may be entered into only if –
  - a. such property can be held by the pool;
  - b. the manager reasonably believes that delivery of the property pursuant to the transaction will not lead to a breach of these Rules.
- 7 A transaction permitted under this Article may at any time be closed out.

#### **5.55 Cover for transactions under this Section**

- 1 No transaction may be entered into under this Section unless the maximum potential exposure created by the transaction, in terms of the principal or notional principal of the derivative or forward contract, is –
  - a. covered individually under paragraph 2 or 3; and
  - b. covered globally under paragraph 4,and for this purpose the examples in paragraph 10 below may be relevant.
- 2 Subject to paragraph 3, exposure is covered individually if there is, in the property of the pool –
  - a. (in the case of an exposure in terms of property) a transferable security or other property which is of the right kind, and sufficient in amount, to match the exposure; and

- b. (in the case of an exposure in terms of money), cash or near cash (or borrowing pursuant to Article 5.56) or transferable securities which is or are, or, on being turned into money in the right currency, will be, sufficient in amount to match the exposure.
- 3 Exposure to an index or basket of securities or other assets is covered individually only if the pool holds securities or other property which (taking into account the closeness of the relationship between fluctuations in the price of the 2) can reasonably be regarded as appropriate to provide cover for the exposure, and they may be so regarded even if there is not complete congruence between the cover and the exposure.
- 4 Exposure is covered globally for the purposes of this Section if, after taking account of all the cover required under paragraph 2 or 3 for other positions already in existence, there is available adequate cover from within the property of the pool to enable the fresh transaction to be entered into.
- 5 A derivative or forward transaction is not available to provide cover for another derivative or forward transaction under this Section, but –
- a. the 2 transactions involved in a “synthetic future” are to be treated as if they were a single derivative, and the net exposure from the combination is to be covered on the basis of the higher of the cover requirements of the options which make up the synthetic future;
- b. “synthetic cash” (that is where a position in a derivative offsets an exposure in property to the point where that exposure has effectively been neutralised, and the effect of the combined holding of both property and the position in the derivative is the same as if the pool had received or stood to receive the value of the property in cash) is available to provide cover for a transaction as if it were cash; and
- c. a covered currency forward or a covered currency derivative may provide cover for a derivative.
- 6 Cash not yet received into the property of the pool but due to be received within one month is available as cover for the purposes of paragraphs 2.b. and 3.
- 7 Subject to paragraph 5, to the extent that property of the pool has been used for cover in respect of one exposure, (whether under this Section or otherwise), it is not available for cover in respect of another.
- 8 Property anticipated under a derivative does not count as property under paragraph 2.a.
- 9 Property is not available for cover if it is the subject of a transaction under Section L (stocklending), unless the manager reasonably believes that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.
- 10 Examples of the cover requirements are as follows –
- a. A bought put option (or a written call option) on 1000 ordinary £1 shares (fully paid) of ABC plc has to be covered by an existing holding in the pool of 1000 ordinary £1 shares (fully paid) of ABC plc (paragraph 2.a. above).
- b. A bought call option (or written put option) on 1000 ordinary £1 shares (fully paid) of ABC plc has to be covered by cover (in the form of cash or an allowable substitute for cash or transferable securities) which is sufficient in

amount to meet the purchase price of the shares on exercise of the option (paragraph 2.b. above).

- c. A sold contract for differences on short-dated sterling has to be covered by cash or near cash or transferable securities, the values of which together at least match the notional principal of the contract (e.g. a LIFFE short sterling contract, or a successive series of such contracts, is covered by £500,000) (paragraphs 2.b. and 7 above).
- d. A sold future on the FT-SE 100 Index has to be covered by holdings of equities, which satisfy the test of appropriateness for cover in paragraph 3 in relation to that future, and the values of which together at least match the current mark to market valuation of the future (e.g. if the multiplier per full index point is £25, and if the eventual obligation under the future is currently at 2800, the valuation of the futures position is  $2800 \times £25 = £70,000$ ) (paragraph 3 above).
- e. Where the manager of a recognized fund, which has holdings in “blue chip” U.K. shares, wishes to switch exposure to the US market, and decides to sell a FT-SE index future to the value of those shares (this transaction satisfying the test of appropriateness for cover in paragraph 3), then the sterling “synthetic cash” position created may thereupon be used as cover for a S&P 500 index future provided that the manager ensures that the cover remains sufficient (e.g. by reference to the sterling/US dollar exchange rate) (paragraphs 3 and 5.b. above).

#### **5.56 Borrowing in the context of efficient portfolio management**

- 1 Cash obtained by borrowing, and borrowings which the manager reasonably regards an eligible institution to be committed to provide, are available for cover under Article 5.55, as long as the normal limits on borrowing (as to which see Article 5.63 and 5.64) are observed.
- 2 Where, for the purposes of this Section, the manager –
  - a. borrows for the pool an amount of currency from an eligible institution; and
  - b. keeps an amount in another currency, at least equal to the borrowing for the time being in a., on deposit with the lender (or the lender’s agent or nominee),

then this Section shall apply as if the borrowed currency, and not the deposited currency, were part of the property of the fund, and the normal limits on borrowing under Articles 5.63 and 5.64 below do not apply to that borrowing.

#### **5.57 Continuing nature of limits and requirements**

- 1 The manager must, at each valuation point (and more frequently if necessary), re-calculate the amount of cover required in respect of positions already in existence under this Section, and derivatives and rights under forward transactions under this Section may be retained in the property of the pool only so long as they remain covered both individually and globally under Article 5.55.
- 2 If at any time –
  - a. any fact or matter relating to the pool or its economic environment; or

- b. the aggregate of all outstanding positions under this Section, is such that at least one of the relevant transactions (assuming it did not exist) could not then properly have been effected, either in that size or at all, the manager must forthwith on becoming aware of that fact take such steps as are necessary to rectify the situation, whether by closing out or by providing additional cover or otherwise.

## SECTION L

### STOCKLENDING

#### 5.58 Stocklending: general

- 1 This Section applies to any pool to which Section K (efficient portfolio management) applies, but not to a feeder fund or fund of funds.
- 2 The powers conferred by this Section may be exercised by such a pool for the purpose of efficient portfolio management, that is when it reasonably appears to the manager to be economically appropriate to do so with a view to generating additional income for the pool with no, or an acceptable degree of, risk.
- 3 Paragraphs 1 and 2 are subject to any restrictions in the constitutional documents or prospectus.

#### 5.59 Permitted stocklending

- 1 The depositary may, at the request of the manager, enter into a stocklending arrangement (in relation to the property of the pool) whereby the property of the pool is to be borrowed by a third party, but only if –
  - a. all the terms of the agreement under which securities are to be re-acquired by the depositary are in a form acceptable to the depositary and in accordance with good market practice; or
  - b. the counterparty is an authorized person or a person included in the list maintained for the purposes of section 43 of the Financial Services Act (listed money market institutions) or, in the case of stocklending effected through Clearstream or Euroclear, is acceptable to Clearstream or Euroclear as the case may be although undisclosed to the depositary; and
  - c. either collateral is obtained which is –
    - (i) acceptable to the depositary,
    - (ii) adequate within Article 5.61.1, and
    - (iii) sufficiently immediate within Article 5.61.2,

or in the case of stocklending effected through Clearstream or Euroclear, a guarantee is given to the depositary by Clearstream or Euroclear as the case may be which guarantees the transfer to the account of the depositary of the securities transferred to the account of the borrower under the stocklending arrangement of securities of the same kind and value, in the event of any default on the part of the borrower.



- 2 The counterparty for the purpose of paragraph 1 is the person who is obliged pursuant to or in consequence of the agreement referred to in paragraph 1a to transfer to the depositary or to the relevant account with Clearstream or Euroclear, as appropriate, the securities transferred by, or to the order of, the depositary under the stocklending arrangement or securities of the same kind.

### 5.60 Limitation by value

There is no limit on the value of the property of the pool which may be the subject of transactions within this Section.

### 5.61 Treatment of collateral

- 1 Collateral is adequate only if it –
  - a. exceeds in value, at the time of the transfer to the depositary, the value of the securities transferred by the depositary;
  - b. is transferred to the depositary or its agent;
  - c. is the subject of an agreement for transfer of the collateral, or of assets equivalent to the collateral, by the depositary as soon as the need for it has disappeared; and
  - d. is in the form of one or more of the following –
    - (i) cash,
    - (ii) near cash,
    - (iii) Government and other public securities,
    - (iv) a certificate of deposit,
    - (v) a letter of credit,
    - (vi) securities transferred in CREST by a DBV, or
    - (vii) securities transferred in the Clearstream or Euroclear systems.
- 2 Collateral is sufficiently immediate if –
  - a. it is transferred before or at the time of the transfer of the securities by the depositary; or
  - b. the depositary reasonably believes at that time that it will be transferred at the latest by the close of business on the day of the transfer.
- 3 The depositary shall take such steps as are necessary to ensure that the value of the collateral at all times exceeds the value of the securities transferred by the depositary.
- 4 Any agreement for transfer of securities or of collateral (or of the equivalent of either) under this Section at a future date may be regarded, for the purposes of valuation under Part 4 or these Rules, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the pool.
- 5 Collateral transferred to the depositary is part of the property of the pool for the purposes of these Rules except in the following respects –

- a. it does not fall to be included in any valuation for the purposes of Part 4 or these Rules, because it is offset under paragraph 4 above by an obligation to transfer;
  - b. it does not count as property for any purpose of Part 5 (other than this Section).
- 6 Paragraph 4 and paragraph 5a do not apply to any valuation of collateral itself for the purposes of this Section.
- 7 The duty in paragraph 3 may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired, where the depositary reasonably believes that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.

## SECTION M

### CASH, BORROWING, LENDING ETC.

#### 5.62 Cash and near cash

- 1 The property of the pool may consist of cash and near cash, where this may reasonably be regarded as necessary in order to enable –
  - a. redemption of units;
  - b. efficient management of the pool in accordance with its objectives; or
  - c. other purposes which may reasonably be regarded as ancillary to the investment objectives of the pool.
- 2 Paragraph 1 does not apply to –
  - a. a money market fund;
  - b. a futures and options fund; or
  - c. a geared futures and options fund,but the property of the pool of any such pool may consist of cash and near cash without limitation.
- 3 Paragraph 1 does not apply during the period of the initial offer, during which the property of the pool may consist of cash and near cash without limitation.

#### 5.63 General power to borrow

- 1 Subject to any restriction in the constitutional documents, the depositary or the company may for the account of the pool in accordance with these Rules, borrow money for the use of the pool on terms that the borrowing is to be repayable out of the property of the pool.
- 2 The depositary may borrow under paragraph 1 only from an eligible institution.
- 3 Paragraph 1 does not apply to a geared futures and options fund.
- 4 Except in the case of a futures and options fund, the manager must ensure that the borrowing for the use of the pool is on a temporary basis, and, for this purpose –
  - a. the manager may have regard in particular to –
    - (i) the duration of any period of borrowing, and
    - (ii) the number of occasions on which resort is had to borrowing in any period; and
  - b. the manager must ensure that no period of borrowing exceeds 3 months, whether in respect of any specific sum or at all, without the prior consent of the depositary, which may be given only on such conditions as appear to the depositary appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

- 5 This Article does not apply to “back to back” borrowing under Article 5.56.2.
6. A recognized fund shall not issue any debenture falling within paragraph 2 of Schedule 1 to the Financial Services Act.

#### **5.64 Borrowing limits**

- 1 The manager must ensure that the borrowing of a recognized fund for the use of a pool does not, on any business day, exceed 10% of the value of the property of the pool.
- 2 In the case of a property fund, the manager must ensure that the borrowing shall not, on any business day, exceed 10% of the value of that part of the property of the pool which for the time being does not consist of immovables.
- 3 In relation to a property fund, an approved mortgage under Article 5.39 or 5.42 does not count as borrowing for the purposes of paragraph 2 above.
- 4 This Article does not apply to “back to back” borrowing under Article 5.56.2.
- 5 In this Article, “borrowing” includes, as well as borrowing in a conventional manner, any other arrangement designed to achieve a temporary injection of money into the property of the pool, in the expectation that the sum will be repaid, for example by way of a combination of derivatives which produces an effect similar to a borrowing but does not include any arrangement for the company to pay to a third party (including the manager) any costs which the recognized fund is entitled to amortize under Article 8.12 and which were paid on behalf of the recognized fund by such third party.

#### **5.65 Restriction on lending of money**

- 1 None of the money in the property of the fund of any recognized fund may be lent.
- 2 Acquiring a debenture is not lending for the purposes of paragraph 1; nor is the placing of money on deposit or in a current account.
- 3 Paragraph 1 does not prevent a company from providing an officer of the company with funds to meet expenditure to be incurred by the officer for the purposes of the company (or for the purposes of enabling the officer properly to perform the officer’s duties as an officer of the company) or from doing anything to enable an officer to avoid incurring such expenditure.

#### **5.66 Restriction on lending of property other than money**

- 1 None of the property of the fund other than money may be lent by way of deposit or otherwise.
- 2 Transactions falling within Section L (stocklending) are not lending for the purposes of paragraph 1.
- 3 None of the property of the fund may be hypothecated or mortgaged or otherwise encumbered except under Section F (property funds).
- 4 Nothing in this Article prevents the company or the depositary at the request of the manager or the company from lending, depositing, pledging or charging property

of the fund for margin requirements where the recognized fund is using derivatives or forward transactions pursuant to any other provision of these Rules.

### **5.67 General power to underwrite or accept placings**

- 1 Subject to any restriction in the constitutional documents, any power in this Part to invest in transferable securities may be used for the purpose of entering into transactions to which this Article applies.
- 2 Subject to paragraph 3, this Article applies to any agreement or understanding (whereby transferable securities will or may become part of the property of the fund) –
  - a. which is an underwriting or sub-underwriting agreement; or
  - b. which contemplates that securities will or may be issued to or subscribed for or acquired by the recognized fund.
- 3 This Article does not apply to –
  - a. an option; or
  - b. purchase of a transferable security which confers a right –
    - (i) to subscribe for or acquire a transferable security, or
    - (ii) to convert one transferable security into another.
- 4 No agreement or undertaking to which this Article applies may be entered into if it relates to units in a collective investment fund.
- 5 The exposure of a recognized fund to agreements and undertakings within paragraph 2 must, on any business day –
  - a. be covered under Article 5.55 as if the exposure had been incurred in the context of Section K (efficient portfolio management) by means of transactions in approved derivatives; and
  - b. be such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in these Rules.

### **5.68 Guarantees and indemnities**

- 1 A recognized fund shall not provide any guarantee or indemnity in respect of the obligations of any third party and none of the property of the fund may be used to discharge any obligation arising under a guarantee or indemnity given by the depositary or manager or the company or any director of the company with respect to the obligations of any third party.
- 2 Paragraph 1 does not apply to an indemnity given to a person winding up a body corporate or collective investment fund in circumstances to which Article 4.05.1 (unitization) applies.

**SECTION N****MISCELLANEOUS****5.69 Requirement to cover sales**

- 1 No agreement on behalf of a recognized fund to dispose of property may be made –
  - a. unless that obligation, and any other similar obligation, could immediately be honoured by the recognized fund in relation to the relevant pool by delivery of property of the pool or the assignment of rights; and
  - b. the property and rights at a. are owned by the recognized fund at the time of the agreement.
- 2 Paragraph 1 does not apply to a derivatives or forward transaction under Section K (efficient portfolio management).
- 3 Paragraph 1 does not apply to a futures and options fund or to a geared futures and options fund.

**5.70 Investment in other group collective investment funds**

- 1 No recognized fund (the “first fund”) may invest in or dispose of units in another collective investment fund (the “second fund”) managed or operated by the manager or an associate of the manager of the first fund, unless the manager of the first fund is under a duty to pay into the property of the first fund, within the period specified in paragraph 2 –
  - a. on investment, either any amount by which the consideration paid out of the property of the first fund for the units in the second fund exceeds the price that would have been paid for the benefit of the second fund had the units been newly created or issued by it or, if such price cannot be ascertained by the manager of the first fund, the maximum amount of any charge permitted to be made by the issuer of units in the second fund; and
  - b. on disposal, the amount of any charge made for the account of the manager of the second fund or an associate of the manager in respect of the disposal.
- 2 The period expires at the close of business on the 4th business day next after the agreement to buy or to sell.
- 3 For the purposes of this Article –
  - a. any addition to or deduction from the consideration paid on the acquisition or disposal of units in the second fund, which is applied for the benefit of the second fund and is, or is akin to, a dilution levy made pursuant to Article 4.25, shall be treated as part of the price of the units and not as part of any charge; and
  - b. any charge made in respect of an exchange of units in one constituent part or separate part of the second fund for units in another constituent part or separate part of that collective investment fund shall be included as part of the consideration paid for the units.

**PART 6****TITLE AND TRANSFER****6.01 The register**

- 1 The trustee or the company shall establish and maintain in Jersey a register of the unitholders (the “register”) in accordance with this Article.
- 2 The trustee or the company may appoint the manager or, in the case of a company, the depositary (the “registrar”) to establish and maintain the register on its behalf and, if the trustee or the company does so –
  - a. the trustee or the company remains responsible for the discharge of all of its duties in relation to the register under these Rules; and
  - b. anything required or authorized under these Rules to be done in relation to the register by, to or before the trustee or a representative of the company may be done by, to or before the registrar or its agent.
- 3 The registrar may appoint some other person to establish and maintain the register on its behalf and if the registrar does so it shall remain responsible for the acts and omissions of that other person as though they were the acts and omissions of the registrar itself.
- 4 The register shall be maintained in a legible form or in a manner capable of being reproduced in a legible form.
- 5 There shall be entered in the register –
  - a. the name and address of each unitholder or, in the case of joint unitholders, the names of each of the joint unitholders and the address of the first such unitholder (other than a unitholder or joint unitholders whose units are all for the time being represented by bearer certificates);
  - b. the number of units (including fractions of a unit) of each class held by each such unitholder (other than units the title to which is for the time being represented by bearer certificates);
  - c. the date on which the unitholder was registered in the register in respect of the units standing in the unitholder’s name; and
  - d. the number of units (including fractions of a unit) of each class for the time being in issue and represented by bearer certificates and the numbers of those certificates,but the trustee or the company is not bound to register more than 4 persons as the joint unitholders of any units.
- 6 The trustee or the company must –
  - a. take all reasonable steps; and
  - b. exercise all due diligence,to ensure that the information contained in the register is at all times complete and up to date.

- 7 In relation to paragraph 6, the manager must in particular –
  - a. take such steps as are necessary to obtain and supply information from or concerning any new unitholder to enable the entry in the register to be made; and
  - b. forthwith notify to the trustee or the company any information which the manager receives relating to the accuracy of or any change to any entry in the register.
- 8 Nothing in this Part requires the trustee or company to make or alter any entry in the register or to issue any certificate or other document or to accept any transfer or conversion in any case where either of them considers it necessary or appropriate to carry out or complete identification procedures in relation to the unitholder or another person pursuant to a statutory or regulatory obligation.

#### **6.02 The register as evidence of title**

- 1 Subject to Article 6.11 (default by unitholder), the register shall be conclusive evidence as to the persons respectively entitled to the units entered therein.
- 2 No notice of any trust, express, implied, or constructive in respect of any unit shall be binding on the manager or the depositary or the company.

#### **6.03 Inspection of the register and copies of entries**

- 1 The trustee or the company shall make the register available for inspection by or on behalf of the unitholders or the manager or depositary in Jersey free of charge at all times during ordinary office hours except that the register of a unit trust may be closed at such times and for such periods (not exceeding 30 days in any one year) as the trustee or the company may from time to time determine.
- 2 The trustee or company shall supply to the manager at the manager's request a copy of the register or any part of it.
- 3 The trustee or company shall supply to a unitholder or the unitholder's authorized representative at the unitholder's request and free of charge a copy in print of the entries on the register relating to that unitholder.

#### **6.04 The manager as unitholder**

- 1 The manager may, unless expressly forbidden to do so by the constitutional documents, be a unitholder.
- 2 The manager is deemed to hold each unit which is in issue (other than a unit the title to which is for the time being represented by a bearer certificate) if no person is entered in the register as the unitholder thereof.
- 3 Where units are transferred by a unitholder to the manager, they need not be cancelled, nor need the name of the manager be entered on the register as the new unitholder.



**6.05 Certificates, etc.**

- 1 On or following the sale of units or, subject to Article 6.06, at any other time, a certificate or other document recording title to the units may be issued to the unitholder if and in such form as the trustee or company determines.
- 2 The manager and the trustee or company must agree on the procedures to be followed in repurchasing units.
- 3 Where the procedures agreed under paragraph 2 require the unitholder to surrender any document (or provide any information) as a condition precedent to obtaining the proceeds of repurchase, they must also oblige the trustee or the company to issue the document or provide any relevant information relating to an entry on the register in a timely manner once it is in a position to do so under those procedures.
- 4 Where the constitutional documents enable bearer certificates to be issued, the trustee must determine the form of them, and the manager and trustee must agree on the procedures to be followed in respect of them.
- 5 The steps required to be taken by a unitholder in relation to the sale and repurchase of units must be specified in the prospectus.
- 6 Every unitholder whose units are represented by certificates shall be entitled to exchange any or all of the unitholder's certificates for one or more certificates of such denominations as the unitholder may require representing the same aggregate number of units of the same class but, before any such exchange is carried out, the unitholder shall surrender to the manager the certificate or certificates to be exchanged.
- 7 If a certificate has become mutilated or defaced, the trustee or company in its discretion may issue to the person entitled in exchange for and upon surrender of the mutilated or defaced certificate a new certificate representing the same aggregate number of units of the same class.
- 8 If a certificate shall be lost, stolen or destroyed, the trustee or company may in its discretion issue to the person entitled a new certificate in lieu thereof but no such new certificate shall be issued unless the applicant has –
  - a. furnished to the trustee or company evidence satisfactory to the trustee or company of the loss, theft or destruction of the original certificate;
  - b. paid all expenses incurred in connection with the investigation of the facts thereof; and
  - c. if required by the trustee or company so to do, furnished to the trustee or company such indemnity as the trustee or the company may require.
- 9 If authorized by the constitutional documents to do so, the trustee or company may make –
  - a. the issue of a certificate; and
  - b. the registration of any grant of probate, letters of administration or any other document relating to or affecting the title to any unit,conditional on the payment to it of such reasonable fee as the manager and trustee or company may agree.

**6.06 Transfer of units by act of parties**

- 1 Subject to paragraph 2, every unitholder shall be entitled to transfer units held by the unitholder in respect of which the unitholder is entered in the register by an instrument of transfer in any usual or common form or in such other lawful form as the manager and the trustee or directors may from time to time approve.
- 2 The trustee and the company are not under any duty to accept a transfer –
  - a. if the number or value of the units of any class sought to be transferred would result in the unitholder, or the transferee, holding less than any number or value stated in the prospectus as the minimum number or value to be held of the relevant class;
  - b. if the constitutional documents contain a limitation upon the categories of persons who may be unitholders and the transferee is not within one of those categories; or
  - c. if the instrument relates to units of more than one class.
- 3 Every instrument of transfer of units shall be signed by or on behalf of the unitholder transferring the units (or, in the case of a body corporate, sealed by that body or signed by one of its officers authorized so to sign) and, unless the transferee is the manager, the transferor shall be deemed to remain the unitholder until the name of the transferee has been entered in the register.
- 4 Every instrument of transfer must be left with the trustee or the company for registration accompanied by –
  - a. any necessary declarations or other documents that may be required in consequence of any legislation now or hereafter from time to time in force; and
  - b. such other evidence as the trustee or company may require to prove the right of the transferor to transfer the units or in the case of a body corporate the authority of the signatory on its behalf.
- 5 All instruments of transfer which shall be registered shall be retained by the trustee or company in original, copy or non-documentary form for a period of 10 years.
- 6 Upon registration of an instrument of transfer, a reference shall be made on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.

**6.07 Transfer of units by operation of law**

- 1 On the death of any one of the joint unitholders the survivor or survivors shall be the only persons recognized by the trustee or company as having any title to or any interest in the units held by such joint unitholders.
- 2 The executors or administrators of a deceased unitholder (not being one of 2 or more joint unitholders) shall be the only persons recognized by the trustee or company as having title to the units held by the deceased unitholder.
- 3 Where any person becomes entitled to a unit in consequence of the death or bankruptcy of any sole unitholder or of the survivor of joint unitholders –
  - a. the person may, subject to b. below, upon producing such evidence as to the person's title as the trustee or company may properly require, either be

registered himself or herself as unitholder of the unit (upon giving to the trustee or company notice in writing that the person so desires) or transfer the unit to some other person;

- b. the provisions concerning transfer of units shall be applicable to any such notice or transfer as if the death or bankruptcy had not occurred and as if the notice or transfer were a transfer signed by the unitholder;
- c. subject to d. below, the person so entitled may give a discharge for all monies payable in respect of the unit, but shall not until registered as a unitholder be entitled to receive notices or attend or vote at any meeting of unitholders, and
- d. the trustee or company may at its discretion retain any monies payable in respect of the unit until the person so entitled is registered as the unitholder of such unit or duly transfers the same.

#### **6.08 Change of name and address of unitholder**

- 1 The trustee or company shall –
  - a. upon receipt of notice in writing of a change of name or change of address of any unitholder;
  - b. upon being satisfied thereof; and
  - c. on compliance with such formalities as the trustee or company may require, alter the register accordingly.
- 2 Where a certificate has been issued and remains valid and the name or address of the unitholder is altered in the register, the trustee or company shall either issue a new certificate to the unitholder or make an appropriate endorsement on the unitholder's existing certificate.

#### **6.09 Conversion of units**

- 1 This Article applies to any pool in relation to which there are units of more than one class in existence and governs the conditions of conversion of such units of one class into units of another class within the same pool.
- 2 Conversion by a unitholder is possible under this Article only if both classes of units are in existence and are offered for sale (the terms of which offer do not exclude the unitholder) at the time of the request for conversion.
- 3 If a unitholder requests the manager to convert such units, the manager shall –
  - a. in the case of a unit trust make a request in writing to the trustee; and
  - b. in the case of a company, if the depositary gives its consent make the conversion,

but the manager need not do so, nor need the trustee comply with the manager's request if the manager does and the custodian need not give its consent, if the conversion would result in the unitholder holding less than any number or value of units of either class stated in the prospectus as the minimum number to be held.
- 4 Subject to paragraph 3 the manager or trustee, as the case may be, shall convert the units which are the subject of the request into the appropriate number of units of

the other class, and that number shall be determined by the manager, after consulting the depositary, on terms that are fair to the unitholder requesting conversion and to other unitholders.

- 5 Part 4 above does not apply when units are converted under this Article.

#### **6.10 Subdivision and consolidation of units**

- 1 The manager or company may, unless expressly forbidden to do so by the constitutional documents, at any time or times when no bearer certificates are in issue with the approval of the depositary determine –
- a. that each unit shall be subdivided into 2 or more units (whereupon each unit shall stand subdivided accordingly); or
  - b. that 2 or more units shall be consolidated (whereupon those units shall stand consolidated).
- 2 Upon a subdivision or consolidation of units the trustee or company shall (unless it has done so before the subdivision or consolidation became effective) forthwith give to each unitholder (or to the first named of joint unitholders) whose name is entered in the register notice of the subdivision or consolidation.

#### **6.11 Default by unitholder**

Where –

- a. the unitholder of any units defaults in making any payment in money or a transfer of property due to the manager or the trustee or company under these Rules, or the constitutional documents, in respect of the creation or sale of units to that unitholder; and
- b. the trustee or company is satisfied that there has been such a default by such evidence furnished to the trustee or company as the trustee or company, as the case may be, shall require,

the trustee or company may make any necessary deletion or alteration in the register; and thereafter the manager shall be entitled to the units in respect of which the defaulting unitholder's name has been removed from the register until those units are either cancelled or sold and paid for.

**PART 7****POWERS AND DUTIES OF THE MANAGER, THE DIRECTORS, THE COMPANY AND THE DEPOSITARY****SECTION A****THE MANAGER****7.01 Management of the recognized fund**

- 1 It is the duty of the manager to manage the recognized fund in accordance with –
  - a. the constitutional documents and the management agreement;
  - b. these Rules; and
  - c. the most recently published prospectus.
- 2 Subject to paragraph 1, it is the manager's right and duty to make decisions as to the constituents of the property of the fund in such a way as appears to the manager likely to secure that the objectives of the recognized fund are attained and that any particular objectives specified in the prospectus are achieved.
- 3 The manager must instruct the depositary from time to time in writing as to how rights attaching to the ownership of property of the fund are to be exercised; but not in the case where, under Article 7.10.2, the depositary has the right to decide after consultation with the manager or directors.
- 4 The duty at paragraph 1 extends to taking all reasonable steps, and exercising due diligence, to avoid the property of the fund being incorrectly priced, contrary to any provision of Part 4.
- 5 The duty at paragraph 1 extends to taking action forthwith to rectify any breach of Part 4; and where the breach relates to the incorrect pricing (or late payment in respect of the creation) of units –
  - a. rectification shall, unless the depositary otherwise directs, extend to the reimbursement (or payment) of money –
    - (i) by the manager to the recognized fund, to unitholders or to former unitholders, or
    - (ii) by the recognized fund to the manager; but
  - b. rectification need not, unless the depositary otherwise directs, extend to any such reimbursement (or payment) where it appears to the depositary that the incorrect pricing (or late payment in respect of the creation) is of minimal significance.

## 7.02 Dealings in property of the fund

- 1 The manager may without the specific authority of the depositary give instructions to agents as to the acquisition or disposal of property of the fund.
- 2 Where the depositary is of the opinion that a particular acquisition or disposal of property by the manager exceeds the powers conferred on the manager, it is the duty of the manager at the manager's own expense to cancel the transaction or make a corresponding acquisition or disposal to secure restoration of the status quo ante.
- 3 Where the depositary is of the opinion that –
  - a. an acquisition of property by the manager necessarily involves documents of title or documents evidencing title being kept in the custody of a person other than the depositary; and
  - b. the depositary cannot reasonably be expected to accept the responsibility which would otherwise be placed upon the depositary as a delegator,the depositary may require the manager to cancel the transaction or make a corresponding disposal.

## 7.03 Maintenance of records

- 1 The manager must keep such accounting and other records as are necessary –
  - a. to enable it to comply with these Rules; and
  - b. to demonstrate at any time that such compliance by it has been achieved.
- 2 The manager must keep a daily record of the units held, acquired or disposed of by it, including the class of such units, and of the balance of any acquisitions and disposals.
- 3 The manager must make the daily record available for inspection by the depositary in Jersey free of charge at all times during ordinary office hours and must supply the depositary with a copy of the record or any part of it on request free of charge.

## 7.04 Audit

- 1 The manager of a unit trust or the directors of a company must, at the outset, and upon any vacancy, with the approval of the depositary appoint as an auditor for the recognized fund a person –
  - a. qualified under the Company Law for appointment as auditor of a company under that law; and
  - b. not disqualified from being an auditor of the manager or depositary under any Article of the Permit Conditions Order or who would be disqualified under that Article if the company were a relevant holder under that Article.
- 2 An auditor appointed otherwise than under paragraph 1 must meet the requirements of sub-paragraphs a. and b. of that paragraph.
- 3 The audit fees of the auditor are determined by the manager of a unit trust or the directors of a company, with the approval of the depositary, unless the auditor was appointed by the company in general meeting in which case the company in general meeting shall determine such fees.

- 4 The manager must ensure that the accounts required to be included in the annual report of the recognized fund are audited by the duly appointed auditors; and that that report is accompanied by a report of the auditor to the unitholders that those accounts have been audited in accordance with approved auditing standards and stating whether or not in the auditor's opinion they give a true and fair view of the financial position of the recognized fund as at the end of the annual accounting period.
- 5 An auditor may be removed at any time by –
  - a. the manager with the approval of the depositary in the case of a unit trust; and
  - b. by the company in general meeting in the case of a company, and this power exists notwithstanding anything in any agreement between the persons concerned.
- 6 Notice of the removal of an auditor shall be given by the manager or directors, as appropriate, to the Commission.
- 7 An auditor shall have –
  - a. a right of access at all times to the accounting and other records of the recognized fund and to all other documents relating to its business; and
  - b. the right to require from the manager, directors, company and depositary such information and explanation as the auditor thinks necessary for the performance of his or her duties as auditor.

#### **7.05 Tax returns**

The manager must from time to time prepare and supply to the depositary such returns relating to the property of the fund as are required to be submitted by the depositary or the company to any fiscal authority.

#### **7.06 Review of recognized fund's constitution**

The manager must keep under review the constitutional documents and the prospectus with a view to ensuring that they are in compliance with the law, including these Rules, and from time to time must make or propose the making of such changes therein as are necessary or desirable in the interests of unitholders.

#### **7.07 Manager to supply information to depositary**

The manager must on the request of the depositary forthwith supply it with such information concerning the management and administration of the recognized fund as the depositary may reasonably require.

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**SECTION B****THE DEPOSITARY****7.08 Oversight by the depositary of the manager**

- 1 It is the duty of the depositary to take reasonable care to ensure –
  - a. except in relation to Part 5, that the recognized fund is managed by the manager in accordance with Article 7.01.1; and
  - b. in relation to Part 5, that decisions about the constituents of the property of the fund do not exceed the powers conferred by that Part.
- 2 The depositary must satisfy itself on reasonable grounds and on a continuing basis that the manager has maintained and is maintaining sufficient records and is adopting such procedures and methods for the calculation of prices at which units are sold and repurchased to ensure that those prices are within the limits for the time being prescribed by Part 4 above.
- 3 If the depositary is at any time not satisfied of any matter specified in paragraph 2, it must inform the Commission.
- 4 The depositary, in the context of its role as such, must act solely in the interests of the unitholders.

**7.09 Control by the depositary over the property of the fund**

- 1 The depositary must take all steps and execute all documents which are necessary to secure that acquisitions, disposals and loans properly made by the manager in accordance with Section A above are completed.
- 2 The depositary must take into its custody or under its control all the capital property of the recognized fund and hold it in trust for the unitholders in accordance with these Rules and the constitutional documents and the depositary agreement and shall ensure that any of the property of the fund in registered form shall, as soon as practicable, be registered in the name of the depositary, or subject to Article 7.14, its nominee and that any transaction entered into for the purposes of Section K of Part 5 (Efficient Portfolio Management) is entered into in such manner as to ensure that any resulting benefit is received by the depositary and held by it as part of the property of the fund.
- 3 The depositary is responsible for the collection of any income due to be paid to the recognized fund and for claiming any repayment of tax, and shall hold any income received in trust for the unitholders in accordance with these Rules and the constitutional documents.
- 4 The depositary must keep such records as are necessary –
  - a. to enable it to comply with these Rules; and
  - b. to demonstrate that such compliance by it has been achieved.



**7.10 Exercise of rights in respect of the property of the fund**

- 1 The depositary must take all steps and execute all documents as are necessary to secure that instructions properly given to it by the manager as to the exercise of rights (including voting rights) attaching to the ownership of property of the fund are carried out.
- 2 The depositary may exercise (or not exercise) any right of voting conferred by any of the property of the fund which is in units or shares in other collective investment funds (or, in the case of a feeder fund dedicated to an eligible investment trust, that investment trust) managed or otherwise operated by the manager or a director or by an associate of the manager or such director respectively, but only after consultation with the manager or the directors, as the case may be.
- 3 The depositary must upon the written request of the manager from time to time execute and deliver or cause to be executed or delivered to the manager or the manager's nominees such powers of attorney or proxies as the manager may reasonably require, in such name or names as the manager may request, authorizing such attorneys and proxies to vote consent or otherwise act in respect of all or any part of the property of the fund not included in paragraph 2.
- 4 The depositary must without undue delay forward to the manager all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it as registered holder of any investment.
- 5 In this Article "voting" includes giving any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the property of the fund and "right" includes a requisition or joining in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement or to consent to any short notice of any meeting.

## SECTION C

### THE MANAGER, THE DIRECTORS, THE COMPANY AND THE DEPOSITARY

#### 7.11 Duties of the manager, the directors, the company and the depositary under the law

- 1 Subject to paragraph 4, the duties of the manager, the directors, the company and the depositary imposed on them by these Rules and by the constitutional documents and the management agreement and depositary agreement are in addition to and not in derogation from the duties which are otherwise imposed on them by law.
- 2 Subject to paragraph 4, the manager, the directors, the company and the depositary are required to fulfil those other duties by these Rules as well as by law.
- 3 Subject to paragraph 4, the manager, directors, company and the depositary have, by virtue of these Rules, all the powers conferred on them by the general law.
- 4 Paragraphs 1, 2 and 3 apply only in so far as the duties imposed or powers conferred by the general law are not qualified or restricted by these Rules.

#### 7.12 Timely performance of duties

The manager, the directors and the depositary must perform the functions and fulfil the duties conferred upon them by these Rules in a timely manner unless delay is both lawful and in the interests of the unitholders.

#### 7.13 Duties of the manager and depositary: investment and borrowing powers

- 1 Subject to paragraphs 6 and 7, it is the duty of the manager –
  - a. to take all reasonable steps; and
  - b. to exercise all due diligence,to avoid the property of the fund being used or invested contrary to any provision in Part 5.
- 2 It is the duty of the depositary –
  - a. to take all reasonable steps; and
  - b. to exercise all due diligence,to exercise such degree of supervision of the manager's operation of the recognized fund as is appropriate with a view to ensuring that the manager complies with paragraph 1.
- 3 The duty at paragraph 1 extends to action forthwith to be taken by the manager, at its own expense, to rectify any breach of any provision in Part 5 to which the following paragraphs do not apply.
- 4 Paragraph 6 below applies –

- a. where the property of the fund at any time is used or invested contrary to any provision of Part 5 (other than a provision excusing a failure to comply on a temporary basis); and
  - b. the reason for the contravention is beyond the control of both manager and depositary.
- 5 Paragraph 6 also applies on or in anticipation of the arrival of a supervening transaction (such as the purchase by the recognized fund of property pursuant to a rights issue, the conversion by the recognized fund of convertible stock, or the closing out of a position which, when open, justified a then existing transaction under Section D or E of Part 5) –
  - a. which, but for this Article, would constitute a breach of Part 5; and
  - b. where it was not possible for the manager or depositary to know at the time of the earlier transaction whether there would be a subsequent breach or not.
- 6 In the circumstances envisaged by paragraph 4 or 5 –
  - a. nothing in Part 5 prevents the manager from entering into a transaction within paragraph 5 provided that it has obtained the consent of the depositary in writing; and
  - b. the manager must take such steps as are necessary to ensure a restoration of compliance as soon as is reasonably practicable having regard to the interests of the unitholders and, in any event, within the period specified in paragraph 8.
- 7 Forthwith upon the depositary becoming aware of any circumstance envisaged by paragraph 4 or 5, it must take such steps as are necessary to ensure that the manager complies with paragraph 6b.
- 8 Subject to paragraph 9, the maximum period for restoration of compliance under paragraph 6b starts at the date of discovery of the relevant circumstance and lasts –
  - a. except where b, c or d applies, for 6 months;
  - b. where the transaction in question was in derivatives pursuant to Section D or E of Part 5 (futures and options funds or geared futures and options funds), until the close of business 5 business days later;
  - c. where the transaction in question was entered into under Section K of Part 5 (efficient portfolio management) until the close of business 5 business days later; and
  - d. where the recognized fund is a property fund and the property in question is an immovable, for 2 years.
- 9 The periods at 8b and 8c (5 business days) are extended –
  - a. if the transaction involved a delivery of a commodity (whether perishable or not), from 5 to 20 business days; or
  - b. if the reason for the contravention in paragraph 4 is the inability of the manager to close out a transaction because of a limit in the number or value of transactions imposed by an eligible derivatives exchange, until 5 business days after –
    - (i) the inability resulting for any such limit is removed; or

- (ii) it becomes, to the knowledge of the manager, reasonably practicable and reasonably prudent for the transaction to be closed out in some other way.

#### 7.14 Delegation

- 1 The directors of a company may delegate to any director, or any committee consisting of one or more directors, any of the directors' powers or duties, but the directors shall remain responsible for the acts or omissions of any such director or committee as if they were acts or omissions of the directors.
- 2 The manager or the directors may delegate any function to any person, including the depositary.
- 3 Subject to paragraphs 4 and 5, the depositary may delegate any function to any person, including the manager and any director of the recognized fund.
- 4 The depositary may not delegate to the manager, or a director or the company, in the case of a recognized fund which is a company –
  - a. any function of oversight in respect of the manager, any of those directors or that company; or
  - b. any function of custody or control of the property of the fund,nor may the depositary delegate any function in a. to an associate of the manager, or of any of those directors or of the company.
- 5 The depositary may not delegate to anyone the function of being a custodian of documents of title or documents evidencing title to property of the fund unless the arrangements with the custodian prevent the custodian from releasing the documents into the possession of a third party without the consent of the depositary.
- 6 If –
  - a. the manager delegates, or causes to be delegated, any function concerning the management of the property of the fund;
  - b. the manager or the directors delegate or cause to be delegated any of their respective functions to the depositary or to an associate of any of them or of the depositary; or
  - c. the depositary delegates any function to the manager or any of the directors of the recognized fund or to an associate of its own or of the manager or any such director,then in the case of a., the manager and in the case of b., the manager or the directors and in the case of c., the depositary, remains responsible, even though it could have satisfied the conditions in paragraph 7, for the acts or omissions of the delegate as if they were the acts or omissions of the manager, or of the directors or of the depositary, as the case may be.
- 7 In the case of any delegation by the manager, the directors or the depositary to which paragraph 1 or 6 does not apply, the manager, the directors or the depositary, as the case may be, are not responsible by virtue of these Rules for any act or omission of the delegate if the manager, directors or depositary can show –

- a. that it was reasonable for an agent to be employed for the function in question;
  - b. that it was reasonable for the manager, directors or depositary to believe that the agent was and remained competent to undertake the function in question; and
  - c. that the manager, directors or depositary, as the case may be, had taken reasonable care to ensure that the function in question was undertaken by the agent in a competent manner.
- 8 Paragraphs 1, 2 and 3 are subject to any restriction in the constitutional documents and the management agreement and depositary agreement.

### 7.15 Conflicts of interest etc.

- 1 The manager, the directors and the depositary must respectively take all reasonable steps to ensure that there is no breach of any of the following requirements in this Article by any “affected person”, that is to say, as the case may be, –
  - a. the manager;
  - b. the company;
  - c. the directors;
  - d. the depositary;
  - e. any investment adviser; and
  - f. any associate of any person in a., b., c., d. or e.
- 2 Cash forming part of the property of the fund or standing to the credit of the distribution account may be placed in any current, deposit or loan account with an affected person only if the person is an eligible institution and the arms length requirement in paragraph 9 is satisfied.
- 3 An affected person may lend money to the recognized fund only if the person is an eligible institution, and the arm’s length requirement in paragraph 9 is satisfied.
- 4 An affected person may not sell or deal in the sale of property to a recognized fund, if it is a company, or to the depositary for the account of the recognized fund unless paragraph 10 applies and for the purpose of this paragraph a sale shall include any lease or other transaction under which movable or immovable property is made available by the recognized fund.
- 5 An affected person may not vest property in the depositary or the company, against the issue of units in the recognized fund, unless upon a unitization or unless paragraph 10 applies.
- 6 An affected person may not purchase property from the recognized fund or the depositary acting for the account of the recognized fund unless Article 4.27 applies (in specie cancellation or repurchase) or unless paragraph 10 applies and for the purpose of this paragraph a sale shall include any lease or other transaction under which movable or immovable property is made available by the recognized fund.
- 7 An affected person may not enter into transactions within Section L of Part 5 (stocklending) in relation to the recognized fund unless the arm’s length requirement in paragraph 9 is satisfied.

- 8 An affected person within paragraph 1f above may not provide services for the recognized fund unless the depositary has reliable evidence that the services are provided on terms which satisfy the arm's length requirement in paragraph 9.
- 9 The arm's length requirement is that the arrangements are at least as favourable to the recognized fund as would be those of any comparable arrangement effected on normal commercial terms negotiated at arm's length between 2 independent parties.
- 10 There is no breach of paragraphs 4, 5 or 6 if paragraph 11 (best execution on exchange) or paragraph 12 (independent valuation) or paragraph 13 (arm's length transaction) applies.
- 11 There is best execution on exchange for the purposes of paragraph 10 if –
  - a. the property is an approved security or an approved derivative;
  - b. the transaction is effected with or through a member of the relevant exchange under the rules of that exchange;
  - c. there is evidence in writing of the effecting of the transaction and of its terms; and
  - d. the manager has taken all reasonable steps to effect the transaction or to ensure that it is effected on the terms which are the best available for the recognized fund in the circumstances.
- 12 There is independent valuation for the purposes of paragraph 10 if –
  - a. the value of the property is certified in writing for the purpose of that transaction by a person selected or approved by the depositary as –
    - (i) independent of any affected person, and
    - (ii) qualified to value property of the relevant kind; and
  - b. the depositary is of the opinion that the terms of the transaction are not likely to result in any material prejudice to unitholders.
- 13 There is an arm's length transaction for the purposes of paragraph 10 if –
  - a. paragraph 11a is not satisfied;
  - b. it is not reasonably practicable to obtain an independent valuation under paragraph 12; and
  - c. the depositary has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in paragraph 9.
- 14 Paragraphs 2-8 are subject to any provision in the constitutional documents or management agreement or depositary agreement forbidding the taking of advantage of all or any of them.
- 15 Nothing in this Article shall prevent the issue of units by the recognized fund to the manager or the cancellation by the recognized fund of units held by or belonging to the manager in accordance, in either case, with the relevant provisions of Part 4.

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**SECTION D****NEW MANAGERS AND DEPOSITARIES****7.16 Replacement of manager**

- 1 Subject to Article 2.10, the manager for the time being shall be subject to removal by notice in writing given by the directors or the depositary to the manager in any of the following events –
  - a. a resolution or court order to wind-up the manager is adopted or is made (except in the case of a summary winding-up for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the depositary) or the manager becomes bankrupt in any other manner specified in Article 8 of the [Interpretation \(Jersey\) Law 1954](#); or
  - b. the manager commits, makes, suffers, consents to or acquiesces in any other act or omission indicative of insolvency under the law of any jurisdiction;
  - c. for good and sufficient reason the directors or the depositary are of the opinion and so state in writing that a change of manager is desirable in the interest of the unitholders;
  - d. an extraordinary resolution is passed removing the manager (or to determine that the manager be removed as soon as this is permitted by law);
  - e. the holders of 2/3 majority in value of the units of the relevant pool or pools in existence (excluding units held or deemed to be held by the manager or by any associate of the manager) make a request in writing to the directors or the depositary that the manager be removed; or
  - f. the manager ceases to hold a permit under the Law.
- 2 On receipt of a notice given by the directors or depositary under paragraph 1 the manager shall cease to be the manager; and the directors or the depositary shall by instrument appoint some other person eligible under these Rules and acceptable to the Commission to be the manager of the recognized fund upon and subject to that other person's entering into such instruments or agreements and executing such other documents as the directors or depositary and the Commission may require.
- 3 If the name of the recognized fund contains a reference to the name of the former manager, the former manager shall be entitled to require the new manager and the depositary forthwith to propose a change in the name of the recognized fund.

**7.17 Retirement of manager**

- 1 Subject to Article 2.10, the manager shall have the right to retire in favour of some other person eligible under these Rules, acceptable to the Commission and approved in writing by the depositary upon and subject to fulfilment of the following conditions –
  - a. the retiring manager appointing in writing such a person as manager of the recognized fund in its place and novating and assigning to such appointee all its rights and duties as such a manager; and

- b. the new manager entering into such agreements and executing such documents as the depositary may be advised is necessary or desirable to be entered into by that person in order to secure the due performance of its duties as a manager.
- 2 Upon retirement, the retiring manager –
  - a. is absolved and released from all further obligations under these Rules and under the constitutional documents but without prejudice to the rights of the depositary or the company or of any unitholder or any other person in respect of any act or omission on the part of the retiring manager prior to such retirement; and
  - b. may retain for its own benefit, and without having to account therefore to the unitholders or any of them, any consideration paid to it in connection with the change of manager.
- 3 Upon the retirement of the retiring manager, the new manager may exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the manager under these Rules and under the constitutional documents and management agreement or depositary agreement as fully as if it had originally been a party to the constitutional documents or management agreement or depositary agreement or had been appointed as the original manager of the recognized fund.

#### **7.18 Supplementary**

- 1 Upon the removal or retirement of the manager, the removed or retiring manager –
  - a. remains entitled to all units held or deemed to be held by it;
  - b. may require the issue to it of a certificate or certificates in respect thereof (if certificates are currently issued);
  - c. is to be registered in the register in respect thereof; and
  - d. thereafter has and may exercise all rights of a unitholder.

#### **7.19 Retirement and replacement of the depositary**

- 1 The depositary may not retire voluntarily except upon the appointment of a new depositary.
- 2 In the event that the depositary –
  - a. desires to retire;
  - b. a resolution or court order to wind-up the depositary is adopted or made (except in the case of a summary winding-up for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the manager and by the directors, in the case of a recognized fund which is a company) or the depositary becomes bankrupt in any other manner specified in Article 8 of the [Interpretation \(Jersey\) Law 1954](#);
  - c. the depositary commits, makes, suffers, consents to or acquiesces in any other act or omission indicative of insolvency under the law of any jurisdiction;



- d. for good and sufficient reason the directors are of the opinion and so state in writing that a change of depositary is desirable in the interests of the unitholders;
- e. an extraordinary resolution is passed removing the depositary (or to determine that the depositary be removed as soon as this is permitted by law); or
- f. the depositary ceases to hold a permit under the Law,

then in the case of unit trust, the manager may, and in the case of a company, the directors may, subject to Article 2.10 of these Rules, by instrument supplemental to the constitutional documents or by agreement, as the case may be, appoint another person eligible under these Rules to be the depositary in its place on terms which are acceptable to the Commission.

## PART 8

### CHARGES AND EXPENSES

#### 8.01 Payments by the recognized fund to the manager

- 1 No payment may be made or benefit given to the manager (whether as such or in any other capacity) out of the property of the pool by way of remuneration for its services, reimbursement of expenses or otherwise, unless the prospectus specifies each type of payment or benefit that may be made or given, each type of expense that may be so reimbursed and in the case of each category of remuneration (or remuneration related to a class of unit), specifies –
  - a. how it will be calculated and accrue and when it will be paid; and
  - b. the maximum and current rates or amount of such remuneration.

#### 8.02 Preliminary charge

- 1 If the prospectus so permits, the manager may make a charge (“preliminary charge”) upon the sale of units by the manager whether acting as principal or not and that charge may be expressed either as a fixed amount, or calculated as a percentage of the creation price.
- 2 The manager shall not make any charge or levy in connection with the sale of units of any class except that referred to at paragraph 1 and, in the case of a recognized fund which has adopted a single pricing basis, a dilution levy in accordance with Article 4.25.
- 3 Where paragraph 1 permits the manager to include a preliminary charge, the amount which the manager may include shall not exceed the amount stated in the prospectus as the current charge.
- 4 Paragraph 1 does not apply on an exchange of units within an umbrella fund but nothing in this Article shall prevent the manager from making a charge on such an exchange in accordance with Article 8.08.

#### 8.03 Increase in remuneration or preliminary charge

The manager may not rely on any introduction of a new category of remuneration for its services or any increase in the current rate or amount of its remuneration payable out of the property of the fund up to or towards any maximum stated in the prospectus or any introduction of or increase in the preliminary charge payable under Article 8.02, unless not less than 90 days before the introduction or increase –

- a. the manager gave notice in writing of that introduction or increase and of the date of its commencement (in the case of remuneration payable out of the property of the fund to all unitholders or (in the case of preliminary charge) to all the persons who ought reasonably to be known to it to have made an arrangement for the purchase of units at regular intervals; and

- b. the manager has revised the prospectus to reflect the introduction or new current rate or amount of remuneration or preliminary charge and the date of its commencement and has made the revised prospectus available.

#### **8.04 Other payments out of the property of the recognized fund**

- 1 No payments may be made or benefit given out of the property of the fund, other than under Article 8.01 and any sums due by virtue of any other Article in these Rules, unless the obligation to make such payment or give such benefit has been incurred by or for the account of the fund and the prospectus specifies each type of payment or benefit that may be made or given.
- 2 Paragraph 3 applies where the property of a body corporate (such as an investment trust) or of another collective investment fund is transferred to the depositary in consideration of the creation of units in the recognized fund to shareholders in that body or to participants in that other fund.
- 3 In such a case the depositary as the successor in title to the other property may pay out of the property of the fund any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of that other property, but it may pay only if –
  - a. there is nothing in the constitutional documents expressly forbidding the payment; and
  - b. the depositary is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

#### **8.05 Exemption from liability to account for profits**

- 1 The manager is not liable to account to the depositary or the unitholders or any of them for the amount of any charge properly taken in accordance with these Rules.
- 2 The depositary is not liable to account to the manager or the unitholders or any of them for the amount of any remuneration (or expenses) properly paid to the depositary in pursuance of these Rules.
- 3 Where the manager has disclosed prominently in the prospectus a statement that the manager or another specified affected person is under no obligation to account to the depositary or to the unitholders or any of them for any profit he or she makes on the sale of units, or on the re-sale or cancellation of units which he or she has repurchased, that person is not liable to account to the depositary or to the unitholders or any of them for any such profit made since the disclosure.
- 4 A person who is an affected person within Article 7.15.1 is not liable to account either to another such affected person or to the unitholders or any of them for any benefits or profits made or derived from or in connection with –
  - a. the person's acting as agent for either or both of the depositary and the manager in the sale or purchase of property to or from the depositary for the account of the recognized fund;
  - b. the person's part in any transaction or the supply of services permitted by Article 7.15; or

- c. the person's dealing in property equivalent to any owned by (or dealt in for the account of) the recognized fund.

#### **8.06 Allocation of payments to capital or to income**

- 1 Any payments under this Part (except as provided under paragraph 2 below) shall be made from the income account of the pool in the first instance.
- 2 Any broker's commission, fiscal charges and other disbursements which are necessary to be incurred in effecting transactions for the recognized fund, and normally shown in contract notes, confirmation notes or difference accounts as appropriate may be charged to the capital account; and any interest on borrowings and charges incurred in effecting, terminating, negotiating or varying the terms of borrowings and taxation and duties payable on respect of or property of the pool and costs of the types described in Article 8.12 shall be made from the capital account or the income account, as the trustee, or directors, reasonably believe appropriate.
- 3 Following a payment made from the income account under paragraph 1 or 2, a transfer of the debit item from the income account to the capital account may be made if the expense is considered to be capital in nature.
- 4 Where it is clear from the prospectus that the pool is designed –
  - a. to concentrate on the generation of income as a higher priority than on capital growth; or
  - b. to place an equal emphasis on the generation of income and on capital growth,the manager and the depositary (and in the case of a company if it is also acceptable to the directors), may agree that all or any part of the remuneration of the manager permitted by Article 8.01 is to be treated as a capital charge, and a transfer of the relevant debit item may be made from the income account to the capital account.
- 5 Following (or if in the view of the trustee or company it is necessary to do so in advance to enable) a payment made (or to be made) from the income account under paragraph 1 or 2, a transfer of credit to the income account from the capital account may be made if it appears to the trustee or company that there is insufficient income in the income account to meet payments made (or to be made), provided that the credit is re-transferred as soon as sufficient amounts are available in the income account in respect of the same annual accounting period.
- 6 Where, in respect of any annual accounting period, taken as a whole, the amount of income received or receivable is less than the net amount of payments made from the income account, the shortfall shall, as from the end of that period, be charged to the capital account and shall not thereafter be transferred to the income account.

#### **8.07 Charges on repurchase**

- 1 If the prospectus so permits, the manager may make a charge (the "repurchase charge") upon the repurchase or cancellation of units by the manager, whether acting as agent or principal, and the amount payable on repurchase or cancellation may be arrived at after deduction of the charge for the benefit of the manager, and that charge may be expressed either as a fixed amount, or calculated as a

- percentage of the proceeds of repurchase which would otherwise have been payable.
- 2 The amount or percentage of the repurchase charge may be expressed as diminishing over the time during which the unitholder has held the units, but may not be expressed as liable to vary in any other respect.
  - 3 Where the manager is permitted to make a repurchase charge the amount shall not exceed the amount that would be derived by applying the rate or method prescribed in the prospectus at the date on which the relevant units were sold.
  - 4 Where the prospectus of a recognized fund, whenever made available, is modified so as to include a repurchase charge the modification must be expressed so as to apply only to units created or sold after the date on which the modification takes effect.
  - 5 A change in the rate or method of the repurchase charge which is adverse to unitholders seeking to have their units cancelled or repurchased must be limited so as to apply only to units which have been created or sold (whether at the request of the current unitholder or otherwise) after the date on which the modification takes effect.
  - 6 The manager may not rely on any change in the rate or method of the repurchase charge, unless –
    - a. the manager has given notice in writing of that increase and of the date of its commencement to the depositary and to all the persons who ought reasonably to be known to the manager to have made an arrangement for the purchase of units at regular intervals;
    - b. the manager has revised the prospectus to reflect the new rate or method and the date of its commencement; and
    - c. 90 days have elapsed since the revised scheme particulars became available.
  - 7 If a prospectus contains a statement relating to the amount, or the calculation of the amount, of a repurchase charge, it shall also contain a statement as to the determination of the order in which units, which have been acquired at different times by a unitholder, are to be taken to be repurchased or cancelled for the purpose of the imposition of the repurchase charge.

#### **8.08 Exchange of units in umbrella funds**

- 1 In the case of an umbrella fund, the manager may make a charge on an exchange of units in one constituent part for units in an other constituent part but the charge shall not exceed the aggregate of –
  - a. any excess of the amount of the preliminary charge that would be applicable to a sale of the units being acquired (by reference to the current preliminary charge stated in the most recently published prospectus) over the preliminary charge actually paid on the original acquisition of the units being repurchased; and
  - b. the amount of any fee payable on switching specified in that prospectus.
- 2 The manager may not make a charge in excess of the fee referred to in paragraph 1(b), unless the prospectus contains a statement as to the determination of the order in which units which have been acquired at different times by a unitholder are to be

taken to be repurchased or cancelled is to be determined in so far as necessary for calculating the maximum charge for an exchange of units in one constituent part for units in another constituent part.

### **8.09 Restricted payments**

No payment or benefit, other than a payment or benefit to the manager not prohibited by these Rules, may be made out of or given at the expense of the property of the fund to any person in consideration of that person acquiring (whether directly, indirectly, absolutely or conditionally) or promoting the sale of, or agreeing so to acquire or promote the sale of, units in the recognized fund.

### **8.10 Performance fees**

No payment may be made out of the property of the fund and no repurchase charge may be made if the amount or frequency of the payment or the amount of the repurchase charge is intended to depend upon fluctuations in the value of the property of the fund or the income attributable thereto or in the price of a unit of any class as compared with fluctuations in the value or price of property of any description or in an index or other factor designated for the purpose.

### **8.11 Movable and immovable property**

A recognized fund shall not incur any expense for the use of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business.

### **8.12 Amortization**

Without prejudice to Article 8.09, costs of the authorization and formation of a recognized fund and of its initial offer or sale of units (or initial offer or sale of units in respect of a constituent part) may be amortized over a period not exceeding 10 years.

### **8.13 Tax**

The restrictions contained in this Part shall not affect any liability for any value added or similar tax related to a charge or expense, but any notice given in accordance with this Part and any statement in a prospectus relating to any charge or expense payable out of the property of the fund or by any unitholder or potential unitholder shall, if the person liable for the charge or expense may also be liable for such tax, contain a statement to this effect.

**PART 9****INCOME****9.01 Accounting periods**

- 1 A recognized fund must have an annual and a half-yearly accounting period, and this Article determines what they are.
- 2 A recognized fund must also have an accounting reference date, which is the date in any year stated in the most recently published prospectus as the date on which the recognized fund's annual accounting period is to end.
- 3 The first annual accounting period shall, subject to the Company Law, begin –
  - a. where the recognized fund is the subject of an initial offer, on the first day of the period of the initial offer; or
  - b. in any other case, when the recognized fund is granted a recognized fund certificate,and each subsequent period shall begin immediately after the end of the one before.
- 4 Each annual accounting period shall end either at the end of the day arrived at under paragraph 5 or, if the manager prefers, at the valuation point last preceding the end of that day.
- 5 The day for paragraph 4 is –
  - a. the next accounting reference date after the beginning of the period in question; or
  - b. if that period is the first period or a period in the course of which a change in the accounting reference date takes place, and the next accounting reference date in either case is less than 6 months after the beginning of the period, and the manager after consulting the auditor so determines, the next but one accounting reference date.
- 6 A half-yearly accounting period is a period beginning with the first day of an annual accounting period and ending on the day which is –
  - a. 6 months before the next accounting reference date; or
  - b. if the next accounting reference date is less than 6 months after that first day, 6 months before the next accounting reference date but one after that first day.
- 7 The manager may, with the agreement of the depositary, elect that a particular annual or half-yearly accounting period shall end on a day which is not more than 7 days after and not more than 7 days before the day on which the period would otherwise end.

## 9.02 Annual income allocation date

- 1 A recognized fund, other than a recognized fund consisting only of roll-up units, must have an annual income allocation date, which is the date in any year stated in the most recently published prospectus as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made.
- 2 The annual income allocation date must be a date within 4 months after the relevant accounting reference date.

## 9.03 Annual allocation of income

- 1 Other than in relation to a pool consisting only of roll-up units, at the end of each annual accounting period, the trustee or the directors shall arrange for the manager to transfer in the books of the recognized fund the income property attributable to the pool to an account to be known as the “distribution account” and the amounts transferred shall be placed on deposit for an appropriate period which allows for any distribution payments to be made.
- 2 The trustee or the directors, as the case may be, are not obliged to comply with paragraph 1 if it appears to them, having consulted the manager, that the average payment to the unitholders (disregarding unitholders of bearer certificates, unitholders of accumulation units, and unitholders who are the manager or the depositary or associates of either of them) by way of income would be less than £5.00 (or the equivalent amount in the base currency).
- 3 Where the trustee or the directors decide under paragraph 2 not to distribute income, they must so inform the manager who must then immediately arrange either –
  - a. to carry the income forward to the next annual accounting period (and to regard it as received at the start of that period); or
  - b. to credit the income to the capital account.
- 4 On or before each annual income allocation date the manager shall calculate under paragraph 5 the amount available for income allocation in respect of the immediately preceding annual accounting period, and the manager shall inform the trustee or directors of that amount.
- 5 The calculation of available income is as follows –
  - a. take the aggregate of the income property received or receivable by the depositary or otherwise for the account of the pool in respect of the period;
  - b. deduct the aggregate of the charges, fees, expenses and other payments properly paid or payable in respect of the period in accordance with Article 8.06.1 (payments out of income);
  - c. add the manager’s best estimate of any relief from tax on such charges and expenses;
  - d. make such other adjustments as the manager considers appropriate (in the case of paragraphs (i) and (ii) below, after consulting the auditors) in relation to –
    - (i) taxation,



- (ii) the proportion of the price received or paid for units that is related to income (taking account of any provisions in the constitutional documents relating to income equalization),
  - (iii) potential income which is unlikely to be received until 12 months after the income allocation date,
  - (iv) income which should not be accounted for on an accrual basis because of lack of information about how it accrues, and
  - (v) any transfer between income and capital account under Article 8.06; and
- e. make any other adjustments (including for amortization under Article 8.12) that the manager considers appropriate after consulting the auditors.
- 6 On or before the annual income allocation date, the manager shall allocate the available income to the units of each class in existence taking account of the provisions of its constitutional documents relating to the proportion of available income attributable to each class. This Article does not apply to any roll-up units.

#### **9.04 Annual allocation to accumulation units**

- 1 The amount of income allocated to accumulation units shall, with effect from the end of the annual accounting period, become part of the capital property and the interests of the unitholders in that amount shall be satisfied by an adjustment, as at the end of the period, in the proportion of the value of the property of the pool to which the price of a unit of the relevant class is related.
- 2 The adjustment under paragraph 1 shall be such as will ensure that the price of an accumulation unit of the relevant class remains unchanged notwithstanding the transfer of the income to the capital property.

#### **9.05 Annual distribution to unitholders of income units**

- 1 Subject to paragraph 2, where the units in existence in a pool are or include income units, on or before each annual income allocation date the manager shall give the depositary timely instructions sufficient to enable the distribution of the income allocated to those units among the unitholders and the manager rateably in accordance with the number of such units held or deemed to be held by them respectively at the end of the relevant annual accounting period and the depositary shall pay the distribution in accordance with the instructions.
- 2 Before distributing income under paragraph 1, there shall be –
- a. deducted any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period; and
  - b. deducted and carried forward in the income account such amount as the manager and the directors may from time to time determine.
- 3 Nothing in this Part of these Rules requires the distribution of income allocated to any units in any case where the manager or the depositary considers it necessary or appropriate to carry out or complete identification procedures in relation to the unitholder or another person pursuant to a statutory, regulatory or other legal obligation.

### 9.06 Interim allocations of income

- 1 This Article applies if at any time the most recently published prospectus –
  - a. states that an allocation of income may be made before the annual income allocation date in any year in respect of a period (“an interim accounting period”) within the annual accounting period; and
  - b. specifies a date as the interim income allocation date in relation to that interim accounting period.
- 2 In such a case, Articles 9.03 to 9.05 shall apply so as to secure the making of an interim allocation of income as if –
  - a. the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;
  - b. the interim income allocation date were the annual income allocation date; and
  - c. the manager and the company were to treat as the available amount of income for the interim allocation a sum in the manager’s or their opinion, as the case may be, not exceeding the amount which would be available for allocation of income if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

### 9.07 Income equalization

The constitutional documents may provide that an allocation of income (whether annual or interim) to be made in relation to any class of units in respect of each unit created or sold during the accounting period in respect of which that income allocation is made shall include a capital sum (“income equalization”).

### 9.08 How distributions may be made

- 1 Any monies payable by the depositary to a unitholder in respect of any unit, the title to which is for the time being represented by a bearer certificate, may be paid by crossed cheque or warrant made payable to the person who, in such manner as is prescribed in the constitutional documents, has identified himself or herself to the depositary as the person entitled to that distribution and may be sent by post to such address as that person shall have disclosed to the depositary for that purpose.
- 2 Any monies payable by the depositary to the manager or to a registered unitholder in respect of any unit may be paid –
  - (i) by crossed cheque or other means including directly to the registered unitholder’s bank account and when sent through the post to the registered address of such unitholder or the first named of joint unitholders, as the case may be; or
  - (ii) by payment to the bank or other agent nominated in writing by the manager or unitholder or all of the joint unitholders, as the case may be, by means of the electronic transfer of funds or otherwise.

- 3 The payment of any cheque to the first named of joint unitholders shall be as effective a discharge to the person making the payment as if such first named joint unitholder had been a sole unitholder.
- 4 Every such cheque which is so sent or electronic or other payment which is so made shall be a satisfaction of the monies payable and shall be a good discharge to the person making the payment.
- 5 Where the depositary holds an authority in writing given by the unitholder (or in the case of joint unitholders by all of them) which has been accepted by the trustee or company and is in such form and on such terms as the depositary shall consider sufficient he or she shall pay the amount payable in accordance with that authority and any payment so made shall be a good discharge to the depositary.
- 6 Any distribution payment which shall remain unclaimed after a period of 10 years from the date of payment shall then be transferred to and become part of the capital property and thenceforth neither the payee nor the unitholder nor any successor in title of his or her shall have any right thereto or therein.

#### **9.09 Distribution statements and tax certificates**

- 1 On or before each income allocation date (whether annual or interim) the depositary shall send to each unitholder (or to the first named of joint unitholders) entered in the register as at the end of the accounting period in question and shall on request give or send to every unitholder of units the title to which is represented by a bearer certificate –
  - a. a statement prepared by the manager showing the calculation of the amount to which the unitholder is entitled, whether or not the income is distributed to the unitholder or allocated to accumulation units and, where applicable, a statement of how much of the amount to which the unitholder is entitled represents income equalization; and
  - b. if the manager so decides, a statement prepared by the manager identifying the sources of income attributable to the unitholders and the amount of tax, if any, withheld from, or accountable in respect of, such amount.
- 2 In the case of any distribution on liquidation or dissolution of the pool, any statement given in accordance with paragraph 1 shall show what proportion of the distribution represents capital and what proportion represents income.
- 3 Paragraph 1b does not prevent the sending of a single tax certificate at least once in every annual accounting period.
- 4 This Article does not apply in relation to the unitholders of roll-up units.

**PART 10****REPORTS****10.01 Annual and half-yearly reports**

- 1 The manager of a unit trust, or the directors of a company, as the case may be, shall, in relation to each annual and half-yearly accounting period, prepare a report stating the matters set out in Part 1 of Schedule 3 below in respect of the 12 months (or 6 months) concerned and otherwise complying with the following requirements of this Article:

Half-yearly reports need not be prepared in relation to the first half-yearly accounting period if the first annual accounting period is a period of less than 12 months.

- 2 A report which relates to an annual accounting period shall contain –
  - a. a comparative table relating to that period stating the matters set out in Part 3 of Schedule 3 below;
  - b. a copy of a report of the auditor to the unitholders on the accounts contained in the report stating the matters set out in Part 4 (or in the case of short form accounts, Part 5) of Schedule 3 below; and
  - c. a copy of a report of the depositary to the unitholders stating the matters set out in Part 6 of Schedule 3 below and supplied to the manager or directors by the depositary in accordance with Article 10.05 below.
- 3 A report which relates to any accounting period shall contain the accounts of the recognized fund for the period to which the report relates which shall, subject to these Rules, include –
  - a. a balance sheet stating the matters set out in Part 7 of Schedule 3;
  - b. a statement of total return stating the matters set out in Part 8 of Schedule 3;
  - c. a portfolio statement stating the matters set out in Part 9 of Schedule 3;
  - d. a statement of movement in unitholder's funds stating the matters set out in Part 10 of Schedule 3; and
  - e. notes to the accounts stating the matters set out in Part 11 of Schedule 3,and shall be prepared in accordance with generally accepted accounting principles and shall give a true and fair view of the financial position of the recognized fund as at the end of period to which the accounts relate.
- 4 A report of an umbrella fund shall contain –
  - a. reports relating to each of its constituent parts which shall each, so far as practicable, contain the accounts and the information that would be required by paragraphs 1, 2a and 3 if the constituent part were a separate recognized fund; and
  - b. except insofar as contained in a report relating to a constituent part in accordance with that paragraph –

- (i) the information referred to in paragraphs 1 and 2a, and
  - (ii) the copy reports relating to the recognized fund referred to in paragraphs 2b. and 2c.
- 5 A report relating to a constituent part which is not contained in a report under paragraph 4 shall contain –
  - a. so far as practicable the accounts and information that would be required by paragraphs 1, 2a. and 3 if the constituent part were a separate recognized fund;
  - b. the statements required by paragraph 13 of Part 1 of Schedule 3; and
  - c. the copy reports relating to the recognized fund referred to in paragraphs 2b. and 2c.
- 6 The manager, or the directors, shall ensure that the full accounts for an annual accounting period give a true and fair view of the net income and the net gains or losses on the property of the fund and each constituent part for that accounting period and the financial position of the recognized fund or constituent part as at the end of that period.
- 7 A report which relates to any accounting period shall be signed by 2 directors of the manager or, if the manager has only one director, by that director or, if the recognized fund is a company, in accordance with the Company Law.

#### **10.02 Publication of manager's or directors' reports**

- 1 The manager shall within 4 months after the end of each annual accounting period and within 2 months after the end of the half-yearly accounting period, publish the manager's or directors' annual and half-yearly report respectively in accordance with paragraphs 2 and 3 below.
- 2 The manager shall send a copy of the report free of charge to each unitholder (or to the first named of joint unitholders) entered in or entitled to be entered in the register at the close of business on the last day of the relevant accounting period (or, if the report relates to a half-yearly accounting period for which no interim allocation of income is made, as at the last day of that period) and shall supply free of charge a copy of the report to each unitholder of bearer units on request by the unitholder.
- 3 In the case of an umbrella fund, if the manager and trustee, or in the case of a company, its directors, so determine for any accounting period, the reports sent to unitholders in accordance with paragraph 2 may be the reports complying with Article 10.01.5 relating to the respective constituent part to which their unitholdings relate, but if requested to do so by any unitholder in respect of any particular accounting period, the manager shall send or supply to that unitholder (or in the case of joint unitholders, the first named), a report complying with Article 10.01.4.
- 4 The manager and the depositary shall make the most recent annual report and the most recent half-yearly report (unless it has been superseded by an annual report) available in English for inspection by the public free of charge at each place specified for the purpose in the most recently published prospectus during ordinary office hours.

- 5 The manager shall send a copy of each annual and half-yearly report and any report containing short form accounts on publication to the Commission.

### **10.03 Annual and half-yearly reports to be offered to purchasers of units**

- 1 Subject to paragraph 2, the manager shall not effect any sale of units in the fund to any person until it has offered that person free of charge a copy of the most recent annual report of the manager in the case of a unit trust, or in the case of a company of the directors, and the most recent half-yearly report of the manager, or of the directors as the case may be, (unless it has been superseded by an annual report) in English.
- 2 Paragraph 1 does not apply where the sale is effected otherwise than in the course of a conversation conducted face to face or by telephone, but the manager must send free of charge a copy of the documents mentioned there to the purchaser if the purchaser asks for them.

### **10.04 Manager to publish daily statement of availability of reports, etc.**

- 1 The manager shall, with every publication of prices under Article 4.23, publish a statement that the most recent report of the manager, or of the directors, and the prospectus are available free of charge to anyone who applies to the manager for them.
- 2 Paragraph 1 is sufficiently complied with if one of the pages of the newspaper in which managers publish prices carries the statement there required in relation to all the recognized funds referred to in those pages.

### **10.05 Annual Report by the depositary**

- 1 It shall be the duty of the depositary to enquire into the conduct of the manager, or in the case of a company the manager and the directors, in the management of the recognized fund in each annual accounting period and to report thereon to the unitholders.
- 2 The depositary's report shall contain the matters set out in Part 6 of Schedule 3 below and shall be delivered to the manager, or in the case of a company the directors, in good time to enable its inclusion in the annual report of the manager, or of the directors, to be published within 4 months after the end of the annual accounting period.

### **10.06 Short form accounts in reports**

- 1 If the manager so determines the accounts to be included in a report sent to or supplied to each unitholder in accordance with Article 10.02.2 or 10.02.3 may be short form accounts except to the extent that, in respect of any particular accounting period, a unitholder (or in the case of joint unitholders, the first named) has requested that a report containing the full accounts referred to in Article 10.01.3 or 10.01.4 be sent or supplied to the unitholder.
- 2 Short form accounts must comply with the relevant requirements of Part 2 of Schedule 3.

## PART 11

### MEETINGS AND MODIFICATIONS

#### 11.01 Introduction

This Part in its application is made subject to Article 2.10 (Alteration of funds, etc.,) and is made subject to applicable law, the provisions of which shall, in relation to a company apply to, and in the case of any conflict shall replace, any provisions of this Part.

#### 11.02 Modification of the constitutional documents: with meeting

- 1 A modification may be made to the constitutional documents only by amendment thereto following –
  - a. the calling of a meeting of unitholders by notice (if required under paragraph 2); and
  - b. the approval of the unitholders (if required under paragraph 3).
- 2 The calling of a meeting is necessary unless the manager and the trustees, or directors in the case of a company, have agreed that the modification is one which may, in accordance with Article 11.03 below, be made without the approval of a resolution.
- 3 The approval of the unitholders (signified by the passing at the meeting of an extraordinary resolution (or by special resolution if applicable law so provides) authorizing the modification) is required in any case where a meeting of unitholders has to be called.
- 4 If a meeting is required under paragraph 2, the notice calling the meeting must state that the trustees, or directors, have reviewed the circumstances leading to the proposed resolution and considers that the information accompanying the notice contains sufficient information to enable unitholders to make an informed decision.

#### 11.03 Modification of the constitutional documents: without meeting

- 1 Subject to paragraph 2 and to any restriction on the powers to modify which may be contained in the constitutional documents, a modification to the constitutional documents may be made without the approval of a resolution of the unitholders if it is required solely –
  - a. to implement any change in the law, including a change brought about by an amendment of these Rules;
  - b. as a direct consequence of any such change in the law;
  - c. to change the name of the recognized fund or of a constituent part of an umbrella fund;
  - d. to remove from the constitutional documents obsolete provisions;

- e. to replace the manager or the depositary when he or she has been removed or wishes to retire or has retired;
  - f. to remove references to a constituent part of an umbrella fund, following the approval of the Commission under Article 2.10 of these Rules to a proposal to alter the recognized fund by removing that constituent part;
  - g. by virtue of Article 16.03 (transitional: constitutional documents etc.);
  - h. to make any other modification which the depositary and the manager have agreed in writing, or in the case of a company the directors consider, does not involve any unitholders or potential unitholders in any material prejudice; or
  - i. solely to reflect the introduction of a new constituent part.
- 2 A modification is not within paragraph 1 if it would affect any express restriction imposed by the constitutional documents on the powers which the manager and depositary or either of them would otherwise be able to exercise within these Rules.

#### **11.04 Resolution to change the prospectus**

- 1 Any change to, or introduction of, any of the following provisions of the prospectus –
- a. investment policy or set of investment objectives in the prospectus of the kind referred to at Article 11.14.2b. and paragraph 9 of Schedule 2;
  - b. manner of calculation, accrual and payment of the manager's remuneration of the kind referred to at paragraph 14 of Schedule 2, except if it is a change of minimal significance;
  - c. details of any other payments of the kind referred to at paragraph 17 of Schedule 2 that may be taken out of the property of the fund; or
  - d. the policy on dilution levy referred to at paragraph 15 of Schedule 2,
- shall not be made without an ordinary resolution, and no significant departure shall be made thereto unless and until the departure has been approved by an ordinary resolution at a meeting of unitholders called for the purpose, and a prospectus amended accordingly has been published.
- 2 Except where approved by an extraordinary resolution at a meeting of unitholders called for the purpose, any change to, or introduction of, any of the following provisions to the prospectus relating to a proposal to –
- a. change the maximum rate or amount of the manager's remuneration (other than a decrease) of the kind referred to at paragraph 14a. of Schedule 2 may not be made; and
  - b. treat all or any part of the manager's periodic charge as a capital charge, may not be made; but this prohibition does not apply where –
    - (i) the pool concerned already has clear investment objectives indicating –
      - a. greater preference for the generation of income than for capital growth, or



- b. equal emphasis on the generation of income and on capital growth, and
    - (ii) 90 days have elapsed since the unitholders were notified in writing by the manager of the change to the prospectus and of the date when it is to come into effect.
- 3 Any amendment to the prospectus to introduce a list, or to add an eligible market to the list, required by paragraph 10 of Schedule 2 (list of eligible markets) shall require approval of an ordinary resolution at a meeting of unitholders unless –
  - a. the amendment is, in the context of the investment strategy of the pool, of minimal significance only, and the depositary and the manager have so agreed in writing; or
  - b. the manager has –
    - (i) given notice in writing of the intended amendment to the depositary and the unitholders,
    - (ii) included in the prospectus the proposed date of commencement of the amendment, and
    - (iii) before the amendment is relied upon, waited for 90 days to elapse since the amended prospectus became available.
- 4 Paragraphs 1, 2 and 3 shall not apply to a change to a prospectus which is required –
  - a. solely to fulfil a requirement resulting from a change in the law (including a change to these Rules); or
  - b. solely to reflect an amendment to the constitutional documents made –
    - (i) in accordance with Article 11.03.1(h), or
    - (ii) to reflect the introduction of a new constituent part.
- 5 No significant departure may be made in the management of the property of the pool from the statements in its prospectus current at the relevant time in fulfilment of the requirements of paragraph 9 of Schedule 2.

### 11.05 Amalgamation

- 1 An amalgamation is a scheme of arrangement (notified to the Commission under Article 2.10 of these Rules whenever a recognized fund is involved) whereby the whole of the property of a pool, or of a collective investment fund (whether a recognized fund or not) or constituent part, or its equivalent, thereof, or body corporate becomes the property (but not the first property) of a recognized fund, and whereby unitholders (or shareholders) in the collective investment fund or body corporate receive units in the recognized fund.
- 2 An amalgamation shall not result in the unitholders in a recognized fund becoming unitholders (or shareholders) in a collective investment fund which is not a regulated collective investment fund.
- 3 Where it is proposed that 2 or more pools should be amalgamated, the proposal will require the approval of the unitholders in the pool or any pool which would cease to exist if the proposal were implemented (the “discontinuing fund or funds”).

- 4 Where it is proposed that a pool should be subject to an amalgamation with a collective investment fund other than a recognized fund the proposal will require the approval of the unitholders in the pool.
- 5 Where it is proposed that a collective investment fund or constituent part, or its equivalent, thereof or a body corporate should be discontinued and amalgamated with a pool (the “continuing fund”), the proposal will (irrespective of any other approval and subject to Article 4.08.2) require the approval of the unitholders in the continuing fund unless paragraph 6 applies.
- 6 This paragraph applies if the depositary of the continuing fund is reasonably satisfied that the inclusion of the property concerned –
  - a. is not likely to result in any material prejudice to the interests of the unitholders in the continuing fund;
  - b. is consistent and is regarded by the manager as consistent with the objectives of the continuing fund; and
  - c. could be effected without any breach, inadvertent or not, of Part 5.

### **11.06 Reconstruction**

- 1 A reconstruction of a pool is a scheme of arrangement (notified to the Committee under Article 2.10 of these Rules) whereby –
  - a. part of the property of a pool becomes the property of a collective investment fund or funds; or
  - b. the whole of that property becomes the property of 2 or more collective investment funds,and whereby unitholders in the pool being reconstructed receive units in the collective investment fund or funds in exchange for the property received into that fund or funds.
- 2 A proposal for reconstruction requires, in respect of the pool being reconstructed, the approval of the unitholders in the pool.
- 3 Where it is proposed that property of the pool being reconstructed should become property of another pool, the proposal will (irrespective of any other approval and subject to Article 4.08.2) require the approval of the unitholders in that other pool, unless that approval would, by virtue of Article 11.05.5 and on the assumption that the property to be included were treated as a discontinuing fund, not have been required on an amalgamation.

### **11.07 Convening of meetings and attendance and voting thereat**

- 1 The trustee or the manager of a unit trust, or in the case of a company the directors, may at any time convene a meeting of the unitholders at such a time and place as the trustee after consulting the manager, or the directors, may think fit.
- 2 The trustee, or the directors, shall, on request in writing of unitholders registered as holding not less than 1/10 (or any proportion below 1/10 specified for this purpose in the constitutional documents) in value of the units in issue, convene a meeting of unitholders at such time and place as the trustee after consulting the manager, or the directors, may think fit.

- 3 The manager shall be entitled to receive notice of and attend at any such meeting but shall not be entitled to vote or be counted in the quorum therefore and accordingly for the purposes of Articles 11.07 to 11.18, the units held or deemed to be held by the manager shall not be regarded as being in issue.
- 4 The words in paragraph 3 after “but” do not apply in respect of any units which the manager holds on behalf of or jointly with a person who, if himself or herself the sole registered unitholder, would be entitled to vote, and from whom the manager has received voting instructions.
- 5 Any associate of the manager shall not be entitled to vote at any such meeting except in respect of units which the associate holds on behalf of or jointly with a person who, if himself or herself the registered unitholder, would be entitled to vote, and from whom the associate has received voting instructions.
- 6 The depositary and its legal advisors shall be entitled to attend every such meeting.
- 7 In this Article, and in Articles 11.08 to 11.18, “unitholders” means –
  - a. the persons who were unitholders on the date 7 days before the notice under Article 11.09 is sent or delivered, whichever is the earlier, but excluding any persons who are known not to be unitholders at the time of the meeting or at any other relevant time; and
  - b. in the case of units for the time being represented by bearer certificates, the persons who for the time being are unitholders of such units which were in issue on the date 7 days before the notice under Article 11.09 is sent or delivered, whichever is the earlier,but where a meeting is adjourned, this paragraph applies as if the references to Article 11.09 were references to Article 11.10.4.

### **11.08 Powers of a meeting of unitholders**

A meeting of unitholders duly convened and held in accordance with this part of the Articles shall be competent by extraordinary resolution, or special resolution or ordinary resolution as the case may be, to require, authorize or approve any act, matter or document in respect of which any such resolution is required or expressly contemplated by these Rules, but shall not have any other powers, except such as are permitted by applicable law and are not inconsistent with these Rules, or are required by applicable law.

### **11.09 Notices of meetings of unitholders**

- 1 Fourteen days’ notice (or any longer period of notice specified for the purpose in the constitutional documents or applicable law), inclusive of the day on which the notice is deemed to be served and of the day specified pursuant to paragraph 2, of every meeting shall be given to the unitholders in the manner provided for in Part 15 below.
- 2 The notice shall specify the place, day and hour of meeting and the terms of the resolutions to be proposed.
- 3 Unless the depositary has convened the meeting a copy of the notice shall be sent by post to the depositary.

- 4 The accidental omission to give notice to or the non-receipt of notice by any of the unitholders shall not invalidate the proceedings at any meeting.

#### **11.10 Quorum**

- 1 The quorum at a meeting of unitholders shall be 2 unitholders present in person or by proxy or in the case of a corporation, by a duly authorized representative.
- 2 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3 If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to such other day and time and to such place as may be appointed by the chairman (if a chairman has been appointed), or otherwise by the trustee, or in the case of a company the directors, and if at such adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting the one or more unitholders present in person or by proxy or their duly authorized representatives shall be a quorum.
- 4 At least 7 days' notice of any adjourned meeting of unitholders which is adjourned for 14 days or more shall be given in the same manner as for an original meeting and such notice shall state that one or more unitholders present in person or by proxy at the adjourned meeting whatever their number and the number of units held by them will form a quorum. Otherwise it shall not be necessary to give any such notice.

#### **11.11 The chairman**

Subject to any applicable law, some person, who need not be a unitholder, nominated in writing by the trustee or the directors shall preside at every meeting of unitholders or if no such person is nominated or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting then the unitholders present in person or by proxy shall choose one of their number to be chairman.

#### **11.12 Adjournment**

The chairman may, with the consent of any meeting of unitholders at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

#### **11.13 Votes at meetings**

- 1 At any meeting of unitholders a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, by the depositary or by one or more unitholders present in person or by proxy and holding or representing 1/20 (or any proportion less than 1/20 specified for this purpose in the constitutional documents) in value of all the units in issue on the date specified in Article 11.07.7.

- 2 Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against such resolution.
- 3 If a poll is duly demanded it shall be taken in such a manner as the chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 4 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such time and place as the chairman directs.
- 5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 6 On a show of hands every unitholder who (being an individual) is present in person, or (being a corporation) is present by its representative properly authorized in that regard, shall have one vote.
- 7 On a poll every unitholder who is present in person or by proxy shall have one vote for every complete undivided share in the property of the fund and a further part of one vote proportionate to any fraction of such an undivided share of which he or she is the unitholder; and a unitholder entitled to more than one vote need not, if he or she votes, use all his or her votes or cast all the votes the unitholder uses in the same way.
- 8 A corporation being a unitholder may authorize such person as it thinks fit to act as its representative at any meeting of unitholders and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as the corporation could exercise if it were an individual unitholder.
- 9 In the case of joint unitholders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint unitholders and for this purpose seniority shall be determined by the order in which the names stand in the register of unitholders.
- 10 On a poll votes may be given either personally or by proxy.

#### **11.14 Restrictions on the putting of composite resolutions to meetings of holders**

- 1 Modifications to the constitutional documents and departures from policies or a set of investment objectives stated in a prospectus of the description set out in paragraph 2 shall not be taken to have been authorized by an extraordinary resolution, a special resolution or an ordinary resolution, as the case may require, at a meeting of unitholders unless each such modification or departure has been the subject of a separate motion for its approval which has been separately approved by an extraordinary resolution or special resolution or ordinary resolution, as the case may be, at that meeting.
- 2 The following are the descriptions of modifications to the constitutional documents and departures from policy or investment objectives referred to in paragraph 1 –
  - a. a modification to any provision in the constitutional documents restricting –
    - (i) the descriptions of assets in which the property of the pool may be invested,

- (ii) the proportion of the property of the pool to be invested in assets of any description,
  - (iii) the description of transactions permitted, or
  - (iv) the borrowing powers of the pool;
- b. any statement made in the prospectus that the manager will or may in relation to any matter within paragraph 2a adopt, in the management of the pool, a policy or set of investment objectives more restrictive than the restrictions imposed in relation to that matter by Part 5 above or by the constitutional documents; and
- c. any change to any statement in paragraph 2b.

### 11.15 Proxies

- 1 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorized in writing or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorized.
- 2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at such place as the depositary or the manager with the approval of the depositary may in the notice convening the meeting direct (or if no such place is appointed then at the registered office of the manager or in the case of a company, of the company) not less than 48 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.
- 3 No instrument for appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.
- 4 A person appointed to act as a proxy need not be a unitholder.
- 5 An instrument of proxy may be in the usual common form or in any other form which the depositary shall approve.
- 6 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or other revocation of the proxy or of the authority under which the proxy was executed or the transfer of the units in respect of which the proxy is given provided that no intimation in writing of such transfer or knowledge of such death, insanity, or other revocation shall have been received at the place appointed for the deposit of proxies or if no such place is appointed at the registered office of the manager and made known to the person exercising the proxy at the time at which the proxy is used.

### 11.16 Minutes

- 1 Minutes of all resolutions and proceedings at every meeting of the unitholders shall be made and duly entered in books to be from time to time provided for the purpose at the expense of the manager or, in the case of a company, the company.
- 2 Any such minute purporting to be signed by the chairman of the meeting shall be conclusive evidence of the matters therein stated and, until the contrary is proved,

every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

### **11.17 Meaning of “extraordinary resolution” and of “ordinary resolution”**

- 1 In these Rules “extraordinary resolution” means a resolution –
  - a. proposed and passed at a meeting of unitholders duly convened and held in accordance with this Part of these Rules of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given; and
  - b. carried, whether on a show of hands or on a poll, by a majority consisting of not less than  $\frac{2}{3}$  (or any larger proportion specified for this purpose in the constitutional documents) of the total number of votes cast for and against such resolution.
- 2 In these Rules “ordinary resolution” means a resolution proposed passed and carried in like manner *mutatis mutandis* to that described in relation to an extraordinary resolution in paragraph 1 except that the required majority shall consist of not less than one half of the total number of votes cast for and against such resolution.

### **11.18 Class meetings**

- 1 If the depositary is of the opinion that any resolution to be proposed is one in relation to which there is or might be a conflict of interest between the unitholders of one class of units and the unitholders of another class of units, whether such conflict might be in relation to classes which are both within a single pool or, additionally in the case of an umbrella fund, between the unitholders of a class of units in one constituent part and the unitholders of a class of units in another, such resolution shall be deemed to have been duly passed only if in lieu of being passed at a single meeting of all unitholders it shall be duly passed at separate meetings respectively of the unitholders of each class of units concerned.
- 2 This part of these Rules shall apply to each separate meeting held pursuant to paragraph 1 as it applies to other meetings.

### **11.19 Resolutions**

- 1 Except where an extraordinary resolution is specifically required or permitted by these Rules or a special resolution is specifically required or permitted by these Rules or Company Law, any resolution referred to in these Rules shall be passed by an ordinary resolution.
- 2 In the case of an equality of votes cast (whether on a show of hands or on a poll) in respect of a resolution put to a general meeting, any chairman appointed pursuant to the constitutional documents shall be entitled to a casting vote in addition to any other vote the chairman may have.

**PART 12****SPECIAL PROVISIONS FOR CERTAIN CATEGORIES OF RECOGNIZED FUND****12.01 Efficient portfolio management: off-exchange options**

Article 12.02 applies to any pool (whether or not it is a futures and options fund) in so far as it engages in transactions for efficient portfolio management involving off-exchange derivatives.

**SECTION A****FUTURES AND OPTIONS FUNDS****12.02 Off-exchange derivatives: discrepancy in valuation**

If at any time it appears to the manager that the latest valuation provided to the manager under Article 5.23.7a. and the latest valuation under Article 5.23.8 (valuation of off-exchange derivatives transactions) are not reasonably similar in amount then the manager must –

- a. take, after consulting the depositary, whatever action relating to the transaction which appears to be in the best interests of the unitholders; and
- b. consider with the depositary whether the discrepancy requires them to consider the validity of the pricing model relevant to further off-exchange transactions under Article 5.23.5.

**12.03 Special rule for selling and repurchase**

- 1 This Article modifies Part 4 for futures and options funds.
- 2 Article 4.14.1 (obligation to sell units) and 4.17.1 (obligation to repurchase units) do not apply in the 15 minutes immediately before a regular valuation point, or, if the regular valuation points are less than one hour apart, in the last quarter of the interval between them, if the manager has stated in the prospectus that the manager is not obliged to sell or repurchase in the 15 minutes (or lesser period) immediately preceding a regular valuation point.
- 3 Where the manager has so stated in the prospectus, then the manager may not, during the period, agree or decide to sell or repurchase units for himself or herself as principal, or arrange or agree to arrange for the trustee or company to create or cancel units.



**SECTION B****GEARED FUTURES AND OPTIONS FUNDS****12.04 Special rules for pricing**

- 1 This Article modifies Part 4 above for geared futures and options funds.
- 2 Prices for sale and repurchase are to be on a forward basis only, and Article 4.26 does not apply.
- 3 Valuation of the property of the pool is to be carried out at least once on every business day.

**12.05 Special rule for selling and repurchase**

- 1 This Article modifies Part 4 for geared futures and options funds.
- 2 Article 12.03.2 and 3 shall apply to such funds.

**SECTION C****PROPERTY FUNDS****12.06 Standing independent valuer**

- 1 The manager shall, at the outset and upon any vacancy, with the approval of the depositary appoint as the standing independent valuer for the pool a person who is qualified under paragraph 2.
- 2 A person is qualified to be the standing independent valuer if the person is –
  - a. a fellow or professional associate of the Royal Institution of Chartered Surveyors;
  - b. a fellow or associate of the Incorporated Society of Valuers and Auctioneers; or
  - c. a fellow or associate of the Institute of Revenues, Rating and Valuation.
- 3 A person is eligible to be appointed, or to retain appointment, as the standing independent valuer only if the person is independent of the manager, the depositary and the directors, in that –
  - a. neither the person nor any partner (if any) or fellow director (if any) of the person's –
    - (i) is an officer, servant or controller of, or
    - (ii) has a financial interest which it is reasonable to regard as significant in,

the manager, the depositary, any of the directors or the recognized fund or any body corporate in the same group as the manager, the depositary or the recognized fund, as the case may be; and

- b. neither the manager nor the depositary nor any of the directors or their associates nor the recognized fund nor any body corporate in the same group as the manager, the depositary or the recognized fund has a financial interest which it is reasonable to regard as significant in any partnership of which the person is a member or in any body corporate of which the person is a director or controller.
- 4 The standing independent valuer may be removed from office by notice in writing given by the manager or by the depositary: the manager may not give any such notice without the agreement of the depositary, and the depositary must inform the manager of any notice given by the depositary.
  - 5 Any partner of the person appointed to be the standing independent valuer who would himself or herself be eligible for appointment may act on his or her behalf: and, if the standing independent valuer considers it expedient that another person who is an appropriate valuer should act on his or her behalf, he or she may appoint that other as his or her delegate for the purpose of any specific valuation.
  - 6 Details of the standing independent valuer shall be given in the prospectus, as specified in paragraph 4 of Schedule 2.

#### **12.07 Functions of the standing independent valuer**

- 1 The standing independent valuer shall value all the immovables held within the property of the pool, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year.
- 2 The standing independent valuer shall also value the immovables, on the basis of a review of the last full valuation, at least once a month.
- 3 The depositary may at any time require the manager to procure an additional valuation under paragraph 1 or under paragraph 2 as the depositary may specify.
- 4 Where, since the last valuation under paragraph 1, any new immovable has been purchased for the pool, and any appropriate valuer under Article 5.35 was not the standing independent valuer, the standing independent valuer shall –
  - a. if the report of the appropriate valuer was on the basis of full valuation with internal inspection, review that valuation as part of any valuation under paragraph 2 until the next full valuation under paragraph 1; and
  - b. if the report of the appropriate valuer was not on the basis in a., value the immovable on that basis as part of his or her next valuation under paragraph 2.
5. The manager and depositary shall each inform the standing independent valuer forthwith upon its becoming aware of any matter appearing likely to –
  - a. affect the outcome of a valuation of an immovable;
  - b. cause the valuer to decide to value under paragraph 1 instead of under paragraph 2; or

- c. cause the valuer to recommend to the depositary that it should make a requirement under paragraph 3.
- 6 The manager and depositary shall each use their best endeavours to ensure that any affected person reports to the valuer forthwith upon that person's becoming aware of any matter within paragraph 5.
- 7 Any valuation by the standing independent valuer (except one under paragraph 4a) shall be on the basis prescribed as an "open market value" in the Statements of Asset Valuation Practice and Guidance Notes on the valuation of assets published by the Assets Valuation Standards Committee of the Royal Institution of Chartered Surveyors (3rd edition published in August 1990 and revised in May 1992).

### **12.08 Special rules for pricing**

- 1 This Article modifies Part 4 above for property funds.
- 2 Any valuation under Article 12.07 shall have effect, until the next valuation under that Article, for the purposes of ascertaining under Part 4 the fair value of the immovable property concerned.
- 3 Prices for the purposes of sale and repurchase are to be on a forward basis only, and Article 4.26 does not apply.
- 4 An agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the property of the pool unless it appears to be legally enforceable.
- 5 Dealing costs are to be those estimated by the standing independent valuer, and the valuer's estimate must have regard to any special reduction which the valuer believes should be available to the manager in the amount or rate of charges or commission payable.
- 6 The following provisions do not apply to property funds –
  - (i) Article 4.02.3;
  - (ii) Article 4.02.4a.;
  - (iii) Article 4.04;
  - (iv) Article 4.26; and
  - (v) Table 4.1.

### **12.09 Failure to obtain minimum subscriptions**

- 1 Where, immediately upon the expiry of the period of the initial offer, it appears to the manager or the directors that the aggregate of monies paid or agreed to be paid for units to be created or sold is less than £5m (or the equivalent in the base currency) –
  - a. the manager may not deduct any preliminary or periodic charge in respect of any units to be sold on or after that expiry;
  - b. the manager must credit back to the account of the unitholder any preliminary or periodic charge deducted on selling units during the initial period; and

- c. the manager, the depositary and company must apply to the Commission for the exercise of the power of the Commission under Article 14.03.3 for the cancellation of the recognized fund certificate, or where the property fund is a constituent part of an umbrella fund, for the amendment and re-issue of the recognized fund certificate with its validity in relation to the property fund removed.
  - 2 Paragraph 1 applies, where there is no initial offer, as if –
    - a. the period of the process of unitization; or
    - b. the period of 21 days after the date on which persons are first invited to become unitholders,  
were the period of the initial offer.

### **12.10 Notification of breaches etc.**

If the manager of a property fund is at any time of the opinion that there has been –

- a. a breach of any provision of Part 5; or
- b. a circumstance within the meaning of Article 7.13.4 or 7.13.5,  
the manager must forthwith notify that breach (or circumstance) together with the manager's proposals for rectification (or restoration of compliance) to –
  - c. the depositary and the directors; and
  - d. the Commission.

### **12.11 Suspension of dealings**

- 1 This Article applies, without prejudice to Article 13.01 (suspension etc.), if at any time it appears to the depositary that there is insufficient property in the pool by way of –
  - a. cash or near cash;
  - b. property related assets; or
  - c. other assets capable of early liquidation,  
to enable the trustee or company to cancel units as necessary to enable the manager to meet the demand or likely demand for repurchase of units.
- 2 In such a case, the trustee, or the directors with the agreement of the depositary –
  - a. shall require the manager to suspend dealings in units (whether by way of sale, repurchase, creation or cancellation);
  - b. shall not, while the suspension remains in force, create or cancel units;
  - c. shall forthwith inform the Commission of the suspension, stating the reasons for its action; and
  - d. shall thereupon confirm the suspension by giving notice in writing –
    - (i) to the manager, and
    - (ii) to the Commission.

- 3 The manager shall comply with a requirement under paragraph 2a, and in each country in which the recognized fund is registered for public sale shall notify the suspension to the authorities responsible for the authorization of collective investment funds, stating the reasons for this action.
- 4 Following the suspension, the manager shall report to the Commission with such frequency as the Commission shall require (and in writing if so required) giving particulars of the action being taken to enable dealings in units to be resumed.
- 5 The suspension shall expire on the close of business on the 28th day after the date of the suspension, unless extended under paragraph 6.
- 6 If it appears to the manager, or to the trustee or directors, that it is desirable in the interests of the unitholders that the suspension should be extended (or further extended) it or they may, not less than 5 business days before the date of expiry of the suspension, apply to the Commission in order to request such extension and, if it appears to the Commission to be desirable to do so in the interests of unitholders or potential unitholders, the Commission may grant such application.
- 7 Articles 4.14 and 4.17 (manager's obligation to sell and repurchase) are subject to this Article.

## **SECTION D**

### **WARRANT FUNDS**

#### **12.12 Special rules for pricing**

- 1 This Article modifies Part 4 above for warrant funds.
- 2 Prices for sale and repurchase are to be on a forward basis only, and Article 4.26 does not apply.
- 3 Valuation of the property of the pool is to be carried out at least once on every business day.

## SECTION E

### FEEDER FUNDS AND FUNDS OF FUNDS

#### 12.13 Pricing and valuation of feeder funds

- 1 The manager of a feeder fund shall deal on the same basis (forward or historic) as the pool, or regulated collective investment fund or other collective investment fund or constituent part, or its equivalent, thereof, into which the feeder fund feeds.
- 2 The normal valuation point for a feeder fund must be within 2 hours after each normal valuation point for the pool, or regulated collective investment fund or other collective investment fund or constituent part, or its equivalent, thereof, into which the feeder fund feeds.
- 3 Paragraphs 1 and 2 do not apply to a feeder fund dedicated to a single eligible investment trust.

#### 12.14 Feeder funds: notification of risk of loss of eligibility of eligible investment trust

- 1 Where the depositary is no longer satisfied of any matter specified in Article 5.46.3 (ongoing requirements for eligible investment trust status), it must forthwith notify that circumstance and its immediate observations as to the resolution of the problem to –
  - a. the manager; and
  - b. the Commission.
- 2 Within 4 months of any notification under paragraph 1, the manager and the depositary must apply to the Commission for the exercise of the power of the Commission under Article 14.03 (Cancellation or amendment and re-issue of recognized fund certificate) for the cancellation of the recognized fund certificate, or where the feeder fund is a constituent part of an umbrella fund for the amendment and re-issue of the recognized fund certificate with its validity in relation to the feeder fund removed following the winding up of that part, unless within that period, the relevant circumstance has ceased to exist, and the depositary reasonably believes it will not recur.

#### 12.15 Valuation of funds of funds

- 1 In the case of a pool which is a fund of funds it shall be valued on the same basis (forward or historic) and on the same frequency as would be applicable if the fund of funds were itself a pool within the relevant Section (out of Sections B, C, D, E, F, G) which is appropriate for the choice of investment by the pool under Article 5.48.1.
- 2 Where a fund of funds invests in money market funds (within Section C), Section C is appropriate within paragraph 1 only if the pool does not invest in any other category of pool or of other regulated collective investment fund or constituent

part, or its equivalent, thereof other than the equivalent of the category of a pool within Section C.

## **SECTION F**

### **UMBRELLA FUNDS**

#### **12.16 Qualification to be authorized as an umbrella fund**

A collective investment fund does not qualify for the grant of a recognized fund certificate as an umbrella fund unless each constituent part would, if it were the subject of a separate application for the grant of a recognized fund certificate, qualify for such grant.

#### **12.17 Base currency**

In the case of an umbrella fund any reference to base currency shall in the context of a valuation of a constituent part or the price of a unit in respect of a constituent part or a payment in respect of such a unit respectively be treated as if the reference were to the currency stated in the prospectus as being the currency to be used for the purpose in question in relation to the constituent part.

#### **12.18 Allocation of property of the fund**

In so far as any of the property of the fund of an umbrella fund, or any assets to be received as part of the property of the fund, or any costs, charges or expenses to be paid out of the property of the fund, are not attributable to one constituent part only, subject to applicable law the recognized fund must allocate such property of the fund, assets, costs, charges or expenses between the constituent parts in a manner which is fair to the unitholders of the umbrella fund generally.

#### **12.19 Significant influence**

The significant influence provisions contained in Article 5.16 shall be applied to the constituent parts of an umbrella fund as a whole and not separately to each constituent part.

**PART 13****SUSPENSION AND TERMINATION****13.01 Suspension and resumption of sale and repurchase of units**

- 1 The manager may with the prior agreement of the trustee or the depositary and the directors, or shall if the trustee or the directors with the agreement of the depositary so requires, at any time for a period not exceeding 28 days suspend the sale and the repurchase of units if he or she, or the trustee or directors in the case of any requirement by them, is of the opinion that there is good and sufficient reason to do so having regard to the interests of unitholders or potential unitholders.
- 2 At the time of suspension under paragraph 1 the manager, or the trustee or directors if they have required the manager to suspend sale and repurchase, shall –
  - a. inform the Commission of the suspension, stating the reasons for this action; and
  - b. forthwith confirm the suspension by giving notice in writing –
    - (i) to the Commission, and
    - (ii) in each country in which the recognized fund is registered for public sale, to the authorities responsible for the authorization of collective investment funds,  
stating the reasons for this action.
- 3 If sale and repurchase are suspended –
  - a. the trustee or company shall not create or cancel units; and
  - b. the manager shall not create or cancel units as agent for the trustee or company.
- 4 Before the resumption of sale and repurchase of units, the manager shall inform the Commission of the proposed resumption and forthwith after the resumption confirm the resumption by giving notice in writing to the bodies and authorities specified in paragraph 2b.
- 5 Nothing in this Article shall prevent the manager from agreeing, during the period of the suspension, to sell or to repurchase units (or to create or cancel them as agent for the trustee or company) at a price calculated by reference to the first valuation point after resumption of sale and repurchase but the potential unitholder or existing unitholder as the case may be may withdraw his or her agreement to purchase or sell such units by notice received by the manager at any time prior to that valuation point.
- 6 During the period of a suspension, none of the obligations in Part 4 relating to the creation, cancellation, sale or repurchase of units or to the valuation of units shall apply.
- 7 This Article may be applied to one or more classes of unit without being applied to other classes of unit in a pool; however, for the purpose of paragraph 1, the



manager or the trustee or directors (as the case may be) shall, in exercising their powers, have regard to the interests of all of the unitholders in the recognized fund.

### **13.02 When the pool is to be wound up**

- 1 Unless the Commission shall otherwise determine, upon the happening of any of the events specified in paragraph 2 and, subject to any applicable law, not otherwise –
  - a. Parts 4 and 5 shall cease to apply to the pool;
  - b. the trustee or company shall cease to create and cancel units in the pool;
  - c. the manager shall cease to sell and repurchase units in the pool;
  - d. the manager shall cease to create or cancel units as agent for the trustee or company; and
  - e. the pool shall be subject to the winding-up procedures specified in Article 13.03.
- 2 The events referred to in paragraph 1 are –
  - a. the cancellation of the recognized fund certificate granted with respect to the pool concerned or its amendment and re-issue with its validity in relation to the relevant pool removed;
  - b. the determination by the Commission, under paragraph 3 of Article 14.03 to cancel the recognized fund certificate applicable to the recognized fund or to amend and re-issue it with its validity in relation to the relevant pool removed at the request of the manager, or the depositary or the company;
  - c. the expiration of any period or the occurrence of any event specified in the constitutional documents as the period at the end of which or the event on the occurrence of which the pool is to terminate;
  - d. the effective date of a duly approved scheme of amalgamation in relation to the pool;
  - e. the effective date of a duly approved scheme of reconstruction which results in all the property of the reconstructed pool becoming the property of 2 or more regulated collective investment funds; or
  - f. the passing of an extraordinary resolution, or in the case of a company a special resolution, to the effect that the pool be wound-up.
- 3 This Article is without prejudice to Article 13.01 and to any order or direction made under the Law.
- 4 The trustee or directors shall give notice to the Commission on the occurrence of any of the events specified in paragraph 2c., 2d., 2e. and 2f.

### **13.03 Manner of winding up**

- 1 In the case of a pool falling within Article 13.02.2d or 13.02.2e, other than the sole pool of a company, the depositary shall wind up the pool in accordance with the approved scheme of amalgamation or reconstruction.

- 2 In the case of any other pool falling within Article 13.02.2, other than the sole pool of a company –
  - a. the depositary shall, as soon as practicable after the pool falls to be wound up, realize the property of the pool and, after paying or retaining adequate provision for all liabilities properly so payable and retaining provision for the costs of the winding up, distribute the proceeds of that realisation to the unitholders and the manager (upon production by them of such evidence, if any, as the depositary may reasonably require as to their entitlement thereto) proportionately to their respective interests in the pool as at the date of the relevant event referred to in Article 13.02.2; and
  - b. any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the depositary after the expiration of 12 months from the date on which the same became payable shall be paid by the depositary into court for distribution as the court may direct subject to the depositary having a right to retain thereout any expenses incurred by the depositary in making and relating to that payment.
- 3 In any case falling within Article 13.02.2a. or 13.02.2b. in relation to the sole pool of a company the directors shall convene an extraordinary general meeting of the company on a date not later than one month from the happening of such event to consider a special resolution to wind-up the company.
- 4 In any case falling within Article 13.02.2c., d., e. or f in relation to the sole pool of a company the company shall be wound-up in accordance with the approved scheme of amalgamation or reconstruction, the constitutional documents and any applicable law, as appropriate.
- 5 Where the depositary and one or more unitholders agree, the requirement in paragraph 2 to realize the property of the pool shall not apply to that part of the property proportionate to the entitlement of that or those unitholders, and the depositary may distribute that part in the form of property, after making such adjustments or retaining such provision as appears to the depositary appropriate for ensuring that that or those unitholders bear a proportional share of the liabilities and costs.
- 6 Nothing in this Part of these Rules requires the depositary to distribute proceeds of a realization to any unitholder in any case where the manager or the depositary considers it necessary or appropriate to carry out or complete identification procedures in relation to the unitholder or another person pursuant to a statutory or regulatory obligation.
- 7 On completion of the winding up in respect of the events referred to in Articles 13.02.2b, c., d., e. or f. the trustee or directors shall notify the Commission in writing of that fact and at the same time an application shall be made for the cancellation or amendment and re-issue of the recognized fund certificate pursuant to Article 14.03.3.

### **13.04 Accounting and reports during winding up**

- 1 Subject to any order of the court, applicable law and to paragraphs 2 and 3, while a pool is being wound up, whether under Article 13.03 or otherwise –
  - a. the annual and half-yearly accounting periods shall continue to run;

- b. the provisions about annual and interim allocation of income shall continue to apply; and
  - c. annual and half-yearly reports shall continue to be required.
- 2 Where, in respect of any annual or half-yearly accounting period, the depositary (after consulting the manager (if appropriate) and the Commission) is satisfied that timely production of an annual or half-yearly report is not required in the interests of the unitholders or of the Commission and applicable law allows, it may direct that immediate production of the report may be dispensed with, and thereupon the period in question must be reported on together with the ensuing period in the next report prepared under paragraph 1 or 3.
- 3 In the case of a pool of a unit trust or a pool which is not the sole pool of a company, at the conclusion of the winding up the accounting period then running shall be regarded as the final annual accounting period, and the annual reports of the manager and depositary, in respect of that final period, shall be published and sent to the Commission and to each person who was a unitholder immediately before the end of the final annual accounting period within 2 months after the end of the period.

**PART 14****APPLICATION FOR RECOGNIZED FUND CERTIFICATE****14.01 Application for recognized fund certificate**

- 1 An application for a recognized fund certificate or the extension of its validity to include additional pool(s) shall be made to the Commission –
  - a. in the case of a unit trust, by the manager and trustee; and
  - b. in the case of an open-ended investment company, by that company, the manager and the custodian,and in any other case, as prescribed by the Minister or directed by the Commission.
- 2 Each such application shall –
  - a. be in the form required from time to time by the Commission;
  - b. contain or be accompanied by such other particulars as the Commission may require;
  - c. be verified in such manner and to such extent as the Commission may require; and
  - d. be accompanied by –
    - (i) in the case of a unit trust, a copy of the trust instrument and fund rules, if any,
    - (ii) in the case of an open-ended investment company, a copy of the memorandum and articles of association of that company, the fund rules (if any), the management agreement and the custodian agreement, and
    - (iii) a certificate, satisfactory to the Commission, signed by an Advocate or Solicitor of the Royal Court to the effect that each such document complies with such of the requirements of these Rules as relate to its contents.

**14.02 Grant of recognized fund certificate**

- 1 The Commission may, on an application duly made in accordance with Article 14.01 and after being furnished with all such information as it may require under that Article, grant a certificate (a “recognized fund certificate”) in respect of a collective investment fund if it appears that –
  - a. the collective investment fund, if it were a recognized fund, would be within one of the categories of recognized funds specified in Article 2.05.1 and takes the form of a unit trust or an open-ended investment company, or such other form as may be specified by the Minister;
  - b. in the case of a unit trust, the trustee and the manager are each the holder of a permit granted under Article 7 of the Law;

- c. in the case of an open-ended investment company, that company, the manager and the custodian are each the holder of a permit granted under Article 7 of the Law;
  - d. in the case of a collective investment fund in any other form, every functionary nominated by the Commission is the holder of a permit granted under Article 7 of the Law; and
  - e. the collective investment fund complies with such of the requirements of these Rules as relate to a recognized fund of the particular category to which it belongs.
- 2 Each recognized fund certificate shall specify the category of recognized fund to which it relates.

#### **14.03 Cancellation or amendment and re-issue of recognized fund certificate**

- 1 The Commission may at any time cancel or amend and re-issue a recognized fund certificate if it appears to the Commission –
- a. that any of the requirements for the grant of the certificate or for inclusion of the recognized fund or a constituent part thereof in the category to which it belongs are no longer satisfied and that the recognized fund certificate should in consequence be cancelled or amended and re-issued as the case may be;
  - b. that it is undesirable in the interests of the participants or potential participants that the pool should continue to be a recognized fund or a constituent part thereof; or
  - c. without prejudice to paragraph b., that –
    - (i) in the case of a unit trust, the manager or the trustee, or
    - (ii) in the case of an open-ended investment company, that company or the manager or the custodian,
- has contravened any provision of the Law or of any Regulations or Order (including these Rules) made under it or of any permit granted under the Law or, in purported compliance with any such provisions or permit, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition, restriction, direction or requirement imposed under the Law.
- 2 For the purposes of paragraph 1.b., the Commission may take into account any matter relating to –
- a. the recognized fund or any constituent part thereof;
  - b. in the case of a unit trust, the manager or the trustee; or
  - c. in the case of an open-ended investment company, that company, the manager or the custodian;
  - d. in the case of a collective investment fund in any other form, such functionaries as the Commission may decide;
  - e. a director or controller of any of the persons stated in sub-paragraphs b., c. and d.; or

- f. any person employed by or associated with any of the persons stated in sub-paragraphs b., c. and d.
- 3 The Commission may cancel or amend and re-issue a recognized fund certificate at the request of –
- a. in the case of a unit trust, the manager or the trustee;
- b. in the case of a company, that company or the manager or the custodian; and
- c. in any other case, such functionaries as the Commission shall decide,
- but the Commission may refuse to do so if it considers that any matter concerning the recognized fund should be investigated as a preliminary to a decision on whether the recognized fund certificate should be cancelled or amended and re-issued, or the cancellation or amendment and re-issue, would not be in the interests of the unitholders and in the case of amendment will require that the request for re-issue of an amended recognized fund certificate be made to the Commission by the same functionaries as would have been required to make the application had it been an application for a new certificate.
- 4 On cancellation or amendment and re-issue of a recognized fund certificate under this Article, each of the persons referred to in paragraph 3 a., b. or c., as the case may be, shall forthwith notify that fact to –
- a. the authorities responsible for the authorization of collective investment funds in each country in which the recognized fund is registered for public sale; and
- b. each unitholder of the recognized fund other than, in the case of a unit trust, the bearer of a bearer certificate.
- 5 The notice required of each of the persons respectively referred to in paragraph 4 may be given by them jointly.
- 6 On cancellation or amendment and re-issue of a recognized fund certificate under this Article, each of the persons referred to in sub-paragraph a., b. or c. as the case may be of paragraph 3 shall forthwith procure the return of the pre-existing certificate to the Commission.

#### **14.04 Representations against refusal or cancellation or amendment of a recognized fund certificate**

- 1 Where the Commission proposes –
- a. to refuse to grant a recognized fund certificate under Article 14.02; or
- b. to cancel or to amend and re-issue a recognized fund certificate under Article 14.03 otherwise than in response to a request made under paragraph 3 of that Article,
- it shall give to the applicants or, as the case may be, the persons to whom the certificate was granted written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by paragraph 2.
- 2 A person to whom a notice is given under paragraph 1, may, within 21 days of the date of the notice, make written representations to the Commission and, if desired, oral representations to the Commission.

- 3 The Commission shall have regard to any representations made in accordance with paragraph 2 in determining whether to refuse to grant a recognized fund certificate or to cancel or amend and re-issue the recognized fund certificate, as the case may be.

**PART 15****SUPPLEMENTARY****15.01 Service of notices and documents**

- 1 In the case of a unit trust any notice required to be served upon a unitholder shall be deemed to have been duly given –
  - a. in the case of units held by a registered unitholder, if it is sent by post to or left at the unitholder's address as appearing in the register and if a joint unitholder the address of the first named unitholder; or
  - b. in the case of units for the time being represented by bearer certificates, if it is given in the manner provided for in the most recently published prospectus.
- 2 Subject to Article 4.24, any notice required to be served or information to be supplied or given to any person other than a unitholder, including the Commission, shall be in writing or else in such other form as enables the recipient to know or record the time of receipt and to preserve a legible copy thereof.
- 3 Subject to any applicable law any notice served by post shall be deemed to have been served on the 2nd day following that on which the letter containing the same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.
- 4 Service of a notice or document on any one of several joint unitholders shall be deemed effective service on the other joint unitholders.



## PART 16

### MISCELLANEOUS

#### 16.01 Definitions

In this Part –

- 1 “commencement date” is the date of coming into force of the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003;
- 2 “effective date” is 1st January 2005;
- 3 “previous Order” means the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988.

#### 16.02 Transitional Provisions

Subject to Article 16.03 and to its other provisions, these Rules shall have effect in relation to recognized funds and applications for recognized fund certificates on and from the effective date.

#### 16.03 Early commencement

- 1 Where, in relation to any fund the depositary and the manager and, in the case of a company, the company desire that these Rules should have effect in advance of the date which, but for this Article, would be the effective date, they may jointly specify (by giving not less than 7 days notice in writing to the Commission) a date falling after the commencement date and before the effective date; and the previous Order shall cease to have effect and these Rules (other than Article 16.02) shall thereupon have effect in relation to that fund on the date so specified and as if references to the effective date were references to the date so specified.
- 2 A notice duly given under paragraph 1 is not revocable.

#### 16.04 Status of existing recognized funds

- 1 Subject to paragraph 2, a fund that held a recognized fund certificate pursuant to the previous Order shall be treated as holding a recognized fund certificate as a fund in the corresponding category granted pursuant to Article 14.02 of these Rules.
- 2 In the case of a fund that held a recognized fund certificate as a government and other public securities fund pursuant to the previous Order, the fund shall be treated as holding a recognized fund certificate as a securities fund granted pursuant to Article 14.02 of these Rules and a replacement recognized fund certificate shall be issued with respect to the fund.

**RULES SCHEDULE 1**

To the Collective Investment Funds (Recognized Funds) Rules 2003

**THE CONSTITUTIONAL DOCUMENTS**

(Article 2.01)

**PART 1****MATTERS WHICH MUST BE CONTAINED WITHIN THE CONSTITUTIONAL DOCUMENTS****1 Name of the recognized fund**

A statement of the name of the recognized fund being a name not inconsistent with the recognized fund's recognized fund status under paragraph 2 and any restricted economic or geographic objectives under paragraph 12.

**2 Recognized fund status**

A statement –

- a. in all cases, of the relevant category of recognized funds under Article 2.05.1 to which the recognized fund belongs;
- b. in the case of a feeder fund, of the name and authorized status of the collective investment fund, or constituent part, or its equivalent, thereof (or of the name of the eligible investment trust) into which the feeder fund is to feed;
- c. in the case of a fund of funds, identifying the categories of the recognized funds or other regulated collective investment funds or, if umbrella funds, constituent parts, or their equivalent, thereof in which the fund of funds may invest; and
- d. in the case of an umbrella fund, identifying, in the case of each constituent part, to which of the relevant categories that part would belong if it were itself the subject of a separate application for the grant of a recognized fund certificate under Article 14.01 of this Order.

**3 Governing law**

A statement that in the case of a recognized fund which is a unit trust that the trust instrument is made under and governed by the law of Jersey.

#### **4 Trust instrument to be binding and authoritative**

In the case of a recognized fund which is a unit trust a statement that the trust instrument is binding on each unitholder as if the unitholder had been a party to it and is bound by its provisions and authorizes and requires the trustee and the manager to do the things required or permitted of them by the terms of the trust instrument.

#### **5 Base currency**

A statement of the currency that is the base currency of each pool.

#### **6 Investment powers in eligible markets**

Except in the case of a feeder fund, a statement that, subject to any restriction in this Order or the constitutional documents, the recognized fund has the power to invest in any securities market or deal on any derivatives market –

- a. which is an eligible securities or derivatives market for that fund by virtue of this Order; or
- b. to the extent that power to do so is conferred by this Order irrespective of any issue of eligibility.

#### **7 Ownership of property of the fund**

- a. In the case of a unit trust a declaration that, subject to the provisions of the trust instrument and to this Order and to all Orders made under Articles 11,14 and 20 of the Law and for the time being in force –
  - (i) the property of the fund (other than sums standing to the credit of the distribution account) is held by the trustee –
    - (a) on trust for the unitholders of the units *pari passu* according to the number of units held by each unitholder in each pool (the property of each pool being declared to be held on separate trusts), or
    - (b) in the case where there is more than one class of units within a pool, according to the number of undivided shares in the property of the pool, represented by the units held by each unitholder, and
  - (ii) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with this Order;
- b. in the case of a company that the property of the fund shall be entrusted to a custodian for its safekeeping and in the case of a company which is an umbrella fund, and any of its constituent parts is a futures and options fund, a geared futures and options fund or a property fund, or any such additional category of fund as may be prescribed from time to time by the Minister, a requirement that each shall invest in a manner which is acceptable to the Commission.

#### **8 Unitholder's liability to pay**

In the case of a recognized fund which is a unit trust a provision that a unitholder is not liable to make any further payment after the unitholder has paid the purchase price of his

or her units and that no further liability can be imposed on the unitholder in respect of the units which he or she holds.

## **9 Conflict**

The constitutional documents shall contain a provision to the effect that the contents of this Order shall be deemed to form part of the trust instrument or articles of association of the company as the case may be.

## **PART 2**

### **MATTERS WHICH MAY BE CONTAINED IN THE CONSTITUTIONAL DOCUMENTS (WITHOUT PREJUDICE TO THE GENERALITY OF PART 2 OF THIS ORDER)**

## **10 Duration of the pool**

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

## **11 Constituents of property, permitted transactions and borrowing powers**

If the descriptions of asset which may be included in the capital property attributable to the pool or the proportion of the capital property attributable to the pool which may consist of an asset of any description or the descriptions of transactions which may be effected on behalf of the pool or the borrowing powers exercisable in relation to the pool are narrower than those permitted for the category of pool to which the pool belongs under Part 5 above, a statement of those narrower descriptions of asset, proportions, transactions or borrowing powers.

## **12 Restricted economic or geographic objectives**

If there are to be any restrictions on the geographic areas or economic sectors in which investment of the capital property attributable to the pool may be made, a statement of what they are.

## **13 Classes of units**

A description of the class or classes of units and the rights attached thereto, indicating which class or classes of units may be created in respect of each pool.

## **14 Bearer Certificates**

In the case of a pool which is a unit trust or which is a constituent part thereof a provision authorizing the issue of bearer certificates.

**15 Enabling and restricting provisions**

Any provision –

- a. dealing with a matter not referred to earlier in this Schedule the inclusion of which serves to enable the recognized fund, any constituent part, the manager or the depositary to obtain any privilege or power conferred by these Rules; or
- b. which is expressly contemplated in these Rules.

**16 Compulsory redemption, cancellation or transfer**

A provision that if any units are owned or held by any person in circumstances which the manager (or in the case of a company the company) considers might result in the recognized fund or any unitholder incurring any liability to taxation or infringing any Law or Regulation or suffering any regulatory, pecuniary or administrative disadvantage which the recognized fund or unitholder might not otherwise have incurred or suffered, the units shall be repurchased, cancelled or transferred and, if the constitutional documents contain such a provision, they shall also provide the procedure for that repurchase, cancellation or transfer.

**17 Exemption from liability**

Subject to applicable law, a provision exempting any person carrying on a restricted activity in relation to a recognized fund, and, in the case of a company, the directors, from liability for failure to discharge their functions in respect of the recognized fund to the extent that due care and diligence has been exercised.

**18 Restatement of statutory provisions**

Any provision which in all material respects has the same effect as a provision contained, at the time when the provision is made, in the Law or in Orders made under Articles 11, 14 and 20 of the Law.

**RULES SCHEDULE 2**

To the Collective Investment Funds (Recognized Funds) Rules 2003

**INFORMATION TO BE CONTAINED IN A PROSPECTUS**

(Article 3.01.02)

**1 The manager and in the case of a company the manager and the company**

State the following particulars of the manager and company if any –

- a. its name;
- b. the nature of its corporate form;
- c. that it is incorporated in Jersey;
- d. if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- e. the following addresses –
  - (i) the address of its registered office,
  - (ii) the address of its head office if that is different from the address of its registered office;
- g. the date of its incorporation;
- h. if the duration of its corporate status is limited, when that status will or may cease;
- i. in the case of a manager only, the amount of its issued share capital and how much of it is paid up;
- j. the names of the directors and, in each case, any significant business activities of the director not connected with the business of the manager or company;
- k. if the manager is the manager of another recognized fund and the manager, or in the case of a company its directors, consider it necessary to be disclosed or the Commission so require, the name of that recognized fund, and such other information as is necessary or required to be disclosed;
- l. that the manager and, in the case of a company the company, are each the holder of a permit;
- m. a summary of the material provisions, relating to the manager, of the constitutional documents and/or of the management agreement as the case may be which may be relevant to unitholders including provisions relating to the remuneration of the manager.

**2 The depositary**

State the following particulars of the depositary –

- a. its name;
- b. the nature of its corporate form;
- c. that it is incorporated in Jersey;
- d. if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- e. the address of its registered office;
- f. the address of its head office if that is different from the address of its registered office;
- g. a description of its principal business activity;
- h. that it is the holder of a permit;
- i. a summary of the material provisions, relating to the depositary, of the constitutional documents and/or of the custodian agreement as the case may be which may be relevant to unitholders including provisions relating to the remuneration of the depositary.

### **3 The investment adviser or investment manager**

If the manager or company employs the services of an investment adviser or investment manager, state the following particulars of the investment adviser –

- a. the adviser's name and function;
- b. whether or not he or she is the holder of a permit;
- c. if he or she is a body corporate in a group of which the manager or depositary is a member, that fact;
- d. if the adviser's principal activity is not providing services as an investment adviser or an investment manager, what the principal activity is;
- e. the main terms of any agreement or arrangement between the adviser and the manager (other than, if paid by the manager, those relating to his or her remuneration) or company and, if the adviser has the authority of the manager or company to make decisions on behalf of the manager or company, that fact and a description of the matters in relation to which the adviser has that authority;
- f. if the adviser is authorized to deal on behalf of the recognized fund and is an associate of the manager, the relationship by virtue of which the adviser is an associate, and the maximum percentage commission payable to the adviser under the agreement or arrangement in e. for any deal done or which could be done on behalf of the recognized fund.

### **4 Standing independent valuer**

In relation to a property fund state the following particulars of the standing independent valuer –

- a. the valuer's name;
- b. particulars of the valuer's professional qualification;

- c. if the valuer is a member of a professional regulatory organization, its name, and the status of the valuer's membership if relevant;
- d. the material terms of the agreement or arrangement between the valuer and the manager.

## **5 The registrar**

Unless the depositary is the registrar state the registrar's name and address.

## **6 The auditor**

State the name and address of the auditor of the recognized fund.

## **7 Legal adviser**

The name and address of the legal adviser to the recognized fund shall be stated.

## **8 The register of unitholders**

State the address where the register of unitholders can be inspected.

## **9 The constitution and objectives of the recognized fund**

State –

- a. the name of the recognized fund;
- b. that the collective investment fund is a recognized fund under the Law;
- c.
  - (i) the relevant category of recognized funds under Article 2.05.1 to which the recognized fund belongs,
  - (ii) additionally, in the case of a feeder fund, the name of, and the basis for permitted investment under Article 5.45 into the collective investment fund into which the feeder fund is to feed,
  - (iii) additionally, in the case of a fund of funds identifying the categories of collective investment fund or constituent parts, or their equivalent, thereof in which the fund of funds may invest, and
  - (iv) additionally, in the case of an umbrella fund, the relevant category of each pool.
- d. the date on which the recognized fund was established and, if the duration of the recognized fund is not unlimited, when it will or may terminate;
- e. if the recognized fund is a company, particulars of its capital structure;
- f. sufficient information to enable a unitholder or a potential unitholder to ascertain –
  - (i)
    - a. what is the objective of the recognized fund; and



- b. what is the manager's investment policy for achieving that objective;
- c. if that policy does not envisage remaining fully invested at all times a statement of the manager's policy in that respect;
- (ii) the general nature of the portfolio and any intended specialisation e.g. in an economic sector, geographical area or type of investment or other property;
- (iii) a description of the types of property which may be included in the recognized fund and any limitations on the extent to which the recognized fund may invest in such property indicating (where appropriate) where the restrictions imposed on the recognized fund are tighter than would otherwise be imposed by these Rules;
- (iv) where the recognized fund's ability to invest in a particular type of property or to a particular extent is provided for by the constitutional documents, that fact;
- (v) the names of the states, local authorities and/or public international bodies in whose securities the recognized fund may invest more than 35%;
- (vi) whether the manager or company may enter into any and if so what transactions for the purposes of efficient portfolio management; and
- (vii) a statement of what borrowing powers are exercisable in relation to the recognized fund.
- g. in the case of a recognized fund which may invest in other collective investment funds, the extent to which the property of the fund may be invested in the units of collective investment funds which are managed by the manager or by an associate of the manager.
- h. in the case of a property fund –
  - (i) the maximum extent to which the property of the fund may be invested in –
    - immovables,
    - property related assets, and
  - (ii) where the manager expects that the property will be invested (during the period when that version of the prospectus may be in circulation) in Government and other public securities –
    - the fact that the property may be so invested, and
    - the maximum limit permitted for such investment (whether by virtue of these Rules or a decision by the manager to adopt a lower maximum);
- i. the circumstances in which the winding-up of the recognized fund can be decided upon, a description of the procedure to be followed in a winding-up and what the rights of unitholders will be in a winding-up;
- j. the accounting reference date;
- k. if there are interim accounting periods, what they are.

**10 List of eligible markets**

List any individual eligible securities and derivatives markets through which the recognized fund may invest or deal by virtue of Article 5.09.2: any securities market in a member state which is eligible by virtue of Article 5.09.1 may be included in the list or referred to in general terms.

**11 The characteristics of classes of units in the recognized fund**

State –

- a. in relation to each available class of unit in the recognized fund, the entitlement of the unitholder of that unit to participate in the property of the fund and the income thereof, a statement of the nominal value (if any) of each class of unit and, where there is more than one class of unit, the names given to each class and the characteristics of each class which distinguishes it from the others;
- b. if the trust instrument constituting the recognized fund authorizes the issue of bearer certificates, that fact;
- c. in the case of unit trust the fact that the nature of the right represented by units is that of a beneficial interest under a trust and, in the case of a company, the fact that the nature of the right represented by units is that of a redeemable participating preference share in that company;
- d. what voting rights are exercisable at meetings of unitholders by the unitholders and, if different rights attach to different classes of units, what those different rights are and, in the case of a company, whether persons other than unitholders can vote at meetings of unitholders and who those persons are.

**12 Valuation of property**

State –

- a. how frequently and at what time or times of day the property of the pool will be regularly valued for the purpose of determining prices at which units in the pool may be purchased from or repurchased by the manager or recognized fund and a description of any circumstances in which the pool may be specially valued;
- b. the basis on which the property of the pool will be valued; and
- c. how the price of units of each class will be determined.

**13 Preliminary charge**

If the price at which units may be purchased may include a preliminary charge by the manager, state –

- a. the current rate or amount of preliminary charge; and
- b. if notice has been given to unitholders of the manager's intention to introduce a preliminary charge or to increase the rate or amount currently charged, particulars of that introduction or increase and when it will take effect.

**14 Periodic charge**

If the manager (whether as such or in any other capacity) may make a charge out of the property of the fund, state –

- a. the maximum rate or amount of that charge;
- b. if the rate or amount of that charge currently made is below the maximum, that rate or amount;
- c. how it will be calculated and accrue and when it will be paid;
- d. if notice has been given to unitholders of the manager's intention to introduce a new category of remuneration for its services or to increase any rate or amount currently charged, particulars of that introduction or increase and when it will take effect; and
- e. if, in accordance with Article 8.06.4, the manager and the depositary or directors have agreed that all or part of that charge is to be treated as a capital charge –
  - (i) that fact, and
  - (ii) the actual or maximum amount of the charge which may be so treated, and
- f. if notice has been given to unitholders of an intention to propose an increase in the maximum amount of that charge at a meeting of unitholders, particulars of that proposal.

**15 Charge on repurchase**

If the manager may make a charge by way of deduction from the proceeds of repurchase, state –

- a. the amount of that charge or, if it is variable, the rate or method of arriving at it;
- b. if the amount or rate or method has been changed, that details of any previous amount or rate or method may be obtained from the manager on request;
- c. if notice has been given to the depositary of an intention to introduce a repurchase charge or to propose a change in the amount or rate or method which is adverse to unitholders, particulars of that proposal; and
- d. how the order in which units acquired at different times by a unitholder shall be determined insofar as necessary for the purposes of the repurchase charge.

**16 Dilution levy**

State –

- a. what is meant by dilution, by dilution levy and by large deals; and
- b. what is the manager's policy on imposing a dilution levy including its policy on large deals.

**17 Other payments out of the property of the fund**

State –

- a. if the depositary is to be remunerated out of the property of the recognized fund, the information envisaged by Article 8.04, and that remuneration will be paid out of the property of the fund;
- b. if the depositary is to be reimbursed out of the property of the fund, expenses incurred in performing any of the duties of the depositary, what those duties are, and that expenses incurred in their performance will be reimbursed out of the property of the fund;
- c. where the recognized fund is a company, any remuneration and expenses of the directors, payable out of the property of the fund;
- d. any remuneration payable to any third party and, if this does not apply, any remuneration payable by the recognized fund for services provided by an affected person; and
- e. the type of any other payments or benefits which may lawfully be made or given out of the property of the fund and how their amounts will be determined.

## **18 Distribution**

State, except in relation to a recognized fund consisting entirely of roll-up units –

- a. the annual income allocation date and, if any, the interim income allocation dates and, if there are unitholders who hold bearer certificates, the procedure for the purposes of receiving distributions of income;
- b. if grouping for equalization is permitted by the constitutional documents, that fact with an explanation of its meaning and a statement of what the grouping periods are.

## **19 The sale and repurchase of units in the recognized fund**

State –

- a. the dealing days and times in the dealing day on which the manager or company will be available to receive requests for the sale and repurchase of units;
- b. the procedures for effecting the sale and repurchase of units and the settlement of transactions;
- c. whether or not certificates evidencing title to units will be issued;
- d. the steps required to be taken by a unitholder in obtaining the repurchase of units before the unitholder can receive the proceeds of repurchase;
- e. the amounts of the following minima (if they apply) for each class of unit in the recognized fund –
  - (i) the minimum number of units which any one person may hold,
  - (ii) the minimum value of units which any one person may hold,
  - (iii) the minimum number or value of units which may be the subject of any one transaction which may be the subject of any one transaction by potential unitholders and unitholders;
- f. the circumstances in which the repurchase of units may be suspended;

- g. the days and times in the day on which the re-calculation of creation and cancellation prices will commence;
- h. where and when the most recent sale and repurchase prices will be published;
- i. the investment exchanges (if any) on which units in the recognized fund are listed or dealt;
- j. that in case of a pool the total consideration payable under a deal in units in the pool which is to be a large deal within the meaning of Part 4 is an amount exceeding a specified sum, that specified sum being not less than £15,000.

## 20 Pricing basis for sale and repurchase

State the manager's normal basis of dealing (whether at a forward price, or at a historic price, or on the basis of a switch from the latter to the former in every dealing period) and whether the recognized fund is operated on a dual or a single dealing price basis and provide an adequate explanation of the relevant bases.

## 21 General information

State –

- a. when annual and half-yearly reports will be published;
- b. if the manager or company has elected to produce short form accounts, a statement that a report containing the full accounts is available on request;
- c. the address at which copies of the constitutional documents, any amending instrument and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- d. how the manager will publish, for the benefit of unitholders whose units in a unit trust are evidenced by bearer certificates, notice –
  - (i) of the fact that annual and half-yearly reports are available for inspection,
  - (ii) that a distribution of income has been declared,
  - (iii) of the calling of a meeting of unitholders,
  - (iv) of the termination of the recognized fund or the amendment or revocation of its recognized fund certificate,
  - (v) that amendments have been made to the constitutional documents or the management agreement or custodian agreement,
  - (vi) that the prospectus has been revised;
- e. the extent to which and the circumstances in which –
  - (i) the recognized fund is liable to pay or suffer tax on any appreciation in the value of the property of the fund or on the income of the property of the fund, and
  - (ii) deductions by way of withholding tax may be made from distributions of income to unitholders and payments made to unitholders on the repurchase of units.

**22 Additional information in all cases**

State any other material information which is within the knowledge of the manager, or in the case of a company its directors or the manager, or which such manager or directors would have obtained by the making of reasonable enquiries –

- a. which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgment about the merits of participating in the recognized fund and the extent and characteristics of the risks accepted by so participating; and
- b. including a statement of any risks investment in the recognized fund may be reasonably regarded as presenting for reasonably prudent investors of moderate means.

**23 Umbrella Funds**

1 State, in the case of an umbrella fund –

- a. that a unitholder is entitled to exchange units in one constituent part for units in any other constituent part;
- b. that an exchange of units in one constituent part for units in another constituent part may be a realization for the purposes of capital gains taxation;
- c. the circumstances under which if any, or as the case may be that in no circumstances, a unitholder who exchanges units in one constituent part for units in another constituent part will be given a right by law to withdraw from or cancel the transaction;
- d. what charges, if any, may be made on exchanging units in one constituent part for units in another;
- e. the policy for allocating between constituent parts any assets of, or costs, charges and expenses payable out of the property of the fund which are not attributable to any particular constituent part;
- f. how the method of amortization of any costs to be amortized under Article 8.12 may be affected by the introduction or termination of a constituent part;
- g. in respect of each constituent part, the currency in which the property of the fund allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the umbrella fund.

2 In the application of this Schedule to an umbrella fund, information required –

- a. shall be stated in relation to each constituent part of the recognized fund where the information for any constituent part differs from that for any other constituent part;
- b. shall be stated for the recognized fund as a whole, but only where the information is meaningful in relation to the recognized fund as a whole; and
- c. shall contain a statement of the extent, if any, to which the constituent parts of the umbrella fund are not “ring fenced” and in the event of the umbrella fund being unable to meet liabilities attributable to any particular constituent

part out of the assets attributable to such constituent part, the excess liabilities may have to be met out of the assets attributable to the other constituent parts.

## 24 Statements to be included

The following statements shall be included –

- a. “If you are in any doubt about the contents of this prospectus, you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser.”;
- b. as appropriate: “It should be remembered that the price of units/shares/participations and income from them can go down as well as up.”;
- c.
  - (i) in the case of a unit trust –

“The manager has taken all reasonable care to ensure that the facts stated herein are true and accurate in all material respects and that there are no other material facts, the omission of which would make misleading any statement herein whether of fact or opinion. The manager accepts responsibility accordingly.”
  - (ii) in the case of a company a statement to the following effect –

“The manager and the directors of the company have taken all reasonable care to ensure that the facts stated herein are true and accurate in all material facts, the omission of which would make misleading any statement herein whether of fact or opinion. The manager and all the directors of the company accept responsibility accordingly.”

## 25 Prominent Statement

Prominent statement that this is the prospectus of the recognized fund valid as at (and date it).

**RULES SCHEDULE 3**

To the Collective Investment Funds (Recognized Funds) (Rules) 2003

**ANNUAL AND HALF YEARLY REPORTS**

(Article 10.01.1)

**PART 1****REPORT OF THE MANAGER OF A UNIT TRUST OR OF THE DIRECTORS OF A COMPANY**

The following matters shall be set out in every annual and half-yearly report –

- 1 The names and addresses of the following –
  - a. the manager;
  - b. the depositary;
  - c. any investment adviser or investment manager;
  - d. the registrar;
  - e. the auditor; and
  - f. in the case of a property fund, the standing independent valuer.
- 2 In the case of a company the names of its directors.
- 3 The objectives of the recognized fund.
- 4 The manager's (or in the case of a company the directors') policy for achieving the objectives of the recognized fund.
- 5 A statement that the collective investment fund is a recognized fund within the meaning of these Rules.
- 6 A statement of which of the categories of recognized fund in Article 2.05.1 the collective investment fund belongs to and, in the case of an umbrella fund, this statement and the name of the constituent part is to be made separately in relation to each constituent part.
- 7 A review of the recognized fund's investment activities during the period to which the report relates.
- 8 Where the manager has elected to produce a report including short form accounts for the recognized fund, a statement that a report containing the full accounts is available on request.
- 9 Particulars of any significant change in the prospectus made since the making of the last report.
- 10 A statement of any subdivision or consolidation of any class of units which has been effected during the period to which the report relates.



- 11 Any other significant information which would enable unitholders to make an informed judgment on the development of the activities of the recognized fund during this period and the results of those activities as at the end of that period.
- 12 In the case of a report relating to an umbrella fund –
- a. information required under the above paragraphs shall be given in respect of each constituent part if it would vary from that given in respect of the umbrella company as a whole and include such statements about the changes over the period to which the report relates in the capital value of units in and income from that constituent part as the manager or the directors as the case may be consider appropriate to enable a unitholder to judge the relative merits of investment in that constituent part as compared with investment in any other constituent part; and
  - b. the report shall contain statements to the effect that –
    - (i) there are and/or (as the case may be), in the future there may be, other constituent parts of that umbrella fund, and
    - (ii) if the assets attributable to any constituent part were insufficient to meet the liabilities attributable to it, whether the shortfall might have to be met out of the assets attributable to one or more other constituent parts of the umbrella fund.
- 13 In the case of a report relating to a constituent part which is not contained in a report relating to the umbrella fund of which the constituent part is part –
- a. statements equivalent to those required by paragraph 12 and, in the case of the statement under 12b.(ii) making it clear whether the shortfall, or part of it, might have to be met out of the property of the pool to which the report relates;
  - b. a statement of whether the auditors report on the annual accounts of the recognized fund for the period in question was unqualified or qualified and, if it was qualified, contain a copy of that report in full together with any further material needed to understand the qualification; and
  - c. where appropriate a statement that a report relating to the umbrella fund as a whole is available from the recognized fund on request.

## **PART 2**

### **REPORT OF THE MANAGER OR DIRECTORS – SHORT FORM ACCOUNTS**

A report of a manager or the directors that contains short form accounts for any annual accounting period shall –

- a. state whether the report of the auditor on the full accounts was unqualified or qualified and, if it was qualified, set out the report in full; and
- b. state whether the report of the auditor on the full accounts contained a statement under paragraphs 4 or 5 of Part 4 of this Schedule and, if so, set out the statement(s) in full.

### PART 3

#### COMPARATIVE TABLE

The following matters shall be set out in the comparative table in relation to each pool and included in the report of the manager or the directors –

- 1 A performance record over the last 5 calendar years, or if the pool has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing –
  - a. the highest sale price and the lowest repurchase price of the units of each class in issue during each of those years; and
  - b. if applicable the net income per unit distributed or, in the case of accumulation units, allocated during each of those years taking account of any sub-division or consolidation of units that occurred during that period.
- 2 Over the last 3 annual accounting periods (or, if the pool has not been in existence during the whole of that period, over the whole period in which it has been in existence) the total net asset value of the property of the pool at the end of each of those years and the net asset value per unit of each class and the number of units of each class in existence or deemed to be in existence at the end of each of those years.
- 3 If, in the period covered by the table –
  - a. the pool has been the subject of any event, (such as an amalgamation or reconstruction but excluding any creation or cancellation of units for cash) having, to a significant extent, an effect on the size of the pool; or
  - b. there have been changes in the investment objectives of the pool,an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in investment objectives, and a brief description of its nature.

### PART 4

#### REPORT OF THE AUDITOR

The report of the auditor to the unitholders for any annual accounting period shall state –

- 1 whether in the auditor's opinion the accounts prepared for that period for the recognized fund (or, in the case of a report prepared for the purposes of Article 10.1.5, in respect of the accounts of a constituent part) have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Rules and the constitutional documents; and
- 2 if there is any material departure from the standard expected by paragraph 1, what that departure is and the reasons for it; and
- 3 whether in the auditor's opinion the accounts give a true and fair view of the net income and the net gains or losses on the property of the fund (or as the case may

- be the property of the pool) for that period and the financial position of the recognized fund or constituent part as at the end of that period; and
- 4 if the auditor is of the opinion that proper accounting records for the recognized fund (or as the case may be the constituent part) have not been kept by the manager or that the accounts are not in agreement with the manager's accounting records for the recognized fund, or constituent part that fact; and
  - 5 if the auditor has not been given all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the auditor's audit, that fact; and
  - 6 if the auditor is of the opinion that the information given in the report of the manager or of the directors for that period is inconsistent with the accounts, that fact.

## **PART 5**

### **AUDITOR'S STATEMENT RELATING TO SHORT FORM ACCOUNTS**

In relation to short form accounts for any annual accounting period, the auditor shall state whether, in the auditor's opinion, the short form accounts are consistent with the full accounts, and are prepared in accordance with the generally accepted accounting principles and in accordance with these Rules and the constitutional documents.

## **PART 6**

### **REPORT OF THE DEPOSITARY**

The report of the depositary to the unitholders for any annual accounting period shall state whether in the depositary's opinion the recognized fund has been managed in that period –

- a. in accordance with the limitations imposed on the investment and borrowing powers of the manager (in the case of a company the manager and the directors) and depositary by the constitutional documents, by the prospectus and these Rules; and
- b. otherwise in accordance with the provisions of the constitutional documents and these Rules,

and if the manager has not done so, the respects in which the manager or the directors, has or have not done so and the steps which the depositary has taken in respect thereof.

## **PART 7**

### **BALANCE SHEET**

The balance sheet included in the accounts in relation to each pool of a recognized fund shall set out a statement of assets and liabilities of each pool as at the end of the period to which the report relates and show –

- 1 The total value of the portfolio of investments.
- 2 Details of current assets.
- 3 Details of current liabilities.
- 4 Net current assets.
- 5 Net assets.
- 6 The value of unitholders' funds.

## **PART 8**

### **STATEMENT OF TOTAL RETURN**

The following matters shall be set out in the statement of total return included in the accounts in relation to each pool of a recognized fund for the period to which the report relates –

- 1 Net gains/losses on the investments.
- 2 Other gains/losses.
- 3 Net income/expenses showing separately gross income and total expenses.
- 4 Total return.
- 5 Distributions paid or to be paid.
- 6 Net increase/decrease in unitholder's funds from investment activities.
- 7 The above main components will require more detailed analysis in the notes to the accounts as follows –
  - a. investment gains/losses should be analyzed to show realised gains/losses, the extent to which such gains/losses had been shown in previous periods, together with the change in realised gains/losses during the period;
  - b. other gains/losses should be described;
  - c. details of individual components of gross income and total expenses should be included in relation to the statement of net income/expenses;
  - d. details of the distributions paid or to be paid, including a reconciliation, if applicable, of the amount of income available for allocation to unitholders should be included.

## **PART 9**

### **PORTFOLIO STATEMENT**

A portfolio statement should set out details of each investment grouped into different categories of assets in which the property of the pool is invested, held at the end of the period to which the report relates according to a classification appropriate to the investment objectives and showing–

- a. the percentage of the value of the property of the pool that each holding represents. The percentage should also be shown for each category of holding the property of the pool, together with the comparative percentages for each of the categories;
- b. holdings which are listed on an eligible securities market and holdings which are not listed on an eligible securities market;
- c. the aggregate nominal value of positions held on derivatives for each security of index as an asset or a liability, together with the market value;
- d. the total value of the portfolio of investments;
- e. net current assets;
- f. net assets; and
- g. a full description of the significant changes in the portfolio; during that period. In determining whether there have been any significant changes in the portfolio, the manager shall have regard to any guidance note issued by the Commission containing guidance as to what constitutes a significant change for these purposes.

## **PART 10**

### **STATEMENT OF MOVEMENTS IN UNITHOLDER'S FUNDS**

The following matters should also be included in the accounts in relation to each pool of a recognized fund for the period to which the report relates –

- 1 The net assets at the beginning of the period.
- 2 The amount of cash or the value of assets received on the creation of new units.
- 3 The amount of cash or the value of assets paid out on the cancellation of units.
- 4 The net increase/decrease in the aggregate value of unitholder's funds from investment activities.
- 5 The net asset value at the end of the period.

## **PART 11**

### **NOTES TO THE ACCOUNTS**

The following matters shall be set out in the notes to the accounts in relation to each pool of the recognized fund –

- 1 Accounting policies
  - a. the policy regarding dividends and other income received and receivable;
  - b. the basis of valuation of the property of the pool;
  - c. if applicable, a statement of the basis for converting amounts in currencies other than the base currency into amounts in the base currency;
  - d. an explanation of any tax charge or refund appearing in the statement of total return;

- e. if applicable, an explanation of the basis for valuing unlisted or suspended securities; and
  - f. any other items which are material to the accounts.
- 2 Capital and reserves
- a. In the case of a company the following details should be shown in respect of capital and reserves –
    - (i) movements on share capital and share premium accounts during the period,
    - (ii) movements on reserves during the period, including details of any transfers to or from income, or to a share premium account, and
    - (iii) details of the rights attaching to different classes of shares.
  - b. in the case of a unit trust the number of units in existence or deemed to be in existence at the end of the period to which the accounts relate.
- 3 Properties
- The name and qualifications of the person valuing the properties (if any) and the basis of valuation.
- 4 Income equalization
- A definition and explanation of income equalization if it is to apply.
- 5 Net current assets
- An analysis of net current assets as at the end of the period to which the accounts relate (unless they are shown in the balance sheet).
- 6 Back to back loans
- Details of any back to back loans.
- 7 Contingent liabilities
- A statement showing the contingent liabilities in respect of any underwriting commitments, placing arrangements, nil paid rights, or partly paid shares, and any other material items.
- 8 Forward exchange transactions
- A statement of open forward exchange positions and the unrealised profit or loss thereon unless they are shown in the portfolio statement.
- 9 Stock lending activities
- Details of the aggregate value of securities on loan to third parties, and the value of collateral held for the account of the pool in respect of those securities.
- 10 Any other information required to give a true and fair view.

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**PART 12****SHORT FORM ACCOUNTS**

The following matters shall be included in short form accounts in relation to each pool for any accounting period –

- 1 The statement of total return required by Part 8 of this Schedule.
- 2 A statement of investments and other assets including –
  - a. a summary of the different types of investments and the total value of investments;
  - b. net current assets; and
  - c. net assets.
- 3 The statement of movements in unitholder's funds required by Part 10 of this Schedule.

**RULES SCHEDULE 4****GLOSSARY**

(Article 1.01.1)

In these Rules, unless the context otherwise requires, the following expressions shall have the following meanings –

“accounting reference date” means the date stated in the most recently published prospectus as the date on which the recognized fund’s annual accounting period is to end in each year;

“accumulation unit” means a unit in a recognized fund described as such;

“affected person”: see Article 7.15.1;

“amalgamation”: in relation to a recognized fund, see Article 11.05.1;

“annual accounting period”: see Article 9.01;

“annual income allocation date”: see Article 9.02.1;

“applicable law” means the law of Jersey including without limitation Company Law;

“appropriate valuer”: see Article 5.35.10;

“approved derivative”: see Article 5.08.2;

“approved immovable”: see Article 5.35;

“approved mortgage”: see Article 5.39;

“approved security”: see Article 5.06;

“articles” in relation to an open-ended investment company means its articles of association as originally framed or as altered;

“associate”, in relation to a person, means –

- a. an undertaking in the same group as that person; and
- b. any other person whose business or domestic relationship with the first person or its associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties;

“authorized company” means a company incorporated by virtue of The Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 of the United Kingdom (S.I. 1996 No. 2827);

“authorized person”: means an authorized person as defined in the Financial Services Act;

“authorized unit trust scheme” means an authorized unit trust scheme as defined in the Financial Services Act;

“base currency”, subject to Article 12.17, means the currency specified in the constitutional documents as the base currency of the recognized fund;



“bearer certificate” means a certificate representing units of any class in a unit trust –

- a. which contains a statement that the bearer of the certificate is entitled to the number of units of that class represented by the certificate; or
- b. delivery of which is otherwise sufficient to transfer title to the units concerned;

“Bermuda United Kingdom class scheme” means any company certified under the Companies Act 1981 of Bermuda to be a United Kingdom class scheme;

“to borrow” includes to obtain by synthetic borrowing;

“business day”, in relation to anything done or to be done in any part of Jersey, means any day other than a Saturday, a Sunday or a bank holiday and, in relation to anything done or to be done by reference to a market outside the Jersey, means any day on which that market is normally open for business;

“cancellation” means the cancellation of units by the trustee or the redemption of shares by the company and, in both cases, includes the manager acting as agent for the recognized fund in connection with the cancellation of units and “cancel” in relation to such units shall be construed accordingly;

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

“capital account” means an account relating to the capital property of the pool;

“capital property” means all the property for the time being held on the trusts of the trust instrument or all the property for the time being of a company attributable to units in the company other than income property and any amount for the time being standing to the credit of the distribution account;

“cash” includes foreign currency;

“category” has, in relation to recognized funds and any constituent parts thereof, the meaning in Article 2.05 and in relation to other collective investment funds and any constituent parts, or their equivalent, thereof has *mutatis mutandis* an equivalent meaning;

“Clearstream” means Clearstream Banking Luxembourg or its successor which clears, or handles the physical exchange and lending of, securities and stores securities;

“close out”, in relation to a transaction entered into for the pool, means the entry into a further transaction under which the obligation to deliver or receive which arises or may, at the option of the other party to the transaction, arise under the original transaction is offset by an equivalent and opposite obligation or right to receive or deliver;

“collateral” means any form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from a transaction;

“collective investment fund” has the same meaning as in Article 2 of the [Collective Investment Funds \(Jersey\) Law 1988](#);

“Commission” means the Jersey Financial Services Commission;

“company” has the meaning given in Part 1 of these Rules;

“Company Law” means the [Companies \(Jersey\) Law 1991](#);

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

“constitutional documents” has the meaning given in Part 1 of these Rules;

“contract for differences” means a contract rights under which constitute an investment falling within paragraph 9 of Part 1 of Schedule 1 to the Financial Services Act (Contracts for differences etc.)

“controller”, in relation to a permit holder, means a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the permit holder or of another body corporate of which it is a subsidiary, and “control” shall be construed accordingly and in relation to a director means a person in accordance with whose advice the director would be accustomed to act (but disregarding advice given in a professional capacity) and for the purposes of this definition “associate” in relation to any person, means that person’s wife, husband, civil partner, or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary;

“covered”: in relation to a derivatives or forward transaction, see Article 5.25 or 5.55;

“creation” means the creation of units by the trustee or the issue of shares by the company and, in both cases, includes the manager acting as agent for the recognized fund in connection with the creation of units and “create” in relation to such units shall be construed accordingly;

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

“CREST” means the system for evidencing and transferring title to securities without a written instrument operated by CRESTCo Limited, a recognized clearing house and the operator of a relevant system;

“current preliminary charge”: see Article 8.02 and Schedule 2, paragraph 13;

“custodian” has the meaning given in Part 1;

“class”, in relation to units in a recognized fund, means each of the classes of unit described in Article 2.04;

“dealing day” means the period in each business day (or in each other day when the manager is open for business) during which the manager keeps his or her premises or any of them open to the public or otherwise publicly available for business of any kind;

“dealing period” means the period between one valuation point and the next;

“dedicated”, in the context of a recognized fund, means that the pool has as its sole objective the enablement of unitholders to participate in or receive –

- a. profits or income arising from the acquisition, holding, management or disposal of investments or assets of the relevant description;
- b. sums paid out of profits or income in a; or
- c. other benefits where expressly permitted under these Rules;

“delivery by value” or “DBV” means a transaction type described as “delivery by value” used to deliver and receive securities within CREST;

“deposit” has the same meaning as in Article 2 of the [Banking Business \(Jersey\) Law 1991](#);

“depository” has the meaning given in Part 1;

“depository agreement” has the meaning given in Part 1;

“derivative”: see Article 5.08.1;

“derivatives transaction”: means a transaction in a derivative;

“dilution” means the amount of dealing costs incurred, or expected to be incurred, by the pool to the extent that they may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the recognized fund as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the pool resulting from the creation or cancellation of units over a period. For the purposes of this definition, dealing costs include the costs of dealing in an investment, professional fees and other expenses incurred, or expected to be incurred, in relation to the acquisition or disposal of approved immovables and, where there is a spread between buying and selling prices of the investment, the indirect cost resulting from differences between such prices;

“dilution levy” means a charge of such amount or at such a rate as may be determined by the manager to be made, in the case of a pool which has adopted a single pricing basis, for the purpose of reducing dilution;

“director” except where the context otherwise requires, means a director of the company;

“distribution account”: see Article 9.03.1;

“documents evidencing title” includes any means of evidencing title whether in documentary form or otherwise;

“effective date”: see Article 16.01;

“eligible”, in the context of a securities market, means any market which the manager is, or directors are, for the time being, entitled to regard as one through which more than 10% of the property of the pool may be invested for the purposes of Article 5.09, and, in the context of a derivatives market, means any market or exchange which the manager is, or directors are, for the time being, entitled to regard as one through which transactions for the account of the recognized fund may be effected for the purposes of that Article;

“eligible institution” means any of the following –

- a. a person registered under the [Banking Business \(Jersey\) Law 1991](#);
- b. Bank of England;
- c. The Central Bank of another member state;
- d. an authorized institution within the meaning of the Banking Act 1987 of the United Kingdom;
- e. a bank which is a subsidiary or holding company of an eligible institution within sub-paragraph d.;

- f. a building society within the meaning of the Building Societies Act 1986 of the United Kingdom which has adopted the power to provide money transaction services and has not assumed any restriction on the extent of that power;
- g. a credit institution as defined in Article 1 of the First Banking Coordination Directive (77/780/EEC), other than an institution referred to in Article 2(2) of that Directive, or an investment firm as defined in Article 1(2) of the Investment Services Directive (93/22 EEC), if the credit institution is established or the investment firm is authorized as the case may be, in the United Kingdom or in another member state;
- h. a registered person under the Protection of Depositors (Bailiwick of Guernsey) Ordinance 1971;

“eligible investment trust”: see Article 5.46;

“Euroclear” means the Euroclear Clearance System Société Coopérative or its successor which controls the system that clears, or handles the physical exchange and lending of, securities and stores securities;

“extraordinary resolution” see Article 11.17;

“feeder fund”: see Article 2.05.8;

“Financial Services Act” means the Financial Services Act 1986 of the United Kingdom;

“first commencement date”: see Article 16.01;

“floating rate note” means an investment within paragraph 2 of Schedule 1 to the Financial Services Act which carries interest at a rate which is re-fixed periodically by reference to an interest rate index;

“forward price” means a price calculated by reference to the valuation point next following the manager’s agreement to sell or, as the case may be, to repurchase the units in question;

“FSA” means the Financial Services Authority of the United Kingdom;

“fund of funds”: see Article 2.05.9;

“future” means a contract with rights which constitute an investment falling within paragraph 8 of Part I of Schedule 1 of the Financial Services Act;

“futures and options fund”: see Article 2.05.4;

“geared futures and options fund”: see Article 2.05.5;

“Government and other public securities”: see Article 5.13.5;

“group”: see Article 1.02;

“guidance” means any guidance issued by the Commission in relation to any matter contemplated by or relating to these Rules;

“Guernsey class “A” scheme” means a scheme which is declared by the Guernsey Financial Services Commission to be a class A scheme pursuant to the Protection of Investors (Bailiwick of Guernsey) Law 1987 and the subordinate legislation and rules made thereunder;

“half-yearly accounting period”: see Article 9.01.6;

“historic price” means a price calculated by reference to the valuation point immediately preceding the manager’s agreement to sell, or, as the case may be, to repurchase the units in question;

“holding company”: see Article 1.02;

“hypothec” means a charge over property in accordance with the law of Jersey or elsewhere;

“income account” means an account relating to the income property of the recognized fund;

“income equalization”: see Article 9.07;

“income property” means all sums, including income equalization, deemed by the manager, or in the case of a company the directors or the manager, after consultation with the auditor, to be in the nature of income received or receivable by the trustee, or in the case of a company the company, in respect of the property of the fund but excluding any amount for the time being standing to the credit of the distribution account;

“income unit”: see Article 2.04;

“initial margin” means cash or other property deposited in accordance with the rules of an eligible derivatives market on entering into a margined contract;

“initial offer” means an offer for sale of units in a pool (otherwise than on a unitization) where all or part of the consideration paid to the depositary for the units is to be used to acquire the initial capital property attributable to the pool;

“initial outlay”: see Article 5.30.2;

“initial price of units”: see Article 4.03;

“instrument constituting the collective investment fund”, in the case of a collective investment fund other than a unit trust, includes any instrument to which the open-ended investment company or its manager is a party setting out any arrangements with any other person relating to any aspect of the operation or management of the collective investment fund, and, in the case of a unit trust means the trust instrument;

“interim accounting period”: see Article 9.06;

“interim income allocation date”: see Article 9.06;

“investment” means any right asset or interest falling within any paragraph of Part I of Schedule 1 to the Financial Services Act;

“investment adviser” or “investment manager”, in relation to a manager, means a person who is engaged by the manager under a commercial arrangement not being a mere contract of employment –

- a. to supply the manager with advice in relation to the pool as to the merits of investment opportunities or information relevant to the making of judgments about the merits of investment opportunities; or
- b. to exercise as a delegate of the manager any function concerning the management of the property of the pool;

“investment manager”: see investment adviser;

“Jersey” means the Bailiwick;

the “Law” means the [Collective Investment Funds \(Jersey\) Law 1988](#);

“management agreement”, has the meaning given in Part 1;

“manager”, has the meaning given in Part 1;

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

“margined contract” means any contract for a derivative;

“member state” means, at any time, in addition to a State which is a member of the European Union, any other State which is within the European Economic Area;

“Minister” means the Chief Minister;

“money market fund”: see Article 2.05.3;

“money market fund assets”: see Article 5.18.2;

“mortgage” includes a charge, heritable security or other similar security created on or over an immovable;

“near cash” means money, deposits or investments which fall within any of the following –

- a. money deposited with an eligible institution which is in –
  - (i) a current account; or
  - (ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding 7 days’ interest calculated at ordinary commercial rates;
- b. certificates of deposit issued by an eligible institution if immediately redeemable at the option of the holder;
- c. Government and other public securities, if redeemable at the option of the holder or bound to be redeemed within 2 years;
- d. a bill of exchange issued by any Government or body within Article 5.13.5 (issuers of Government and other public securities), and
- e. deposits with a local authority of a kind which fall within paragraph 9 of Part II of the First Schedule to the Trustee Investments Act 1961 of the United Kingdom, and equivalent deposits with any local authority in another member state, if the money can be withdrawn immediately and without payment of a penalty as described at a. above;

“net asset value”: see Article 5.03.1;

“notified point”: see Article 4.06.2;

“OEIC Regulations” means the Financial Services (Open-Ended Investment Companies) Regulations 1997;

“off-exchange” means otherwise than on or under the rules of an eligible derivatives market;

“off exchange option” means an option (or a contract for differences in the nature of an option) which falls within Articles 5.23.5 to 8;

“ordinary resolution” see Article 11.17;

“open-ended investment company” has the meaning given in Part 1 of these Rules;

“option” means a right exercisable within a specified period of time, at the option of the holder of the right, to dispose of or acquire any property at a specified price and includes where appropriate a contract for differences resembling an option;

“period of the initial offer”: see Article 4.01.4;

“periodic valuation”: see Article 4.28.1;

“permitted immovable”: see Article 5.35;

“pool” has the meaning given in Part 1;

“premium”, in relation to an option, means the total amount which the purchaser of the option is, or may be, required to pay in consideration for the right to exercise the option;

“previous Order”: see Article 16.01.1;

“principal or notional principal”, in relation to any derivatives transaction or forward transaction, is to be interpreted as follows –

- a. “principal” means (except where b. applies) the amount of property or the value of the property which must be delivered in order to satisfy settlement of a derivative or forward contract which is not a contract for differences;
- b. “principal”, in the case of an option on a future, means the amount of property or the value of the property which would be required under a. in relation to the future; and
- c. “notional principal” means –
  - (i) in the case of a contract for differences which is an index derivative, the current mark to market valuation of a contract for differences resembling a futures contract or the exercise value of a contract for differences resembling an option contract, as the case may be, and
  - (ii) in the case of any other contract for differences, the notional lot size of a contract, so that, for example, the notional principal in the case of a LIFFE short sterling contract is £500,000;

“property fund”: see Article 2.05.6;

“property of the fund”, in relation to a recognized fund, means the capital property and the income property and all such property must be attributable to one or more pools;

“property of the pool” means that part of the property of the fund that is attributable to a pool;

“property related assets”: see Article 5.36;

“prospectus”: see Article 3.01;

“purchase”, in relation to an option, means acquiring the right to exercise the option;

“recently issued”: see, in relation to transferable securities, Article 5.06.2;

“recognized fund” has the meaning given in Part 1;

“recognized fund certificate” means a certificate issued by the Commission under Article 14.02;

“recognized scheme” means a recognized scheme as defined in the Financial Services Act;

“recognized self-regulating organization” means a recognized self-regulating organization as defined in the Financial Services Act;

“reconstruction”: see Article 11.06;

“repurchase price” means the manager’s price for repurchase under Articles 4.19 or 4.20;

“register”: see Article 6.01;

“registrar” means the person who maintains the register;

“regulated collective investment fund” means a recognized fund, or an authorized unit trust scheme, or an authorized company, or a recognized scheme, or a Guernsey class “A” scheme, or a Bermuda United Kingdom class scheme, or an Isle of Man authorized scheme, or an undertaking which meets the requirements of Directive 85/611 of the European Union (UCITS);

“repurchase”, in relation to units in a recognized fund, means the purchase of units from a unitholder by the manager as a principal;

“roll-up unit” means a unit in a recognized fund described as such;

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

“securities company” means an authorized company which is a securities company as defined in Article 2.03.2 of the OEIC Regulations;

“securities fund”: see Article 2.05.2;

“special resolution” means a resolution which is a special resolution as defined in the Company Law;

“standing independent valuer”: see Article 12.06;

“sub fund” means a part of the property of a collective investment fund which is pooled separately;

“subsidiary”: see Article 1.02;

“synthetic borrowing” means any arrangement of the kind described in Article 5.64.5;

“synthetic cash”: see Article 5.25.5.b;

“synthetic future”: see Article 5.23.9;

“transferable security”: see Article 5.05;

“trust instrument” has the meaning given in Article 1.01;

“trustee”, has the meaning given in Article 1.01;

“types of collective investment fund” means categories of regulated collective investment funds or constituent parts, or their equivalent, thereof;



“UCITS Directive” means the Council Directive of 20 December 1985 on the co-ordination of the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. 85/611/EEC);

“umbrella fund” means a recognized fund (or where the context requires other collective investment fund) where the contributions of the unitholders and the profits and income out of which payments are to be made to them are not only pooled but that the constitutional documents provide that such pooling is to be accomplished separately in relation to separate parts of the property in question and that unitholders are entitled to exchange rights in one part for rights in another;

“unit trust” has the meaning given in Article 1.01 of these Rules;

“units”, shall have the meaning given in Article 1 of the Law;

“unitholder”, means

- a. in relation to a unit in a recognized fund, the person who is entered in the register as the holder of that unit or, where the context requires, is the holder of a unit in another collective investment fund; or
- b. in relation to a unit in a recognized unit trust or, where the context otherwise requires, in another collective investment fund, where a bearer certificate represents that unit, the bearer of that bearer certificate;

“unitization”: see Article 4.05.1;

“units in existence” means all units which have been created, but including any unit which the trustee or company is obliged to create, and excluding any unit which the trustee or company is obliged to cancel;

“valuation point”: see Article 4.28;

“warrant”: see Article 5.07;

“warrant fund”: see Article 2.05.7;

“write”, in relation to an option, means the granting of the option.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003	<a href="#">R&amp;O.21/2003</a>	2 April 2003 (but see Part 16)
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	<a href="#">R&amp;O.44/2005</a>	9 December 2005
Civil Partnership (Consequential Amendments) (Jersey) Regulations 2012	<a href="#">R&amp;O.47/2012</a>	2 April 2012
<a href="#">States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013</a>	<a href="#">R&amp;O.107/2013</a>	19 July 2013

### Table of Renumbered Provisions

Original	Current
2	spent, omitted from this revised edition
3	2
SCHEDULE 1.01 3	spent, omitted from this revised edition
SCHEDULE 1.01 4, 5, 6	SCHEDULE 1.01 3, 4, 5
SCHEDULE 1 Part I	RULES SCHEDULE 1 Part 1
SCHEDULE 1 Part II	RULES SCHEDULE 1 Part 2
SCHEDULE 2	RULES SCHEDULE 2
SCHEDULE 3 Part I	RULES SCHEDULE 3 Part 1
SCHEDULE 3 Part II	RULES SCHEDULE 3 Part 2
SCHEDULE 3 Part III	RULES SCHEDULE 3 Part 3
SCHEDULE 3 Part IV	RULES SCHEDULE 3 Part 4
SCHEDULE 3 Part V	RULES SCHEDULE 3 Part 5
SCHEDULE 3 Part VI	RULES SCHEDULE 3 Part 6
SCHEDULE 3 Part VII	RULES SCHEDULE 3 Part 7
SCHEDULE 3 Part VIII	RULES SCHEDULE 3 Part 8
SCHEDULE 3 Part IX	RULES SCHEDULE 3 Part 9
SCHEDULE 3 Part X	RULES SCHEDULE 3 Part 10
SCHEDULE 3 Part XI	RULES SCHEDULE 3 Part 11
SCHEDULE 3 Part XII	RULES SCHEDULE 3 Part 12

### Table of Endnote References

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<sup>1</sup>

*This Order has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government.*

<sup>2</sup> *Schedule*

*amended by R&O.47/2012, R&O.107/2013*