

THE COLLECTIVE INVESTMENT SCHEMES (CLASS B) RULES 1990 ("Class B Rules")

GUIDANCE NOTES

These Guidance Notes, which are intended to assist existing and potential promoters and managers of Class B collective investment schemes with an understanding of the Commission's policy and practice, should be read in conjunction with the Class B Rules.

INTRODUCTION

1. In exercising its general functions under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 the Commission is required to have particular regard to:
 - (a) the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on finance business; and
 - (b) the protection and enhancement of the reputation of the Bailiwick as a financial centre.

These considerations apply equally when the Commission is exercising its statutory functions under the P01 Law.

2. Prior to the introduction of the Class B Rules, no rules of substance applied to Class B schemes, albeit that they were required to obtain authorisation under the POI Law. This situation was in marked contrast to the regime which has applied to Class A1 and A2 schemes since 1988. The Class B Rules now being introduced are designed to enable the Commission to demonstrate that it discharges the responsibilities set out at 1(a) and (b).

THE APPROACH TO THE RULES

3. As stated in its Annual Report for 1988, in considering applications for the authorisation of collective investment schemes, the Commission gives great weight to the status of the intended promoters. There is a policy of selectivity, which means that only promoters of the first rank are encouraged. Normally, a demonstrable track record in the promotion of established mutual funds is required, and the authorisation of intended promoters by regulatory authorities in other jurisdictions is not in itself generally sufficient.

4. In the light of this policy, the Commission determined that the Class B Rules should be as flexible as possible consistent with meaningful investor protection. Although necessarily couched in legal terms, the Rules are essentially a codification of best practice, with much reliance placed on disclosure. The imposition of specific investment and borrowing restrictions has been deliberately avoided **and it will be noted that the Commission has the power to disapply any of the Rules.**
5. The introduction of Class B Rules is intended to strengthen investor protection while at the same time providing a clear framework to enable prospective promoters to properly consider the Bailiwick of Guernsey as a jurisdiction in which to establish their funds. It is hoped that codification will lead in time to the introduction of “standard” documentation, thus reducing costs, and also enhancing the ability of promoters to market Class B schemes in other jurisdictions by demonstrating that such schemes are subject to permanent and continuing supervision by the Commission.

AN OVERVIEW OF THE RULES

6. This paragraph provides a brief description of the main objectives and salient features of the Class B Rules.

PART 1, INTRODUCTORY, contains definitions for the purpose of interpretation.

PART 2, APPLICATION OF RULES, CONSTITUTION OF A CLASS B SCHEME, AND INVESTMENT, BORROWING AND HEDGING POWERS, applies the Rules to all Class B schemes except to the extent otherwise agreed by the Commission (see Part 11); prescribes what the principal documents of a Class B scheme should provide for, deals with the advertising and marketing of Class B schemes; covers permitted payments of expenses out of scheme property; limits the investment, borrowing and hedging powers of a Class B scheme to those permitted under its principal documents or scheme particulars and disclosed in its scheme particulars.

PART 3, TITLE TO UNITS AND DEALINGS THEREIN, contains technical requirements as to the registration, certification and transfer of units which are familiar to Guernsey registrars of schemes; and requires dealings in, pricing of, and settlement for units to be effected in compliance with the principal documents and scheme particulars, and contract notes to be issued to investors.

PART 4, THE MANAGER AND THE TRUSTEE, describes the duties of managers, trustees and directors of company schemes; the procedure for appointing and removing auditors; requirements regarding separation of designated managers and trustees and notice to the Commission of proposed changes to a scheme; and contains rules regarding the replacement and retirement of trustee and managers, and dealings as principals in scheme property by managers, trustees and associates.

PART 5 deals with the treatment of **DISTRIBUTIONS OF INCOME.**

PART 6, REPORTS TO HOLDERS, prescribes the contents of annual reports and accounts of Class B schemes and their dissemination.

PART 7 covers procedural arrangements regarding **MEETINGS OF HOLDERS**.

PART 8, TERMINATION OF THE SCHEME, prescribes events which require schemes to be terminated, and the manner of winding-up unit trust and company schemes.

PART 9 contains provisions for the **SERVICE OF NOTICES AND DOCUMENTS** to investors.

PART 10, SCHEME PARTICULARS AND PROSPECTUSES, sets out the requirements for preparing, revising and publishing scheme particulars, and refers to the liability of managers and directors to pay compensation for losses arising as a result of the publication of false or misleading prospectuses or scheme particulars.

PART 11, AUTHORISATION OF CLASS B SCHEMES, lists the documents which should be lodged with the Commission in support of an application for authorisation as a Class B scheme, and which should be accompanied by the appropriate application fee (currently £500); deals with Class B declarations; and enables the Commission to exclude or modify the application of the Rules.

PART 12 contains **TRANSITIONAL PROVISIONS** which apply to all schemes which were authorised Class B schemes at 1st October 1990.

PART 13 sets out **CONSEQUENTIAL AMENDMENTS** to The Collective Investment Schemes Rules 1988.

The **SCHEDULE** sets out the format of scheme particulars of Class B schemes.

THE APPLICATION OF THE RULES

7. The Commission's policy is to regard the Rules as a basis for exercising judgement and discretion, taking into account all the facts pertaining to a particular application. The Commission intends to adopt a pragmatic approach to the Rules, subject to its overriding duty referred to in 1(a) and (b) above.

This policy recognises that Class B schemes range from the retail fund aimed at the "general public" via institutional funds to the strictly private fund established solely as a vehicle for investment by a single institution, and that their investment objectives and risk profiles are similarly wide-ranging.

8. As the Rules are designed to reflect best practice, it is not envisaged that the majority of promoters of Class B schemes will, in fact, perceive a need to seek the Commission's agreement to disapply any of the Rules. In the case of retail funds, very persuasive arguments will need to be made if the disapplication of any Rule is sought.

THE COMMISSION'S POLICY AND PRACTICE

9. Given the Commission's wish to be flexible and not to discourage innovation, it is only practicable to give a broad indication of current policy and practice

In summary, provided the promoter is acceptable:

- (i) investment objectives and restrictions must be designed to spread risks;
 - (ii) where funds are, in the Commission's view, subject to above average risk e.g. futures and options funds or properties funds, the Commission requires a prominent health warning, a substantial minimum investment, and restricts sales of units to business, professional and experienced investors;
 - (iii) expenses charged to the scheme must be fair and reasonable and accounted for to unitholders;
 - (iv) pricing of units must achieve a reasonable equity between buyers and sellers and the manager; and
 - (v) all material facts should be clearly disclosed to intending and existing investors.
10. It should also be noted that the POI Law requires all persons undertaking "controlled investment business" in or from within the Bailiwick of Guernsey (e.g. the management of Class B schemes) to be licensed, and that in considering applications for licences the Commission is required to consider, inter alia, the general nature and specific attributes of that controlled investment business, and the economic benefit to the Bailiwick likely to derive from that business.
11. In conclusion, the Commission is always prepared to meet managers, potential promoters or their professional advisers in order to discuss matters of policy and practice regarding collective investment schemes, whether authorised or proposed.

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The Collective Investment Schemes

(Class B) Rules 1990

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GUERNSEY FINANCIAL SERVICES COMMISSION

THE COLLECTIVE INVESTMENT SCHEMES (CLASS B) RULES 1990

The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred on it by Sections 12, 14, 15, 16, 18 and 20 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the “Law”) as amended hereby makes the following rules:-

PART 1- INTRODUCTORY

1.01 Citation and commencement

These rules (including the schedule hereto) may be cited as the Collective Investment Schemes (Class B) Rules 1990 (the “Class B rules”) and come into operation on 1st October 1990.

1.02 Interpretation

- (1) Unless the context otherwise requires, in these Class B rules expressions defined in the Law have the same meanings as they have in the Law and the following expressions have the meanings assigned to them:

“**accumulation unit**” means a unit in a Class B Scheme in respect of which income is reinvested;

“**annual accounting period**” is the period of 12 months 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 the date in the calendar year specified in the principal documents as the date on or before which allocations of income in respect of each annual accounting period are to be made;

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

“**approved bank**” means a person who is registered under the Protection of Depositors (Bailiwick of Guernsey) Ordinances 1971 to 1990 or under the Depositors and Investors (Prevention of Fraud) (Jersey) Law 1967 or is authorised to carry on a deposit-taking business under the United Kingdom Banking Act 1987 or under the law of any other jurisdiction as may be approved by the Commission;

“**approved law firm**” means a firm of lawyers qualified under applicable law to practice that law and approved by the Commission for the purposes of these rules;

“**associate**” in relation to a body corporate means:

- (a) any member of the group of which that body corporate forms part;

- (b) any body corporate at least one-third of the issued equity share capital of which is beneficially owned by that body corporate or an associate;
- (c) any officer of that body corporate or of any associate;

“auditor” means the auditors for the time being of a Class B Scheme;

“authorised scheme” means a collective investment scheme declared by the Commission to be an authorised collective investment scheme under Section 8 of the Law;

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

“bearer certificate” means a certificate representing units of any type which contains a statement that the bearer of the certificate is entitled to the number of units of that type represented by the certificate;

“bearer depositary receipt” means the issue by a depositary of a bearer receipt representing registered units;

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

“capital property” means all the property held in accordance with the terms of the principal documents or scheme particulars, other than income property;

“Class B Scheme” means an authorised scheme which is declared by the Commission to be a Class B Scheme;

“Commencement date” means the date on which these rules come into operation;

“company scheme” means any Class B Scheme constituted as a body corporate;

“controller” means

(a) in relation to a body corporate, a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary; and

(b) in relation to an unincorporated association:

- i. any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and
- ii. any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the association;

and for the purposes of this definition “associate”, in relation to any person, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary;

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

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

“declaration of authorisation” means the declaration of the Commission that a collective investment scheme is an authorised scheme of a specified class;

“directors” means the directors, or other members of the principal managing body of a company scheme;

“enactment” includes rules and regulations;

“existing scheme” means a collective investment scheme which, at the commencement date, had obtained a Class B declaration of authorisation under the Law in accordance with the Collective Investment Schemes Rules 1988;

“extraordinary resolution” has the meaning assigned to it in rule 7.06; **“feeder fund”** means a Class B 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 units in a single collective investment scheme;

“feeder fund” means a Class B 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 units in a single collective investment scheme;

“fund of funds” means a Class B 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 units in a number of collective investment schemes;

“generally accepted accounting principles” means accounts prepared in accordance with the standard accounting practice or the generally accepted accounting principles of:

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

“group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company. For the purposes of this definition:

- (a) a company is deemed to be a subsidiary of another if (but only if):
 - (i) that other either:-
 - (aa) is a member of it and controls the composition of its board of directors; or
 - (bb) holds more than half in nominal value of its equity share capital; or
 - (ii) the first mentioned company is a subsidiary of any company which is that other's subsidiary;
- (b) (i) a company is deemed to be another's holding company if (but only if) the other is its subsidiary; and

- (ii) a body corporate is deemed the wholly owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees; and

(c) any reference to a "company" in this definition includes any body corporate;

"Guernsey" means the Bailiwick of Guernsey;

"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 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 fluctuations; and
- (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 a Class B Scheme, means the person who is entered in the register as the holder of the unit or the bearer of a bearer certificate or bearer depositary receipt representing that unit or the first named holder in the case of joint holders;

"income equalisation" means a capital sum included in an allocation of income;

"Income property" means all sums, deemed by the manager, after consultation with the auditor, to be in the nature of income received or receivable in respect of the scheme property;

"income unit" means a unit in a Class B Scheme which is not an accumulation unit;

"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 before the annual income allocation date in any year,

"interim income allocation date", in relation to an interim accounting period, means the date in the calendar year specified in the principal documents as the date on or before which allocations of income in respect of that interim accounting period are required or authorised to be made or, if the principal documents leave the determination of that date to the discretion of the manager, the date determined for that purpose by the manager;

"investment adviser" means a person who provides the manager of a Class B Scheme with advice as to the merits of investment opportunities available to a Class B Scheme whether or not he regularly exercises a discretionary power over investments for the account of that Class B Scheme;

“issue” means the sale of units by the manager as a principal and “issue price” shall be construed accordingly;

“Law” means the Protection of Investors (Bailiwick of Guernsey) Law, 1987;

“management agreement” means an agreement under which a person is appointed manager of a Class B Scheme other than a unit trust scheme to discharge the duties contemplated by these rules to be undertaken by the manager and in the case where there is a principal manager and a designated manager, or where there is more than one designated manager includes any agreement whereby the principal manager has delegated the performance of some or all of its functions to the designated manager;

“management securities” means securities in a company scheme which:

- (a) 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); and
- (b) carry no right or expectation to participate, directly or indirectly, in any of the profits of the company scheme; and
- (c) on a 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 manager, or
- (b) where there is a principal manager and a designated manager each such person; or
- (c) where there is more than one designated manager each such person;

“margin” means cash or other property;

“marketing” in relation to units in a Class B Scheme and a particular country, means the promotion of that scheme in that country whether by means of prospectuses, advertisements, invitations or otherwise and “to market” shall be construed accordingly;

“minimum holding of units”, in relation to any units (whether income or accumulation 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 manager may, with the approval of the trustee, from time to time prescribe as the minimum holding a person must have in order to qualify to become a holder of units of that type in the scheme or in order to remain a holder of units of that type in the scheme (after redemption or conversion);

“minimum redemption number of units” in relation to any units (whether income or accumulation 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 redemption price);
as the principal documents or scheme particulars may or the manager 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 a Class B 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, or of any one or more of the following and transferable securities:

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

“option” means a right exercisable within a specified period of time, at the option of the holder of the right, to dispose of or acquire any property at a specified price;

“periodic charge” means a charge made by the manager by way of remuneration for his services;

“preliminary charge” means a charge made by the manager upon the issue of units;

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

“principal documents”, in relation to:

- (a) a unit trust scheme, means the trust deed;
- (b) a company scheme, means the articles of association 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;
- (c) a collective investment scheme other than a unit trust scheme or a company scheme, means the documents dealing collectively with the same or similar obligations and duties as the principal documents constituting a unit trust scheme and a company scheme;

“principal manager” means the principal manager appointed under the principal documents which has delegated the performance of some or all of its functions to the designated manager;

“qualified auditor” means a person who holds a current practising certificate issued by:

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

“record date” means a date selected by the manager for the distribution of interim or annual income, being a date not later than the interim or annual income allocation date respectively;

“redemption” means the purchase of units from a holder by the manager as a principal and “redeem” and “redemption price” shall be construed accordingly;

“register” has the meaning assigned to it in rule 3.0 1(1);

“registrar” has the meaning assigned to it in rule 3.01(2);

“scheme particulars”, means particulars of a Class B Scheme prepared, revised and published in accordance with these rules;

“scheme property” means the capital property and the income property of a Class B Scheme but in the case of a company scheme there shall be disregarded any property attributable to management securities;

“subsidiary” has the meaning given in Section 20 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971;

“transferable security” means any investment falling within any of paragraphs 36(1) to (6) of schedule 5 to The Collective Investment Schemes Rules 1988 other than an investment which either cannot be transferred, or can be transferred only with the consent of a third party other than, in the case of an investment falling within paragraph 36(1) or (2) of that schedule, either the body corporate which issued the investment or any members or debenture holders of that body corporate;

“trust deed” means a written instrument, whether or not under seal, made between the manager and the trustee constituting the trust and includes supplemental deeds;

“trustee”, in relation to a Class B Scheme, means the designated trustee in the case of a unit trust scheme or designated custodian in the case of a 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 a Class B 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 property and that investors in each separate part may exchange rights in one part for rights in another;

“unit” means a unit which represents or is attributable to an undivided share in the scheme property; and

“unit trust scheme” means a Class B Scheme under which the scheme property is held in trust for the investors.

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules throughout the Bailiwick of Guernsey.
- (3) Where for the purposes of these rules or for any other purpose any amount in one currency is required to be translated into another currency such translation shall be effected using such rate of exchange or formula as may be prescribed in the principal documents or as the manager shall determine with the approval of the trustee.
- (4) In these rules, in the case of an umbrella fund, except where otherwise expressly provided:
 - (a) **“constituent part”** in relation to an umbrella 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” shall apply as if the references in that definition to a scheme were references to each separate part of the property into which the scheme property is divided.
- (5) A reference in these rules to:
 - (a) an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment; and
 - (b) a document, written notice or written instructions shall be taken to be a reference to a

document, notice or instructions given in any legible form provided that a printed copy of the document, notice or instructions can be made.

- (6) References in these rules to a numbered rule shall be construed as references to the rule bearing that number in these rules.
- (7) References in any of these rules to a numbered paragraph shall, unless the reference is to a paragraph of a specified rule, be construed as references to the paragraph bearing that number in the rule in which it appears.

1.03 Umbrella funds

The following rules shall apply in the case of an umbrella fund as if each reference to a Class B Scheme were a reference to each constituent part within the umbrella fund but subject to any modification set out in any particular rule.

PART 2- APPLICATION OF RULES, CONSTITUTION OF A CLASS B SCHEME, AND INVESTMENT, BORROWING AND HEDGING POWERS

2.01 Application of rules

- (1) Unless specifically agreed otherwise by the Commission in accordance with rule 11.03, all of these Class B rules apply to every Class B Scheme.
- (2) The principal manager and the designated manager(s) shall be jointly and severally responsible for compliance with these rules.
- (3) A 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.

2.02 The principal documents

- (1) Subject to rule 11.02, the principal documents of a Class B Scheme shall state
 - (a) the name of the scheme;
 - (b) the applicable law under which the principal documents are made and governed;
 - (c) the base currency of the scheme and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent part.
 - (d) the maximum permitted level of any preliminary and periodic charges and the basis on which these charges are calculated;
 - (e) the amount of notice to be given to participants to increase manager's charges up to the maximum permitted level;
 - (f) how the trustee's remuneration is to be provided for and whether it is to be paid out of the assets of the scheme;
 - (g) the nature of all other costs and charges payable out of the assets of the scheme;
 - (h) the arrangements for the appointment and removal of the manager and the trustee;
 - (i) the classes of units to be issued and voting rights attached thereto;
 - (j) the arrangements for issue and redemption of units;
 - (k) any minimum holding of units and any minimum redemption number of units;
 - (l) the arrangements for the registration of, and transfer of title to, units;
 - (m) the basis for valuing the assets of the scheme and for calculating the prices at which units will be created, cancelled, converted, issued or redeemed;
 - (n) the accounting periods and income distribution dates;
 - (o) the date by which and the method by which reports and accounts will be published;

- (p) the provisions for the convening and conduct of meetings including the service of notices and documents;
 - (q) the circumstances in which issues or redemptions of units may be suspended; and
 - (r) the provisions for winding-up of the scheme.
- (2) Subject to rule 11.02, the principal documents or scheme particulars of a Class B Scheme shall state:
- (a) the investment objectives and restrictions;
 - (b) the hedging powers and restrictions (or an appropriate negative statement);
 - (c) the borrowing powers and restrictions (or an appropriate negative statement);
 - (d) 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 thereto shall be filed with the Commission.
- (4) A Class B Scheme shall operate and conduct its affairs in accordance with its principal documents and scheme particulars

2.03 Deleted *(The Collective Investment Schemes (Class B) Rules 1990 (Amendment) Rules 2004)*

2.04 Payments out of and into the scheme property

- (1) There shall be paid:
- (a) out of (or as the case may be into) the capital property of a Class B Scheme all payments (or repayments) of a capital nature properly so payable; and
 - (b) out of (or as the case may be into) the income property of a Class B Scheme all payments (or repayments) of an income nature properly so payable; and
 - (c) out of the capital property of a Class B Scheme all payments of an income nature to the extent that the income property of the scheme is insufficient to meet them when they fall due for payment; and such payments may be treated by the manager with the agreement of the trustee as a temporary loan from the capital property to the income property which may be repayable when the income property becomes sufficient so to do.
- (2) The following expenses may be paid out of the scheme property if and to the extent that there is authority for such payment in the principal documents:
- (a) any periodic charge payable to the manager under the scheme; and
 - (b) the fees of the trustee; and
 - (c) any expenses or disbursements of the trustee which are of descriptions authorised by the principal documents to be paid out of the scheme property.
- (3) In addition to the expenses described at paragraph (2), other expenses fees or charges may be paid out of the scheme property provided that the nature of such expenses fees or charges and how the amounts will be determined are disclosed in the scheme particulars and that the amounts charged are disclosed in the next report to holders.
- (4) No other expenses fees or charges may be paid out of the scheme property except with the prior specific approval in writing of the Commission and provided that the scheme particulars are revised to disclose such expenses fees or charges and any such approved payments are specifically disclosed in the next report to holders.
- (5) In the case of an umbrella fund any expenses fees or charges which can be paid out of the scheme property under this rule and any sums received which are not attributable to one constituent part only shall be allocated amongst the constituent parts in such a way as the manager, after consulting the trustee, considers to be fair to the investors in the various

constituent parts.

2.05 Sub-division and consolidation of units

The manager may, at any time when no bearer certificates or bearer depositary receipts are in issue, with the approval of the trustee determine that each unit shall be subdivided into two or more units (whereupon each unit shall stand sub-divided accordingly) or that one or more units shall be consolidated (whereupon those units shall stand consolidated) PROVIDED THAT in the case of a company scheme such units shall only be sub-divided or consolidated in accordance with the provisions of applicable law.

2.06 Investment objectives and powers

- (1) The property of a Class B scheme shall be invested with the aim of spreading risk;
- (2) The property of a Class B Scheme shall 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 a Class B Scheme shall not be invested in contravention of limits or restrictions imposed under its principal documents or scheme particulars and disclosed in its scheme particulars; and if the limits or restrictions disclosed in the scheme particulars are more restrictive than those imposed under the principal documents, no departure may be made from the limits or restrictions disclosed in the scheme particulars unless written notice is given to holders in accordance with paragraph (7)(i) and the scheme particulars are duly amended.
- (4) The manager and the trustee shall take all reasonable steps and exercise all due diligence to avoid the scheme property being invested in contravention of paragraphs (1) to (3).
- (5) Subject to paragraph (6), a manager or trustee becoming aware that the scheme property is invested in contravention of paragraphs (1) to (3) shall immediately take such steps as are necessary to rectify the position and shall notify the Commission in writing if the position has not been rectified within one month.
- (6) Paragraph (5) does not apply:
 - (a) during whichever is the shorter period of six months from the date on which persons are invited to become investors in the scheme or the period beginning with that date and ending on the first date on which the value of the scheme property exceeds £1,000,000 or its equivalent but the manager and trustee shall 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 the limits or restrictions beyond the control of the manager or trustee, but the manager Or trustee shall each take such steps as are necessary, having regard to the interest of investors, to ensure that the position is rectified as soon as is reasonably practicable and in any event within six months from the earliest date on which the manager or trustee became aware of the breach.
- (7) Subject to rule 4.06(2)(a) and (4), no amendment may be made to the types of assets permitted to be held by a Class B Scheme or to its investment limits or restrictions unless:
 - (i) sufficient written notice is given to holders to enable them to deal in units in the scheme before the amendment takes effect; and
 - (ii) the principal documents or scheme particulars are amended forthwith.
- (8) Units in a collective investment scheme which has the characteristics described in Paragraph 4 of Schedule 3 of the Law and which is managed or operated by the

manager or by a person in the same group as the manager or by a person who is a controller of the manager or of whom the manager is a controller may not be acquired for a Class B Scheme unless the manager procures, in such way as the manager shall think fit, that any preliminary charge payable on the issue of units, or any charge payable on the redemption of units, in the target collective investment scheme is not suffered directly or indirectly by the Class B Scheme or any investors in that scheme.

2.07 Borrowing and hedging powers

- (1) No hedging transaction or borrowing shall be undertaken by a Class B Scheme unless permitted under its principal documents or scheme particulars and disclosed in its scheme particulars.
- (2) No hedging transaction or borrowing shall be undertaken by a Class B Scheme which exceed the limits or restrictions laid down in its principal documents or scheme particulars and disclosed in its scheme particulars; and if the limits or restrictions disclosed in the scheme particulars are more restrictive than those imposed under the principal documents, no departure may be made from the limits or restrictions disclosed in the scheme particulars unless written notice is given to holders in accordance with paragraph (5)(i) and the scheme particulars are duly amended.
- (3) The manager and the trustee shall take all reasonable steps and exercise all due diligence to avoid any contravention of paragraphs (1) and (2).
- (4) A manager or trustee becoming aware of any contravention of paragraphs (1) or (2) shall, as soon as is reasonably practicable having regard to the interests of investors, take such steps as are necessary to rectify the position and shall notify the Commission in writing if the position has not been rectified within three months.
- (5) Subject to rule 4.06(2)(a) and (4), no amendment may be made to a Class B Scheme's borrowing or hedging powers unless:
 - (i) sufficient written notice is given to holders to enable them to deal in units in the scheme before the amendment takes effect; and
 - (ii) the principal documents or scheme particulars are amended forthwith.

PART 3- TITLE TO UNITS AND DEALINGS THEREIN

3.01 The register

- (1) The trustee shall establish and maintain in Guernsey a register of the holders ("the register") in accordance with this rule.
- (2) The trustee may appoint some other person (including the manager) ("the registrar") to establish and maintain the register on the trustee's behalf and, if the trustee does so:
 - (a) the trustee remains responsible for the discharge of all the trustee's duties in relation to the register under these rules; and
 - (c) anything required or authorised under these rules to be done in relation to the register by, to or before the trustee may be done by, to or before the registrar.
- (3) The register shall be maintained in a legible form or in a manner capable of being reproduced in a legible form.
- (4) There shall be entered in the register: (a) the name and address of each holder (but so that for any second or subsequent forename an initial shall suffice) and in the case of joint holders the name shall suffice for any second or subsequent holders, other than one whose units are all for the time being represented by bearer certificates or bearer

depository receipts; and

- (b) the number of units (including fractions of a unit) of each class held by each such holder, other than units the title to which is for the time being represented by bearer certificates or bearer depository receipts, and the serial numbers, if any, of the certificates issued in respect of those units; and
- (c) the date on which the holder was registered in the register in respect of the units standing in his name; and
- (d) the number of units (including fractions of a unit) of each class for the time being in issue and represented by bearer certificates or bearer depository receipts and the serial numbers of those certificates; and
- (e) the date on which any transfer is registered (and a sufficient reference to enable the name and address of the transferee to be identified).

The trustee is not bound to register more than four persons as the joint holders of any units.

3.02 The register as evidence of title

- (1) Subject to rule 3.05, the register shall be conclusive evidence as to the persons entitled to the units entered therein.
- (2) No notice of any trust (express, implied or constructive) which may be entered in the register in respect of any unit shall be binding on the manager or the trustee.
- (3) A body corporate may be registered as a holder or as one of joint holders.

3.03 The manager as holder

The manager may become a holder and shall be deemed to hold each unit (other than a unit the title to which is for the time being represented by a bearer certificate or a bearer depository receipt) during such times as neither the manager nor any other person is entered in the register as the holder thereof.

3.04 Certificates

- (1) Subject to paragraphs (6) and (7), the manager or the trustee shall within 21 days after the issue to a person of units in a Class B Scheme (or, if it be later, within five business days after receipt by the manager of cleared funds by way of consideration for the issue of those units) provide that person with a certificate representing those units in such form as may from time to time be agreed between the manager and the trustee (or in the case of a company scheme, the directors) and, subject to paragraph (2) each such certificate shall:
 - (a) bear the name of the scheme and, in the case of an umbrella fund, the name of the constituent part; and
 - (b) be dated; and
 - (c) bear the names and addresses of the manager and the trustee; and
 - (d) subject to sub-paragraph (g) below bear a distinctive number in series; and
 - (e) specify the number of units represented thereby and, where more than one type of

unit in the scheme is available, the type of unit represented thereby; and

- (f) state the name, and if the manager so determines the address, of the holder or, if there be more than one, the name and address of the holder first named in the register and the names only of the others; and
 - (g) be signed on behalf of the trustee or in the case of a company scheme be issued under seal (unless such sealing is not required under applicable law) in such manner as is specified in the principal documents (which may in addition dispense with the need for distinguishing numbers on such basis as is therein prescribed).
- (2) If permitted under applicable law the principal documents may authorise:
- (a) the issue of bearer certificates; and in this case a certificate issued under paragraph (1) shall, if the holder to whom it is issued so requests, instead of stating his name and address, state that the bearer of the certificate is entitled to the units represented by the certificate; and/or
 - (b) the issue by a depositary of bearer receipts representing the registered units.
- (3) Certificates shall be valid and binding notwithstanding that before the delivery thereof any person whose signature appears thereon as a duly authorised signatory ceases to be an authorised signatory.
- (4) Upon a sub-division of units in accordance with rule 2.05 the trustee or, in the case of a company scheme, the company shall:
- (a) either issue to each holder of a certificate representing units a new certificate representing the number of additional units to which he has become entitled by reason of the sub-division or endorse his existing certificate to indicate that it represents the original and that additional number of units; and
 - (b) forthwith give notice of the sub-division to each holder (or to the first named of joint holders) whose name is entered in the register accompanied, except where the manager and the trustee are not under an obligation to issue certificates representing units, by an additional certificate or an invitation to submit his certificate for endorsement.
- (5) Upon a consolidation of units in accordance with rule 2.05 the trustee or, in the case of a company, scheme, the company shall:
- (a) endorse each existing certificate to indicate that it represents the consolidated number of units; and
 - (b) forthwith give notice of the consolidation to each holder (or to the first named of joint holders) whose name is entered in the register accompanied, except where the manager and the trustee are not under an obligation to issue certificates representing units, by an invitation to submit his certificate for endorsement.
- (6) This regulation shall not apply if the principal documents contain a provision relieving the manager and trustee from any duty to issue certificates and if the principal documents do contain such a provision neither the manager nor the trustee shall issue certificates representing units.

- (7) If the principal documents relieve the manager and the trustee from any obligation to issue certificates representing units other than bearer certificates or bearer depositary receipts, the manager and the trustee shall be obliged to deliver bearer certificates or bearer depositary receipts representing such of a holder's units as the holder has requested but shall not issue any certificates representing units other than bearer certificates or bearer depositary receipts.
- (8) In the case of joint holders, the trustee shall not be bound to issue more than one certificate, and delivery to one such person shall be delivery to all.
- (9) This rule does not require the manager and the trustee to issue certificates in respect of units purchased under an arrangement for the purchase of units at intervals unless the holder has requested the issue of certificates in respect of them.

3.05 Default by holder

If:

- (a) such evidence is furnished to the trustee as the trustee shall require to show that default has been made by a holder in making any payment in money or a transfer of property due to the manager or the trustee under the provisions of these 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 in respect of those units which has been signed or issued in accordance with rule 3.04(1)(g) is received by the trustee;

the trustee shall cancel or make any necessary amendments to that certificate and make any necessary deletion or alteration in the register and thereafter the manager shall be entitled to the units in respect of which the defaulting holder's name has been removed from the register until the same be cancelled or issued by the manager and the name of the purchaser entered in the register.

3.06 Conversion of registered into bearer certificates or bearer depositary receipts and vice versa

- (1) This rule applies where the principal documents authorise the issue of bearer certificates or bearer depositary receipts as permitted by applicable law.
- (2) A holder whose units are for the time being evidenced by an entry in the register may apply to the trustee for his name to be struck out of the register in respect of some or all of those units and:
 - (a) if he does so; and
 - (b) where certificates evidencing title to those units have been issued upon surrender to the trustee of those certificates; his name shall be so struck out and he shall be issued with a bearer certificate or a bearer depositary receipt in substitution therefor.
- (3) A holder whose units or some of them are for the time being represented by

bearer certificates or bearer depositary receipts may apply to the trustee for his name to be entered in the register in respect of some or all of those units and, upon surrender to the trustee of the bearer certificates or bearer depositary receipts representing title to those units, the trustee shall enter the name of that holder in the register in respect of those units and, unless the principal documents relieve the manager and the trustee from any obligation to issue certificates representing units, issue to him a certificate evidencing his title to those units.

3.07 Exchange and replacement of certificates

- (1) Every holder whose units are represented by certificates shall be entitled to exchange any or all of his certificates for one or more certificates of such denominations as he may require representing the same aggregate number of units of the same class but, before any such exchange is carried out, the holder shall surrender the certificate or certificates to be exchanged or shall furnish the evidence required in paragraph (2)(a) and shall pay the sum payable (if any) in respect of the issue of a new certificate or certificates.
- (2) If a certificate is defaced, mutilated, lost, stolen or destroyed the trustee may in its discretion issue to the person entitled a new certificate in lieu thereof but no such new certificate shall be issued unless the applicant has:
 - (a) furnished to the trustee evidence satisfactory to the trustee of the defacement, mutilation, loss, theft or destruction of the original certificate; and
 - (b) paid all expenses incurred in connection with the investigation of the facts thereof; and
 - (c) in the case of defacement or mutilation, produced and surrendered to the trustee the defaced or mutilated certificate; and
 - (d) if required by the trustee or the manager so to do, furnished to the trustee such indemnity as the trustee or manager may require.
- (3) Every certificate issued under this rule shall be in the name of the holder of the units represented by the certificate or certificates surrendered, defaced, mutilated, lost, stolen or destroyed.

3.08 Transfer of units by act of parties

- (1) Subject to paragraph (2), every holder shall be entitled to transfer units held by him in respect of which he is entered in the register by an instrument of transfer in any usual or common form or in such other form as the trustee and the manager (or in the case of a company scheme, the directors) may from time to time approve.
- (2) The trustee is not under any duty to accept a transfer:
 - (a) if the transfer is of some only of the units of any class held by a holder if such transfer would result in the holder, or the transferee, being a holder of

such number of the units of the class in question as would be less than the minimum holding of units; or

- (b) if the principal documents or any condition imposed on the scheme by the Commission contain a limitation upon the categories of persons who may be holders and the transferee is not within one of those categories; or
 - (c) unless and until the trustee has been furnished with such evidence and declarations as to status, residence or otherwise as he may require; or
 - (d) of units over which the trustee, the manager or the Class B Scheme may have a lien; or
 - (e) if the instrument of transfer relates to units of more than one class.
- (3) Every instrument of transfer of units shall be signed by or on behalf of the holder transferring the units (or, in the case of a body corporate, sealed by that body or signed in accordance with that body's signing authorities) but need not be signed by the transferee unless the units are partly paid; and, unless the transferee is the manager, the transferor shall be deemed to remain the holder until the name of the transferee has been entered in the register.
 - (4) Every instrument of transfer which is required to be stamped by applicable law must be duly stamped and left with the trustee for registration accompanied by any necessary declarations or other documents that may be required by applicable law and by the certificate or certificates relating to the units to be transferred and by such other evidence as the trustee may require to prove the title of the transferor or his right to transfer the units or, in the case of a body corporate, the authority of the signatory(ies) on its behalf. The trustee 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 by him for the replacement thereof.
 - (5) All instruments of transfer which are registered shall be retained by the trustee for a period of six years and a reference shall be made on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.
 - (6) Subject to rule 3.12 no fee shall be charged for the registration of any transfer or the issue of a new certificate in the name of the transferee; and if some only of the units represented by a certificate are transferred the transferor shall be entitled free of charge to a new certificate in respect of the balance.

3.09 Registration of a transfer in favour of the manager

- (1) Upon the registration of a transfer in favour of the manager, the certificate or certificates in respect of, the units transferred shall be cancelled and the name of the holder removed from the register in respect of such units, but the name of the manager need not be entered in the register as the holder of such units nor a certificate issued therefor.
- (2) Such removal shall not be treated for any purposes as a cancellation, withdrawal or redemption of the units and such units may after the registration

of such transfer be sold by the manager Or be registered in its name so long as such units have not been cancelled.

3.10 Transfer of units by operation of law

Subject to applicable law:

- (1) On the death of any one of joint holders the survivor or survivors shall be the only person or persons recognised by the trustee and the manager as having any title to or any interest in the units; and upon producing such evidence of death as the trustee may require and delivering up the relevant certificate the survivor or survivors shall be entitled to have such certificate duly marked or to have a fresh certificate issued in his name or their names as may be appropriate.
- (2) The legal personal representative of a deceased holder (not being one of two or more joint holders) shall be the only person recognised by the trustee and the manager as having title to the units held by him.
- (3) (a) Any person becoming entitled to a unit in consequence of the death of any sole holder or of the survivor of joint holders, in consequence of bankruptcy, desastre, curatelle or similar proceedings or under an order of a Guernsey court ,may, subject as hereafter provided, upon producing such evidence as to his title as the trustee may reasonably require, either be registered himself as holder of such unit upon giving to the trustee notice in writing of such his desire or transfer such unit to some other person.
- (b) All the provisions of these rules relating to the transfer of units shall be applicable to any such notice or transfer as if it were a transfer signed by such holder.
- (c) Subject to sub-paragraph (d), a person becoming entitled to a unit in consequence of death, bankruptcy, desastre, curatelle or similar proceedings or under an order of a Guernsey court may give a discharge for all monies payable in respect of the unit but shall not be entitled in respect of such unit to receive notices of, or attend or vote at, any meeting of holders until he has been registered as a holder.
- (d) The trustee may at his discretion retain any monies payable in respect of any unit of which any person under the provisions of this paragraph is entitled to be registered as the holder, or is entitled to transfer, until such person is registered as the holder of such unit or duly transfers it.

3.11 Change of name or address of holder

The Trustee shall:-

- (a) upon receipt of notice in writing of a change of name, or of a change of address, of any holder; and
- (b) upon being satisfied thereof; and

- (c) on compliance with such formalities, including in the case of a change of name, the surrender of any certificate previously issued to such holder, as the trustee may require; alter the register accordingly and either issue a new certificate to the holder or make an appropriate endorsement to the holder's existing certificate.

3.12 Payment of fees on issue of certificates

If authorised by the principal documents to do so the trustee or the registrar on the trustee's behalf may make:

- (a) the issue of a certificate under these rules other than rule 3.04; and
- (b) the registration of any document relating to or affecting the title to any unit; conditional upon the payment to him of such reasonable fee as the manager and the trustee may agree.

3.13 Trustee to supply certificates

The trustee shall deliver to or to the order of the manager certificates evidencing title to units in such denominations and, unless they are bearer certificates or bearer depositary receipts, in the names of such persons as holders of the units, as the manager may require for the purpose of delivering them to those to whom the manager has issued units; and he shall do so forthwith upon the request of the manager:

- (a) in the case of units to be issued upon their creation, upon payment to the trustee of the consideration payable in connection with their issue; or
- (b) in the case of units which are to be issued otherwise than on their creation, upon the surrender to the trustee of certificates representing that number of units of the relevant type which are to be re-issued.

3.14 Inspection of the register and copies of entries

- (1) The trustee shall make the register available for inspection in Guernsey by a holder or his authorised representative or the manager free of charge during ordinary office hours (subject to such reasonable restrictions as the trustee may impose but so that not less than two hours in each business day shall be allowed for inspection) except that the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the trustee may from time to time determine.
- (2) The trustee shall supply the manager with a copy of the register or any part of it on request.
- (3) The trustee shall supply a holder or his authorised representative free of charge with a copy in print of the entries on the register relating to that holder.

3.15 Pricing of units and dealings by trustee and manager

- (1) The manager and trustee of a Class B Scheme must comply with the principal documents and scheme particulars in relation to the creation, cancellation, issue and redemption of units, the pricing thereof, and settlement therefor.

- (2) On the issue, redemption or conversion of units, contract notes shall be issued in accordance with Part 13 of The Collective Investment Schemes (Designated Persons) Rules 1988.

PART 4 - THE MANAGER AND THE TRUSTEE

4.01 Management of the scheme

- (1) It is the duty of the manager to manage the scheme and to make decisions as to the constituents of the scheme property from time to time in accordance with:
 - (a) the principal documents; and
 - (b) subject to rule 11.03, these rules; and
 - (c) the most recently published scheme particulars; and
 - (d) in the case of a company scheme, subject to any directions from time to time given by the directors.
- (2) It is the duty of the trustee:
 - (a) to take reasonable care to ensure that the scheme is properly managed by the manager in accordance with paragraph (1); and
 - (b) to discharge its duties under the principal documents and these rules.
- (3) In the case of a company scheme, it is the duty of the directors not to 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 and scheme particulars or these rules.
- (4) The manager, and, in the case of a company scheme, the company and the directors, shall on the request of the trustee forthwith supply the trustee with such information concerning the management and administration of the scheme as the trustee may reasonably require.
- (5) The manager of a company scheme is entitled to discharge all the powers, duties and discretions of the directors, subject to sub-paragraph (1)(d) above and to any provisions of applicable law; and, if so required, the directors shall execute all such deeds and documents and do everything necessary or desirable to give full effect to this provision.

4.02 Auditor

- (1) (a) In the case of a scheme other than a company scheme, the manager shall, at the outset and upon any vacancy, with the approval of the trustee appoint a qualified auditor as auditor for the scheme.
- (b) In the case of a company scheme, the holders or directors shall, at the outset and upon any vacancy, with the approval of the trustee and in accordance with the

principal documents or scheme particulars and applicable law appoint a qualified auditor as auditor for the scheme.

- (2) The audit fees of the auditor shall be determined, in the case of a scheme other than a company scheme, by the manager with the approval of the trustee and, in the case of a company scheme, in accordance with the principal documents or scheme particulars and applicable law.
- (3) The manager shall have the accounts required to be included in the annual report in accordance with rule 6.01 audited by the auditor, and that report shall be accompanied by a report of the auditor to the holders that those accounts have been audited in accordance with approved auditing standards and stating whether or not in their opinion they give a true and fair view of the financial position of the scheme as at the end of the annual accounting period.
- (4) An auditor may at any time be removed by:
 - (a) the manager with the approval of the trustee in the case of a scheme other than a company scheme; or
 - (b) the shareholders or directors of a company scheme with the approval of the trustee and in accordance with the principal documents or scheme particulars and applicable law; notwithstanding anything in any agreement between the persons concerned, but subject to applicable law, the manager shall forthwith give notice to the Commission of any such removal with a statement of the reasons therefor.

4.03 Inspection and obtaining copies of principal documents and scheme particulars

- (1) The manager and the trustee shall each make a copy of the principal documents and of the most recently published scheme particulars available in English for inspection by the public free of charge at all times during ordinary office hours at its principal place of business in Guernsey; and if the manager markets units in the scheme in any other state or territory it shall make available in that state or territory the documents and information prescribed or required under the laws of that state or territory.
- (2) The manager and the trustee shall allow any person to obtain a copy of the principal documents and of the scheme particulars on payment of a reasonable fee.

4.04 Record of units held by manager

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

4.05 General powers and duties of the trustee

- (1) Subject to paragraph (7) and save where it is contrary to rule 4.01, it is the duty of the trustee to carry out the instructions of the manager as to the investments which are from

time to time to comprise the scheme property.

- (2) The trustee shall take into its custody or under its control all the scheme property and hold it in trust in accordance with the provisions of the principal documents and these rules.
- (3) Subject to paragraph (5), the trustee may at his 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 a person to become the registered holder of scheme property the title to which is in registered form.
- (4) Subject to paragraph (5), the manager may, with the agreement of the trustee and if the principal documents permit it, arrange for part of the scheme property to be loaned through the agency of any person approved in writing in that behalf by the Commission; and any income received on account of the loan shall form part of the scheme property. It is hereby declared, for the avoidance of doubt, that this rule shall 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 paragraph (3) or paragraph (4) only if:
 - (a) he is satisfied at the outset after making reasonable enquiries, and continues thereafter after repeating those enquiries at reasonable intervals to be satisfied, that the custodian or borrower, as the case may be, is a fit and proper person to be such a custodian or borrower; and
 - (b) arrangements have been and continue to be made with the custodian or borrower, as the case may be, to protect the rights of the trustee in priority to other creditors of the custodian or borrower which the trustee is satisfied are sufficient under the law of the country or territory where the documents or property will be kept to safeguard the interests of investors in the scheme.
- (6) The trustee shall take reasonable care to ensure that the methods used by the manager in calculating prices at which units are issued and redeemed are in accordance with the principal documents and scheme particulars.
- (7) The trustee shall be entitled to give notice to the 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 or of the principal documents or scheme particulars; and the trustee shall be entitled to require the manager to secure the transfer in place of any such property of other property acceptable to the trustee.
- (8) If services are provided under paragraph (3) by an approved bank or a subsidiary of an approved bank which is an associate of the manager, neither the trustee, the manager nor the person providing the custodial services shall be liable to account either to the other or others of them or to the holders or any of them for any profits or benefits made by or derived from payments made by way of remuneration for the custodial services.

4.06 General provisions applicable to the manager and the trustee

- (1) (a) The designated manager and the designated trustee of a Class B Scheme shall:
 - (i) be different persons and act independently of each other;

- (ii) each be incorporated, administered, and have a place of business, in Guernsey;
 - (iii) each be licensed under the Law;
 - (iv) not be a subsidiary of the other; and
 - (v) not have executive directors or other officers in common.
- (b) In the case of a company scheme, the designated custodian shall not have executive directors or other officers in common with those of the company.
- (c) The Commission shall be entitled to require such undertakings, bonds, guarantees and assurances as the Commission may determine to secure compliance with paragraph (a) and (b) of this rule.
- (2) The manager of a Class B Scheme shall give written notice to the Commission of:
- (a) any proposed alteration to the scheme including its investment, borrowing and hedging powers; and
 - (b) any proposal to replace the trustee of the scheme.
- Any notice given in respect of a proposed alteration involving a change in the principal documents or scheme particular shall be accompanied by a certificate from an approved law firm either confirming that following the alteration the principal documents or scheme particulars will continue to comply with such of these rules as relate to the contents of the principal documents or scheme particulars or giving such confirmation subject to such exceptions as are detailed in that certificate.
- (3) The trustee of a Class B Scheme shall give written notice to the Commission of any proposal to replace the manager of the scheme.
- (4) No effect shall be given to any such proposal as is mentioned in paragraph (2) or (3) unless:
- (a) the Commission has given its approval to the proposal; or
 - (b) one month has elapsed since the notice was given without the Commission having notified the person serving the notice that the proposal is not approved.
- (5) The duties of the manager and the trustee and, in the case of a company scheme, the company and the directors (as the case may be) imposed on each of them by these rules and by the principal documents or scheme particulars are in addition to and not in derogation from the duties which are otherwise imposed on them by applicable law; and those parties are required to fulfil those other duties by these rules as well as by such law.
- (6) The trustee of a money market fund shall be a bank registered in accordance with the provisions of the Protection of Depositors (Bailiwick of Guernsey) Ordinances 1971 to 1990.

4.07 Voting rights in respect of the scheme property

- (1) This rule applies in relation only to Class B Schemes which are not feeder funds or funds of funds.
- (2) All rights of voting conferred by any of the scheme property shall be exercised or not exercised in such manner as the manager may direct and the manager may refrain at its own discretion from the exercise of any voting rights.
- (3) The trustee shall upon the written request of the manager from time to time execute and deliver or cause to be executed or delivered to the manager or its nominees such powers of attorney or proxies as the manager may reasonably require, in such name or names as the manager may request, authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the scheme property. The manager shall exercise these rights in what it considers to be the best interests of the holders.
- (4) The trustee shall without undue delay forward to the manager all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it or its delegates as registered holder of any investment.
- (5) In this rule “vote” includes any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the scheme property and “right” includes a requisition or joining in a requisition to convene any meeting or to give notice of any resolution or joining in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement or to consent to any short notice of any meeting.

4.08 Retirement of the trustee

- (1) The trustee shall not be entitled to retire voluntarily other than upon the appointment of a new trustee.
- (2) Subject to rule 4.06(4), in the event of the trustee desiring to retire or ceasing to be licensed under the Law then,
 - (a) in the case of a unit trust scheme, the manager may by a deed supplemental to the trust deed, under the seal of the manager, or
 - (b) in the case of a company scheme, the company may by a new trustee agreement; appoint another person licensed under the Law to be the trustee in place of the retiring trustee in accordance with the provisions of rule 4.06.

4.09 Replacement and retirement of the manager

- (1) Subject to rule 4.06(3) and (4), the manager may be removed by notice in writing given by the trustee 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 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 desastre; or
- (b) if a receiver is appointed of the undertaking of the manager or any part thereof; or
 - (c) if for good and sufficient reason the trustee is of the opinion and so states in writing to the holders, with reasons, that a change of manager is desirable in the interests of the holders; or
 - (d) if an extraordinary resolution is passed removing the manager; or
 - (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.
- (2) Subject to rule 4.06 (3) and (4) the manager shall on receipt of such notice cease to be the manager and:
- (a) in the case of a unit trust scheme, the trustee shall by writing under its seal; or
 - (b) in the case of a company scheme, the company shall by a new management agreement; appoint some other person licensed under the Law to be the manager of the scheme in accordance with the provisions of rule 4.06; and any such deed or agreement shall contain such provisions as the trustee may be advised are necessary or desirable or as the Commission requires to be entered into by the new manager in order to secure the due performance of its duties as manager.
- (3) If the name of the scheme contains a reference to the name of the former manager, the former manager shall be entitled to require the new manager and the trustee forthwith to propose a change in the name of the scheme.
- (4) The manager shall have the right to retire in favour of some other person licensed under the Law approved in writing by the trustee upon and subject to fulfilment of the conditions set out in paragraph (2).
- (5) Upon the appointment of a new manager:
- (a) the removed or retiring manager shall be released from all further obligations under these rules and under the principal documents but without prejudice to the rights of any person in respect of any act or omission on the part of the removed or retiring manager prior to its retirement or removal; and
 - (b) the new manager shall thereafter have all the powers, rights, duties and obligations of the manager under these rules and under the principal documents as fully as if it had been originally a party to the principal documents.
- (6) Upon the removal or retirement of the manager:
- (a) the removed or retiring manager shall remain entitled to all units held or deemed to be held by it and shall be entitled to require the issue to it of a certificate or certificates in respect thereof (if not previously issued) and to be registered in the register in respect thereof and thereafter to have and exercise all rights of a holder of such units; and

- (b) the removed or retiring manager shall, 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 such removal or retirement. If the removed or retiring manager refuses or fails to effect or procure such transfer within 30 days after the date of its removal or retirement the company shall be entitled to transfer such shares on behalf of the removed or retiring manager or its associate, and to account to such person for the proceeds less any costs incurred.

4.10 Manager, trustee and associates not to deal as principals regarding the scheme property

- (1) Subject to paragraphs (3) and (4), it is the duty of the manager and of the trustee to take all reasonable steps to ensure that neither of them nor any investment adviser nor any associate of either of them or of any such investment adviser as principal:
 - (a) sells, or deals in the sale of, property to the trustee for account of the scheme, or vests property in the trustee against the issue of units in the scheme (otherwise than pursuant to a unitisation), or
 - (b) purchases property from the trustee acting for the account of the scheme.
- (2) The steps referred to in paragraph (1) include the making of reasonable enquiries to determine the identity of the associates of the manager, of the trustee or of any investment adviser.
- (3) A transaction in any property is not prohibited by this rule:
 - (a) if the value of that property is certified in writing for the purpose of that transaction by a person selected or approved by the trustee as qualified to value property of the description to which that property belongs and the trustee is of the opinion that the terms of that transaction are not such as are likely to result in any prejudice to holders, or
 - (b) where that property is an investment which is dealt in on an investment exchange, the transaction is effected with or through a member of that exchange under arrangements recorded in writing and made between the manager, the trustee and that member which the trustee and the manager are satisfied impose on that member a duty to take reasonable steps to ensure that every transaction effected by that member for the account of the scheme is effected on the best terms available at the time the transaction is effected, on the market generally for transactions with reliable counterparties of the same size and nature as the transaction in question.
- (4) Neither the trustee, the manager, any investment adviser nor any associate of any of them shall be liable to account either to the other or others of them or to the holders or any of them for any profits or benefits made by or derived from or in connection with any transaction permitted by paragraph (3).

PART 5- DISTRIBUTIONS OF INCOME

5.01 Amount available for income allocation

On or before each annual or interim income allocation date, the manager (or in the case of a company scheme, the directors) shall determine the amount of the income property available for income allocation in accordance with the principal documents and scheme particulars.

5.02 Income equalisation

If the principal documents provide for income equalisation, the manager may after consulting the auditor make adjustments to the mechanism whereby income equalisation operates if the manager reasonably believes that such adjustments are necessary or expedient in order to provide for equity between holders or as a consequence of fiscal requirements or to cater for the particular circumstances of a Class B Scheme.

5.03 How distributions may be made

- (1) Any monies payable by the trustee to a holder in respect of any unit the title to which is for the time being represented by a bearer certificate or bearer depositary receipt may be paid by crossed cheque or warrant made payable to the order of the person who, in such manner as is prescribed in the principal documents, has identified himself to the trustee (or his agent for payment) as the person entitled to that distribution and may be sent by post to such address as that person has disclosed to the trustee for that purpose.
- (2) Any monies payable by the trustee to the manager or to a registered holder in respect of any unit may be paid by crossed cheque or warrant made payable to the order of, and sent through the post to the usual business address of the manager, or the registered address of such holder, as the case may be, or, in the case of joint holders, made payable to, and sent to the registered address of, that one of the joint holders who is first named on the register.
- (3) The payment of any cheque or warrant to the first named of joint holders shall be as effective a discharge to the trustee and the manager as if such first named joint holder were a sole holder.
- (4) Every such cheque or warrant which is so sent shall be a satisfaction of the monies payable and shall be a good discharge to the person making the payment.
- (5) Where an authority in writing in that behalf has been received by the trustee from the manager or the registered holder or in the case of joint holders from all of them in such form as the trustee or, in the case of a company scheme, the directors, consider sufficient, the trustee shall pay the amount payable to the manager or the holder or joint holders, as the case may be, to his or their nominated bank or other agent with the same effect as hereinbefore provided as though such nominated bank or other agent were the

sole holder.

- (6) Any distribution payment which remains unclaimed shall 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 of the same shall then be transferred to and become part of the capital property; and thenceforth neither the payee nor the holder nor any successor in title of his shall have any right thereto or therein except as part of the capital property.
- (7) The trustee shall be entitled to appoint a paying agent, with the approval of the manager, and, in the case of a company scheme, the directors; and, if the trustee does so:
 - (a) the trustee remains responsible for the discharge of all the trustee's duties under this rule; and
 - (b) anything required or authorised under this rule to be done by the trustee may be done by the paying agent.

5.04 Distribution statements

- (1) On or before each interim income allocation date and on or before each annual income allocation date the trustee (or, in the case of a company scheme, the company) shall unless requested otherwise send to each holder (or to the first named of joint holders) entered in the register as at the record date and shall on request give to a holder of units the title to which is represented by a bearer certificate or a bearer depositary receipt:
 - (a) a statement prepared by the manager showing the calculation of the amount to which the holder is entitled, whether or not the income is distributed to him or allocated to accumulation units, and, where applicable, a statement of how much of the amount to which he is entitled represents income equalisation; and
 - (b) if the manager so determines, a statement prepared by the manager identifying the sources of income attributable to the holders by country and the amount of tax (if any) withheld from, or accountable in respect of, such amount.
- (2) In the case of any distribution on dissolution of the scheme, any statement prepared under paragraph (1) shall show what proportion of the distribution represents capital and what proportion represents income.

PART 6- REPORTS TO HOLDERS

6.01 Annual reports and accounts

- (1) The manager shall, in relation to each annual accounting period, prepare a report and accounts which shall at least contain:
 - (a) the names and addresses of:
 - (i) the manager;
 - (ii) the trustee;
 - (iii) any investment adviser;
 - (iv) any registrar;
 - (v) the auditor;
 - (vi) the directors, in the case of a company scheme;
 - (b) a statement that the scheme is an authorised Class B Scheme;
 - (c) a review of the manager'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 judgement on the development of the activities of the scheme during that period and the results of those activities as 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 of the value of the scheme property that each holding represents and a description of any significant changes in the portfolio during the 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 stating:
 - (i) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these rules and the principal documents; and
 - (ii) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period; and

- (iii) if the auditor is of opinion that proper accounting records have not been kept by the manager or that the accounts are not in agreement with the manager's accounting records, that fact; and
- (iv) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact; and
- (v) if the auditor is of opinion that the information given in the report of the manager for that period is inconsistent with the accounts, that fact;
- (j) a copy of the report to holders which is required by rule 6.04 to be delivered to the manager, stating whether in the trustee's opinion the manager has managed the scheme in that period in accordance with the provisions of the principal documents and these rules;
- (k) a statement of the scheme's assets and liabilities (or in the case of a company scheme, a balance sheet), including a description and the amount of any contingent liabilities;
- (l) a detailed income and distribution account (or in the case of a company scheme, a statement of income and expenditure);
- (m) a statement of the bases for valuation of the scheme property, and for converting amounts in currencies other than the base currency into amounts in the base currency.
- (2) The accounts shall be prepared in accordance with generally accepted accounting principles and shall give a true and fair view of the financial position of the scheme as at the end of the period to which the accounts relate.
- (3) Annual reports shall be signed by two directors of the manager or, if the manager has only one director, by that director and in the case of a company scheme in accordance with applicable law.
- (4) In the case of an umbrella fund the manager shall have 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; and
 - (ii) a description of the investment objectives; and
 - (iii) such statements about the changes over the period to which the report relates in the capital value of units in the constituent part and the income therefrom as the manager considers appropriate to enable a holder to judge the relative merits of investment in that constituent part as compared with investment in any other constituent part; and
 - (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 that such report be sent to him; 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 any holder who requests it.

6.02 Publication of annual report and accounts

- (1) The manager shall, within six months after the end of the annual accounting period, publish the annual report in accordance with paragraphs (2) and (3).
- (2) The manager shall send a copy of the report to each holder (or to the first named of joint holders) entered in the register on the record date and shall give a copy of the report to each holder of bearer units or bearer depositary receipts on request by the holder.
- (3) The manager and the trustee shall 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.
- (4) The manager shall send a copy of the report in English to the Commission when it is published.

6.03 Annual reports to be offered to purchasers of units

The manager shall not effect any sale of units in a Class B Scheme to any person other than a person who is already a holder of units in the scheme until it has offered that person free of charge a copy of the most recent annual report and accounts.

6.04 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 scheme in each annual accounting period and to report thereon to the holders.
- (2) The trustee's report shall contain the matters set out in Rule 6.01(1)(j) and shall be delivered to the manager in good time to enable him to include a copy of the report in his annual report to the holders.

6.05 Interim reports and accounts

Any report and accounts published in relation to an interim accounting period shall:-

- (i) to the extent that it contains the information, be prepared on a basis consistent with the requirements of rule 6.01;
- (ii) be sent to each holder in accordance with rule 6.02(2), made available for inspection in accordance with rule 6.02 (3) and offered to purchasers of units in accordance with rule 6.03;
- (iii) be sent to the Commission on publication.

PART 7- MEETINGS OF HOLDERS

7.01 Convening of meetings, attendance and voting

- (1) The trustee, the manager, or, in the case of a company scheme the company, may at any time subject to applicable law convene a meeting of holders on such day, and at such time and place, as may be thought fit.
- (2) The manager, or in the case of a company scheme the directors, shall, on the request in writing of such number of holders as may be specified in the principal documents, in accordance with applicable law convene a meeting of holders on such day, and at such time and place, as may be thought fit.
- (3) The manager, or (being a holder) any associate of the manager, shall be entitled to receive notice of and attend at any such meeting but, subject to paragraph (4), shall not be entitled to vote but may be counted in the quorum therefore; and accordingly for the purposes of this part of these rules the units held or deemed to be held by the manager or any associate of the manager shall not be regarded as being in issue.
- (4) The manager or any associate of the manager shall be entitled to vote and be counted in the quorum at any such meeting in respect of units which he holds as a bare trustee or nominee on behalf of a person entitled to vote and from whom he has received voting instructions.
- (5) The manager, the trustee and their respective legal advisers shall be entitled to attend and be heard at every such meeting.

7.02 Powers of a meeting of holders

- (1) Subject to paragraph (2), a meeting of holders duly convened and held in accordance with this part of these rules shall (subject to applicable law) be competent by extraordinary resolution:
 - (a) to sanction any modification, alteration or addition to the provisions of the principal documents which shall be agreed by the trustee and the manager; and
 - (b) to remove the manager as provided in rule 4.09(1)(d); and
 - (c) to approve an arrangement for the reconstruction or amalgamation of the Class B Scheme with another body or scheme whether or not that other scheme is a collective investment scheme; and
 - (d) to approve any change .in the investment, borrowing or hedging powers of the scheme; and
 - (e) to terminate the Class B Scheme as provided in rule 8.05; and shall have such further or other powers as are:

- (i) permitted by applicable law and not inconsistent with these rules; or
 - (ii) required by applicable law.
- (2) A meeting of holders shall not be competent to sanction an increase in the maximum of the manager's periodic charge except by an extraordinary resolution which provides that the increase shall become effective not earlier than 90 days after the date on which the resolution is passed.
- (3) If a meeting of holders is convened by the manager, the trustee or in the case of a company scheme, the company, to consider a resolution for the removal of the trustee or the manager, the person convening the meeting shall ensure that the notice is accompanied by a statement of the reasons for proposing the resolution.

7.03 Notices of meetings of holders

- (1) Fourteen days notice (or any longer period of notice specified for the purpose in the principal documents or by applicable law), inclusive of the day on which the notice is served and of the day for which the notice is given, of every meeting shall be given to the holders in the manner provided for in rule 9.
- (2) The notice shall specify the place, day and hour of the meeting and the terms of the resolutions to be proposed.
- (3) A copy of the notice shall be sent by post by the manager to the trustee or by the trustee to the manager as the case may be and, in the case of a company scheme, by the company to both the manager and the trustee.
- (4) Subject to applicable law, the accidental omission to give notice to or the non-receipt of notice by any of the holders shall not invalidate the proceedings at any meeting.
- (5) There may be included in any notice convening a meeting of the company in relation to a company scheme for the purpose of passing an extraordinary resolution a notice specifying the place, the day and the hour of a subsequent meeting to be held (subject to the passing of the extraordinary resolution at the first meeting) for the purpose of confirming such extraordinary resolution in accordance with the provisions of applicable law.

7.04 Quorum

- (1) Subject to applicable law, the quorum at a meeting of holders shall be such number of holders present in person or by proxy as is specified in the principal documents.
- (2) Subject to paragraph (3), no business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (3) If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall stand adjourned in accordance with applicable law to such day and time and to such place as may be appointed by the chairman; and (if permitted under applicable law) at such adjourned meeting the holders present in person or by proxy shall be a quorum.

- (4) Ten days notice of any adjourned meeting of holders shall be given in the same manner as for an original meeting where such meeting is adjourned for 14 days or more and such notice shall state (if permitted under applicable law) that the holders present at the adjourned meeting whatever their number and the value of units held by them will form a quorum. Save as aforesaid, it shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

7.05 Minutes

Minutes of all resolutions and proceedings at every meeting of the holders shall be made and duly entered in books to be from time to time provided for the purpose by and at the expense of the manager and, in the case of a company scheme, books shall be kept in accordance with the provisions of applicable law. Any such minute signed in accordance with applicable law and, if necessary, confirmed at a subsequent meeting shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

7.06 Meaning of “extraordinary resolution”

In these rules “extraordinary resolution” means a resolution proposed and passed as an extraordinary or special resolution at a meeting of holders duly convened and held in accordance with this part of these rules and carried, whether on a show of hands or on a poll, by a majority consisting of 75% (or any other proportion specified under applicable law) of the total number of votes cast for and against such resolution. Where under applicable law such resolution requires confirmation at a subsequent meeting by a simple majority, the term “extraordinary resolution” shall include such confirmation.

7.07 Class meetings

- (1) If the trustee is of the opinion that the extraordinary resolution to be proposed is one in relation to which there is or might be a conflict of interest between the holders of accumulation units and the holders of income units or, in the case of an umbrella fund, between the holders of units in one constituent part and the holders of units in another, such resolution shall be deemed to have been duly passed only if in lieu of being passed at a single meeting of all holders it shall be duly passed at separate meetings respectively of the holders of accumulation units and income units or of the holders of units in the one constituent part and of holders of units in the other, as the case may be.
- (2) This part of these rules shall apply to each separate meeting of holders of accumulation units and of holders of income units as though references in this part to units and to holders were references respectively to units of the type in question and to the holders of such units.

7.08 Umbrella Funds

Part 7 of these rules shall apply in the case of an umbrella fund to each constituent part as well as to the umbrella fund as a whole and shall so apply as if the reference to the holders were a reference to the holders of units in that constituent part. However, a meeting of holders of units in one constituent part only may, in pursuance of rule 7.02(1):-

- (a) sanction a modification, alteration or addition to a provision of the principal documents

only if the provision relates only to that constituent part; or

- (b) sanction a departure by the manager from a policy statement included in scheme particulars as long as that statement relates only to that constituent part.

PART 8- TERMINATION OF THE SCHEME

8.01 When a unit trust scheme is to be wound up

Forthwith upon the happening of any of the events specified in rule 8.05 the trustee shall cease the creation and cancellation of units in the Class B Scheme, the manager shall cease the issue and redemption of units in the Class B Scheme and the trustee shall proceed to wind up the scheme in accordance with rule 8.02.

8.02 Manner of winding-up a unit trust scheme

- (1) Upon the passing of an extraordinary resolution under rule 7.02 (1)(c) approving the reconstruction or amalgamation of the Class B Scheme with another body or scheme which entails the winding up of the Class B scheme the trustee shall wind up the Class B Scheme in accordance with that resolution or the terms of the approved reconstruction or amalgamation.
- (2) In any other case the trustee shall as soon as practicable after the Class B Scheme falls to be wound up under rule 8.01 realise the scheme property and, after paying or providing for liabilities properly so payable and retaining provision for the costs of the winding up, distribute the proceeds of that realisation to the holders and the manager as they may direct (upon production by them of evidence as to their entitlement thereto) proportionately to their respective interests in the scheme. Provided that if the manager so directs or the principal documents so require, the trustee shall rather than realising any of the scheme property distribute it 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 12 months from the date on which the same became payable shall be distributed by the trustee in accordance with applicable law subject to the trustee having a right, if applicable law so permits, to retain thereout any expenses incurred by it in making that distribution.

8.03 When a company scheme is to be wound up

Forthwith upon the happening of any of the events specified in rule 8.05 the company shall cease the creation and cancellation of units in the company scheme, the manager shall cease the issue and redemption of units in the scheme and:

- (i) where rule 8.05(a) applies, the directors of the company shall subject to applicable law convene an extraordinary general meeting of the company scheme for a date not later than one month after the happening of the event in question for the purpose of

considering a resolution to wind up the company; or

- (ii) where either rule 8.05(b), (c) or (d) applies, the company scheme shall be wound up in accordance with the terms of the principal documents and applicable law.

8.04 Manner of winding-up a company scheme

On a winding-up the assets available for distribution among the holders of units in a company scheme shall be applied firstly in the payment to the holders of units in the company shares of the scheme property in accordance with their respective interests, and thereafter in the payment to the holders of management securities of sums in accordance with their respective entitlements as provided in the principal documents.

8.05 Winding-up events

The events referred to in rule 8.01 and 8.03 are:

- (a) when the authorisation of the scheme is revoked (unless the Commission in any particular case otherwise directs);
- (b) when an extraordinary resolution passed by the holders determines that the Class B Scheme shall be wound up;
- (c) where the principal documents so provide, when the date for the termination of the Class B Scheme is reached without an extraordinary resolution passed by the holders postponing the termination; or
- (d) where the principal documents so provide, when the value of the scheme property falls below the value prescribed in the principal documents and scheme particulars for the requisite period if any and the manager, in the case of a unit trust scheme, or the directors, in the case of a company scheme, elect to wind up the scheme.

PART 9- SERVICE OF NOTICES AND DOCUMENTS

9. Service of notices and documents

- (1) Without prejudice to any other method of service under applicable law, any notice or document required to be served upon a holder shall be deemed to have been duly given:
 - (a) in the case of units for the time being represented by bearer certificates or bearer depositary receipts, if it is given in the manner provided for in the most recently published scheme particulars; or
 - (b) in the case of units held by a registered holder, if it is sent by post to, or left at, his address as appearing in the register.
- (2) Any notice or document served by post shall be deemed to have been served on the fifth day following that on which the letter containing the same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

- (3) Service of a notice or document on any one of several joint holders shall be deemed effective service on the other joint holders.

PART 10- SCHEME PARTICULARS AND PROSPECTUSES

10.01 Preparation of scheme particulars

- (1) Scheme particulars shall be prepared by the manager of a Class B Scheme and by the directors in the case of a company scheme; and such scheme particulars shall, subject to rule 11.02, comply with the schedule to these rules.
- (2) Scheme particulars shall be revised at least once in every 12 months to reflect any changes but not otherwise but if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the scheme particulars are due for such an annual revision they shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.
- (3) A revision of scheme particulars may take the form of a complete substitution for the previous particulars or of a supplement to those particulars.
- (4) References in these rules to scheme particulars are references to scheme particulars prepared and revised (where revision is required) in accordance with this rule.

10.02 Publication of scheme particulars

The manager of a Class B Scheme (and in the case of a company scheme, the company):

- (a) shall not market units in that scheme unless:
 - (i) scheme particulars have been prepared in accordance with rule 10.01 in English; and
 - (ii) arrangements have been made for a printed document containing those particulars to be available in what the manager (and in the case of a company scheme, the company) reasonably considers to be sufficient numbers to enable it to comply with the requirements of subparagraph (b); and
 - (iii) a copy of that document has been sent to the Commission, and to the trustee; and
- (b) shall not effect any sale of units in that 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.

10.03 Inspection of scheme particulars

The manager of a Class B Scheme (and in the case of a company scheme, the company) shall make a copy of the scheme particulars available for inspection by any member of the public free of charge at all times during ordinary office hours at its principal place of business in' Guernsey.

10.04 Compensation for false or misleading prospectuses or scheme particulars

- (1) The manager, and in the case of a company scheme the directors, of a Class B Scheme is/are to be treated as responsible for any scheme particulars.
- (2) The manager, and in the case of a company scheme the directors, shall be liable to pay compensation to any person who has purchased or agreed to purchase units in the scheme and suffered loss as a result of:
 - (a) any untrue or misleading statement in any scheme particulars which form part of or constitute a prospectus or the omission therefrom of any matter required by these rules to be included in the scheme 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 which form part of or constitute a prospectus.
- (3) The omission from the scheme particulars of any information required under these rules shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.

10.05 Exemption from liability to pay compensation

- (1) A person shall not incur any liability under rule 10.04 for any loss in respect of units in a Class B Scheme caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the scheme particulars were prepared or ought to have been revised in accordance with rule 10.01 he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter the omission of which caused the loss was properly omitted and in either case that:
 - (a) he continued in that belief until the time when the units were acquired; or
 - (b) the units were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire units in the scheme; or
 - (c) before the units were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of persons likely to acquire units in the scheme; or
 - (d) the person who acquired the units was not influenced, or not influenced to any material extent, by that statement, or would not have been influenced, or influenced to any material extent, by the inclusion of the matter omitted, in making his decision to acquire the units.
- (2) Without prejudice to paragraph (1), a person shall not incur any liability under rule 10.04 for any loss in respect of any units in a Class B Scheme caused by any such statement or omission as is there mentioned if he satisfies the court:

- (a) that before the units were acquired a correction had been published in a manner calculated to bring it to the attention of persons likely to participate in the scheme; or
- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the units were acquired.
- (3) A person shall not incur any liability under rule 10.04 if he satisfies the court that the person suffering the loss acquired the units in question with knowledge that the statement was false or misleading or with knowledge of the omitted matter, as the case may be.
- (4) A person shall not incur any liability under rule 10.04 as a result of a failure to prepare revised scheme particulars in accordance with rule 10.01(2) if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for a revision of the scheme particulars under rule 10.01(2).

PART 11- AUTHORISATION OF CLASS B SCHEMES

11.01 Application for Class B declaration

The manager of a collective investment scheme seeking a Class B Scheme declaration of authorisation from the Commission shall submit the appropriate application form to the Commission and shall also provide:

- (a) a certificate from an approved law firm stating either that the principal documents and scheme particulars comply with all of these rules relating to their contents or detailing those rules relating to the contents of the principal documents or scheme particulars with which the scheme will not comply, together with the reasons for such non-compliance, and why it is not considered necessary to comply in the interests of investors; and
- (b) signed or certified copies of the principal documents, scheme particulars and other agreements material to the scheme; and
- (c) the application fee as prescribed from time to time by Regulations made under Section 22 of the Law; and
- (d) such other information as the Commission may require

11.02 Class B declarations

- (1) The Commission may, but need not, grant a Class B Scheme declaration if it is satisfied either:
 - (a) that the scheme's principal documents and scheme particulars appear to the Commission to comply with all of these rules relating to their contents; or
 - (b) that it is unnecessary in the interests of investors for the scheme's principal documents and/or scheme particulars to comply with any of these rules relating to

their contents with which they do not comply.

- (2) A Class B Scheme declaration granted in the circumstances set out in sub-paragraph (1)(b) shall specify the rules with which the scheme's principal documents and/or scheme particulars do not comply.

11.03 Derogations

- (1) The Commission may, by notice in writing to the designated manager of a Class B Scheme, exclude or modify the application of any provision of those rules in relation to that scheme if the Commission is satisfied that compliance with that provision is not necessary in the interests of investors.
- (2) An exclusion or modification under paragraph (1) may be in such terms (as to notification of investors, revision of scheme particulars or otherwise) as the Commission may specify.

11.04 Undertakings

As a condition of the authorisation of a scheme as a Class B Scheme the Commission shall be entitled to require such undertakings, indemnities, bonds, guarantees and assurances as the Commission may determine to secure compliance with these rules.

PART 12- TRANSITIONAL PROVISIONS

12.01 Application

This Part applies to all existing schemes. 12.02 Continued authorisation of existing schemes

- (1) An existing scheme is deemed to have been granted a Class B Scheme declaration in accordance with rule 11.02 on the date when it in fact obtained a Class B Scheme declaration in accordance with the Collective Investment Schemes Rules 1988, as if these rules had been in operation on that date.
- (2) Anything done under the Collective Investment Schemes Rules 1988 before these rules come into operation in relation to a Class B Scheme which could be done under these rules is deemed to have been done under these rules as if they had been in operation when it was done.

12.03 Amendment of principal documents and scheme particulars

- (1) Subject to rule 11.02, the principal documents of an existing scheme must be revised to comply with all of these Class B rules relating to their contents either on the next occasion when any amendment to the principal documents is required to be approved by the holders of units in the scheme or by not later than two years from the commencement date.
- (2) Subject to rules 10.01(3) and 11.02, the scheme particulars of an existing scheme must be revised to comply with the Schedule to these rules by not later than one year from the commencement date.

- (3) Until such time as is referred to in paragraphs (1) and (2), and subject to rule 11.02, no amendment may be made to the principal documents or scheme particulars of existing schemes unless the amendment complies with these rules relating to their contents.

PART 13- CONSEQUENTIAL AMENDMENTS

13 Consequential amendments

In the Collective Investment Schemes Rules 1988

- (a) in rule 1.02(1) delete the definition of 'Class B Scheme';
- (b) in rule 2.01(3) delete 'other than the rules which are expressed to apply to a Class B Scheme';
- (c) rule 2.01(5)(3) is repealed;
- (d) in rule 2.01(7)(b) delete 'or B';
- (e) in rule 2.02(2) for 'A2 or B' substitute 'or A2';
- (f) rule 10.01(3) is repealed;
- (g) in rule 10.02(1) for 'A2 or B' substitute 'or A2';
- (h) rule 10.02(3) is repealed;
- (i) in rule 10.02(4), immediately after 'Class B Scheme declaration' insert 'under the Collective Investment Schemes (Class B) Rules 1990';
- (j) in rule 10.03 for 'A2 or B' substitute 'or A2'.

SCHEDULE**Rule 10.01****SCHEME PARTICULARS****1 The manager**

The following particulars of the manager appointed under the principal documents shall be stated:

- (a) its name, place and date of incorporation, and the address of its registered office;
- (b) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (c) the names of its directors, and any significant activities of any directors which are not connected with the business of the manager;
- (d) whether the manager may deal in units without accounting for profits; and
- (e) if the manager is a principal manager, the fact that it has delegated the performance of some or all of its functions to the designated manager, and the name, place and date of incorporation, and registered address of the designated manager.

2. The trustee

The following particulars of the trustee shall be stated:

- (a) its name, place and date of incorporation, and the address of its registered office;
- (b) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (c) the amount of its issued share capital and how much of it is paid up;
- (d) a description of its principal business activity.

3. The investment adviser

If the scheme or the manager employs, under the terms of a commercial arrangement, the services of an investment adviser, the following shall be stated:

- (a) the name of the investment adviser;
- (b) if the investment adviser is a body corporate, the address of its registered office, or, if otherwise, the address of the investment adviser's principal place of business;
- (c) if the investment adviser is a body corporate in a group of which the manager or trustee

is a member, that fact;

- (d) if the principal activity of the investment adviser is other than providing services as an investment adviser, what that principal activity is;
- (e) the main terms of the agreement or arrangement under which the investment adviser is retained (other than those relating to the investment adviser's remuneration) and, if the investment adviser has any discretionary authority, that fact and a description of the matters in relation to which the investment adviser has that authority.

4 **The registrar**

If a registrar is employed, the name and address of the person who maintains the register of holders shall be stated.

5. **The register of holders**

The address in Guernsey where the register of holders can be inspected shall be stated.

6. **The auditor**

The name and address of the auditor of the scheme shall be stated.

7. **The constitution and objectives of the scheme**

The following shall be stated:-

- (a) the name of the scheme;
- (b) the date on which the scheme was established and, if the duration of the scheme is not unlimited, when it will or may terminate;
- (c) that the scheme is an authorised Class B Scheme;
- (d) if the scheme is a feeder fund, a statement of the name and status of the scheme into which it is to feed;
- (e) if the scheme is a company scheme, particulars of:
 - (i) its capital structure;
 - (ii) the names of its directors;
 - (iii) any significant activities of any directors which are not connected with the business of the scheme;
- (f) in relation to the investment policy to be adopted by the scheme:
 - (i) whether the objective of that policy is to be capital growth, income growth or some other stated policy;
 - (ii) any economic sectors or geographical areas to which investment will be confined

or which are likely to be preferred in the making of decisions as to how the property of the scheme is to be invested;

(iii) any limitations on the descriptions of investment which may be included in the scheme property;

(iv) the maximum extent to which scheme property may be invested in:

(A) assets or securities of a particular type, categorised by reference to risk, valuation and realisation difficulties;

(B) securities of a single issuer or of any class of securities of a single issuer;

(v) if investment in other collective investment schemes is provided for in the principal documents, that fact and the extent to which the scheme property may be invested in the units of collective investment schemes which are managed by the manager or by an associate of the manager;

(vi) whether the scheme may enter into hedging transactions and, if so, what types of transaction are likely to be entered into for the purposes of hedging, the circumstances in which such transactions may be entered into and what are the limits to the amounts payable by way of premium or margin in connection with such transactions;

(vii) a statement of the borrowing powers exercisable in relation to the scheme;

(g) the circumstances in which the winding-up of the scheme can be decided on, a description of the procedure to be followed in a winding-up and what the rights of holders will be in a winding-up;

(h) the accounting dates.

8. The characteristics of units in the scheme

The following shall be stated:-

(a) in relation to each available class of unit in the scheme, the entitlement of the holder of that unit to participate in the scheme property and the income thereof, a statement of the nominal value (if any) of each class of unit and, where there is more than one type of unit, the names given to each class and the characteristics of each class which distinguish it from the others;

(b) if the title to the units or to some of the units will be evidenced by the issue of bearer certificates or bearer depositary receipts, that fact;

(c) if the title to the units or to some of the units is to be evidenced by entries on a register of unit holders, whether or not certificates evidencing title to those units will be issued;

(d) in the case of a unit trust scheme, the fact that the nature of the right represented by units is that of a beneficial interest under a trust and, in the case of any other type of Class B Scheme, the nature of the right represented by the units in the scheme;

- (e) (i) what voting rights are exercisable by holders at meetings of holders and, if different rights attach to different classes of units, what those different rights are; and
- (ii) whether persons other than holders can vote at meetings of holders, who those persons are, and what voting rights are exercisable by such persons.

9. Valuation of property, charges and distributions

The following shall be stated:

- (a) how frequently and at what time of day the scheme property will be regularly valued for the purpose of determining prices at which units in the scheme may be issued, redeemed, created or cancelled and a description of any circumstances in which the scheme may be specially valued;
- (b) in relation to each purpose for which the scheme property will be required to be valued, whether it will be valued on an offer basis, a bid basis, a mid-market basis or on any other specified basis;
- (c) if the price at which units may be issued by the manager or created by the scheme includes a preliminary charge a statement of the amount of that charge expressed as a percentage of the creation price of those units which is the maximum permitted by the principal documents and, if different, the amount currently charged;
- (d) how the following remuneration and expenses will be determined where they are payable out of the scheme property:
 - (i) the remuneration of the manager; and
 - (ii) the remuneration of the trustee; and
 - (iii) where the scheme is a company scheme, the remuneration and expenses of the directors or other members of the company's governing body; and if the principal documents permit any of the above to be at a higher level, what those higher levels are or how they may be determined;
- (e) the nature of any other charges or expenses payable out of the scheme property and how their amounts will be determined;
- (f) the date or dates in each calendar year on which allocations of income are to be made to investors and, in the case of investors who are the holders of bearer certificates or bearer depositary receipts, how they are to identify themselves for the purposes of receiving distributions of income;
- (g) where the formation expenses of the scheme are being amortised the amount (or estimated amount) of the formation expenses and the period over which such expenses are to be amortised;
- (h) if income equalisation is permitted by the principal documents, that fact with an explanation of its meaning and its method of operation.

10. The issue and redemption of units in the scheme

The following shall be stated:

- (a) the days and times on which the manager will be available to receive requests for the issue and redemption of units, and the basis for calculating issue and redemption prices;
- (b) the procedure for effecting the issue and redemption of units and settlement of transactions, and how a holder to whom no certificate has been issued may produce evidence of title to his units;
- (c) the amount of the following minima (if they apply) for each class of unit in the scheme:
 - (i) the minimum number of units which any one person may hold;
 - (ii) the minimum value of units which any one person may hold;
 - (iii) the minimum number of units which may be the subject of one transaction of purchase;
 - (iv) the minimum value of units which may be the subject of one transaction of purchase;
 - (v) the minimum number of units which may be the subject of one act of redemption;
 - (vi) the minimum value of units which may be the subject of one act of redemption;
- (d) the circumstances in which the redemption of units may be suspended;
- (e) the investment exchanges (if any) on which units in the scheme are listed or dealt;
- (f) where and when the most recent issue and redemption prices will be published, or if no such prices are to be published, from whom they may be obtained.

11. General information

The following shall be stated:

- (a) when annual reports will be published;
- (b) the address at which copies of the principal documents (including any amending documents) and of the most recent annual reports may be inspected and from which copies of them may be obtained;
- (c) how the manager or the scheme, as the case may be, will publish, for the benefit of holders holding bearer certificates and bearer depositary receipts, notice:
 - (i) that annual reports are available for inspection;
 - (ii) that a distribution has been declared;

- (iii) of the calling of a meeting of holders;
 - (iv) of the termination of the scheme or the revocation or suspension of its authorisation;
 - (v) that amendments have been made to the principal documents;
 - (vi) that the scheme particulars have been revised;
- (d) the extent to which and the circumstances in which:
- (i) the scheme is liable to pay or suffer tax on any appreciation in the value of the property of the scheme or on the income of the property of the scheme; and
 - (ii) deductions by way of withholding tax may be made in respect of distributions of income or the payment of redemption monies to holders.
- (e) if the manager may deal in units without accounting for any profits to investors and to the trustee in the case of a unit trust scheme, or to the company in the case of a company scheme, that fact.

12. **Statement to be included**

The following statement shall be included: "Investors in [Name of Scheme] are not eligible for the payment of any compensation under the Collective Investment Schemes (Compensation of Investors) Rules 1988 made under the Protection of Investors (Bailiwick of Guernsey) Law, 1987."

13. **Additional information**

Any special risk warnings required by the Commission shall be stated, together with any other material information:

- (a) which investors and their professional advisers would reasonably require, and reasonably expect to find in the scheme particulars, for the purpose of making an informed judgment about the merits of investing in the scheme and the extent of the risks accepted by so investing; and
- (b) which is within the knowledge of the manager or, in the case of a company scheme, the directors of the company scheme or which such persons would have obtained by the making of reasonable enquiries.

14. **Umbrella funds**

In the case of an umbrella fund -

- (a) the scheme particulars shall contain a statement describing the arrangements made by the principal documents for charges (if any) in the case of an exchange of units in one constituent part for units in another, including the maximum amount of the charge and the minimum number of exchanges that will be permitted free of charge; and

- (b) if any information required by this schedule to be included in scheme particulars is different for different constituent parts it shall be given in relation to each constituent part of the scheme.

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