

# **THE AUTHORISED COLLECTIVE INVESTMENT SCHEMES (CLASS B) RULES and GUIDANCE, 2021**

The Authorised Collective Investment Schemes (Class B) Rules, made in accordance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>1</sup> (“the Law”), are set out in this document.

Further guidance, provided by the Guernsey Financial Services Commission (“the Commission”) is set out in shaded boxes.

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<sup>1</sup> Order In Council No. XVIII of 2020.

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## PART 1 INTRODUCTION

### 1.1 Application

- (1) The Authorised Collective Investment Schemes (Class B) Rules 2021 replace The Authorised Collective Investment Schemes (Class B) Rules 2013<sup>2</sup>.
- (2) The Commission may in its absolute discretion, by written notice, exclude or modify the application of any provision of these Rules.
- (3) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

**Guidance Note:** This document take a two-level approach –

- the Rules set out the standards to be met; and
- guidance notes present suggested ways of showing compliance with the Rules.

Licensees may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes contains guidance from the Commission and does not form part of the Rules.

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<sup>2</sup> G.S.I. No.49 of 2013.

- (4) Where any currency requires translation into another currency this must be effected using the rate of exchange formula as prescribed in the principal documents or as the manager determines with the approval of the trustee.
  
- (5) These Rules apply, in the case of an umbrella fund, as if each reference to an authorised scheme were a reference to each constituent part within the umbrella fund, except where expressly provided, and –
  - (a) “constituent part” or “sub-fund” means one of the separate parts into which the property of the umbrella fund is divided; and
  
  - (b) a definition of the expression “base currency” will apply as if the references in that definition to an authorised scheme were references to each separate part of the property into which the scheme property is divided.

- (6) An authorised scheme which is an umbrella fund does not qualify to be authorised unless each constituent part would, if it were the subject of a separate application for authorisation, qualify for separate authorisation under these Rules.

**Guidance Note:**

**Responsibilities of the principal manager and the designated administrator**

Certain rules distinguish that compliance with the requirement in question is the responsibility of the principal manager (if there is one), the board of the scheme, the designated administrator or, in the case of a unit trust scheme with no principal manager, the trustee. There are also instances where, in the absence of a Guernsey principal manager, this role will be undertaken by an investment adviser that is not based in Guernsey.

Other requirements simply state 'manager', which could mean either the principal manager or the designated administrator.

In the Commission's experience there are certain decision-making and operational duties that are undertaken by specific parties. For example, the principal manager (where it exists) takes responsibility for, and the investment manager makes, the scheme's decisions. If the investment adviser is not resident in Guernsey it does not require a licence under the Law. In any event, ultimate responsibility would always fall to the board of a company scheme, the general manager of a limited partnership, or the trustee in the case of a unit trust scheme with no principal manager. The designated administrator would be responsible for monitoring the scheme property to ensure ongoing adherence to investment restrictions. There are also certain duties that could fall to any of these parties under contractual arrangements.

The Commission will take into account the contractual arrangements of the authorised scheme when assessing compliance with these Rules.

An authorised scheme that is a company scheme incorporated in Guernsey under Part 1 of The Companies (Guernsey) Law, 2008 is also required to comply with the provisions of that law. The Companies (Guernsey) Law, 2008 will always take precedence over these Rules.

## **PART 2 CONSTITUTION AND PRINCIPAL DOCUMENTS**

### **2.1 Constitution**

- (1) An authorised scheme that is a unit trust scheme must be constituted by a trust instrument made in writing.
- (2) An authorised scheme that is a limited partnership scheme must be constituted by a written limited partnership agreement.

### **2.2 Undertakings**

- (1) As a condition of authorisation of a Class B Scheme, the Commission is entitled to require such undertakings, indemnities, bonds, guarantees, and assurances as it may determine to secure compliance with these Rules.

### **2.3 Application for authorisation**

- (1) A person seeking a declaration of authorisation from the Commission must submit the appropriate application form and provide –
  - (a) a statement, signed by the manager or a law firm, confirming either that the principal documents and scheme particulars comply with all of these Rules, or detailing those rules with which they do not comply, together with the reasons for non-compliance, and why it is not considered necessary to comply in the interests of investors;
  - (b) copies of the principal documents, scheme particulars, and other agreements material to the authorised scheme, signed or certified by the manager or a law firm; and
  - (c) the application fee as prescribed; and



- (d) such other information as the Commission may require.
- (2) All authorisation requests must clearly indicate the identity of the proposed designated administrator and the designated trustee or designated custodian.

## 2.4 Authorisation declarations

- (1) The Commission may declare that a scheme that complies with rule 2.3 is authorised if it is satisfied -
  - (a) that the scheme's principal documents and scheme particulars appear to comply with all of these Rules; or
  - (b) that it is unnecessary, in the interests of investors, for the scheme's principal documents or scheme particulars to comply with any specific rules, relating to their contents, with which they do not comply.
- (2) A Class B Scheme declaration, where relevant, must specify the rules with which the scheme's principal documents or scheme particulars do not comply.
- (3) Declarations will also be issued in respect of the constituent parts of an umbrella fund. Any such declaration will be subject to a timeframe of one year after which time any constituent part, or class, not activated will be revoked. Any new class added to the umbrella fund must be declared as approved by the Commission.

**Guidance Note:**

Where a Class B Scheme declaration of authorisation is issued the Commission will, at the same time, confirm the designation of the trustee or custodian and the designation of the administrator.

## 2.5 The principal documents

- (1) The principal documents of an authorised scheme must state –
  - (a) the name of the scheme;
  - (b) the applicable law under which the principal documents are made and governed.
  
- (2) The principal documents or scheme particulars of an authorised scheme must state –
  - (a) the investment objectives and restrictions;
  - (b) the hedging powers and restrictions, or include an appropriate negative statement;
  - (c) the borrowing powers and restrictions, or include an appropriate negative statement;
  - (d) the arrangements for the appointment and removal of the manager and trustee of the scheme;
  - (e) the arrangements for the appointment and removal of the auditors of the scheme.
  
- (3) A signed or certified copy of the principal documents and scheme particulars, and any subsequent amendments or variations, must be filed with the Commission.
  
- (4) An authorised scheme must operate and conduct its affairs in accordance with its principal documents and scheme particulars.

## 2.6 Payments out of and into the scheme

- (1) The following payments, where authorised by the principal documents, may be paid out of the scheme property –
  - (a) any periodic charge payable to the manager and the investment adviser of the authorised scheme;
  - (b) the fees of the trustee; and
  - (c) any expenses or disbursements of the trustee and manager and investment adviser which are of descriptions authorised by the principal documents.
- (2) Other expenses, fees, or charges may be paid out of the scheme property provided that their nature, and how the amounts will be determined, are disclosed in the scheme particulars and that the amounts charged are disclosed in the next annual or interim report to holders.
- (3) No other expenses, fees, or charges must be paid out of the scheme property -
  - (a) except with prior notification having been made to the trustee;

AND

- (b) provided that sufficient notice is given to holders to enable them to redeem units in the scheme before the amendment takes effect;
- (c) the scheme particulars are revised to disclose such expenses, fees, or charges; and
- (d) any such expenses, fees, or charges are specifically disclosed in the next annual or interim report to holders.

- (4) In the case of an umbrella fund any expenses, fees, or charges which are not attributable to one constituent part only must be allocated amongst the constituent parts in accordance with the scheme particulars.

## **2.7 Investment objectives and powers**

- (1) The property of an authorised scheme must be invested with the aim of spreading risk.
- (2) The property of an authorised scheme must only comprise assets permitted to be held under its principal documents or scheme particulars and of a nature or type described in its scheme particulars.
- (3) The property of an authorised scheme must not be invested in contravention of limits or restrictions imposed under its principal documents or scheme particulars.
- (4) Where any limitations or restrictions disclosed in the scheme particulars are more restrictive than those imposed under the principal documents those stated in the former must be adhered to unless written notice is given to the holders and the scheme particulars are duly amended.
- (5) The principal manager of an authorised scheme, or in the case of a company scheme the company, in the case of a unit trust scheme with no principal manager the trustee, and in the case of a limited partnership with no principal manager the general partner, must take all reasonable steps to avoid the scheme property being invested in contravention of this rule. The trustee must take all reasonable steps to oversee that the principal manager, or in the case of a company scheme the directors, properly discharge their duties.
- (6) If a manager becomes aware that the scheme property is invested in contravention of this rule, the principal manager, or equivalent as set out at (5), must immediately take such steps as are necessary to rectify the position and notify the trustee. The manager or trustee must notify the Commission, in writing, if the position has not been rectified within one month of the date on which the manager became aware of the contravention.

- (7) Section (5) does not apply –
- (a) during whichever is the shorter period of –
- (i) one year from the date on which persons are invited to become investors in the authorised scheme; or
- (ii) the period beginning with that date and ending on the first date on which the value of the scheme property exceeds £5,000,000, or its equivalent
- but the principal manager, or equivalent as set out at (5), and trustee must take all reasonable steps and exercise all due diligence to ensure that the scheme property is invested with the aim of spreading risk and in a manner consistent with the manner in which the property must be invested at the end of the relevant period; or
- (b) in the event of a breach of limits or restrictions beyond their control, the principal manager, or equivalent as set out at (5), must take all necessary steps, having regard to the interests of investors, to ensure that the position is rectified as soon as is reasonably practicable and within six months from the earliest date on which they became aware of the breach.
- (8) Any proposal to amend the types of assets permitted to be held by an authorised scheme, or to its investment limits or restrictions, must be subject to the requirements of these Rules.
- (9) Subject to these Rules, no amendment may be made to the types of assets permitted to be held by an authorised scheme, or to its investment limits or restrictions, unless –
- (a) sufficient written notice is given to holders to enable them to redeem units in the scheme before the amendment takes effect; and
- (b) the principal documents or scheme particulars are amended.

(10) Units in a collective investment scheme which –

(a) is managed or operated by –

- (i) the principal manager;
- (ii) a person in the same group as the principal manager;
- (iii) a person who is a controller of the principal manager; or
- (iv) a person of whom the principal manager is a controller;

OR

(b) has

- (i) the same investment adviser;
- (ii) a person in the same group as the investment adviser;
- (iii) a person who is a controller of the investment adviser; or
- (iv) a person of whom the investment adviser is a controller,

may not be acquired for an authorised scheme unless the principal manager procures that any charge payable by the target collective investment scheme is not suffered directly or indirectly by the authorised scheme or any investors in that scheme.

- (11) Section (10) does not apply to a feeder fund structure. In such instances the relevant fee structure in the target collective investment scheme should be fully disclosed.

**Guidance Note:**

**Responsibilities of the principal manager and the designated administrator**

The designated administrator's responsibility is to monitor the adherence to rule 2.7(1) to (3). Any breaches should be brought to the attention of the principal manager (or equivalent). The designated administrator should also ensure that the investment manager has been informed.

The designated administrator should monitor the rectification steps that would be required by the directors, principal manager and trustee or general partner (where applicable) and investment adviser.

With the exception of the case of a unit trust scheme with no principal manager, the role of the trustee is to oversee the process.

## **2.8 Borrowing and hedging powers**

- (1) Hedging transactions and borrowing must not be undertaken unless permitted under the principal documents or scheme particulars and disclosed in those scheme particulars.
- (2) Hedging transactions and borrowing must not exceed any limits or restrictions laid down in the principal documents or scheme particulars and disclosed in those scheme particulars.
- (3) Where the limits or restrictions disclosed in the scheme particulars are more restrictive than those imposed under the principal documents those set out in the scheme particulars must be adhered to unless written notice is given, to holders, and those scheme particulars are amended accordingly.

- (4) The principal manager, or in the case of a company scheme the company, in the case of a unit trust scheme with no principal manager the trustee, or in the case of a limited partnership with no principal manager the general partner, must take all reasonable steps to avoid any contravention of this rule.
- (5) The trustee must take all reasonable steps to oversee that the manager properly discharges his duties under this rule.
- (6) If a principal manager, or alternative contractual provider, becomes aware of any contravention of this rule it must, as soon as is reasonably practicable and having regard to the interests of investors, take such steps as are necessary to rectify the position and notify the trustee. The manager or trustee must notify the Commission, in writing, if the position has not been rectified within six months of the date on which the manager first became aware of the contravention.
- (7) Proposals to amend the borrowing or hedging powers of an authorised scheme are subject to the requirements of these Rules and must not be made unless –
  - (a) sufficient written notice is given to holders to enable them to redeem units in the authorised scheme before the amendment takes effect; and
  - (b) the principal documents or scheme particulars are amended.

## **2.9 Prior notifications**

- (1) The manager of an authorised scheme must give prior written notice, to the Commission, of any proposed material alteration to the scheme's investment, borrowing, and hedging powers.
- (2) Any notice given in respect of a proposed alteration involving a change in the principal documents or scheme particulars must be accompanied by a certificate, from the manager or a law firm, either confirming that, following the amendments, those documents will continue to comply with these Rules, or setting out the exceptions.



- (3) The trustee must give written notice, to the Commission, of any proposal to replace the designated administrator. The incumbent and the proposed replacement designated administrator are subject to the requirements of rule 4.7.
- (4) The manager must give prior written notice, to the Commission, of any proposal to replace the designated trustee or designated custodian of the scheme. The incumbent and the proposed replacement designated trustee/custodian are subject to the requirements of rule 4.6.
- (5) The designated administrator or trustee must give prior written notice, to the Commission, of any proposal to replace either the principal manager or the investment adviser.

**Guidance Note:**

The manager may delegate to a third party, for example a law firm, the alteration of the scheme particulars and production of the written notification to the Commission.

However, the manager remains responsible for compliance with rule 2.9(1) and (2).

**2.10 Changes to authorised schemes requiring immediate notification to the Commission**

- (1) The manager or trustee must give immediate written notice, to the Commission, of changes –
  - (a) to the directors;
  - (b) to the registrar;
  - (c) to the auditor; or
  - (d) of the termination of a class of unit or, in the case of an authorised scheme that is a cellular company, the termination of a cell.

## 2.11 Preparation of scheme particulars

- (1) Scheme particulars must be reviewed at least once in every twelve months and amended to reflect any changes.
- (2) Where significant new matters arise, or material changes occur, the scheme particulars must be amended immediately.
- (3) Any revision of the scheme particulars may take the form of a complete substitution for the previous particulars or of a supplement to those particulars.

### **Guidance Note:**

Whether a change is deemed material depends on its effect on the authorised scheme and its holders.

Ultimately, the manager will need to determine whether, in each case, a particular change is material in nature. Generally, any change requiring the prior sanction of holders by resolution, or a change which is significant enough to warrant prior notice to holders to enable sufficient time to redeem units, would be considered, by the Commission, to be material.

## 2.12 Contents of scheme particulars

- (1) Scheme particulars must comply with the requirements set out in Schedule 1 to these Rules.

## 2.13 Publication of scheme particulars

- (1) The principal manager or, where there is none, the directors of an authorised scheme, the trustee of a unit trust scheme, or the general partner of a limited partnership, must not market units in the authorised scheme unless –

- (a) scheme particulars have been prepared, in accordance with these Rules, in English or another language elected by the holders, provided the language is of the jurisdiction into which the scheme is to be marketed and provided that a certified translation into English is made available; and
  - (b) arrangements have been made for a document containing those particulars to be available in what the principal manager, or equivalent, reasonably considers to be sufficient numbers; or is available via a website to comply with (2); and
  - (c) a copy of that document has been sent to the Commission and the trustee.
- (2) The principal manager, or equivalent as set out at (1), must not effect any sale of units in the authorised scheme to any person, other than a holder of units in the scheme, until it has offered that person, free of charge, a copy of the scheme particulars.

#### **2.14 Compensation for false or misleading scheme particulars**

- (1) The principal manager, or in the case of there being no principal manager, the directors of an authorised scheme, or in the case of a unit trust scheme with no principal manager the trustee, or in the case of a limited partnership with no principal manager the general partner, is to be treated as responsible for any scheme particulars.
- (2) The principal manager, or equivalent as set out at (1), is liable to pay compensation to any person who has purchased, or agreed to purchase, units in the authorised scheme and has suffered loss as a result of -
  - (a) any untrue or misleading statement in any scheme particulars or the omission of any matter, required by these Rules, to be included in those particulars; or
  - (b) any untrue or misleading statement or omission arising as a result of a failure to revise, update, or correct any scheme particulars.

- (3) The omission, from scheme particulars, of any information required under these Rules shall be treated as a statement that there is no such matter.
- (4) References in this rule to the acquisition of units include references to contracting to acquire them.

### **2.15 Exemption from liability to pay compensation**

- (1) In this rule revised scheme particulars will be treated as different scheme particulars from any preceding and the original.
- (2) The principal manager or, where there is none, the directors of an authorised scheme, the trustee of a unit trust scheme, or the general partner of a limited partnership, is not liable to pay compensation if, at the time when the scheme particulars were made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that –
  - (a) it continued to take such reasonable care until the time of the relevant acquisition of units in the authorised scheme;
  - (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers;
  - (c) it had already taken all reasonable steps to ensure 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 the decision to invest.
- (3) The principal manager, or equivalent as set out at (2), is also not liable to pay compensation 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) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the units were acquired; or
- (c) the person who acquired the units knew, at the time of the acquisition, that the statement was untrue or misleading or knew of the omission.

## **2.16 Undesirable or misleading names**

- (1) The name of an authorised scheme must not be undesirable or misleading.
- (2) The principal manager, or in the case of a company scheme the company, in the case of a unit trust scheme with no principal manager the trustee, or in the case of a limited partnership with no principal manager the general partner, of an authorised scheme must ensure that the name of a sub-fund or of a class of unit is not undesirable or misleading.

### Guidance Note:

The Commission will take into account whether the name of the authorised scheme –

- is substantially similar to the name of another;
- implies that the scheme has merits which are not, or might not be, justified;
- implies that the principal manager or investment adviser has particular qualities which might not be justified;
- is inconsistent with the scheme's investment objectives or policy;
- implies that the authorised scheme is not a scheme (for example, describing it as a "plan" or "account" is unlikely to be acceptable); and
- might mislead investors into thinking that persons other than the principal manager, directors, general partner, or trustee of an authorised scheme are responsible for the scheme.

The Commission is unlikely to approve a name that includes the word "guaranteed" unless –

- the guarantee is given by –
  - a person duly licensed, authorised, or registered under the supervisory laws; or
  - a person subject to prudential supervision in accordance with criteria defined by the laws of the UK, or the European Union, or prudential rules at least as stringent as those,  
  
other than the manager or the trustee;
- the principal manager (or equivalent), if any, of the authorised scheme can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
- the guarantee covers all holders within the authorised scheme and is legally enforceable by each holder who is intended to benefit from it or by a person acting on that holder's behalf;
- the guarantee relates to the total amount paid for a unit which includes any charge or other costs of buying or selling units in the scheme;
- the guarantee provides for payment, at a specified date or dates, and is unconditional; although reasonable commercial exclusions such as force majeure may be included; and
- where the guarantee applies to different classes of units, it is identical in its application to all classes except for the differences attributable to income already received or charges already suffered by the different classes of unit.

**Guidance Note:**

The name of an authorised scheme may indicate a guaranteed capital return or income return, or both, but only if the total amount paid for a unit is guaranteed.

The Commission is unlikely to approve a name of an authorised scheme that includes words implying a degree of capital security (such as “capital protected” or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the scheme particulars, and –

- the principles, with regards to the implication of a guarantee, are satisfied except that the protection may relate to an amount not materially less than the total amount paid for a unit; or
- the investment objective and investment policy for the authorised scheme are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a unit,

and the Commission will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a case-by-case basis.

**Umbrella funds**

The Commission will take into account those factors that apply to the naming of authorised schemes, as set out in this guidance note.

## PART 3 TITLE TO AND DEALINGS IN UNITS

### 3.1 The register

- (1) The registrar must establish and maintain a register of holders in accordance with this Part.

#### **Guidance Note:**

The registrar shall be licensed, under the Law, for at least the restricted activity of Registration. Typically the registrar will be either the designated administrator or trustee but it does not need to be limited to these parties and the Commission would expect the arrangement to be covered by a contractual agreement.

The trustee's oversight role will continue to ensure the proper maintenance of the register and the Commission would expect the contractual arrangement to allow the trustee access to the registrar's records in order that the trustee may properly discharge its duties.

- (2) The registrar must exercise all due diligence and take reasonable steps to ensure that the information contained on the register is, at all times, complete and up to date.
- (3) The register must contain –
  - (a) the name and address of each holder and, for joint holders, no more than four need to be registered;
  - (b) the number of units of each class held by each holder;
  - (c) the date on which the holder was registered for units standing in their name;
  - (d) the date on which a person ceased to be a holder; and
  - (e) the number of units of each class currently in issue and not yet redeemed.



- (4) No notice of any trust whether express, implied, or constructive, which may be entered in the register is binding on the registrar.
- (5) The register is conclusive evidence of the persons entitled to the units entered in it.
- (6) A body corporate may be registered as a holder or as a joint holder.
- (7) The registrar must –
  - (a) supply on request, to any holder or his authorised representative, a copy of the entries on the register relating to that holder;
  - (b) carry out any conversion of units after consultation with the designated administrator and trustee, as appropriate.

### **3.2 Certificates or contract notes**

- (1) A document recording title to those units recorded by the registrar may be issued in such form as permitted in the principal documents.
- (2) The registrar must produce any document under this rule, or provide relevant information, in a timely manner where the procedures for redemption of units require the holder to surrender that document.

### **3.3 Suspension of dealings**

- (1) If dealings in units are suspended the designated administrator must notify the Commission immediately, stating the reason for the suspension.

### **3.4 Default by holder**

- (1) The registrar must cancel, or make any necessary amendments to, a certificate or make any necessary alteration to the register if –
  - (a) such evidence is received to show that default has been made, by a holder, in making any payment in money or transfer of property due to the authorised scheme either under the provisions of these Rules, or any other rules made by the Commission, or the principal documents, in respect of the creation and issue of units to that holder; and
  - (b) any certificate, if issued, in respect of those units, which has been signed or issued in accordance with these Rules, is received by the registrar.

### **3.5 Transfer of units by act of parties**

- (1) Every holder is entitled to transfer units held, in respect of which they are entered in the register, by an instrument of transfer, in any usual form, or in such other form as the principal manager, or equivalent, may approve.
- (2) The registrar is not under a duty to accept a transfer –
  - (a) if, where the transfer is of only some units of any class held by the holder, such a transfer would result in the holder, or the transferee, being a holder of such a number of units of that class as would be less than the minimum holding of units;
  - (b) if the principal documents, or any condition imposed on the authorised scheme by the Commission, contain a limitation on the categories of persons who may be holders and the transferee is not within one of those categories;
  - (c) unless and until the registrar has been furnished with such evidence and declarations as to status, residence, or otherwise, as may be required;

- (d) of units over which the trustee, the principal manager, or the authorised scheme may have a lien; or
  - (e) if the instrument or transfer relates to units of more than one class.
- (3) Every instrument of transfer of units must be executed, by or on behalf of the holder transferring the units, but need not be executed by the transferee unless the units are partly paid.
- (4) Unless the transferee is the manager, the transferor will be deemed to remain the holder until the name of the transferee has been entered in the register.
- (5) Every instrument of transfer submitted to the registrar must –
- (a) be stamped, where required by applicable law;
  - (b) be accompanied by any necessary declarations or other documents required under the law;
  - (c) be accompanied by any certificates, where issued, relating to the units; and
  - (d) any other evidence required

to prove the title of the transferor, or their right to transfer the units, or in the case of a body corporate the authority of the signatories on its behalf.

- (6) The registrar may dispense with the production of any certificate which has been lost, stolen, or destroyed, upon compliance, by the transferor, with the requirements which apply in the case of an application for their replacement.
- (7) All instruments of transfer which are registered must be retained, by the registrar, for a period of six years and a reference must be made, on the register, enabling the name of the transferor and the transferee and the date of the transfer to be identified.

- (8) No fee must be charged for the registration of any transfer, or the issue of a new confirmation in the name of the transferee, and, if only some of the units represented by a certificate are transferred then the transferor is entitled, free of charge, to a new confirmation in respect of the balance.

### 3.6 Transfer of units by operation of law

- (1) On the death of a joint holder, the survivors must be the only persons recognised, by the registrar, as having the title to any interest in the units. Upon the production of evidence of death that the registrar may require, and delivering up the relevant certificate, the survivors are entitled to have the certificate marked, or have a fresh certificate issued, in their names.
- (2) The legal personal representative of a deceased holder must be the only person recognised, by the registrar, trustee, and manager, as having title to the units.
- (3) Any person becoming entitled to a unit on the death of a sole holder, or as a consequence of that holder's bankruptcy, *désastre*, *curatelle*, or similar proceedings, or under any order of a Guernsey court may, upon providing such evidence of title as the registrar may reasonably require, either be registered themselves as the holder of the unit or have registered such person as they nominate in writing.
- (4) A person becoming entitled to a unit under the circumstances set out in this rule may give a discharge for all monies payable in respect of that unit but is not entitled to receive notices of, or attend, or vote, at any meetings of holders until they are registered as a holder.
- (5) The designated administrator may, at their discretion, retain any monies payable in respect of any unit of which any person is entitled to be registered as the holder of under the provisions of this rule, or is entitled to transfer, until such person is registered as the holder or duly transfers it.

### **3.7 Change of name and address of holder**

- (1) The registrar must –
  - (a) upon receipt of notice, in writing, of a change of name, or a change of address of any holder;
  - (b) upon being satisfied; and
  - (c) on compliance with such formalities, including in the case of a change of name the surrender of any certificate previously issued,

alter the register accordingly and either produce a new certificate or make an appropriate endorsement to the existing certificate.

### **3.8 Payment of fees on production of certificates**

- (1) If authorised to do so under the principal documents the registrar may make the registration of any document relating to, or affecting the title of, any unit conditional on the payment of such reasonable fee as the principal manager, or equivalent, may agree.

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

- (1) The registrar must make the register available for inspection free of charge in Guernsey, by a holder, their authorised representative, or the manager during ordinary office hours.
- (2) The registrar may impose reasonable restrictions on the availability of the register but it must be available, for inspection, for no less than two hours in each business day.
- (3) The register may be closed at such times and for such periods, not exceeding 30 days in any one year, as the registrar may determine with the approval of the trustee.

- (4) The registrar must supply the manager and trustee with a copy of the register, or any part of it, on request.
- (5) The registrar must supply a holder, or their authorised representative, with a copy of the entries on the register relating to that holder.

### **3.10 Pricing of units and dealings by trustee and designated administrator**

- (1) The manager and the trustee must comply with the principal documents and scheme particulars in relation to the creation, cancellation, issue, and redemption of units, and the pricing and settlement of such units.
- (2) On the issue, redemption, or conversion of units contract notes must be issued in accordance with Part 10 of the Licensees (Conduct of Business) Rules, 2021.

### **3.11 Pricing controls and checks**

- (1) The manager and trustee must ensure that appropriate controls, procedures, and checks are in place in respect of the pricing of units including in respect of compensation for incorrect pricing.

#### **Guidance Note:**

Managers and trustees should refer to the Commission's "Pricing Controls in respect of Open-Ended Collective Investment Schemes" guidance document, available on the Commission's website.

## PART 4 THE MANAGER AND THE TRUSTEE

### 4.1 Management of the scheme

- (1) The manager and the trustee must –
  - (a) be different persons and act independently of each other;
  - (b) each be incorporated or be a branch in, be administered in, and have a place of business in, Guernsey;
  - (c) each be licensed under the Law;
  - (d) not be a subsidiary of the other; and
  - (e) not have executive directors or other officers in common.
- (2) In the case of a company scheme, the trustee must not have executive directors or other officers in common with those of the company.
- (3) The Commission is entitled to require such undertakings, bonds, guarantees, and assurances as the Commission may determine to secure compliance with these Rules.
- (4) It is the duty of the principal manager, or in the case of a company scheme the company, in the case of a unit trust scheme with no principal manager the trustee, or in the case of a limited partnership with no principal manager the general partner, to manage the authorised scheme and to make decisions as to the constituents of the scheme property in accordance with –
  - (a) the principal documents;
  - (b) the provisions of any applicable law;

- (c) these Rules;
  - (d) the most recently published scheme particulars; and
  - (e) in the case of a company scheme subject to any directions given by the directors.
- (5) It is the duty of the designated administrator to administer the authorised scheme and to monitor the constituents of the scheme property in accordance with –
- (a) the principal documents;
  - (b) the provisions of any applicable law;
  - (c) these Rules;
  - (d) the most recently published scheme particulars;
  - (e) in the case of a company scheme any directions given by the directors; and
  - (f) in the case of a limited partnership any directions given by the general partner.
- (6) It is the duty of the trustee –
- (a) to take reasonable care to ensure that the authorised scheme is properly managed and administered by the principal manager, or equivalent, and designated administrator in accordance with these Rules; and
  - (b) to discharge its duties under the principal documents and these Rules.



- (7) In the case of a company scheme the directors must not give any directions or exercise any powers, duties, or discretions which would, or might, cause the company to operate otherwise than in accordance with the principal documents, scheme particulars, or these Rules.
- (8) The manager, and in the case of a company scheme the company and the directors, must on the request of the trustee supply the trustee with such information concerning the management and administration of the scheme as the trustee may reasonably require.
- (9) The trustee of a money market fund must be a bank registered in accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>3</sup>.

#### **4.2 Auditor**

- (1) The principal manager or where there is none, the trustee in a unit trust scheme, or the general partner in a limited partnership must at the outset, and upon any vacancy, appoint a qualified auditor for the scheme.
- (2) In the case of a company scheme the holders or directors must, at the outset and upon any vacancy, in accordance with the principal documents, scheme particulars, and any applicable law, appoint a qualified auditor for the scheme.
- (3) The audit fees of the auditor must be determined, in the case of a company scheme by the directors and, in the case of a limited partnership scheme by the general partner, and in the case of a unit trust scheme by the trustee, in accordance with the principal documents, scheme particulars, and any applicable law.

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<sup>3</sup> Order In Council No. XX of 2020.

- (4) The manager must have the accounts, required to be included in the annual report under these Rules, audited by the auditor. That report must be accompanied by a report, of the auditor to the holders, that those accounts have been audited in accordance with generally accepted auditing standards. It must contain the income statement and financial position of the authorised scheme as at the end of the annual accounting period.
- (5) An auditor may, at any time, be removed by –
  - (a) the manager with prior notification to the trustee;
  - (b) the holders or directors of a company scheme with prior notification to the trustee, and in accordance with the principal documents, scheme particulars, and any applicable law;
  - (c) in the case of a unit trust scheme, the principal manager with prior notification to the trustee, or by the trustee alone if no principal manager;
  - (d) in the case of a limited partnership, the general partner with prior notification to the trustee; and
  - (e) notwithstanding anything in any agreement between the persons listed above, but subject to any applicable law, the manager must give notice to the Commission of any such removal with a statement of reasons.

#### **4.3 Inspection and obtaining copies of principal documents and scheme particulars**

- (1) The manager and the trustee must allow any person to obtain a copy of the principal documents and of the scheme particulars, either electronically or in hard copy format, and upon payment of a reasonable fee.

#### **4.4 Record of units held by manager**

- (1) The manager must keep a record of units held by it, including the class of such units, which have been acquired or disposed of and the balance of any acquisitions and disposals.
- (2) The manager must make that record available for inspection by the trustee, in the Bailiwick, free of charge at all times during ordinary office hours. They must supply the trustee with a copy of the record, or any part of it, free of charge.

#### **4.5 General powers and duties of the designated custodian / trustee**

- (1) It is the duty of the trustee to carry out the instructions of the principal manager, or other person with appropriate authority, as to the investments which are to comprise the scheme property.
- (2) The trustee is responsible for the safe custody of all the scheme property. The trustee will be liable, to the authorised scheme, in the event of any loss of any scheme property which occurs as a result of the trustee's unjustifiable failure to perform its obligation.
- (3) The trustee may, at its discretion, entrust the documents of title or the documents evidencing title to all or part of the scheme property for safe keeping to some other person, not being the manager, and may arrange for such person to become the registered holder of that scheme property.
- (4) The principal manager, or in the case of a company scheme the directors, in a limited partnership the general partner, or in a unit trust scheme with no principal manager the trustee may, with the agreement of the trustee and where permitted in the principal documents and scheme particulars, arrange for part of the scheme property to be loaned through the agency of any person approved, in writing, by the trustee. Any income received on account of the loan must form part of the scheme property. This does not apply to the deposit of cash forming part of the scheme property in accordance with the principal documents.
- (5) The trustee may take advantage of (3) and (4) only if –

- (a) it is satisfied, after making reasonable enquires at reasonable intervals, that the custodian or borrower is a fit and proper person; and
  - (b) arrangements have been made with the custodian or borrower to protect the rights of the trustee in priority to other creditors and the trustee is satisfied that these are sufficient, under the law of the jurisdiction where the documents, or property, will be kept to safeguard the interests of investors in the scheme.
- (6) The trustee must take reasonable care to ensure that the methods used by the manager in calculating the prices at which units are issued and redeemed are in accordance with the principal documents and scheme particulars.
- (7) The trustee is entitled to give notice to the principal manager, or alternative contractual provider where there is no principal manager, that it is not prepared to accept the transfer of any property which, in the opinion of the trustee, infringes the terms of these Rules, the principal documents, or the scheme particulars. The trustee is entitled to require the principal manager to secure the transfer in place of any such property of other property acceptable to the trustee.
- (8) If services are provided, under (3), by an approved bank or a subsidiary of such which is an associate of the manager or the trustee, neither the trustee, the manager, or the person providing custodial services will be liable to account to the other, or to the holders, for any profits or benefits made by, or derived from, payments by way of remuneration for those custodial services.

#### 4.6 Appointment and Retirement of the designated custodian / trustee

- (1) Every scheme must have a designated custodian or designated trustee.
- (2) The manager must give prior written notice, to the Commission, of any proposal to replace the designated custodian or designated trustee of the scheme. The appointment will only be effective following confirmation of designation from the Commission.
- (3) The trustee is not entitled to retire voluntarily other than upon the appointment of a new trustee.
- (4) In the event of the trustee wanting to retire, or ceasing to be licensed under the Law, then –
  - (a) in the case of a unit trust scheme, the manager may by an instrument supplemental to the trust instrument and signed by the manager;
  - (b) in the case of a company scheme, the company may by new trustee agreement; or
  - (c) in the case of a limited partnership, the general partner may by new limited partnership agreement,

appoint another person, licensed under the Law, to be the trustee in place of the retiring trustee and in accordance with these Rules.

##### **Guidance Note:**

Until such time as the Commission provides confirmation of the designation of any proposed replacement trustee, the current trustee remains responsible for the scheme and its compliance.

#### 4.7 Appointment, replacement, and retirement of the manager / designated administrator

- (1) Every scheme must have a designated administrator.
- (2) The trustee must give written notice, to the Commission, of any proposal to replace the designated administrator. The appointment will only be effective following confirmation of designation from the Commission.
- (3) The manager may be removed by notice in writing given by the trustee, or in the case of a company scheme by the directors, or in the case of a limited partnership by the general partner, to the manager, in any of the following events –
  - (a) if an order is made, or a resolution is passed, for the winding-up of the manager, except in the case of a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the trustee, or if its affairs are declared to be in a state of *désastre*;
  - (b) if a receiver is appointed;
  - (c) if, for good reason, the trustee is of the opinion, and so states in writing to the holders, that a change of manager is desirable in the interests of the holders;
  - (d) if a resolution is passed removing the manager;
  - (e) if the holders of three quarters majority in value of the units, excluding units held or deemed to be held by the manager, make a request, in writing to the trustee, that the manager be removed; or
  - (f) if the manager ceases to be licensed under the Law.
- (4) Subject to (1), the manager must, on receipt of such notice, cease to be manager and the authorised scheme must, by a new management agreement, appoint some other person licensed under the Law and in accordance with these Rules.

- (5) If the name of the scheme contains a reference to the name of the former manager, the former manager is entitled to require the new manager and the trustee to propose a change in the name of the authorised scheme.
- (6) The manager has the right to retire in favour of some other person licensed under the Law, approved in writing by the trustee.
- (7) On the appointment of a new manager –
  - (a) the removed or retiring manager is released from all further obligations under these Rules and the principal documents but without prejudice to the rights of any person in respect of any act or omission, on its part, prior to its retirement or removal;
  - (b) the new manager assumes all the powers, rights, duties, and obligations of the manager under these Rules and the principal documents, as fully as if it had been an original party to those documents.
- (8) On 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 and is entitled to require the issue of the appropriate certificates, if not previously issued, and to be registered as, and exercise all rights associated with, the holder of such units; and
  - (b) in the case of a company scheme, transfer or procure the transfer at cost, to the new manager, of any management securities held for its benefit immediately prior to their retirement or removal. Where the removed or retiring manager refuses or fails to effect or procure such a transfer within 30 days after the date of its removal or retirement, the company becomes entitled to transfer such units on their behalf, and to account to that person for the proceeds less any costs incurred.

**Guidance Note:**

Until such time as the Commission provides confirmation of the designation of any proposed replacement designated administrator, the current designated administrator remains responsible for the scheme and its compliance.

**4.8 Conflicts of interest**

- (1) The manager, any director of a company scheme, the general partner of a limited partnership, and any trustee must take reasonable care to ensure that the following transactions are not carried out on behalf of the authorised scheme –
  - (a) putting cash on deposit with an affected person, unless that person is an eligible institution or an approved bank and the arm's length requirement in (2) is satisfied;
  - (b) lending money by an affected person to, or for the account of, the authorised scheme unless the affected person is an eligible institution or an approved bank and the arm's length requirement in (2) is satisfied;
  - (c) dealing in property by an affected person to, or with, the authorised scheme, or the trustee for the account of that scheme, unless (3) applies;
  - (d) vesting of property, other than cash, by an affected person in the authorised scheme, or the trustee for the account of that scheme, against the issue of units in that scheme, unless –
    - (i) section (3) applies; or



- (ii) the purpose of the vesting is that the whole or part of the property of a body corporate, or a collective investment scheme, becomes the first property of the authorised scheme and the unitholders of shares or units, in the body corporate or collective investment scheme, become the first holders in the authorised scheme;
  - (e) the acquisition of scheme property by an affected person from the authorised scheme, or the trustee acting for the account of the authorised scheme, unless (3) applies, and
  - (f) transactions in respect of stock lending by an affected person with, or in relation to, the authorised scheme, unless the arm's length requirement in (6) is satisfied.
- (2) Transactions to which this rule applies must be at least as favourable to the authorised scheme as any comparable arrangement, on normal commercial terms, negotiated at arm's length between the affected person and an independent party.
- (3) There is no breach of rules, to which this rule applies, if the transaction meets the requirements of (4), (5) and (6).
- (4) The transaction satisfies the criteria for best execution on exchange if –
- (a) the property is an approved security or an approved derivative;
  - (b) the transaction is effected under the rules of the eligible market with or through a person who is bound by those rules;
  - (c) there is evidence, in writing, of the effecting of the transaction and of its terms; and
  - (d) the principal manager, or equivalent, has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the authorised scheme.
- (5) There is an independent valuation if –

- (a) the value of the property is certified, in writing, for the purpose of the transaction by a person approved by the trustee as –
    - (i) independent of the authorised scheme and any affected person; and
    - (ii) qualified to value property of the relevant kind; and
  - (b) the trustee is of the opinion that the terms of the transaction are not likely to result in any material prejudice to holders.
- (6) Where (4)(a) is not satisfied, and it is not reasonably practicable to obtain an independent valuation, there is an arm's length transaction for the purposes of (3) if the trustee has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement.

**Guidance Note:**

The arm's length requirement is that the arrangements between the relevant person and the authorised scheme are at least as favourable to the authorised scheme as would be any comparable arrangement effected on normal commercial terms negotiated at arm's length between the relevant person and an independent party.

## **PART 5 ALLOCATION AND DISTRIBUTION OF INCOME**

### **5.1 Amount available for income allocations**

- (1) If the authorised scheme allocates income on or before each annual income allocation date, or interim income allocation date, the manager, or in the case of a company scheme the directors, must determine the amount of the property available for income allocation in accordance with the principal documents, scheme particulars, and applicable law.

### **5.2 Unclaimed and joint holder distributions**

- (1) Where an authority has been received, in writing, by the registrar, in such form as the registrar or, in the case of a company scheme the directors, consider sufficient, from –

- (a) the manager; or

- (b) the registered holder, or in the case of joint holders from all of them,

the authorised scheme must pay the amount payable to the manager or the holder or joint holders, to their nominated bank, or other agent, as though such nominated bank or other agent were the sole holder.

- (2) Any distribution payment which remains unclaimed must be dealt with in accordance with the provisions of the principal documents or, if there are no such provisions, after a period of six years from the date of payment must then be transferred to and become part of the scheme property after which point neither the payee, the holder, or any successor in title, will have any right to except as part of the scheme property.

## PART 6 REPORTS TO HOLDERS

### 6.1 Annual reports and accounts

- (1) The manager must, in relation to each annual accounting period, prepare a report and accounts which must at least contain –
  - (a) the names and addresses of –
    - (i) the manager;
    - (ii) the trustee;
    - (iii) any investment adviser;
    - (iv) the registrar;
    - (v) the auditor; and
    - (vi) in the case of a company scheme, the directors;
  - (b) a statement that the scheme is an authorised scheme;
  - (c) a review of the authorised scheme's investment activities during the period to which the report relates;
  - (d) details of any significant change in the scheme particulars during the period to which the report relates;
  - (e) a statement of the value per unit of the scheme property, calculated on a consistent basis, at the beginning and end of the period to which the report relates;

- (f) any other significant information which would enable holders to make an informed judgment on the development of the activities of the authorised scheme during that period and the results of those activities at the end of the period;
  - (g) a portfolio statement specifying the investments comprised in the scheme property at the end of the accounting period, the percentage value of the scheme property that each holding represents, and a description of any significant changes in the portfolio during that period;
  - (h) a statement of the net income per unit distributed or, in the case of accumulation units, allocated during that period;
  - (i) a copy of a report of the auditor on the accounts of the scheme reporting in accordance with generally accepted auditing standards;
  - (j) a copy of the report to holders which is required by these Rules to be delivered to the manager, stating whether in the trustee's opinion, the manager has managed the authorised scheme in accordance with the provisions of the principal documents, the scheme particulars, and these Rules;
  - (k) a balance sheet, including a description and the amount of any contingent liabilities;
  - (l) a detailed income statement;
  - (m) a statement of the bases for valuation of the scheme property and for converting amounts in currencies not in the base currency.
- (2) The accounts must be prepared in accordance with generally accepted accounting principles and must include the income statement and financial position of the authorised scheme as at the end of the period to which the accounts relate.
- (3) Annual reports must be signed in accordance with the principal documents.

- (4) In the case of an umbrella fund the manager has the following, additional, obligations –
- (a) to include in each report the following information in relation to each constituent part in the umbrella fund –
    - (i) the name of the constituent part;
    - (ii) a description of the investment objectives; and
    - (iii) such statements about the changes, over the period to which the report relates, in capital value of units in the constituent part and its income as the manager considers appropriate to enable the holder to judge the relative merits of investment in that constituent part as compared with investment in any other constituent part;
  - (b) to supply to any person to whom a report relating to a constituent part has been sent, the corresponding report relating to any of the other constituent parts if that person requests; and
  - (c) to state, in each report relating to a constituent part, the fact that the corresponding report for any other constituent part will be sent to the holder on request.

## **6.2 Publication of annual reports and accounts**

- (1) The principal manager, or in the case of a company scheme the company, in the case of a limited partnership the general manager, or in the case of a unit trust scheme with no principal manager the trustee must, within six months after the end of the annual accounting period, publish the annual report, in accordance with this rule and the disclosures made in the scheme particulars.

- (2) The manager must send a copy of the report to each holder, or to the first named of joint holders, entered in the register on the date of issue or, if permitted by the principal documents, the manager or the directors may, on giving notice to the holders, make the report available on a website.
- (3) The manager and the trustee must make the most recent annual report available, in English, for inspection by the public free of charge during ordinary office hours at each place specified for the purpose in the most recently published scheme particulars or make them available on a relevant website.
- (4) The manager must send a copy of the report, in English, to the Commission when it is published or no later than six months after the end of the annual accounting period.

### **6.3 Annual reports to be offered to purchasers of units**

- (1) The principal manager, or equivalent as set out in rule 6.2(1), must not effect any sale of units in an authorised scheme to any person, other than a person who is already a holder of units in that scheme, until it has offered that person, free of charge, a copy of the most recent annual report and accounts or the annual report and accounts are available on a relevant website.

### **6.4 Annual report by the trustee**

- (1) It is the duty of the trustee to enquire into the conduct of the manager, and in the case of a company scheme the directors, in the management of the authorised scheme in each annual accounting period and to report its findings to the holders.
- (2) The trustee's report must contain the matters set out in rule 6.1(1)(j) and must be delivered to the manager in good time to enable it to include a copy of the report in the authorised scheme's annual report to holders.

## 6.5 Interim reports and accounts

- (1) Any report and accounts published in relation to the interim accounting period must –
  - (a) to the extent that it contains such information, be prepared on a basis consistent with the requirements set out in rule 6.1; and
  - (b) be sent to each holder, be made available for inspection, and be offered to purchasers of units in accordance with these Rules.



## **PART 7 MEETINGS OF HOLDERS**

### **7.1 Convening of meetings, attendance, and voting**

- (1) The trustee, the principal manager, or in the case of a company scheme the directors, may at any time convene a meeting of holders on such day and at such time and place as thought fit.
- (2) The principal manager, or in the case of a company scheme the directors, must, on the written request of such a number of holders as may be specified in the principal documents, convene a meeting of the holders on such a day and at such a time and place as thought fit.
- (3) The manager, or any associate of the manager, is entitled to receive notice of and attend any such meeting but, subject to (4), is not entitled to vote but may be counted in the quorum and, accordingly, the units held, or deemed to be held, by the manager or any associate of the manager will not be regarded as being in issue.
- (4) The manager, or any associate of the manager, is entitled to vote and be counted in the quorum at any such meeting in respect of units which it holds as a bare trustee or nominee on behalf of a person entitled to vote and from whom it has received voting instructions.
- (5) The manager, the trustee and their representative legal advisers are entitled to attend and be heard at every such meeting.

### **7.2 Powers of a meeting of holders**

- (1) Subject to (2), a meeting of holders duly convened and held in accordance with these Rules will be competent, by resolution –
  - (a) to sanction any modification, alteration, or addition to the provisions of the principal documents which must be agreed by the trustee and the principal manager, or equivalent;

- (b) to remove the manager in accordance with these Rules;
  - (c) to approve an arrangement for the reconstruction or amalgamation of the authorised scheme with another body or scheme whether or not that is a collective investment scheme;
  - (d) to approve any change in the investment, borrowing, or hedging powers of the scheme; and
  - (e) to terminate the authorised scheme under the provisions of these Rules.
- (2) An increase in the periodic charge must not occur without sufficient notice being given in order to allow an investor to redeem their shares prior to the increase coming into effect.
- (3) If a meeting of holders is convened by the principal manager, or in the case of a company scheme the company, in the case of a limited partnership the general partner, or in the case of a unit trust scheme with no principal manager the trustee, to consider a resolution for the removal of the trustee or the manager then the person convening the meeting must ensure that the notice is accompanied by a statement of the reasons for proposing the resolution.

### **7.3 Notice of meeting of holders**

- (1) A minimum of ten days' notice of every meeting, or longer if so specified in the principal documents, inclusive of the day on which the notice is served and of the day for which the notice is given, must be given to the holders in the manner set out in these Rules.
- (2) The notice must specify the place, day, and hour of the meeting and the terms of the resolutions to be proposed. Where it is proposed that the meeting is held entirely electronically, or via telephone, the notice must include details of the method of attendance.

- (3) A copy of the notice must be sent by the manager to the trustee, or by the trustee to the manager and, in the case of a company scheme by the company to the manager, the trustee, and the directors.

#### **7.4 Quorum**

- (1) The quorum at a meeting of holders must be such number of holders present in person, or by proxy, as is specified in the principal documents.
- (2) Subject to (3), no business must 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 will stand adjourned to such a day, time, and place as may be appointed by the chairman.
- (4) At such an adjourned meeting the holders present, in person or by proxy, will be a quorum.

#### **7.5 Minutes**

- (1) Minutes of all resolutions and proceedings, at every meeting of holders, must be made and duly entered in books and, in the case of a company scheme, those books must be kept in accordance with the provisions of any applicable law.

#### **7.6 Meaning of resolution**

- (1) In these Rules “resolution” means as passed by a simple majority of holders or class of holders;
- (2) A written resolution is passed by a simple majority if it is passed by holders representing a simple majority of the total voting rights of holders eligible to vote.

- (3) A resolution passed at a meeting on a show of hands is passed by a simple majority of –
- (a) the holders who, entitled to do so, vote in person on the resolution;  
and
  - (b) the persons who vote on the resolution as duly appointed proxies of holders entitled to vote on it.
- (4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by holders representing a simple majority of the total voting rights of holders who, being entitled to do so, vote in person or by proxy on the resolution.

## PART 8 TERMINATION AND SUSPENSION OF THE SCHEME

### 8.1 Suspension and resumption of dealings in units

- (1) The manager must, at the request of the trustee, or may, with the prior agreement of the trustee, or as required or permitted by the principal documents suspend the issue, cancellation, sale, and redemption of units (the “dealing in units”) if it, or the trustee, is of the opinion that due to exceptional circumstances there is good reason having regard to the interests of holders.
- (2) At the time of suspension the manager, or the trustee if it has required the manager to suspend dealings in the units, must give written confirmation of the suspension and the reasons for it to –
  - (a) the holders;
  - (b) the Commission; and
  - (c) the authorities in any jurisdiction in which the authorised scheme is registered for public sale.
- (3) During the period of suspension none of the obligations related to the creation, cancellation, sale, or redemption of units, or to the valuation of scheme property apply.
- (4) The suspension of dealings in units must cease as soon as practicable after the manager, or the trustee in the case of a requirement by it, no longer holds the opinion that such a step is necessary.
- (5) Once the suspension of dealings in units is lifted the manager must inform the Commission of the proposed resumption and, following resumption, confirm it by giving written notice to the authorities set out in (2)(c).

- (6) This rule does not prevent the principal manager, or in the case of a company scheme the company, or where there is no principal manager in the case of a unit trust scheme the trustee, and in the case of a limited partnership the general partner from agreeing, during the period of the suspension, to sell or redeem units or to arrange for the trustee in the case of a unit trust scheme, or a company in the case of a company scheme, to create or cancel them at a price calculated by reference to the first valuation point after resumption of dealings in units.
- (7) This rule may be applied to one or more classes of unit without being applied to others and must be applied to a sub-fund of an umbrella fund.

**Guidance Note:**

This rule may be applied to one or more classes of unit without being applied to other classes of unit in an authorised scheme and shall apply to a sub-fund (of an umbrella fund) as it applies to the scheme.

In such an application reference must be made to the trustee of the class, or classes, related to the sub-fund and to the scheme property attributable to the sub-fund.

The principal manager, if any (or equivalent), and the trustee shall have regard to the interests of all of the holders in the scheme (or umbrella fund).

## **8.2 When a unit trust scheme or limited partnership is to be wound up**

- (1) Following a winding-up event, as set out in rule 8.6, the trustee must stop the creation and cancellation of units in the authorised scheme, the manager and registrar must stop the sale and redemption of units in the scheme, and the trustee and the principal manager, or in the case of a unit trust scheme with no principal manager the trustee, must proceed to wind up the scheme in accordance with rule 8.3.

### 8.3 Manner of winding up a unit trust scheme or limited partnership scheme

- (1) Upon the passing of a resolution approving the reconstruction of the authorised scheme with another body or authorised scheme, the scheme must be wound up in accordance with that resolution or the terms of the approved reconstruction.
- (2) In any other case the trustee must, as soon as practicable after the authorised scheme falls to be wound up and with consideration to the best interests of the holders, realise the scheme property and, after paying or providing for all liabilities properly payable and retaining provision for the costs of the winding-up, either -
  - (a) distribute the proceeds of that realisation to the holders and the principal manager or, in the case of a limited partnership the general partner, as they may direct and proportionately to their respective interests in the scheme; or
  - (b) if so directed, or in accordance with provisions made in the principal documents, distribute the scheme property in specie amongst the holders in satisfaction of their proportionate entitlements.
- (3) Any unclaimed net proceeds or other cash held by the trustee, after the expiration of twelve months from the date on which they became payable, must be distributed by the trustee in accordance with any applicable law subject to the trustee having a right to retain any expenses incurred by making such a distribution.

#### **Guidance Note:**

The Commission recognises that a rapid dissolution of scheme property could lead to a 'fire sale' environment in which fair value prices would not be achieved. Therefore, the concept of 'as soon as practicable' should incorporate a clear intention to minimise such losses to investors.

#### **8.4 When a company scheme is to be wound up**

- (1) Following a winding-up event, as set out in rule 8.6, the company must stop the creation and cancellation of units in the authorised scheme, the manager and registrar must stop the sale and redemption of units in the scheme, and -
  - (a) the directors of the company scheme must convene an extraordinary general meeting of the scheme, for a date not later than one month after the winding-up event, for the purpose of considering a resolution to wind-up the scheme; or
  - (b) the scheme must be wound up in accordance with the terms of the principal documents and any applicable law.

#### **8.5 Manner of winding-up a company scheme**

- (1) On a winding-up, subject to the principal documents and the Law, the assets available for distribution amongst the holders of units in a company scheme must be applied first in the payment to the holders of units in the company scheme of shares of the scheme property in accordance with their respective interests, followed by the payment to holders of management securities and nominal securities of sums in accordance with their respective entitlements as provided in the scheme particulars.

#### **8.6 Winding-up events**

- (1) Winding-up events include –
  - (a) when the authorisation of the authorised scheme is revoked or, in the case of a sub-fund of an umbrella fund when the authorisation of that sub-fund is revoked where there is separate authorisation for that sub-fund, or when the authorisation of the umbrella fund is amended to refer only to other sub-funds where there is not a separate authorisation for that sub-fund;



- (b) when a resolution passed by the holders determines that the authorised scheme must be wound up;
- (c) where the scheme particulars provide when the date for the termination of the authorised scheme is reached without a resolution being passed by the holders postponing the termination; and
- (d) where the scheme particulars provide when the value of the scheme property falls below the value prescribed in the scheme particulars for the requisite period and the principal manager, or equivalent, elects to wind-up the authorised scheme.

**Guidance Note:**

The Commission's expectations are for an orderly wind-down with reference to the interest of investors.

### **8.7 Winding-up of a sub-fund of an umbrella fund**

- (1) Rules 8.2, 8.3, 8.4, 8.5 and 8.6 can be read, unless the context otherwise requires, as applying to the winding-up of a sub-fund of an umbrella fund.
- (2) A sub-fund of an umbrella fund must be wound up in accordance with rule 8.2 and 8.3 in the case of a unit trust scheme, and rule 8.4 and 8.5 in the case of a company scheme.

### **8.8 Additional provisions applicable to umbrella funds which are companies**

- (1) In the case of a company scheme liabilities of an umbrella fund attributable, or allocated to, a particular sub-fund must be met first out of the scheme property attributable or allocated to such a sub-fund.

## 8.9 Reconstruction

- (1) Where, for the purposes of a reconstruction, it is proposed that the scheme property of an authorised scheme, or that attributable to a sub-fund of an umbrella scheme, should become the property of another body or authorised scheme, the proposal must not be implemented without the sanction of a resolution of the holders of the authorised scheme, or of the classes of units related to the sub-fund, and the prior written approval of the Commission.
- (2) Where it is proposed that an authorised scheme or sub-fund of an umbrella fund should receive property as a result of a reconstruction then the proposal must not be implemented without the sanction of a resolution of the holders of the authorised scheme, or of the classes of units related to the sub-fund, and the prior written approval of the Commission unless (3) applies.
- (3) This rule applies if the trustee in the case of a unit trust scheme, or the directors in the case of a company scheme, or the general partner in the case of a limited partnership, are reasonably satisfied that the inclusion of the property concerned –
  - (a) is not likely to result in any material prejudice to the interests of the holders in the authorised scheme;
  - (b) is consistent with the objectives of the authorised scheme or the sub-fund; and
  - (c) could be effected without any breach of these Rules.

## **PART 9 SERVICE OF NOTICES AND DOCUMENTS**

### **9.1 Service of notices and documents**

- (1) Any notice or document required to be served on a holder will be deemed to have been duly given, in the case of units held by a registered holder, if it is sent by post to, or left at, their address as appearing on the register, or sent via fax or email, subject to the provisions of The Companies (Guernsey) Law, 2008, regardless of the constitution of the authorised scheme.

## PART 10 GENERAL PROVISION

### 10.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) In these Rules the following definitions should be followed -

**“accumulation unit”** means a unit, in an authorised scheme, in respect of which income is reinvested;

**“affected person”** includes –

- (a) a company scheme;
- (b) the trustee;
- (c) a director of a company scheme;
- (d) the manager;
- (e) any investment adviser of a scheme;
- (f) any associate of any person listed above; and
- (g) the auditor of the authorised scheme;

**“annual accounting period”** means the twelve month period between dates specified for that purpose or ending on a particular day specified in any calendar year in the principal documents;

**“annual income allocation date”** means in any year stated in the most recently published scheme particulars the date on or before which, in respect of each annual accounting period, an allocation of income is to be made;

**“applicable law”** means, in the case of a company scheme, the law of a jurisdiction in which the company is incorporated, and in any other case the governing law as specified in the authorised scheme’s principal documents;

**“approved bank”** means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 2020 or is registered under The Banking Business (Jersey) Law, 1991 or is authorised to carry on a banking or deposit-taking business under the law of the UK, of any EU member State, or under the law of any country or territory which may be listed in notices issued by the Commission;

**“approved derivative”** means one which is traded or dealt in on an eligible derivatives market;

**“approved security”** means a transferable security that is admitted to official listing on the International Stock Exchange, or in the UK, or in an EEA State, or is traded on or under the rules of an eligible securities market (otherwise than by the specific permission of the market authority);

**“authorised scheme”** means a collective investment scheme which has been declared to be an authorised Class B Scheme by the Commission;

**“base currency”** means the currency specified in the principal documents as that of the authorised scheme;

**“company scheme”** means any authorised scheme constituted as a body corporate including protected cell companies and incorporated cell companies;

**“conversion”** means the exchange of units in one constituent part of an umbrella fund for those in another constituent part of the same fund;

**“eligible institution”** means –

- (a) a credit institution authorised in the UK or by an EEA State regulator;
- (b) an investment firm authorised in the UK or by an EEA State regulator;
- (c) a firm authorised under the Law; or
- (d) a firm licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 2020

or, in each case, under any European Union Directives or other laws or Regulations;

**“feeder fund”** means an authorised scheme which has, as its investment objective, to invest all the property into another collective investment scheme, whether domiciled in the Bailiwick or elsewhere;

**“generally accepted accounting principles”** includes those accepted –

- (a) in the UK;
- (b) in the United States;
- (c) in Canada;
- (d) in any other country approved in writing by the Commission; or
- (e) following International Financial Reporting Standards;

**“generally accepted auditing standards”** means audits conducted in accordance with the standard auditing practice or the generally accepted auditing principles of –

- (a) the United Kingdom;
- (b) the United States of America;
- (c) Canada;
- (d) any other country the auditing practice or principles of which are approved, in writing, by the Commission; or
- (e) International Auditing Standards;

**“hedging transaction”** means a transaction –

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

**“holder”**, in relation to a unit in an authorised scheme, means the person who is entered in the register as the holder of the unit or the first named holder in the case of joint holders;

**“interim accounting period”** means a period of time within the annual accounting period in respect of which the principal documents require or authorise the trustee to make any interim allocation of income, should there be sufficient funds, before the annual income allocation date in any year;

**“interim income allocation date”** means any date specified in the scheme particulars of an authorised scheme as the date on or before which an allocation of income is to be made, should there be sufficient funds;

**“investment adviser”** means a person who provides the principal manager of an authorised scheme, or the authorised scheme itself in instances where there is no principal manager, with advice as to the merits of investment opportunities available to an authorised scheme whether or not they regularly exercise a discretionary power over investments for the account of that scheme;

**“management agreement”** means an agreement under which a person is appointed manager of an authorised scheme to discharge the duties set out in these Rules as to be undertaken by the manager and, in the case where there is a principal manager and a designated administrator or where there is more than one designated administrator, includes an agreement whereby the principal manager has delegated the performance of some or all of its functions to the designated administrator;

**“management securities”** means securities in a company scheme which are held solely for the benefit of persons employed or engaged in or about the management of the assets of the company scheme (or any associate thereof) which –

- (a) carry no right or expectation to participate, directly or indirectly, in any of the profits of the company scheme; and
- (b) on winding up or on redemption, carry no right to receive anything other than the return of the price paid for the securities;

**“manager”** means –

- (a) the designated administrator;
- (b) where there is a principal manager and a designated administrator, both; or
- (c) where there is more than one designated administrator, each such person;

**“minimum holding of units”**, in relation to any units means –

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

as the principal documents or scheme particulars may, or the principal manager of an authorised scheme (or in the case of a company scheme the company, or in the case of a limited partnership the general partner, or in the case of a unit trust scheme with no principal manager the trustee), from time to time prescribe;

**“minimum redemption number of units”** in relation to any units means –

- (a) such number of units of that type; or
- (b) that number of units of that type including fractions as may have such value (calculated on the redemption price);

as the principal documents or scheme particulars may, or the principal manager of an authorised scheme (or in the case of a company scheme the company, or in the case of a limited partnership the general partner, or in the case of a unit trust scheme with no principal manager the trustee), may, with the approval of the trustee, from time to time prescribe as the minimum number in relation to any one transaction of redemption in units of that type;

**“money market fund”** means an authorised scheme the sole object of which is to enable investors to participate in or receive profits or income arising from the acquisition, holding, management, or disposal of any one or more of the following (with or without transferable securities) –

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

**“overseas regulator”** means, in relation to a country or territory outside the Bailiwick, an authority discharging –

- (a) functions corresponding to any functions of the Commission; or
- (b) such other functions as the Commission may, by Regulation, prescribe;

**“periodic charge”** means a charge made by the manager or investment adviser by way of remuneration for services;

**“preliminary charge”** means a charge made by the principal manager or investment adviser upon the issue of units;



**“principal documents”** means, in relation to –

- (a) a unit trust scheme, the trust instrument and management agreement;
- (b) a company scheme, the articles of incorporation of a Guernsey company (or an equivalent document under the applicable law of a non-Guernsey body corporate), the management agreement and the trustee agreement; and
- (c) a collective investment scheme other than a unit trust scheme or a company scheme, the documents dealing collectively with the same or similar obligations and duties as the principal documents constituting a unit trust scheme or a company scheme;

**“principal manager”** means the Guernsey-based principal manager appointed under the principal documents which would normally delegate the performance of some or all of its functions to the designated administrator and the investment adviser;

**“qualified auditor”** means a person who has a place of business in the Bailiwick of Guernsey and who holds a current practising certificate issued by –

- (a) The Institute of Chartered Accountants in England and Wales;
- (b) The Institute of Chartered Accountants of Scotland;
- (c) The Institute of Chartered Accountants in Ireland;
- (d) The Association of Chartered Certified Accountants; or
- (e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards for membership as the bodies specified above;

**“scheme particulars”** means written particulars of an authorised scheme prepared, revised, and published in accordance with these Rules;

**“scheme property”** means the property of an authorised scheme (but in the case of a company scheme any property attributable to management securities shall be disregarded);

**“trust instrument”** means a written instrument, whether or not under seal, made between the principal manager and the trustee, or by the trustee alone, constituting the trust and includes supplemental information;

**“trustee”**, in relation to an authorised scheme, means –

- the person designated as such by the Commission for the purposes of the Law;
- the designated trustee in the case of a unit trust scheme;

- the designated custodian in the case of an authorised scheme other than a unit trust scheme;

**“trustee agreement”** means an agreement under which a body corporate is appointed to hold the scheme property of a company scheme and to discharge the duties imposed by these Rules on the trustee;

**“umbrella fund”** means an authorised scheme which provides that the contributions of investors and the profits or income out of which payments are to be made to them are pooled in separate parts of the scheme; an authorised scheme incorporated as either a protected cell company or incorporated cell company, and having the same attributes, would constitute an umbrella fund;

**“unit trust scheme”** means an authorised scheme under which the scheme property is held in trust for investors.

## **PART 11 TRANSITIONAL ARRANGEMENTS, SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT**

### **11.1 Transitional Arrangements**

- (1) Designated managers, recognised under the Authorised Collective Investment Schemes (Class B) Rules, 2013, will be redesignated as designated administrators in accordance with these Rules.

### **11.2 Savings**

- (1) Declarations of authorisation issued under the section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>4</sup> and previously governed by the Authorised Collective Investment Schemes (Class B) Rules, 2013<sup>5</sup> are recognised as valid declarations of authorisation for the purposes of these Rules.
- (2) Any exclusions or modifications granted by the Commission, under the Authorised Collective Investment Schemes (Class B) Rules, 2013, will continue to apply where the Law and these Rules provide scope for such exclusions or modifications.

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<sup>4</sup> Order In Council No. XXX of 1987.

<sup>5</sup> G.S.I. No. 49 of 2013.

### **11.3 Revocations**

#### **11.3.1 Revocation of The Authorised Collective Investment Schemes (Class B) Rules, 2013**

- (1) The Authorised Collective Investment Schemes (Class B) Rules, 2013 are revoked.

### **11.4 Citation and commencement**

- (1) These rules may be cited as the Class B Rules 2021.
- (2) These rules come into force on 1<sup>st</sup> November 2021.

## **SCHEDULE 1**

### **Scheme Particulars**

Scheme particulars must state their effective date and contain, at minimum, the matters set out below.

#### **1. Name and structure of the authorised scheme**

- i. That the authorised scheme is an authorised Class B open-ended collective investment scheme.
- ii. whether the scheme is a company, unit trust scheme, a limited partnership, protected cell company, incorporated cell company, or other.
- iii. where the scheme is domiciled.
- iv. whether the scheme intends to be listed on a stock exchange and, if so, which.

#### **2. The parties to the authorised scheme**

Name and addresses of the following –

- i. the principal manager or general partner;
- ii. the trustee;
- iii. the designated administrator;
- iv. the investment adviser;
- v. the registrar;
- vi. the auditor;
- vii. the directors.

The arrangements for the appointment and removal of the principal manager, investment adviser, designated administrator, and the trustee should be disclosed.

#### **3. The investment objectives of the authorised scheme**

- i. Specific details relating to the objectives;
- ii. details of any powers to change the investment objectives including requirements to submit proposals to a holder vote;
- iii. any borrowing, gearing, or hedging powers that may apply.

#### **4. Investment policy**

- i. The investment restrictions that will apply;
- ii. how the spread of risk will be achieved;
- iii. any borrowing or gearing powers that will apply; and
- iv. details of any powers to change any of the above, including any requirements to submit proposals to a vote of holders.

#### **5. Periodic accounting or reporting**

- i. The accounting standards that will be applied to the preparation of the accounts;
- ii. the duration of the first accounting period;
- iii. the accounting date of the authorised scheme; and
- iv. when reports will be published and distributed to holders, taking into account the requirement of these Rules.

#### **6. Issue and redemption procedure**

- i. The classes of units to be issued and the voting rights attached;
- ii. the arrangements for issue and redemption of units;
- iii. any minimum holding of units and any minimum redemption number of units;
- iv. the arrangements for the registration of, and transfer of title to, units; and
- v. the circumstances in which issues or redemptions of units may be suspended.

#### **7. The valuation procedure**

- i. The details of the manner and the frequency in which assets and liabilities in the scheme will be valued;
- ii. the base currency; and
- iii. provision for the publication prices.

#### **8. Holder's rights (including limited partners in appropriate structures)**

- i. The arrangements that will exist for general meetings;
- ii. any class rights that will exist; and
- iii. any voting rights that may be exercisable at meetings of holders.

## **9. The distribution policy**

- i. The distribution policy and indicative distribution date, or annual income allocation date; and
- ii. if appropriate, the policy relating to any distribution or allocation of income.

## **10. Directors' interests and the interests of the parties in the authorised scheme**

The scheme particulars should include a statement showing the interests of each director, and of the parties listed under point 2, in the shares of the authorised scheme; together with the level of the directors' remuneration and expenses. Details of any other directorships that are held, and have been held for the past five years, by the directors will be made available to any potential holder at the registered office of the authorised scheme. Any material conflicts of interest must be disclosed for any intended holder to make an informed judgment on the merits of investing in the scheme.

## **11. Fees and expenses**

The nature of all fees, material charges, and expenses payable out of the scheme property and how their amounts will be determined, including but not limited to –

- i. the level of any preliminary and periodic charges and the basis on which these charges are calculated;
- ii. the amount of notice to be given to participants to increase the principal manager's and investment adviser's charges;
- iii. how the trustee's remuneration is to be provided for and whether it is to be paid out of the assets of the scheme; and
- iv. in the case of an umbrella scheme, how fees and expenses will be allocated amongst the constituent parts.

## **12. Risk Warnings**

Sufficient risk warnings must be disclosed for any intended holder to make an informed judgment on the merits of investing in the scheme.

## **13. Tax**

- i. The authorised scheme's tax status; and
- ii. the tax treatment applicable in jurisdictions where the scheme is to be marketed.

**Guidance Note:**

The Commission is prepared to accept general disclosure or, if specific countries have been targeted, information that is relevant to investors in those countries. Such information should be correct at the time of the issue and indicate that potential investors should seek tax advice specific to their own circumstances.

**14. Additional information**

The scheme particulars must state any other material information that an investor would reasonably require to enable the person to make an informed judgment about the merits of investing in the units offered. For example –

- i. the provisions for the convening and conduct of meetings, including the service of notices and documents;
- ii. the provisions for winding-up the scheme.



