

**CONSULTATION ON THE DRAFT OF THE
COLLECTIVE INVESTMENT SCHEMES
(CLASS A) RULES 2008**

Table of Contents

Glossary	2
Part 1 - Introduction	28
Part 2 - Authorised Scheme Applications	29
Part 3 - Constitution	30
Part 4 - Investor Relations	35
Part 5 - Investment and Borrowing Powers	53
Part 6 - Operating Duties and Responsibilities	93
Part 7 - Suspension and Termination	133
Schedule 1 Table: contents of the principal documents	138
Schedule 2 Table: contents of the prospectus	141

Glossary

In these rules, unless the context otherwise requires, expressions defined in the Law have the same meanings as they have in the Law and the following expressions shall mean:

accounting reference date	the date or day stated in the most recently published prospectus as the date or day on which the scheme's annual accounting period is to end in each year;
advising on investments	has the meaning given in the Law;
affected person	(a) a company scheme; (b) its trustee; (c) a director of a company scheme; (d) the manager; (e) any investment adviser of a scheme; (f) any associate of any person in paragraph (a), (b), (c), (d) or (e); and (g) the auditor of the authorised scheme;
annual accounting period	the 12-month period stipulated in the prospectus which ends on the accounting reference date;
annual income allocation date	the date in any year stated in the most recently published prospectus as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made;
annual report	a report for each annual accounting period of an authorised scheme;
applicable law	in the case of a company scheme, the law of the jurisdiction in which the company is incorporated, and, in any other case, the governing law specified in the authorised scheme's principal documents;
appropriate valuer	a person who complies with the requirements of rule 5.6.2 (Investment in property);
approved bank	a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended or is registered under The Banking Business (Jersey) Law, 1991 or is authorised to carry on a banking or deposit-taking business under the law of any member State or under the law of any other country or territory which may be listed in notices issued from time to time by the Commission;
approved derivative	a derivative which is traded or dealt in on an eligible derivatives market;
approved law firm	a firm of lawyers qualified under applicable law to practise that law and approved by the Commission for the purposes of these rules;

approved money-market instrument	(in accordance with rule 5.2.7) a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time;
approved security	a transferable security that is admitted to official listing on the Channel Islands Stock Exchange or in an EEA State or is traded on or under the rules of an eligible securities market (otherwise than by the specific permission of the market authority);
associate	<p>in relation to a body corporate:</p> <ul style="list-style-type: none"> (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; or (c) any officer of that body corporate or of any associate; and (d) any person exerting significant influence; or <p>in relation to a person ("A"):</p> <ul style="list-style-type: none"> (a) an affiliated company of A; (b) an appointed representative of A or of any affiliated company of A; or (c) any other person whose business or domestic relationship with A or his associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties; or (d) any person exerting significant influence;
auditor	the auditors for the time being of an authorised scheme;
authorised scheme	<ul style="list-style-type: none"> (a) a unit trust scheme; (b) a company scheme; or (c) a collective investment scheme other than a unit trust scheme or a company scheme, <p>which has been declared to be a Class A Scheme by the Commission;</p>
base currency	the currency specified in the principal documents as the base currency of the authorised scheme;
Banking Consolidation Directive	the Directive of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (No. 2006/48/EC);
bid price	the price at which a <i>person</i> could sell a <i>unit</i> in a <i>dual-priced</i>

	<i>authorised scheme or a security;</i>
body corporate	any body corporate, including a body corporate constituted under the law of a country or territory outside Guernsey;
business day	any day normally treated as a business day in Guernsey and under the applicable law of an authorised scheme;
buying	any form of buying, including acquiring for valuable consideration;
cancellation	(in relation to units) a cancellation of a <i>unit</i> by the <i>manager</i> of an <i>authorised scheme</i> ;
cancellation price	(in relation to the <i>cancellation</i> of <i>units</i> in a <i>dual-priced authorised scheme</i>) the <i>price</i> for each <i>unit</i> payable by the <i>trustee</i> to the <i>manager</i> on that <i>cancellation</i> ;
capital account	an account relating to the capital property of an authorised scheme;
capital property	the scheme property, other than income property, and any amount for the time being standing to the credit of the distribution account;
cash	includes foreign currency;
certificate representing certain securities	<p>an <i>investment</i> which is in summary: a certificate or other instrument which confers contractual or property rights (other than rights consisting of options):</p> <p>(a) in respect of any <i>share, debenture, government and public security or warrant</i>) held by a person other than the person on whom the rights are conferred by the certificate or instrument; and</p> <p>(b) the transfer of which may be effected without requiring the consent of that person;</p> <p>but excluding any certificate or other instrument which confers rights in respect of two or more <i>investments</i> issued by different persons or in respect of two or more different <i>government and public securities</i> issued by the same <i>person</i>;</p>
CESR's UCITS eligible assets guidelines	The Committee of European Securities Regulators' guidelines concerning eligible assets for investment by undertakings for collective investment in transferable securities (CESR/07-044).
class	<p>(a) a particular class of units of an authorised scheme;</p> <p>(b) all of the units relating to a single sub-fund; or</p> <p>(c) a particular class of units relating to a single sub-fund;</p>
Class A Scheme	an authorised scheme which is declared by the Commission to be a Class A Scheme;
class meeting	a separate meeting of holders of a class of units;
close out	in relation to a transaction entered into for an authorised

	scheme, the entry into a further transaction under which the obligation to deliver or receive which arises or may, at the option of the other party to the transaction, arise under the original transaction is offset by an equivalent and opposite obligation or right to receive or deliver;
collateral	any form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from a transaction;
collective investment scheme	has the meaning given under the Law;
commencement date	the date on which these rules come into operation;
Commission	the Guernsey Financial Services Commission;
commodity	a physical asset (other than a financial instrument or cash) which is capable of delivery;
communicate	to communicate in any way, including causing communication to be made or directed;
Companies Law	The Companies (Guernsey) Law 2008, or any successor law;
company scheme	any authorised scheme constituted as a body corporate, including protected cell companies and incorporated cell companies;
competent authority	the authority designated by each EEA State in accordance with Article 48 of MiFID, unless otherwise specified in MiFID;
contracts for differences	contracts the rights under which constitute an investment falling within paragraph 2(1)(h) of Schedule 1 to the Law;
controller	<p>(a) in relation to a body corporate, any person who, either alone or with any <i>associate</i> or <i>associates</i> 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 of another body corporate of which the body corporate is a <i>subsidiary</i>; and</p> <p>(b) in relation to an unincorporated association:</p> <p>(i) any person in accordance with whose directions or instructions, either alone or with those of any <i>associate</i> or <i>associates</i>, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and</p>

	(ii) any person who, either alone or with any <i>associate</i> or <i>associates</i> , 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, “ <i>associate</i> ”, 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 <i>subsidiary</i> of that body corporate and any employee of any such <i>subsidiary</i> ;
credit	any kind of loan, deferment of repayment of any loan or of interest on any loan, guarantee or indemnity, and any other kind of accommodation or facility in the nature of credit;
currency class unit	a class of unit denominated in a currency that is not the base currency of the authorised scheme, or is permitted by rule 3.3.4(i) (Currency class units: requirements);
custody	(in relation to investors’ assets) as defined in the Protection of Investor’s (Bailiwick of Guernsey) Law, 1987, as amended;
day	a period of 24 hours beginning at midnight;
deal	a dealing transaction;
dealing	has the meaning given in the Law;
dealing costs	including fiscal charges or commissions or other charges;
dealing day	the period in each business day (or in each other day when the manager of an authorised scheme (or, in the case of a company scheme, the company) is open for business) during which the manager of an authorised scheme (or, in the case of a company scheme, the company) keeps its premises or any of them open to the public or otherwise available for business of any kind;
dealing period	the period between one valuation point and the next;
debenture	an investment which is in summary, any of the following and which is not a <i>government and public security</i> . <ul style="list-style-type: none"> (a) debentures; (b) debenture stock; (c) loan stock; (d) bonds; (e) certificates of deposit; or (f) any other instrument creating or acknowledging indebtedness;
debt securities	(a) any investment falling within paragraph 2(1)(b) of

	Schedule 1 to the Law; or
	(b) any investment falling within paragraph 2(1)(e) of Schedule 1 to the Law which confers a right related to an investment within paragraph (a) above;
declaration of authorisation	the declaration of the Commission that an authorised scheme is authorised under the Law;
dedicated	in the context of a scheme, that the manager (or, in the case of a company scheme, the company) intends holders to participate in or receive: <ul style="list-style-type: none"> (a) profits or income arising from the acquisition, holding, management or disposal of investments or assets of the relevant description; (b) sums paid out of profits or income in paragraph (a); or (c) other benefits, where expressly permitted under these rules;
deposit	the same as the meaning given in section 2 of The Banking Supervision (Bailiwick of Guernsey) Law, 1994;
derivative	a contract for differences, a future or an option;
derivatives transaction	a transaction in a derivative;
Designated Persons Rules	the Collective Investment Schemes (Designated Persons) Rules 1988 or any successor rules;
dilution	the amount of dealing costs incurred, or expected to be incurred, by a company scheme or for the account of a <i>single-priced authorised scheme</i> to the extent that these costs may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the company scheme or for the account of the <i>single-priced authorised scheme</i> as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the <i>single-priced authorised scheme</i> resulting from the <i>issue</i> or <i>cancellation</i> of <i>units</i> over a period; <p>for the purposes of this definition, <i>dealing costs</i> include both the costs of <i>dealing</i> in an investment, professional fees incurred, or expected to be incurred, in relation to the acquisition or disposal of an immovable and, where there is a spread between the <i>buying</i> and selling prices of the <i>investment</i>, the indirect cost resulting from the differences between those prices;</p>
dilution adjustment	an adjustment to the <i>price</i> of a <i>unit</i> determined by the <i>manager</i> of a <i>single-priced authorised scheme</i> , under rule 6.3.8 (Dilution) for the purpose of reducing <i>dilution</i> ;
dilution levy	a charge of such amount or at such rate as may be determined by the <i>manager</i> of a <i>single-priced authorised scheme</i> to be made for the purpose of reducing the effect of

	<i>dilution;</i>
directors	the directors of a company scheme, including a person occupying, in relation to the company scheme, the position of director, by whatever name called, and “ director ” means any one of them;
distribution account	the account to which the income property of an authorised scheme must be transferred as at the end of each annual accounting period under rule 6.8.3 (Income allocation and distribution);
document	any piece of recorded information, including information recorded in any form; in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
documents evidencing title	any means of evidencing title whether in documentary form or otherwise;
dual-priced authorised scheme	an <i>authorised scheme</i> , or, in the case of an <i>umbrella fund</i> , a <i>sub-fund</i> (if it were a separate <i>scheme</i>), that is not a <i>single-priced authorised scheme</i> ;
dual pricing regime	a system of dual pricing adopted by a scheme in accordance with rule 6.3 (Valuation and pricing) meaning that there is no single price for the <i>units</i> in the <i>authorised scheme</i> ;
EEA regulator	a competent authority for the purposes of any of the Single Market Directives;
EEA State	a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as it has effect for the time being; as at 1 January 2008, the following are EEA States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom;
efficient portfolio management	techniques and instruments which relate to <i>transferable securities</i> and <i>approved money-market instruments</i> and which fulfil the following criteria: <ul style="list-style-type: none"> (a) they are economically appropriate in that they are realised in a cost effective way; (b) they are entered into for one or more of the following specific aims: <ul style="list-style-type: none"> (i) reduction of risk; (ii) reduction of cost; (iii) generation of additional capital or income for the

scheme with a risk level which is consistent with the risk profile of the *scheme* and the risk diversification rules laid down in this rulebook.

eligible	(in relation to a securities or a derivatives market) a market that satisfies the requirements in rule 5.2.10 (Eligible markets: requirements), in relation to <i>authorised schemes</i> falling under rule 5 (Investment and borrowing powers);
eligible institution	(a) a BCD credit institution authorised by an EEA State regulator; (b) a MIFID investment firm authorised by an EEA State regulator; (c) a firm authorised under the POI Law; or (d) a firm licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended, or in each case under any successor EU directives or other laws or regulations;
execute	(in relation to a transaction) to carry into effect or perform the transaction, whether as principal or agent, including using another <i>person</i> to execute the transaction;
extraordinary resolution	a resolution proposed and passed as an extraordinary or special resolution at a meeting of <i>holders</i> duly convened and held in accordance with the 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 <i>applicable law</i>) of the total number of votes cast for and against such resolution at a general meeting of holders or (as the case may be) <i>class meeting</i> , of which notice specifying the intention to propose the resolution as an extraordinary or special resolution has been duly given;
feeder fund	an <i>authorised scheme dedicated</i> to a single <i>authorised scheme</i> ;
financial instrument	instruments specified in Section C of Annex I of <i>MiFID</i> , that is: (a) <i>transferable securities</i> ; (b) <i>money-market instruments</i> ; (c) <i>units</i> in collective investment undertakings; (d) <i>options, futures, swaps, forward rate agreements</i> and any other <i>derivative</i> contracts relating to securities, currencies, interest rates or yields, or other <i>derivative</i> instruments, financial indices or financial measures which may be settled physically or in <i>cash</i> ; (e) <i>options, futures, swaps, forward rate agreements</i> and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by

reason of a default or other termination event);

- (f) options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral system, operated by an investment firm or a *market operator*, which brings together multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of MiFID;
- (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in paragraph (f) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see Articles 38(1), (2) and (4) of the *MiFID Regulation*);
- (h) derivative instruments for the transfer of credit risk;
- (i) financial contracts for differences; and
- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to:
 - (i) climatic variables;
 - (ii) freight rates;
 - (iii) emission allowances;
 - (iv) inflation rates or other official economic statistics;
 - (v) telecommunications bandwidth;
 - (vi) commodity storage capacity;
 - (vii) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;
 - (viii) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
 - (ix) a geological, environmental or other physical variable;
 - (x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred; and
 - (xi) an index or measure related to the price or

	<p>value of, or volume of transactions in, any asset, right, service or obligation,</p> <p>where the conditions in Articles 38(3) and (4) of the <i>MiFID Regulation</i> are met;</p> <p>[Note: Article 4(1)(17) and Section C of Annex I to <i>MiFID</i> and Articles 38 and 39 of the <i>MiFID Regulation</i>]</p>
financial promotion	an invitation or inducement to engage in investment activity that is communicated in the course of business;
forward price	a price calculated by reference to the valuation point next following the manager's agreement to sell or, as the case may be, to redeem the units in question;
FSMA	the Financial Services and Markets Act 2000 of the United Kingdom;
fund of funds	an authorised scheme which invests into two or more authorised schemes;
futures	contracts the rights under which constitute an investment falling within paragraph 2(1)(g) of Schedule 1 to the Law;
geared futures and option scheme	an <i>authorised scheme</i> dedicated to approved and other derivatives (where most or all of the extent of investment is limited by the amount of property available to be put up as initial outlay) whether with or without transferable securities;
general insurance contract	<p>any contract of insurance namely:</p> <ul style="list-style-type: none"> (a) accident; (b) sickness; (c) land vehicles; (d) railway rolling stock; (e) aircraft; (f) ships; (g) goods in transit; (h) fire and natural forces; (i) damage to property; (j) motor vehicle liability; (k) aircraft liability; (l) liability of ships; (m) general liability; (n) credit; (o) suretyship; (p) miscellaneous financial loss; (q) legal expenses; (r) assistance;

generally accepted accounting principles the standard accounting practice or the generally accepted accounting principles of:

- (a) the United Kingdom;
 - (b) the United States of America; or
 - (c) any other country approved in writing by the Commission,
- or International Financial Reporting Standards;

government and public security

an investment which is in summary a loan stock, bond or other instrument creating or acknowledging indebtedness, issued by or on behalf of:

- (a) the States of Guernsey, the States of Alderney and the Chief Pleas of Sark;
- (b) the government of the United Kingdom;
- (c) the Scottish Administration;
- (d) the Executive Committee of the Northern Ireland Assembly;
- (e) the National Assembly of Wales;
- (f) the government of any country or territory outside the United Kingdom;
- (g) a local authority in the United Kingdom or elsewhere; or
- (h) a body the members of which comprise:
 - (i) States including the United Kingdom or another EEA State; or
 - (ii) bodies whose members comprise States including the United Kingdom or another EEA State;

group

in relation to a body corporate, 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:
 - (A) is a member of it and controls the composition of its board of directors; or
 - (B) 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; and

	<ul style="list-style-type: none"> (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;
group savings plan	<p>a savings plan</p> <ul style="list-style-type: none"> (a) of which the <i>plan manager</i> is the <i>manager</i>, or in the same group as the <i>manager</i>, of the <i>authorised scheme</i> by reference to <i>units</i> in which the <i>plan register</i> is being, or is proposed to be, maintained; (b) under which <i>investments</i> are periodically acquired and held by a nominee for the absolute benefit of the respective subscribers to the savings plan; and (c) under which all the <i>investments</i> are <i>units</i> in one or more <i>authorised schemes</i> managed by the <i>plan manager</i>, or a body corporate in the same group as the <i>plan manager</i>;
Guernsey	the Bailiwick of Guernsey;
guidance note	any note or document issued by the Commission and incorporating guidance in relation to any matter contemplated by or relating to these rules;
half-yearly accounting period	a period determined in accordance with rule 6.8.2(ii) (Accounting periods);
higher volatility fund	<p>a collective investment scheme which is:</p> <ul style="list-style-type: none"> (a) a geared futures and options scheme, a geared scheme, or a warrant scheme where movements in the <i>price of units</i> are likely to be significantly amplified; or (b) a fund of funds scheme of which one or more of the schemes to which it is dedicated falls within paragraph (a); or (c) an umbrella fund, a sub-fund of which, if it were a separate fund, would fall within paragraph (a);
historic price	a price calculated by reference to the valuation point immediately preceding the manager's agreement to sell or, as the case may be, to redeem the units in question;
holder	<ul style="list-style-type: none"> (a) the shareholder; or (b) the unitholder;
IMA SORP	the Statement of Recommended Practice for financial

	statements of authorised firms issued by the Investment Association and effective as at 1 January 2006;
income account	an account relating to the income property of a scheme;
income equalisation	(in relation to an authorised scheme) a capital sum which, in accordance with a power contained in the principal documents, is included in an allocation of income for a unit issued or sold during the accounting period in respect of which that income allocation is made;
income property	all sums considered by a company scheme or by a manager, in each case after consultation with the auditor, to be in the nature of income received or receivable for the account of and in respect of the property of an authorised scheme, but excluding any amount for the time being standing to the credit of the distribution account;
initial offer	an offer for sale of units in an authorised scheme or in a sub-fund (otherwise than in accordance with arrangements of the type described in rule 5.5.9(iii)(b)(III) (Guarantees and indemnities)), where all or part of the consideration paid for the account of the authorised scheme for the units is to be used to acquire the initial scheme property of the authorised scheme or the initial scheme property attributable to the sub-fund;
initial outlay	the amount which the <i>authorised scheme</i> is required to provide in order to obtain rights under a transaction in <i>derivatives</i> , excluding any payment or transfer or exercise of rights;
initial price	(a) (in relation to a <i>unit</i> of any <i>class</i> in a <i>single-priced authorised scheme</i>) the price to be paid; or (b) (in a <i>dual-priced authorised scheme</i>) such amount as may be agreed by the <i>trustee</i> and <i>manager</i> as being the maximum <i>price</i> , inclusive of any <i>preliminary charge</i> , if that may be paid to the <i>manager</i> during the period of the <i>initial offer</i> under rule 6.2.3 (Initial offers);
instrument of incorporation	the instrument of incorporation of a company scheme (as from time to time amended);
interim accounting period	a period within an annual accounting period in respect of which an allocation of income is to be made;
interim income allocation date	any date specified in the prospectus of an authorised scheme as the date on or before which an allocation of income will be made;
investment	any investment, including any asset, right or interest;
investment adviser	(in relation to an authorised scheme) a person who is retained by a company scheme or its manager or by a manager of a unit trust scheme under a commercial arrangement which is not a contract of service;

	<ul style="list-style-type: none"> (a) to supply any of them with advice in relation to the authorised scheme as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities; or (b) to exercise for any of them any function concerning the management of the scheme property;
investment manager	<p>a <i>person</i> who acting only on behalf of an investor:</p> <ul style="list-style-type: none"> (a) manages <i>investments</i> in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement; or (b) manages <i>investments</i> in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement;
issue	the issue of new units by the trustee of a unit trust scheme or by a company scheme;
issue price	(in relation to the <i>issue of units of a dual-priced authorised scheme</i>) the <i>price</i> for each <i>unit</i> payable by the <i>manager</i> to the <i>trustee</i> on that <i>issue</i> ;
large deal	<p>a transaction (or <i>series of transactions</i> in one <i>dealing period</i>) by any <i>person</i> to <i>buy, sell</i> or exchange <i>units</i> in an <i>authorised scheme</i>, of any value, as set out in the <i>prospectus</i>, for the purposes of:</p> <ul style="list-style-type: none"> (a) a <i>dilution levy</i>; (b) a <i>dilution adjustment</i>; or (c) calculating the <i>prices</i>, for a <i>dual-priced authorised scheme</i>, at which <i>units</i> may be <i>sold</i> or <i>redeemed</i>;
larger denomination share	a share that is not a smaller denomination share;
Law	The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;
limited redemption arrangements	the arrangements operated by a <i>manager</i> for the redemption of <i>units</i> in an <i>authorised scheme</i> where the <i>manager</i> holds himself out to redeem <i>units</i> in that <i>scheme</i> less frequently than twice in a calendar month in accordance with rule 6.2.19 (Limited redemption);
management	the same as the meaning given to it in the Law;
management agreement	an agreement under which a person is appointed manager of an authorised scheme other than a unit trust scheme to discharge the duties contemplated by these rules to be undertaken by the manager;
management securities	securities in a company scheme which are held solely for the benefit of persons employed or engaged in or about the

	management of the assets of the company scheme (or any associate thereof) which:
	(a) carry no right or expectation to participate, directly or indirectly, in any of the profits of the company scheme; and
	(b) on a winding-up or on redemption, carry no right to receive anything other than the return of the price paid for the securities;
manager	(a) the designated manager;
	(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	cash or other property paid, transferred or deposited under the terms of any contract for a derivative, and for these purposes cash or property shall be treated as having been paid, transferred or deposited if it must be paid, transferred or deposited in order to comply with a requirement imposed by the market on which the contract is made or traded;
marketing	in relation to units in an authorised scheme in a particular country:
	(a) <i>communicating</i> to a <i>person</i> in that country or territory an invitation or inducement to become, or offer to become, a <i>holder</i> in that <i>authorised scheme</i> ; and
	(b) advising <i>on investments</i> to, or arranging (bringing about) a deal in an investment for, a <i>person</i> in that country or territory to become a <i>holder</i> in that <i>authorised scheme</i> ,
	and “ to market ” shall be construed accordingly;
market operator	a person who manages and/or operates the business of a <i>regulated market</i> . The market operator may be the <i>regulated market</i> itself;
member State	at any time, in addition to a State which is a member of the European Community, any other State which is within the European Economic Area;
MiFID	The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC);
MiFID Regulation	Commission Regulation (EC) 1287/2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
money	any form of money, including cheques and other payable

	orders;
money-market instruments	those classes of <i>financial instruments</i> which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment; [Note: Article 4(1)(19) of <i>MiFID</i>]
month	a calendar month;
mortgage	includes a charge, heritable security or other similar security created on or over an immovable;
near cash	money, deposits or investments which fall within any of the following: <ul style="list-style-type: none"> (a) money deposited with an approved bank which is in: <ul style="list-style-type: none"> (i) a current account; or (ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding seven days' interest calculated at ordinary commercial rates; (b) certificates of deposit issued by an approved bank if immediately redeemable at the option of the holder of the certificate of deposit; (c) government and other public securities, if redeemable at the option of the holder of the security or bound to be redeemed within two years; (d) bills of exchange which are government or public securities; and (e) deposits with any local authority in Guernsey or any member State, if the money can be withdrawn immediately and without payment of a penalty as described in paragraph (a);
nominal securities	securities which, in the case of a company scheme, are issued to the manager or its nominee solely for the purpose of preserving the share capital of the company;
nominee company	a body corporate whose business consists solely of acting as a nominee holder of <i>investments</i> or other property;
non-UCITS retail scheme	a scheme authorised in the UK as a non-UCITS retail scheme;
offer price	the price at which a <i>person</i> could purchase a <i>unit</i> in a <i>dual-priced authorised scheme</i> ;
off-exchange	(in relation to a transaction in an <i>investment</i>) a transaction which is not <i>on-exchange</i> ;
officer	<ul style="list-style-type: none"> (a) (in connection with the exercise of the Commission's power to require information) an officer of the Commission, a member of the Commission's staff or an agent of the Commission; and (b) (otherwise) (in relation to a body corporate) a director,

	member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in that capacity, or a controller of the body;
on-exchange	effected by means of the facilities of, or governed by the rules of, an exchange;
operator	<p>(a) (in relation to a <i>unit trust scheme</i>) the <i>manager</i>;</p> <p>(b) (in relation to a <i>company scheme</i>) that company or, if applicable, the <i>manager</i>;</p> <p>(c) (in relation to any other <i>collective investment scheme</i> that is a <i>unit trust scheme</i> with a separate <i>trustee</i>) any person who, under the trust deed establishing the scheme, is responsible for the management of the property held for or within the <i>authorised scheme</i>;</p> <p>(d) (in relation to any other <i>collective investment scheme</i> that is a <i>company scheme</i>) that company or, if applicable, any person who, under the constitution or founding arrangements of the scheme, is responsible for the management of the property held for or within the <i>authorised scheme</i>;</p> <p>(e) (in relation to any other <i>collective investment scheme</i>) any person who, under the constitution or founding arrangements of the scheme, is responsible for the management of the property held for or within the scheme;</p>
options	has the meaning given in paragraph 2(1)(f) of Schedule 1 to the Law and includes, where appropriate, contracts for differences resembling options;
OTC	over the counter;
OTC derivative	a <i>derivative</i> traded solely over the counter;
overseas regulator	<p>in relation to a country or territory outside the Bailiwick of Guernsey, an authority discharging in that place:</p> <p>(a) functions corresponding to any functions of the Commission under the Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended or under the regulatory Laws; or</p> <p>(b) such other functions as the Commission may by regulation prescribe;</p>
participant	a person who participates in an <i>authorised scheme</i> ;

participating security	a security which enables title to participating securities to be evidenced otherwise than by a certificate and transferred otherwise than by a written instrument;
person	any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership);
plan investor	a <i>person</i> entered in the <i>plan register</i> under rule 6.4.9 (Plan registers);
plan manager	the person primarily responsible for the <i>group savings plan</i> ;
plan register	<p>(a) (in relation to a <i>company scheme</i>) a record of <i>persons</i> who subscribe to a <i>group savings plan</i> and for whom <i>shares</i> in the <i>company scheme</i> are held for the purposes of the <i>group savings plan</i> by the <i>plan manager</i> or a nominee (other than a record for the establishment or maintenance of which no payments are to be made out of the <i>scheme property</i>);</p> <p>(b) (in relation to a <i>unit trust scheme</i>) a sub-<i>register</i> to the <i>register</i>, which sub-<i>register</i> records <i>persons</i> who subscribe to a <i>group savings plan</i> and for whom units in the <i>unit trust scheme</i> are held for the purposes of the plan by the <i>plan manager</i> or a nominee (other than any sub-<i>register</i> that has not been established and maintained in accordance with rule 6.4.4 (Register: general requirements and contents) or for the establishment of which no payments are to be made out of the <i>scheme property</i>);</p>
preliminary charge	a charge upon a sale of units by a <i>manager</i> , whether or not acting as principal;
premium	in relation to an option, the total amount which the purchaser of the option is, or may be, required to pay in consideration of the right to exercise the option;
price	(in relation to a unit in an <i>authorised scheme</i>) the price of the <i>unit</i> calculated in accordance with rule 6.3 (Valuation and pricing);
principal documents	<p>in relation to:</p> <p>(a) a <i>unit trust scheme</i>, the trust instrument;</p> <p>(b) a <i>company scheme</i>, the articles of incorporation of a Guernsey company (or an equivalent document under the applicable law of a non-Guernsey body corporate), the management agreement and the trustee agreement; and</p> <p>(c) a <i>collective investment scheme</i> other than a <i>unit trust scheme</i> or a <i>company scheme</i>, the documents dealing</p>

collectively with the same or similar obligations and duties as the *principal documents* constituting a *unit trust scheme* or a *company scheme*;

- principal or notional principal** in relation to any derivatives transaction or forward transaction, is to be interpreted as follows:
- (a) “**principal**” (except where paragraph (b) applies): the amount of property or the value of the property which must be delivered in order to satisfy settlement of a derivative or forward contract which is not a contract for differences;
 - (b) “**principal**”, in the case of an option on a future: the amount of property or the value of the property which would be required under paragraph (a) in relation to the future; and
 - (c) “**notional principal**”:
 - (i) in the case of a contract for differences which is an index derivative, the current mark to market valuation of a contract for differences resembling a futures contract or the exercise value of a contract for differences resembling an option contract, as the case may be; and
 - (ii) in the case of any other contract for differences, the notional lot size of a contract, so that, for example, the notional principal in the case of a LIFFE short sterling contract is £500,000;
- prospectus** a document containing information about the *authorised scheme* and complying with the requirements in rule 4.2.2 (Publishing the prospectus) and Schedule 2 (Table: contents of the prospectus);
- purchase** in relation to an option, acquiring the right to exercise the option;
- pure protection contract**
- (i) a long-term insurance contract in respect of which the following conditions are met:
 - (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (c) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with (a) or (c); or
 - (ii) a reinsurance contract covering all or part of a risk to

which a person is exposed under a long-term insurance contract;

qualified auditor

a person who is a member of the Guernsey Society of Chartered and Certified Accountants who holds a current practising certificate issued by:

- (a)
 - (i) The Institute of Chartered Accountants in England and Wales;
 - (ii) The Institute of Chartered Accountants in Scotland;
 - (iii) The Institute of Chartered Accountants in Ireland; or
 - (iv) The Association of Chartered 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;

qualifying money market fund

- (1) an authorised scheme or a *collective investment scheme* authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by an authority under the national law of an *EEA State*, and which satisfies the following conditions:
 - (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings) or at the value of the investors' initial capital plus earnings;
 - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
 - (c) it must provide liquidity through same day or next day settlement.
- (2) For the purposes of (1)(b), a money market instrument is to be considered of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any

	competent rating agency is not to be considered to be of high quality.
	(3) For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECA1 within the meaning of Article 81(1) of the Banking Consolidation Directive.
readily realisable security	<p>(a) a <i>government and public security</i> denominated in the currency of the country of its issuer;</p> <p>(b) any other <i>security</i> which is:</p> <ul style="list-style-type: none"> (i) admitted to official listing on an exchange in an <i>EEA State</i>; (ii) regularly traded on or under the rules of such an exchange; or (iii) regularly traded on or under the rules of an investment exchange regulated or designated by the UK authorities; and <p>(c) a newly issued <i>security</i> which can reasonably be expected to fall within paragraph (b) when it begins to be traded;</p>
recognised scheme	an <i>authorised scheme</i> which is a recognised scheme under the provisions of the UK Financial Services and Markets Act 2000;
reconstruction	in relation to an <i>authorised scheme</i> (which in this definition includes a sub-fund), a scheme of arrangement whereby all or part of the scheme property of the <i>authorised scheme</i> becomes the property (including the first property) of another body or <i>authorised scheme</i> or of two or more bodies or <i>authorised schemes</i> and whereby holders in the <i>authorised scheme</i> being reconstructed receive shares or units in that body or <i>authorised scheme</i> (or those bodies or authorised schemes) in exchange for the property received into such body or <i>authorised scheme</i> (or bodies or schemes);
redemption	the purchase of units from their holder by the manager acting as a principal;
redemption charge	an amount levied by the manager of an authorised scheme upon the redemption of units, in the case of an authorised scheme under rule 6.7.7 (Charges on buying and selling units);
redemption price	the <i>price</i> payable by the <i>manager</i> for each <i>unit</i> it <i>redeems</i> from a <i>unitholder</i> , calculated in accordance with rule 6.3 (Valuation and pricing);

register	the register of unitholders;
registrar	the person who maintains a register;
regulated market	in accordance with Article 4(1)(14) of <i>MiFID</i> , a multilateral system operated and/or managed by a <i>market operator</i> , which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID;
relevant investment	means: <ul style="list-style-type: none"> (a) a contractually based <i>investment</i>; (b) a <i>pure protection contract</i>; (c) a <i>general insurance contract</i>; (d) rights to or interests in an <i>investment</i> falling within (a);
remuneration	any form of remuneration, including benefits of any kind;
rules	the Collective Investment Scheme (Class A) Rules 2008;
sale	in relation to units (except where the context otherwise requires), the sale of units by the manager as a principal;
sale price	the <i>price</i> payable to the <i>manager</i> for each <i>unit</i> it <i>sells</i> to a <i>unitholder</i> , calculated in accordance with rule 6.3 (Valuation and pricing);
scheme	an <i>authorised scheme</i> and any other collective investment scheme;
scheme of arrangement	an <i>authorised scheme</i> (“ transferor fund ”) or a sub-fund of an <i>authorised scheme</i> that is an <i>umbrella fund</i> (“ transferor sub-fund ”) under which: <ul style="list-style-type: none"> (a) either: <ul style="list-style-type: none"> (i) all or part of the property of the transferor fund, or all or part of the property attributed to the transferor sub-fund, is to become the property of one or more <i>authorised schemes</i> (“transferee schemes”); or (ii) all or part of the property attributed to the transferor sub-fund is to become part of the property attributed to one or more other sub-funds of the same <i>umbrella fund</i> (“transferee sub-funds”); and (b) holders of units in the transferor fund or transferor sub-fund, the property of which is being transferred or

reattributed under paragraph (a), are to receive, in exchange for their respective interests in that property, either:

- (i) units in the transferee scheme or one or more of the transferee schemes to which the property is transferred; or
- (ii) units in the transferee sub-fund or one or more of the transferee sub-funds to which the property is reattributed;

scheme property

- (a) (in relation to a company scheme) the property subject to the collective investment scheme constituted by it; and
- (b) (in relation to a unit trust scheme) the capital property and the income property;

sell

(in relation to any *investment*) sell in any way, including disposing of the *investment* for valuable consideration; in this definition, “disposing” includes:

- (a) (in relation to an *investment* consisting of rights under a contract):
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract; and
- (b) (in relation to an investment consisting of rights under other arrangements) assuming the corresponding liabilities under the arrangements;

security

any of the following investments:

- (a) share;
- (b) debenture;
- (c) government and public security;
- (d) warrant;
- (e) certificate representing certain securities;
- (f) unit;
- (g) stakeholder pension scheme; and
- (h) rights to or interests in investments listed in paragraphs (a) to (g);

series of transactions

a series of transactions *executed* with a view to achieving one investment decision or objective;

share

- (a) in relation to a company scheme, a share in the company scheme; or
- (b) (otherwise) a share or stock in the share capital of any

	body corporate (wherever incorporated) or any unincorporated body constituted under the law of a country or territory outside Guernsey;
single-priced authorised scheme	an <i>authorised scheme</i> or, in the case of an <i>umbrella fund</i> , a <i>sub-fund</i> (if it were a separate <i>scheme</i>), for the <i>units</i> of which there is only one <i>price</i> applicable by reference to a <i>valuation point</i> ;
single pricing regime	a system of single pricing adopted by an authorised scheme in accordance with rule 6.3 (Valuation and pricing) such that there is only one price for the units of the authorised scheme applicable by reference to a valuation point;
smaller denomination share	a share to which are attached rights in a smaller denomination;
standing independent valuer	the person appointed as such under rule 5.6.4 (Standing independent valuer and valuation);
stock lending	the disposal of an investment subject to an obligation or right to require the same or a similar investment from the same counterparty;
stock lending activity	the activity of undertaking a stock lending transaction;
sub-fund	a part of the scheme property of an umbrella fund that is pooled separately;
sub-fund	(in relation to an <i>authorised scheme</i> that is an umbrella) a separate part of the <i>scheme property</i> of that scheme that is pooled separately;
subsidiary	the same as the meaning given in section 56(1) of The Banking Supervision (Bailiwick of Guernsey) Law, 1994;
transferable security	an investment within rule 5.2.7 (Transferable securities);
trust deed	the deed referred to in rule 3.2.3 (The trust deed for unit trust schemes), together with any deed expressed to be supplemental to it, made between the manager and the trustee;
trust instrument	a written instrument, whether or not under seal, made between the manager and the trustee constituting the trust and including supplemental instruments;
trustee	in relation to a scheme, the designated trustee in the case of a unit trust scheme or designated custodian in the case of an authorised scheme other than a unit trust scheme;
trustee agreement	an agreement under which a body corporate is appointed to hold the scheme property of an authorised scheme (other than a unit trust scheme) and to discharge the duties imposed by these rules on the trustee;
UCITS Directive	the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in

	transferable securities (UCITS) (No 85/611/EEC) as amended from time to time;
UCITS eligible assets Directive	Commission Directive 2007/16/EC implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.
umbrella fund	an authorised scheme under which the contributions of the participants in the authorised scheme and the profits or income out of which payments are to be made to them are pooled separately in relation to separate parts of the scheme property;
unit	the investment which is the right or interest (however described) of the participants in scheme. This includes: <ul style="list-style-type: none"> (a) (in relation to a <i>unit trust scheme</i>) a unit representing the rights or interests of the unitholders in the <i>unit trust scheme</i>; and (b) (in relation to a <i>company scheme</i>) a share in the <i>company scheme</i>;
unit trust scheme	an <i>authorised scheme</i> under which the scheme property is held in trust for the investors;
United Kingdom	England and Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man);
unitholder	(a) (in relation to a company scheme or a unit trust scheme as appropriate, and subject to rule 4.4.4 (Special meaning of unitholder in rule 4.4)), the person whose name is entered on the register in relation to that unit; or <ul style="list-style-type: none"> (b) (in relation to a unit in an authorised scheme not within paragraph (a)), the person who is entered on the register of the authorised scheme as the holder of that unit;
unitisation	arrangements for a newly formed <i>unit trust scheme</i> under which: <ul style="list-style-type: none"> (a) the whole or part of the property of a <i>body corporate</i> (or a <i>collective investment scheme</i>) becomes the first property to be held on the trust of the <i>unit trust scheme</i>; and (b) the <i>holders</i> of: <ul style="list-style-type: none"> (i) <i>shares</i> in the <i>body corporate</i> being wound up; or (ii) <i>units</i> in the <i>collective investment scheme</i>, the property of which is being transferred, become the first <i>participants</i> in the <i>unit trust scheme</i>;

valuation point	a valuation point fixed by the manager for the purpose of rule 6.3.3 (Valuation points);
voting rights	a right to vote at general meetings on all, or substantially all, matters;
warrant	a warrant or other instrument entitling the holder to subscribe for a <i>share</i> , <i>debenture</i> or <i>government and public security</i> and any other <i>transferable security</i> (not being a nil paid or partly paid <i>security</i>) which is: <ul style="list-style-type: none"> (a) listed on an <i>eligible securities</i> market; and (b) akin to an <i>investment</i> described above in that it involves a down payment by the then holder and a right to later surrender the instrument and pay more <i>money</i> in return for a further <i>transferable security</i>; and
write	in relation to an option, the granting of the option.

Part 1 - Introduction

The Guernsey Financial Services Commission (the “**Commission**”), in exercise of the powers conferred on it by sections 12, 14(2)(a), 14(2)(d), 15(1), 16(1) and 16(2)(f), 18 and 20 of The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, hereby makes the following rules.

1.1 Explanation

These rules are made by the Commission under the Law and make provision for the constitution and management of Class A Schemes. The Commission’s underlying purpose is to assure a high standard of investor protection for the benefit of those who invest in such schemes.

1.2 Citation and commencement

These rules (including the Schedules hereto), which may be cited as the Collective Investment Schemes (Class A) Rules 2008 (the “**Class A Rules**”), are made on [●] [●] 2008 and, with the exception of Part [●] (“**Transitional Provisions**”), shall come into operation on [●] [●] 2008.

Part 2 - Authorised Scheme Applications

2.1 Application

The *manager* of a *scheme* seeking a *Class A Scheme declaration of authorisation* from the *Commission* shall submit to the *Commission*:

- 2.1.1 the appropriate application form;
- 2.1.2 a certificate from an *approved law firm* stating that the *principal documents* comply with all of these rules relating to their contents;
- 2.1.3 signed or certified copies of the *principal documents*, the *prospectus*, and other agreements material to the *authorised scheme*;
- 2.1.4 the application fee as prescribed from time to time by rules made under section 22 of the Law; and
- 2.1.5 such other information as the *Commission* may require.

2.2 Declaration

Each *declaration of authorisation* shall state that the *authorised scheme* is a *Class A Scheme* and whether the *Class A Scheme* is a *company scheme* or a *unit trust scheme*.

2.3 Undertakings

As a condition of authorisation of a *Class A 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.

2.4 Continuing compliance obligation

- 2.4.1 In the case of a *Class A Scheme* which is not incorporated or established under the law of Guernsey (a “**non-Guernsey Scheme**”), the *manager* must notify the *Commission* immediately if *applicable law* is changed or if the *principal documents* are amended to comply with *applicable law*, with the result that the *principal documents* no longer comply with such of these rules as relate to the contents of the *principal documents*.
- 2.4.2 Notice pursuant to rule 2.4.1 must identify which of these rules the *principal documents*, in complying with requirements of *applicable law*, no longer comply with and must include a statement to the effect that the *manager*, after taking proper advice, considers that the scheme overall affords investors protection at least equivalent to these rules.
- 2.4.3 On receipt of notice pursuant to rule 2.4.1, the *Commission* may, at its discretion, confirm, in writing, the *declaration of authorisation* of the non-Guernsey Scheme as a *Class A Scheme*, or may revoke the *declaration of authorisation*, or may make such other declaration as it may deem appropriate.

Part 3 - Constitution

3.1 Introduction

This chapter applies to:

- 3.1.1 a manager of an authorised scheme;
- 3.1.2 any director of a company scheme;
- 3.1.3 a *trustee*; and
- 3.1.4 a company scheme.

3.2 The principal documents

3.2.1 Application

This section applies to:

- (i) a *manager of an authorised scheme*;
- (ii) any *director of a company scheme*;
- (iii) a *trustee*; and
- (iv) a *company scheme*.

3.2.2 Relationship between the principal documents and the rules

- (i) The *principal documents* must not contain any provision that:
 - (a) conflicts with these rules;
 - (b) prevents *units* in the *scheme* being marketed in Guernsey; or
 - (c) is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (ii) Any power conferred by the *rules* on the *company scheme*, the *manager*, any other *director* of the *company scheme*, or the *trustee*, whether in a sole or joint capacity, is subject to any restriction in the *principal documents*.

3.2.3 The trust deed for unit trust schemes

A *unit trust scheme* must be constituted by a *trust deed* made between the *manager* and the *trustee*.

3.2.4 Matters which must be included in the principal documents

The statements and provisions required by Schedule 1 (Table: contents of the principal documents) must be included in the *principal documents*, where appropriate.

3.2.5 Umbrella fund with only one sub-fund

- (i) If, after the first *issue* of a *unit* in an *authorised scheme* which is an *umbrella fund*, for a period of 24 consecutive *months*, *units* of fewer than two *sub-funds* are in *issue*, the *manager* or, for a *company scheme*, its

other *directors* must take such action as is necessary to reflect the fact that the scheme is no longer an *umbrella fund* or cause *units* of more than one *sub-fund* to be in *issue*.

- (ii) If paragraph (i) applies or is reasonably expected to become applicable by the *manager* or, for a *company scheme*, its *directors*, the *manager* or its *directors* must notify the *unitholders* and the *Commission* of any action required to be taken to comply with paragraph (i).
- (iii) Paragraph (i) does not apply if, before the expiry of the 24-month period, winding-up of the *authorised scheme* has commenced.

3.3 Units

3.3.1 Application

This section applies to a *manager*, a *company scheme* and the *trustee*.

3.3.2 Guidance: Classes of units

- (i) The *principal documents* may provide for different *classes* of *unit* to be issued in an *authorised scheme* and, for an *authorised scheme* which is an *umbrella fund*, provide that *classes* of *units* may be issued for each *sub-fund*.
- (ii) In order to be satisfied that rule 3.2.2 (Relationship between the principal documents and the rules) is complied with, the *Commission* will take into account the following principles when considering proposals for *unit classes*:
 - (a) a *unit class* should not provide any advantage for that *class* if that would result in prejudice to *unitholders* of any other *class*;
 - (b) the nature, operation and effect of the new *unit class* should be capable of being explained clearly to prospective investors in the *prospectus*; and
 - (c) the effect of the new *unit class* should not appear to be contrary to the purpose of any part of these *rules*.

3.3.3 Guidance: Currency class units

A *currency class unit* differs from other *units* mainly in that its *price*, having been calculated initially in the *base currency*, will be quoted, and normally paid for, in the currency of the designation of the *class*. Income distributions will also be paid in the currency of designation of the *class*.

3.3.4 Currency class units: requirements

For a *currency class unit*:

- (i) the currency of the *class* concerned must not be the *base currency* (or, in the case of a *sub-fund* which, in accordance with a statement in the *prospectus*, is to be valued in some other currency, the currency of the *class* may be the *base currency* but must not be that other currency);
- (ii) the *price* must be expressed in the currency of the *class* concerned;

- (iii) any distribution must be paid in the currency of the *class* concerned; and
- (iv) statements of amounts of *money* or values included in statements and in tax certificates must be given in the currency of the *class* concerned (whether or not also given in the *base currency*).

3.3.5 Rights of unit classes

- (i) If any *class* of *units* in an *authorised scheme* has different rights from another *class* of *units* in that *authorised scheme*, the *principal documents* must describe how the proportion of the value of the *scheme property* and the proportion of income available for allocation attributable to each such class must be calculated.
- (ii) For an *authorised scheme* which is not an *umbrella fund*, the *principal documents* must not provide for any *class* of *units* in respect of which:
 - (a) the extent of the rights to participate in the *capital property*, *income property* or *distribution account* would be determined differently from the extent of the corresponding rights for any other *class* of *units*; or
 - (b) payments or accumulation of income or capital would differ in source or form from those of any other *class* of *units*.
- (iii) For an *authorised scheme* which is an *umbrella fund*, the provisions in paragraph (ii)(a) apply to *classes* of *units* in respect of each *sub-fund* as if each *sub-fund* were a separate *authorised scheme*.
- (iv) Paragraphs (ii) and (iii) do not prohibit a difference between the rights attached to one *class* of *units* and to another *class* of *units* that relates solely to:
 - (a) the accumulation of income by way of periodical credit to capital rather than distribution;
 - (b) charges and expenses that may be taken out of the *scheme property* or payable by the *unitholders*;
 - (c) the currency in which *prices* or values are expressed or payments made; or
 - (d) the use of derivatives and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a currency class unit and either the base currency of the scheme or any currency in which all or part of the scheme property is denominated or valued (in this section, referred to as a “**currency class hedging transaction**”).

3.3.5A Hedging of currency class units

A currency class hedging transaction must:

- (i) be undertaken in accordance with the requirements of Chapter 5 (Investment and borrowing powers); and

- (ii) (for the purposes of valuing scheme property and calculating the price of units in accordance with rule 6.3 (Valuation and pricing)) be attributed only to the currency class units for which it is undertaken.

3.3.5B Guidance on hedging of currency classes

- (i) Before undertaking a currency class hedging transaction for a class of units, the manager should:
 - (a) ensure that the relevant prospectus clearly:
 - (I) states that such a transaction may be undertaken for the relevant class of currency class units; and
 - (II) explains the nature of the risks that such a transaction may pose to investors in all classes;
 - (b) consult the *trustee* about the adequacy of the systems and controls it uses to ensure compliance with rule 3.3.5A (Hedging of currency class units); and
 - (c) consult the scheme auditor and, where appropriate, *trustee* to determine how:
 - (I) the transaction will be treated in the scheme's accounts; and
 - (II) any consequential tax liability will be met,(in each case) without prejudice to unitholders of classes other than the relevant currency class.
- (ii) Currency class hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a currency class unit. The manager should ensure that the total value of the hedged position does not exceed the value of the relevant currency class units unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the currency class units should not be so large as to be speculative or to constitute an investment strategy.

3.3.6 Sub-division and consolidation of units

- (i) The *directors* of a *company scheme* or the *manager* of a *unit trust scheme* may, unless expressly forbidden to do so by the *principal documents*, determine that:
 - (a) each *unit* of any *class* is to be sub-divided into two or more *units*; or
 - (b) *units* of any *class* are to be consolidated.
- (ii) The *company scheme* or the *manager* must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each *unitholder* (or the first-named of joint *unitholders*) of any sub-division or consolidation under paragraph (i).

3.3.7 Guarantees and capital protection

If there is any arrangement intended to result in a particular capital or income return from a holding of *units* in a *scheme*, or any investment objective of giving protection to the capital value of, or income return from, such a holding:

- (i) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:
 - (a) *unitholders* and the *manager* or *trustee*; or
 - (b) *unitholders* intended and not intended to benefit from the arrangement; and
- (ii) where, in accordance with any statement required by Schedule 2 paragraph (26)(c)(iv) (Table: contents of the prospectus), action is required by the *unitholders* to obtain the benefit of any guarantee, the *manager* must provide reasonable notice in writing to *unitholders* before such action is required.

3.3.8 Guidance: Switching rights: umbrella funds

- (i) The *participants* in an *authorised scheme* which is an *umbrella fund* are entitled to exchange rights in one *sub-fund* for rights in another *sub-fund* of the *umbrella fund*.
- (ii) To satisfy paragraph (i), where any *sub-fund* in a *scheme* which is an *umbrella fund* has provisions in its *prospectus* limiting the *issue* of *units* in that *sub-fund*, the *manager* should ensure that at least two *sub-funds* are able to issue *units* at any time.

Part 4 - Investor Relations

4.1 Introduction

This chapter applies to:

- 4.1.1 a *manager* of an *authorised scheme*;
- 4.1.2 any director of a company scheme;
- 4.1.3 a *trustee*; and
- 4.1.4 a company scheme.

4.2 Pre-sale notifications

4.2.1 Application

This section applies to a *manager*, a *company scheme* and any *director* of a *company scheme*.

4.2.2 Publishing the prospectus

- (i) A *prospectus* must be drawn up in English and published as a document by the *manager* and, for a *company scheme*, it must be approved by the *directors*.
- (ii) The *manager* must ensure that the prospectus:
 - (a) contains the information required by Schedule 2 (Table: contents of the prospectus);
 - (b) does not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*;
 - (c) does not contain any provision that conflicts with any of these *rules*; and
 - (d) is kept up-to-date and that revisions are made to it, whenever appropriate.

4.2.3 Availability of prospectus and long report

- (i) A *company scheme* or the *manager* of a *unit trust scheme* must:
 - (a) supply a copy of the *authorised scheme's* most recent *prospectus* drawn up and published in accordance with rule 4.2.2 (Publishing the prospectus) free of charge to any *person* on request; and
 - (b) file a copy of the *authorised scheme's* original *prospectus*, together with all revisions thereto, with the *Commission*.
- (ii) A *manager* must, upon the request of a *unitholder* in an *authorised scheme* that it manages, provide information supplementary to the *prospectus* of that *authorised scheme* relating to:

- (a) the quantitative limits applying to the risk management of that *authorised scheme*;
 - (b) the methods used in relation to paragraph (a); and
 - (c) any recent developments relating to the risk and yields of the main categories of *investment*.
- (iii) A *company scheme* or the *manager* of a *unit trust scheme* which in either case is intending to market *units* in the territory of an EEA State must:
- (a) ensure that the following documents are drawn up in the official language, or one of the official languages, of the EEA State or a language approved by an EEA State regulator:
 - (I) the *prospectus*;
 - (II) the *principal documents*; and
 - (III) the latest annual and half-yearly long reports of the *authorised scheme*;
 - (b) supply copies of the most recent version of the documents in paragraph (a) to any purchaser of *units* free of charge on request; and
 - (c) file copies of the most recent version of the *documents* listed in paragraph (a) with the competent authority of each such *EEA State*, provided in the official language, or one of the official languages, of that State or a language approved by the *competent authority* of that State.

4.2.4 False or misleading prospectus

- (i) The *manager*:
 - (a) must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by these *rules* to be included in it; and
 - (b) is liable to pay compensation to any *person* who has acquired any *units* in the *authorised scheme* and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this *rule*.
- (ii) The *manager* is not in breach of paragraph (i)(a) and is not liable to pay compensation under paragraph (i)(b) if, at the time when the *prospectus* was made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:
 - (a) it continued to take such reasonable care until the time of the relevant acquisition of *units* in the *authorised scheme*;
 - (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers;

- (c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
 - (d) the *person* who acquired the *units* was not materially influenced or affected by that statement or omission in making the decision to invest.
- (iii) The *manager* is also not in breach of paragraph (i)(a) and is not liable to pay compensation under paragraph (i)(b) if:
- (a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of *persons* likely to acquire the *units* in question; or
 - (b) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the *units* were acquired.
- (iv) The *manager* is not liable to pay compensation under paragraph (i)(b) if the *person* who acquired the *units* knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.
- (v) For the purposes of this rule, a revised *prospectus* will be treated as a different *prospectus* from the original one.
- (vi) References in this rule to the acquisition of *units* include references to contracting to acquire them.

4.3 Approvals and notifications

4.3.1 Application

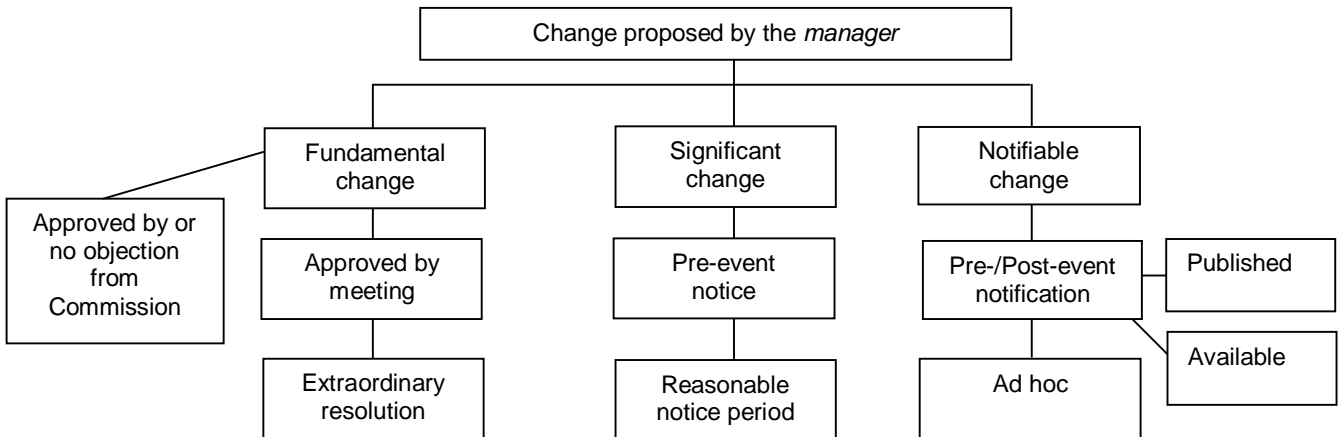
This section applies to a *manager*.

4.3.2 Guidance: Explanation

- (i) The diagram in rule 4.3.3 explains how a *manager* should treat changes it is proposing to an *authorised scheme* and provides an overview of the *rules* and guidance in this section.
- (ii) The prior approval of the *Commission* for certain proposed changes to an *authorised scheme*, including a change of the *manager* or *trustee* or a change to the *principal documents*, is required in the circumstances set out in rule 4.3.10 (Changes to authorised schemes). This should be kept in mind when considering any proposed change.

4.3.3 Diagram: Change event

This diagram belongs to rule 4.3.2 (Guidance: Explanation).



4.3.4 Fundamental change requiring prior approval by meeting

- (i) The *manager* must, by way of an *extraordinary resolution*, obtain prior approval from the *unitholders* for any proposed change to the *authorised scheme* which, in accordance with paragraph (ii), is a fundamental change.
- (ii) A fundamental change is a change or event which:
 - (a) changes the purposes or nature of the *authorised scheme*;
 - (b) may materially prejudice a *unitholder*;
 - (c) alters the risk profile of the *authorised scheme*; or
 - (d) introduces any new type of payment out of *scheme property*.

4.3.5 Guidance: Fundamental changes

- (i) Any change may be fundamental depending on its degree of materiality and effect on the *authorised scheme* and its *unitholders*. Consequently, a *manager* will need to determine whether in each case a particular change is fundamental in nature or not.
- (ii) For the purpose of rule 4.3.4(ii)(a) to rule 4.3.4(ii)(c) (Fundamental change requiring prior approval by meeting) a fundamental change to an *authorised scheme* is likely to include:
 - (a) any proposal for a *reconstruction*;
 - (b) a change in the investment policy to achieve capital growth from investment in one country rather than another;
 - (c) a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity *investments*;

- (d) a change in the investment policy to allow the *authorised scheme* to invest in derivatives as an investment strategy, which increases its volatility; or
- (e) a change to the characteristics of an *authorised scheme* to distribute income annually rather than monthly; or
- (f) the introduction of *limited redemption arrangements*.

4.3.6 Significant change requiring pre-event notification

- (i) The *manager* must give prior written notice to *unitholders* in respect of any proposed change to the operation of an *authorised scheme* that, in accordance with paragraph (ii), constitutes a significant change.
- (ii) A significant change is a change or event which is not fundamental in accordance with rule 4.3.4 (Fundamental change requiring prior approval by meeting) but which:
 - (a) affects a *unitholder's* ability to exercise his rights in relation to his investment;
 - (b) would reasonably be expected to cause the *unitholder* to reconsider his participation in the *authorised scheme*;
 - (c) results in any increased payments out of the *scheme property* to a *manager* or any other director of a *company scheme* or an associate of either; or
 - (d) materially increases other types of payment out of *scheme property*.
- (iii) The notice period in paragraph (i) must be of a reasonable length (and must not be less than 60 *days*).

4.3.7 Guidance: Significant changes

- (i) Changes may be significant depending in each case on their degree of materiality and effect on the *authorised scheme* and its *unitholders*. Consequently, the *manager* will need to determine whether in each case a particular change is significant in nature or not.
- (ii) For the purpose of rule 4.3.6 (Significant change requiring pre-event notification) a significant change is likely to include:
 - (a) a change in the method of *price* publication;
 - (b) a change in any operational policy, such as dilution policy or allocation of payments policy; or
 - (c) a change in the pricing arrangements for units of the *authorised scheme* so as to cause a *single-priced authorised scheme* to become a *dual-priced authorised scheme*, or vice versa.

4.3.8 Notifiable changes

- (i) The *manager* must inform *unitholders* in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the *authorised scheme*.

- (ii) A notifiable change is a change or event, other than a fundamental change under rule 4.3.4 (Fundamental change requiring prior approval by meeting) or a significant change under rule 4.3.6 (Significant change requiring pre-event notification), which a *unitholder* must be made aware of unless the *manager* concludes that the change is insignificant.

4.3.9 Guidance: Notifiable changes

- (i) The circumstances causing a notifiable change may or may not be within the control of the *manager*.
- (ii) For the purpose of rule 4.3.8 (Notifiable changes), a notifiable change might include:
 - (a) a change of named *investment manager* where the *authorised scheme* has been marketed on the basis of that individual's involvement;
 - (b) a significant political event which impacts on the *authorised scheme* or its operation;
 - (c) a change to the time of the *valuation point*;
 - (d) the introduction of limited issue arrangements; or
 - (e) a change of the *trustee* or a change in the name of the *authorised scheme*.
- (iii) The appropriate manner and timescale of notification would depend on the nature of the change or event. Consequently, the *manager* will need to assess each change or event individually.
- (iv) An appropriate manner of notification could include:
 - (a) sending an immediate notification to the *unitholder*;
 - (b) publishing the information on a website; or
 - (c) the information being included in the next long report of the *authorised scheme*.

4.3.10 Changes to authorised schemes

- (i) In addition to and notwithstanding the above provisions, the *manager* of an *authorised scheme* shall give written notice to the *Commission* of:
 - (a) any proposed fundamental, significant and notifiable alteration to the *authorised scheme*; and
 - (b) any proposal to replace the *trustee* of the *authorised scheme*.
- (ii) Any notice given in respect of a proposed alteration involving a change in the *principal documents* shall be accompanied by a certificate from an *approved law firm* either confirming that following the alteration the *principal documents* will continue to comply with such of these *rules* as relate to the contents of the *principal documents* or giving such confirmation subject to such exceptions as are detailed in that certificate.

- (iii) The *trustee* of an *authorised scheme* shall give written notice to the *Commission* of any proposal to replace the *manager* of the *authorised scheme*.
- (iv) No effect shall be given to any such proposal as is mentioned in rule 4.3.10(i)(a), if the alteration to the *authorised scheme* is deemed fundamental, or rule 4.3.10(iii) unless:
 - (a) the *Commission* has given its approval to the proposed alteration; or
 - (b) one month has elapsed since the notice was given without the *Commission* having notified the person serving the notice that the proposed alteration is not approved.

4.4 Meetings of unitholders and service of notices

4.4.1 Application

This rule applies to a *manager*, a *trustee* and any *director* of a *company scheme* and is subject to *applicable law*.

4.4.2 General meetings

- (i) The *manager*, the *trustee* or the *directors* of a *company scheme* may convene a general meeting of *unitholders* at any time.
- (ii) The *unitholders* may request the convening of a general meeting by a requisition which must:
 - (a) state the objects of the meeting;
 - (b) be dated;
 - (c) be signed by *unitholders* who, at that date, are registered as the *unitholders* of *units* representing not less than one-tenth in value (or such lower proportion stated in the *principal documents*) of all of the *units* then in issue; and
 - (d) be deposited at the head office of the *company scheme* or with the *trustee*.
- (iii) The *manager*, the *trustee* or the *directors* of a *company scheme* must, on receipt of a requisition that complies with paragraph (ii), immediately convene a general meeting of the *scheme* for a date no later than eight weeks after receipt of the requisition.

4.4.3 Class meetings

This section applies, unless the context otherwise requires, to *class meetings* by reference to the *units* of the *class* concerned and the *unitholders* and prices of such *units*.

4.4.4 Special meaning of unitholder in rule 4.4

- (i) Unless a *unit* in the *authorised scheme* is a *participating security*, in this section “*unitholders*” means *unitholders* as at a cut-off date selected by

the *manager* which is a reasonable time before notices of the relevant meeting are sent out.

- (ii) If any *unit* in the *authorised scheme* is a *participating security*, a registered *unitholder* of such a *unit* is entitled to receive a notice of a meeting or a notice of an adjourned meeting under rule 4.4.5 (Notice of general meetings), if entered on the *register* at the close of business on a *day* to be determined by the *manager*, which must not be more than 21 *days* before the notices of the meeting are sent out.
 - (iii) For the purposes of paragraph (ii), in rule 4.4.6 (Quorum) to rule 4.4.11 (Chairman, adjournment and minutes) “*unitholders*” in relation to those *units* means the *persons* entered on the *register* at a time to be determined by the *manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting.
- (a)

4.4.5 Notice of general meetings

- (i) Where the *manager*, the *trustee* or the *directors* of a *company scheme* decide to convene a general meeting of *unitholders*:
 - (a) each *unitholder* must be given at least 14 *days*’ written notice, inclusive of the date on which the notice is first served and the *day* of the meeting; and
 - (b) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the *trustee*.
- (ii) The accidental omission to give notice to, or the non-receipt of notice by, any *unitholder* does not invalidate the proceedings at any meeting.
- (iii) Notice of an adjourned meeting of *unitholders* must be given to each *unitholder*, stating that while two *unitholders* present in person or by proxy are required to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with rule 4.4.6(iii) (Quorum) should two such *unitholders* not be present after a reasonable time from the convening of the meeting.
- (iv) Paragraph (i)(a) does not apply to the notice of an adjourned meeting.

4.4.6 Quorum

- (i) The quorum required to conduct business at a meeting of *unitholders* is two *unitholders*, present in person or by proxy.
- (ii) If after a reasonable time from the time for the start of the meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of *unitholders*, must be dissolved; and
 - (b) in any other case, must stand adjourned to:

- (I) a *day* and time which is seven or more *days* after the *day* and time of the meeting; and
 - (II) a place to be appointed by the chairman.
- (iii) If, at an adjourned meeting under paragraph (ii)(b), a quorum is not present after a reasonable time from the time for the start of the meeting, one person entitled to be counted in a quorum present at the meeting shall constitute a quorum.

4.4.7 Resolutions

- (i) Except where an *extraordinary resolution* is specifically required or permitted, any resolution of *unitholders* is passed by a simple majority of the votes validly cast at a general meeting of *unitholders*.
- (ii) In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.
- (iii) Where a resolution (including an *extraordinary resolution*) is required to conduct business at a meeting of *unitholders* and every *unitholder* is prohibited under rule 4.4.8(iv) (Voting rights) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the *trustee* to the process, instead be passed with the written consent of *unitholders* representing 50% or more, or for an *extraordinary resolution* 75% or more, of the *units* of the *authorised scheme* in *issue*.

4.4.8 Voting rights

- (i) On a show of hands every *unitholder* who is present in person has one vote.
- (ii) On a poll:
 - (a) votes may be given either personally or by proxy or in another manner permitted by the *principal documents*;
 - (b) the voting rights for each *unit* must be the proportion of the voting rights attached to all of the *units* in issue that the price of the *unit* bears to the aggregate *price* or *prices* of all of the *units* in issue:
 - (I) if any *unit* is a *participating* security, at the time determined under rule 4.4.4(ii) (Special meaning of unitholder in rule 4.4);
 - (II) otherwise, at the date specified in rule 4.4.4(i) (Special meaning of unitholder in rule 4.4); and
 - (c) a *unitholder* need not use all his votes or cast all his votes in the same way.
- (iii) For joint *unitholders*, the vote of the most senior who votes, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint *unitholders*. For this purpose, seniority must be determined by the order in which the names stand in the register of *unitholders*.

- (iv) No *director* of the *company scheme* or the *manager* can be counted in the quorum of, and no such *director* or the *manager* or any of their associates may vote at, any meeting of the *authorised scheme*.
- (v) The prohibition in paragraph (iv) does not apply to any *units* held on behalf of, or jointly with, a person who, if himself the registered *unitholder*, would be entitled to vote and from whom the *director*, the *manager* or its associates have received voting instructions.
- (vi) For the purpose of this section, *units* held, or treated as held, by the *manager* or any other *director* of the *company scheme* must not, except as mentioned in paragraph (v), be regarded as being in *issue*.

4.4.9 Right to demand a poll

- (i) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
 - (a) the chairman;
 - (b) at least two *unitholders*; or
 - (c) the *trustee*.
- (ii) Unless a poll is demanded in accordance with paragraph (i), a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.

4.4.10 Proxies

- (i) A *unitholder* may appoint another person to attend a general meeting and vote in his place.
- (ii) Unless the *principal documents* provide otherwise, a *unitholder* may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.
- (iii) Every notice calling a meeting of an *authorised scheme* must contain a reasonably prominent statement that a *unitholder* entitled to attend and vote may appoint a proxy.
- (iv) For the appointment to be effective, any document relating to the appointment of a proxy must not be required to be received by the *company scheme* or any other person more than 48 hours before the meeting or adjourned meeting.

4.4.11 Chairman, adjournment and minutes

- (i) A meeting of *unitholders* must have a chairman nominated:
 - (a) in the case of a *unit trust scheme*, by the *trustee*; and
 - (b) in the case of a *company scheme*, by a *director* or, if no such nomination is made, by the *trustee*.

- (ii) If the chairman is not present after a reasonable time from the time for the start of the meeting, the *unitholders* present must choose one of them to be chairman.
- (iii) The chairman:
 - (a) may, with the consent of any meeting of *unitholders* at which a quorum is present; and
 - (b) must, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (iv) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
- (v) The *manager* must ensure that:
 - (a) minutes of all resolutions and proceedings at every meeting of *unitholders* are made and kept; and
 - (b) any minute made in paragraph (a) is signed by the chairman of the meeting of *unitholders*.
- (vi) Any minute referred to in paragraph (v)(b) is conclusive evidence of the matters stated in it.

4.4.12 Notices to unitholders

- (i) Where these *rules* require any notice or *document* to be served upon a *unitholder*, it is duly served if it is:
 - (I) “sent” by post to or left at the *unitholder’s* address as appearing in the *register*; or
 - (II) “sent” by using an electronic medium in accordance with rule 4.4.13 (Other notices).
- (ii) Any notice or *document* served by post is deemed to have been served on the second *business day* following the *day* on which it is posted.
- (iii) Any *document* left at a registered address or delivered other than by post is deemed to have been served on that *day*.

4.4.13 Other notices

- (i) Any *document* or notice to be served on, or information to be given to, any person, including the *Commission*, must be in legible form.
- (ii) For the purposes of this *rule*, any *document or notice* is in a legible form which:
 - (a) is consistent with the *company scheme’s*, the *directors’*, the *manager’s* or the *trustee’s* knowledge of how the recipient of the *document* wishes or expects to receive the *document*;
 - (b) is capable of being provided in hard copy by the *manager*, the *trustee*, or any other *director* of the *company scheme*;

- (c) enables the recipient to know or record the time of receipt; and
 - (d) is reasonable in the context.
- (iii) In these *rules*, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.

4.5 Reports and accounts

4.5.1 Application

The *rules* in this section apply to a *manager*, a *trustee* and any *director* of a *company scheme*.

4.5.2 Guidance: Explanation

In order to provide the *unitholders* with regular and relevant information about the progress of the *authorised scheme*, the *manager* must prepare and send to unitholders a report half-yearly and annually.

4.5.3 Preparation of annual reports

- (i) The *manager* must, for each *annual accounting period* and *half-yearly accounting period*, prepare a report for an *authorised scheme*.
- (ii) Where the first *annual accounting period* of an *authorised scheme* is less than 12 *months*, a half-yearly report need not be prepared.
- (iii) The first *annual accounting period* of an *authorised scheme* must begin:
 - (a) on the first *day* of any period of *initial offer*; or
 - (b) in any other case, on the date of the relevant *declaration of authorisation*.

4.5.4 Contents of the annual report

- (i) An annual report on an *authorised scheme*, other than an *authorised scheme* which is an *umbrella fund*, must contain:
 - (a) the full accounts for the *annual accounting period*, which must be prepared in accordance with generally accepted accounting principles and IMA SORP or a similar recommended practice;
 - (b) the report of the *manager* in accordance with rule 4.5.7 (Manager's report);
 - (c) the comparative table in accordance with rule 4.5.8 (Comparative table);
 - (d) the report of the *trustee* in accordance with rule 4.5.9 (Report of the trustee); and
 - (e) the report of the *auditor* in accordance with rule 4.5.10 (Report of the auditor).

- (ii) An annual report on an *authorised scheme* which is an *umbrella fund* must be prepared for the *umbrella fund* as a whole and must contain:
 - (a) for each *sub-fund*:
 - (I) the full accounts for the *annual accounting period*, which must be prepared in accordance with generally accepted accounting principles and *IMA SORP* or a similar recommended practice;
 - (II) the report of the *manager* in accordance with rule 4.5.7 (Manager's report); and
 - (III) the comparative table in accordance with rule 4.5.8 (Comparative table);
 - (b) the aggregation of the accounts required by paragraph (a)(I) for each *sub-fund*;
 - (c) the report of the *trustee* in accordance with rule 4.5.9 (Report of the trustee); and
 - (d) the report of the *auditor* in accordance with rule 4.5.10 (Report of the auditor).
- (iii) The *directors* of a *company scheme* or the *manager* of a *unit trust scheme* must ensure that the accounts referred to in paragraphs (i)(a) and (ii)(a) give a true and fair view of the net income and the net gains and the losses on the *scheme property* of the *authorised scheme*, or, in the case of paragraph (ii)(a), the *sub-fund*, for the *annual accounting period* in question and the financial position of the *scheme* or *sub-fund* as at the end of that period.
- (iv) The *manager* of an *authorised scheme* which is an *umbrella fund* may, in addition to complying with paragraph (ii), prepare a further annual report for any one or more individual *sub-funds* of the *authorised scheme*, in which case it must contain:
 - (a) in relation to the *sub-fund*:
 - (I) the full accounts for the *annual accounting period*, which must be prepared in accordance with generally accepted accounting principles and *IMA SORP* or a similar recommended practice;
 - (II) the report of the *manager* in accordance with rule 4.5.7 (Manager's report); and
 - (III) the comparative table in accordance with rule 4.5.8 (Comparative table),
 - (b) the report of the *trustee* in accordance with rule 4.5.9 (Report of the trustee); and
 - (c) the report of the *auditor* in accordance with rule 4.5.10 (Report of the auditor).

4.5.5 Contents of the half-yearly report

- (i) A half-yearly report on an *authorised scheme*, other than for an *authorised scheme* which is an *umbrella fund*, must contain:
 - (a) the full accounts for the *half-yearly accounting period*, which must be prepared in accordance with generally accepted accounting principles and IMA SORP or a similar recommended practice; and
 - (b) the report of the *manager* in accordance with rule 4.5.7 (Manager's report).
- (ii) A half-yearly report on an *authorised scheme* which is an *umbrella fund* must be prepared for the *umbrella fund* as a whole and must contain:
 - (a) for each *sub-fund*:
 - (I) the full accounts for the *half-yearly accounting period*, which must be prepared in accordance with generally accepted accounting principles and IMA SORP or a similar recommended practice; and
 - (II) the report of the *manager* in accordance with rule 4.5.7 (Manager's report); and
 - (b) the aggregation of the accounts in paragraph (a)(I) for each *sub-fund*.
- (iii) The *manager* of an *authorised scheme* which is an *umbrella fund* may, in addition to complying with paragraph (ii), prepare a further half-yearly long report for any one or more individual *sub-funds* of the *authorised scheme*. Such reports must contain the full accounts and the report of the *manager* that would be required by paragraph (i) if the *sub-fund* were a separate *authorised scheme*.

4.5.6 Annual and half-yearly reports for sub-funds of an umbrella fund

The *manager* may, but need not, prepare annual and half-yearly reports for any individual *sub-fund* of an *umbrella fund* in accordance with rules 4.5.4 (Contents of the annual report), 4.5.5 (Contents of the half-yearly report) and 4.5.8 (Comparative table) and make them available on request to any *unitholder* investing in the relevant *sub-fund*. However, if the *manager* does so, this does not relieve it of its duty:

- (i) to prepare annual and half-yearly reports on the *umbrella fund* as a whole (rules 4.5.4 (Contents of the annual report) and 4.5.5 (Contents of the half-yearly report)); and
- (ii) to make available and publish the annual and half-yearly reports for the *umbrella fund* as a whole (rule 4.5.11 (Publication and availability of annual and half-yearly reports)).

4.5.7 Manager's report

The matters set out in paragraphs (i) to (xiii) must be included in any *manager's* report, except where otherwise indicated:

- (i) the names and addresses of:
 - (a) the *manager*;
 - (b) the *trustee*;
 - (c) the *registrar*;
 - (d) any *investment adviser*;
 - (e) the *auditor*; and
 - (f) for an *authorised scheme* which invests in immovables, the *standing independent valuer*;
- (ii) (for a *company scheme*) the names of the *directors*;
- (iii) a statement of the authorised status of the *authorised scheme*;
- (iv) (for a *company scheme*) a statement that the *unitholders* of the *company scheme* are not liable for the debts of the *company scheme*;
- (v) the investment objectives of the *authorised scheme*;
- (vi) the policy for achieving those objectives;
- (vii) a review of the investment activities during the period to which the report relates;
- (viii) particulars of any fundamental changes in accordance with rule 4.3.4 (Fundamental change requiring prior approval by meeting) made since the date of the last report;
- (ix) particulars of any significant changes which have occurred in accordance with rule 4.3.6 (Significant change requiring pre-event notification) since the date of the last report;
- (x) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised scheme* during that period and the results of those activities as at the end of that period;
- (xi) for a report on an *umbrella fund* prepared in accordance with rule 4.5.4(ii) (Contents of the annual report) or rule 4.5.5(ii) (Contents of the half-yearly report):
 - (a) (for a *company scheme*), a statement to the effect that, as a *sub-fund* is not a legal entity, if the assets attributable to any *sub-fund* were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other *sub-funds* of the *company scheme*; and
 - (b) information required by paragraphs (i) to (x) must be given for each *sub-fund* if it would vary from that given in respect of the *umbrella fund* as a whole;
- (xii) for an *authorised scheme* which invests a substantial proportion of its assets in other *schemes*, a statement as to the maximum proportion of

management fees charged to the *authorised scheme* itself and to other *schemes* in which that *scheme* invests; and

- (xiii) for a report on an individual *sub-fund* of an *authorised scheme* which is an *umbrella fund* prepared in accordance with rule 4.5.4 (Contents of the annual report) or rule 4.5.5 (Contents of the half-yearly report):
 - (a) (for a *company scheme*, other than a *company scheme* which is a protected cell company or an incorporated cell company) a statement making it clear that if the liability relates to another *sub-fund* of the *umbrella fund*, the shortfall or any part of it might have to be met out of the assets of the *sub-fund* to which the report relates; and
 - (b) a statement that the latest long report prepared for the *umbrella fund* as a whole is available on request.

4.5.8 Comparative table

The comparative table required by rule 4.5.4(i)(c) (Contents of the annual report) must set out:

- (i) a performance record over the last five calendar years or, if the *authorised scheme* has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
 - (a) the highest and the lowest price of a *unit* of each *class* in issue during each of those years; and
 - (b) the net income distributed (or, for accumulation units, allocated) for a *unit* of each *class* in issue during each of those years, taking account of any sub-division or consolidation of *units* that occurred during that period;
- (ii) as at the end of each of the last three annual accounting periods (or all of the *authorised scheme's annual accounting periods*, if less than three):
 - (a) the total net asset value of the *scheme property* at the end of each of those years;
 - (b) the net asset value per *unit* of each *class*; and
 - (c)
 - (I) (for a report of the *directors* of a *company scheme*) the number of *units* of each *class* in issue; or
 - (II) (for a report of the *manager* of a *unit trust scheme*) the number of *units* of each *class* in existence or treated as in existence; and
- (iii) if, in the period covered by the table:
 - (a) the *authorised scheme* has been the subject of any event (such as a *scheme of arrangement*) having a material effect on the size of the *authorised scheme*, but excluding any issue or cancellation of *units* for cash; or

- (b) there have been changes in the investment objectives of the *authorised scheme*,

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

4.5.9 Report of the trustee

- (i) The *trustee* must make an annual report to *unitholders* which must be included in the annual report.
- (ii) The annual report must contain:
 - (a) a description, which may be in summary form, of the duties of the *trustee* under rule 6.6.4 (General duties of the trustee) and in respect of the safekeeping of the *scheme property*; and
 - (b) a statement whether, in any material respect:
 - (I) the *issue, sale, redemption and cancellation*, and calculation of the price of the *units* and the application of the *authorised scheme's* income have not been carried out in accordance with these *rules* and the principal documents; and
 - (II) the investment and borrowing powers and restrictions applicable to the *authorised scheme* have been exceeded.

4.5.10 Report of the auditor

The *manager* must ensure that the report of the *auditor* to the *unitholders* must include a statement:

- (i) whether, in the *auditor's* opinion, the accounts have been properly prepared in accordance with generally accepted accounting principles and IMA SORP or a similar recommended practice, these *rules* and the principal documents;
- (ii) whether, in the *auditor's* opinion, the accounts give a true and fair view of the net income and the net gains or losses of the *scheme property* of the *authorised scheme* (or, as the case may be, the *scheme property* attributable to the *sub-fund*) for the *annual accounting period* in question and the financial position of the *authorised scheme* or *sub-fund* as at the end of that period;
- (iii) whether the *auditor* is of the opinion that proper accounting records for the *scheme* (or, as the case may be, *sub-fund*) have not been kept or whether the accounts are not in agreement with those records;
- (iv) whether the *auditor* has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and
- (v) whether the *auditor* is of the opinion that the information given in the report of the *directors* or in the report of the *manager* for that period is consistent with the accounts.

4.5.11 Publication and availability of annual and half-yearly reports

- (i) The *manager* must, within four *months* after the end of each *annual accounting period* and two *months* after the end of each *half-yearly accounting period*, respectively, make available and publish the reports prepared in accordance with rules 4.5.4(i) to (iii) (Contents of the annual report) and rules 4.5.5(i) to (ii) (Contents of the half-yearly report).
- (ii) The reports referred to in paragraph (i) must:
 - (a) be sent to all *unitholders*;
 - (b) be supplied free of charge to any *person* on request;
 - (c) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified; and
 - (d) be sent to the *Commission*.

Part 5 - Investment and Borrowing Powers

5.1 Introduction

5.1.1 Application

- (i) This Part 5 applies to the *manager* and the *trustee* of an *authorised scheme* and to a *company scheme*.
- (ii) This Part 5 helps in achieving the objective of protecting investors by laying down minimum standards for the investments that may be held by an *authorised scheme*. In particular:
 - (a) the proportion of *transferable securities* and *derivatives* that may be held by an *authorised scheme* is restricted if those *transferable securities* and *derivatives* are not listed on an eligible market; the intention of this is to restrict investment in *transferable securities* or *derivatives* that cannot be accurately valued and readily disposed of; and
 - (b) *authorised schemes* are required to comply with a number of investment rules that require the spreading of risk.

5.1.2 Treatment of obligations

- (i) Where a rule in this chapter allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this chapter, it must be assumed that the maximum possible liability of the *authorised scheme* under any other of those *rules* has also to be provided for.
- (ii) Where a rule in this chapter permits a transaction to be entered into or an investment to be retained only if that transaction or the retention or other similar transactions are covered:
 - (a) it must be assumed that, in applying any of those *rules*, the *authorised scheme* must also simultaneously satisfy any other obligation relating to cover; and
 - (b) no element of cover must be used more than once.

5.1.3 Guidance: Indicative overview of investment and borrowing powers

This table gives an overview of the permissible investments and maximum investment limits for *authorised schemes*. Note that *authorised schemes* which invest in immovables and gold will not be UCITS III compliant.

Authorised scheme investments and investment techniques	Limits	
	Permissible investment	Maximum limit
<i>Approved securities</i>	Yes	None
<i>Transferable securities</i> that are not <i>approved securities</i>	Yes	10%
<i>Government and public securities</i>	Yes	None
Section 270 Designated Funds and UCITS III compliant Funds	Yes	None
Non-UCITS III Open-Ended Collective Investment Schemes	No	N/A
<i>Warrants</i>	Yes	None
<i>Closed-Ended Investment Vehicles</i>	Yes	None
<i>Deposits</i>	Yes	None
<i>Derivatives</i>	Yes	None
Immovables (i.e. real property)	No	N/A
Gold	No	N/A
Hedging	Yes	None
<i>Stock lending</i>	Yes	None
Underwriting	Yes	None
Borrowing	Yes	10% (T)
Cash and <i>near cash</i>	Yes	None
Note:	Meaning of terms used:	
A percentage	an upper limit (though there may be limits of other kinds)	
“(T)”	temporary only - see <i>rule 5.5.4(iv)</i> (General power to borrow)	
“N/A”	Not applicable	

5.2 General investment powers and limits

5.2.1 Application

This section applies to a *company scheme*, a *manager of a unit trust scheme* and a *trustee*.

5.2.2 Table of application

- (i) This table belongs to rule 5.2.1 (Application).

Rule	Company Scheme	Manager	Trustee
5.2.3 to 5.2.9		x	
5.2.10(i)		x	
5.2.10(ii)(a) and (b)		x	
5.2.10(ii)(c)			x
5.2.10(iii)		x	
5.2.11 to 5.2.21		x	
5.2.22	x	x	
5.2.23(i)	x	x	
5.2.23(ii)	x	x	x
5.2.23(iii)	x	x	x
5.2.23(iv)	x	x	x
5.2.24		x	
5.2.25		x	x
5.2.26		x	
5.2.27	x		
5.2.28		x	
5.2.29 to 5.2.33	x	x	

- (ii) In addition to the parts of *CESR's UCITS eligible assets guidelines* specifically referred to in this section, the *manager* of an *authorised scheme* should have regard to the other parts of those guidelines when applying the *rules* in this section.

5.2.3 Prudent spread of risk

- (i) A *manager* must ensure that, taking account of the investment objectives and policy of the *authorised scheme* as stated in the most recently published *prospectus*, the *scheme property* of the *authorised scheme* aims to provide a prudent spread of risk.
- (ii) The *rules* in this section relating to spread of investments do not apply until the expiry of a period of six *months* after the date on which the *declaration of authorisation*, in respect of the *authorised scheme*, takes effect or on which the *initial offer* commenced, if later, provided that paragraph (i) is complied with during such period.

5.2.4 Investment powers: general

The *scheme property* of each *authorised scheme* must be invested only in accordance with the relevant provisions in rules 5.2 (General investment powers and limits) to 5.6 (Optional additional investment powers and borrowing limits for

authorised schemes) that are applicable to that *authorised scheme* and up to any maximum limit so stated, but the *principal documents* may further restrict:

- (i) the kind of property in which the *scheme property* may be invested;
- (ii) the proportion of the *capital property* of the *authorised scheme* to be invested in assets of any description;
- (iii) the descriptions of transactions permitted; and
- (iv) the borrowing powers of the *authorised scheme*.

5.2.5 Valuation

- (i) In this chapter, the value of the *scheme property* means the net value determined in accordance with rule 6.3 (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.
- (ii) When valuing the *scheme property* for the purposes of this chapter:
 - (a) the time as at which the valuation is being carried out (the “**relevant time**”) is treated as if it were a *valuation point*, but the valuation and the relevant time do not count as a valuation or a *valuation point* for the purposes of rule 6.3 (Valuation and pricing);
 - (b) *initial outlay* is to be regarded as remaining part of the *scheme property*;
 - (c) if the *manager*, having taken reasonable care, determines that the *authorised scheme* will become entitled to any unrealised profit which has been made on account of a transaction in *derivatives*, that prospective entitlement is to be regarded as part of the *scheme property*; and
 - (d) when valuing the *scheme property* of a *dual-priced authorised scheme*, the *cancellation* basis of valuation referred to in rule 6.3.2 (Valuation) is to be applied.

5.2.6 Class A schemes: general

- (i) The *scheme property* must, except where otherwise provided in the *rules* in this chapter, consist solely of any or all of:
 - (a) *transferable securities*;
 - (b) *units* in *collective investment schemes*;
 - (c) *approved money-market instruments*;
 - (d) *derivatives* and forward transactions permitted;
 - (e) *deposits*; and
 - (f) (for a *company scheme*) movable and immovable property that is necessary for the direct pursuit of the *company scheme*’s business;

in accordance with the *rules* in this chapter.

5.2.6A Guidance: Valuation

It should be noted that for the purpose of rule 5.2.5 (Valuation), rule 6.3 (Valuation and pricing) may be affected by specific provisions in this chapter such as, for example, rule 5.4.6 (Treatment of collateral).

5.2.7 Transferable securities

- (i) A *transferable security* is an *investment* which is any of the following:
 - (a) a *share*;
 - (b) a *debenture*;
 - (c) a *government and public security*;
 - (d) a *warrant*, or
 - (e) a *certificate representing certain securities*.
- (ii) An *investment* is not a *transferable security* if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- (iii) In applying paragraph (ii) to an *investment* which is issued by a *body corporate*, and which is a *share* or a *debenture*, the need for any consent on the part of the *body corporate* or any members or *debenture* holders of it may be ignored.
- (iv) An *investment* is not a *transferable security* unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the *investment*.

5.2.7A Investment in transferable securities

- (i) an *authorised scheme* may invest in a *transferable security* only to the extent that the *transferable security* fulfils the following criteria:
 - (a) the potential loss which the *authorised scheme* may incur with respect to holding the *transferable security* is limited to the amount paid for it;
 - (b) its liquidity does not compromise the ability of the *manager* to comply with its obligation to *redeem units* at the request of any qualifying unitholder (see rule 6.2.16(iii));
 - (c) reliable valuation is available for it as follows:
 - (I) in the case of a *transferable security* admitted to or *dealt* in on an *eligible* market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
 - (II) in the case of a *transferable security* not admitted to or *dealt* in on an *eligible* market, where there is a valuation on a periodic basis which is derived from information from the issuer of the *transferable security* or from competent investment research;
 - (d) appropriate information is available for it as follows:

- (I) in the case of a *transferable security* admitted to or *dealt* in on an *eligible* market, where there is regular, accurate and comprehensive information available to the market on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
- (II) in the case of a *transferable security* not admitted to or *dealt* in on an *eligible* market, where there is regular and accurate information available to the *manager* on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
- (e) it is negotiable; and
- (f) its risks are adequately captured by the risk management process of the *manager*.
- (ii) Unless there is information available to the *manager* that would lead to a different determination, a *transferable security* which is admitted to or *dealt* in on an *eligible* market shall be presumed:
 - (a) not to compromise the ability of the *manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*; and
 - (b) to be negotiable.

5.2.7B Where the *manager* considers that the liquidity or negotiability of a *transferable security* might compromise the ability of the *manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*, it should assess the liquidity risk in accordance with *CESR's UCITS eligible assets guidelines* with respect to article 2(1) of the *UCITS eligible assets Directive*.

5.2.7C Closed ended funds constituting transferable securities

A unit in a closed-ended fund shall be taken to be a *transferable security* for the purposes of investment by an *authorised scheme*, provided it fulfils the criteria for *transferable securities* set out in rule 5.2.7A, and either:

- (i) where the closed-ended fund is constituted as a company or a unit trust:
 - (a) it is subject to corporate governance mechanisms applied to companies; and
 - (b) where another *person* carries out asset management activity on its behalf, that *person* is subject to national regulation for the purpose of investor protection; or
- (ii) where the closed-ended fund is constituted under the law of contract:
 - (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
 - (b) it is managed by a *person* who is subject to national regulation for the purpose of investor protection.

- 5.2.7D** (i) A *manager* should not invest the *scheme property* of an *authorised scheme* in units of a closed-ended fund for the purpose of circumventing the investment limits set down in this section.
- (ii) When required to assess whether the corporate governance mechanisms of a closed-ended fund in contractual form are equivalent to those applied to companies, the *manager* should consider whether the contract on which the closed-ended fund is based provides its investors with rights to:
- (a) vote on the essential decisions of the closed-ended fund (including appointment and removal of asset management company, amendment to the contract which set up the closed-ended fund, modification of investment policy, merger, liquidation); and
- (b) control the investment policy of the closed-ended fund through appropriate mechanisms.
- (iii) The assets of the closed-ended fund in contractual form should be separate and distinct from those of the asset manager and the closed-ended fund should be subject to liquidation rules that adequately protect its investors.

5.2.7E Transferable securities linked to other assets

- (i) An *authorised scheme* may invest in any other *investment* which shall be taken to be a *transferable security* for the purposes of investment by a scheme provided the *investment*:
- (a) fulfils the criteria for *transferable securities* set out in rule 5.2.7A; and
- (b) is backed by or linked to the performance of other assets, which may differ from those in which an *authorised scheme* can invest.
- (ii) Where an *investment* in (i) contains an embedded derivative component (see rule 5.2.18(iv)(a)), the requirements of this section with respect to *derivatives* and forwards will apply to that component.

5.2.7F Approved money-market instruments

An *approved money-market instrument* is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

5.2.7G A money-market instrument shall be regarded as normally dealt in on the money market if it:

- (i) has a maturity at issuance of up to and including 397 days;
- (ii) has a residual maturity of up to and including 397 days;
- (iii) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or
- (iv) has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in (i) or (ii) or is subject to yield adjustments as set out in (iii).

5.2.7H (i) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the

obligation of the *manager* to *redeem units* at the request of any qualifying *unitholder* (see rule 6.2.16(iii)).

- (ii) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:
 - (a) enabling the *manager* to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
 - (b) based either on market data or on valuation models including systems based on amortised costs.
- (iii) A money-market instrument that is normally dealt in on the money market and is admitted to or *dealt* in on an *eligible* market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the *manager* that would lead to a different determination.

5.2.71 Guidance on assessing liquidity and quality of money-market instruments

- (i) The *manager* should assess the liquidity of a money-market instrument in accordance with *CESR's UCITS eligible assets guidelines* with respect to article 4(1) of the *UCITS eligible assets Directive*.
- (ii) Where an *approved money-market instrument* forms part of the *scheme property* of a *qualifying money market fund*, the *manager* should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.

5.2.8 Transferable securities and money market instruments generally to be admitted to or dealt in on an eligible market

- (i) *Transferable securities* and *approved money market instruments* held within an *authorised scheme* must be:
 - (a) admitted to or *dealt* in on an *eligible* market within rule 5.2.10(i)(a) (Eligible markets: requirements);
 - (b) *dealt* in on an *eligible* market within rule 5.2.10(i)(b) (Eligible markets: requirements);
 - (c) admitted to or *dealt* in on an *eligible* market within rule 5.2.10(ii) (Eligible markets: requirements);
 - (d) for an *approved money-market instrument* not admitted to or *dealt* in or on an *eligible market*, within rule 5.2.10A(i); or
 - (e) recently issued *transferable securities*, provided that:
 - (I) the terms of issue include an undertaking that applicable will be made to be admitted to an *eligible* market; and
 - (II) such admission is secured within a year of issue.

- (ii) However, an *authorised scheme* may invest no more than 10% of the *scheme property* in *transferable securities* and *approved money-market instruments* other than those referred to in 5.2.8(i) above.

5.2.9 Guidance: Eligible markets regime: purpose

- (i) This section specifies criteria, based on those in Article 19 of the UCITS Directive, as to the nature of the markets in which the property of an *authorised scheme* may be invested.
- (ii) Where a market ceases to be *eligible*, *investments* on that market cease to be *approved securities*. The 10% restriction in rule 5.2.8(iv) (Class A schemes: general) applies, and exceeding this limit because a market ceases to be *eligible* will generally be regarded as a breach beyond the control of the *manager*.

5.2.10 Eligible markets: requirements

- (i) A market is *eligible* for the purposes of these *rules* if it is:
 - (a) a *regulated market*;
 - (b) a market in an *EEA State* which is regulated, operates regularly and is open to the public; or
 - (c) any market within paragraph (ii).
- (ii) A market not falling within paragraphs (i)(a) and (b) is *eligible* for the purposes of these *rules* if:
 - (a) the *manager*, after consultation with and notification to the *trustee* (and, in the case of a *company scheme*, any *directors*), decides that market is appropriate for investment of, or *dealing* in, the *scheme property*;
 - (b) the market is included in a list in the *prospectus*; and
 - (c) the *trustee* has taken reasonable care to determine that:
 - (I) adequate custody arrangements can be provided for the *investment* dealt in on that market; and
 - (II) all reasonable steps have been taken by the *manager* in deciding whether that market is *eligible*.
- (iii) In paragraph (ii)(a), a market must not be considered appropriate unless it:
 - (a) is regulated;
 - (b) operates regularly;
 - (c) is recognised as a market or exchange or as a self-regulating organisation by an *overseas regulator*;
 - (d) is open to the public;
 - (e) is adequately liquid; and

- (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

5.2.10A Money-market instruments with a regulated issuer

- (i) (In addition to instruments admitted to or *dealt* in on an *eligible* market) an *authorised scheme* may invest in an *approved money-market instrument* provided it fulfils the following requirements:
 - (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
 - (b) the instrument is issued or guaranteed in accordance with rule 5.2.10B.
- (ii) The issue or the issuer of a money-market instrument, other than one dealt in on an *eligible* market, shall be regarded as regulated for the purpose of protecting investors and savings if:
 - (a) the instrument is an *approved money-market instrument*;
 - (b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with rule 5.2.10C; and
 - (c) the instrument is freely transferable.

5.2.10B Issuers and guarantors of money-market instruments

- (i) An *authorised scheme* may invest in an *approved money-market instrument* if it is:
 - (a) issued or guaranteed by any one of the following:
 - (I) a central authority of an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation;
 - (II) a regional or local authority of an *EEA State*;
 - (III) the European Central Bank or a central bank of an *EEA State*;
 - (IV) the European Union or the European Investment Bank;
 - (V) a non-*EEA State* or, in the case of a federal state, one of the members making up the federation;
 - (VI) a public international body to which one or more *EEA States* belong; or
 - (b) issued by a body, any *securities* of which are dealt in on an *eligible* market; or
 - (c) issued or guaranteed by an establishment which is:
 - (I) subject to prudential supervision in accordance with criteria defined by Community law; or

- (II) subject to and complies with prudential rules considered by the Commission to be at least as stringent as those laid down by Community law.
- (ii) An establishment shall be considered to satisfy the requirement in (i)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:
 - (a) it is located in the *European Economic Area*;
 - (b) it is located in an *OECD* country belonging to the Group of Ten;
 - (c) it has at least investment grade rating;
 - (d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

5.2.10C Appropriate information for money-market instruments

- (i) In the case of an *approved money-market instrument* within rule 5.2.10B(i)(b) or issued by a body of the type referred to in rule 5.2.10E; or which is issued by an authority within rule 5.2.10B(i)(a)(ii) or a public international body within rule 5.2.10B(i)(a)(vi) but is not guaranteed by a central authority within rule 5.2.10B(i)(a)(i), the following information must be available:
 - (a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;
 - (b) updates of that information on a regular basis and whenever a significant event occurs; and
 - (c) available and reliable statistics on the issue or the issuance programme.
- (ii) In the case of an *approved money-market instrument* issued or guaranteed by an establishment within rule 5.2.10B(i)(c), the following information must be available:
 - (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;
 - (b) updates of that information on a regular basis and whenever a significant event occurs; and
 - (c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.
- (iii) In the case of an *approved money-market instrument*:
 - (a) within rule 5.2.10B(i)(a)(i), (iv) or (v); or

- (b) which is issued by an authority within rule 5.2.10B(i)(a)(ii) or a public international body within rule 5.2.10B(i)(a)(vi) and is guaranteed by a central authority within rule 5.2.10B(i)(a)(i);

information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

- 5.2.10D (i) The appropriately qualified third parties referred to in rule 5.2.10C(i)(a) should specialise in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.
- (ii) The regular updates of information referred to in rule 5.2.10C(i)(b) and (ii)(b) should normally occur on at least an annual basis.

5.2.10E Other money-market instruments with a regulated issuer

- (i) In addition to instruments admitted to or *dealt* in on an *eligible* market, an *authorised scheme* may also with the express consent of the Commission invest in an *approved money-market instrument* provided:
 - (a) the issuer is itself regulated for the purpose of protecting investors and savings in accordance with rule 5.2.10A(ii);
 - (b) investment in that instrument is subject to investor protection equivalent to that provided by instruments which satisfy the requirements of rule 5.2.10B(i)(a), (b) or (c); and
 - (c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.
- (ii) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
- (iii) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by Community law or an establishment which is subject to and complies with prudential rules considered by the Commission (in accordance with rule 5.2.10B(ii)) to be at least as stringent as those laid down by Community law.

5.2.11 Spread: general

- (i) This *rule* does not apply to *government and public securities*.
- (ii) For the purposes of this *rule* companies included in the same group, in accordance with international accounting standards, are regarded as a single body.
- (iii) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.

- (iv) Not more than 5% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body.
- (v) The limit of 5% in paragraph (iv) is raised to 10% in respect of up to 40% in value of the *scheme property*. *Covered bonds* need not be taken into account for the purpose of applying the limit of 40%.
- (vi) The limit of 5% in (iv) is raised to 25% in value of the *scheme property* in respect of *covered bonds*, provided that when an *authorised scheme* invests more than 5% in *covered bonds* issued by a single body, the total value of *covered bonds* held must not exceed 80% in value of the *scheme property*.
- (vii) In applying paragraphs (iv) and (v), *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (viii) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 5% in value of the *scheme property*; this limit being raised to 10% where the counterparty is an *approved bank*.
- (ix) Not more than 20% in value of the *scheme property* is to consist of *transferable securities* and *approved money-market instruments* issued by the same group (as referred to in paragraph (ii)).
- (x) Not more than 20% in value of the *scheme* is to consist of the *units* of any one *collective investment scheme*.
- (xi) In applying the limits in paragraphs (iii), (iv), (v), (vii) and (viii), and subject to (vi), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
 - (a) *transferable securities* (including *covered bonds*) or *approved money-market instruments* issued by; or
 - (b) *deposits* made with; or
 - (c) exposures from *OTC derivatives* transactions made with,
 - a single body.
- (xii) For the purpose of calculating the limits in paragraphs (viii) and (xi), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in paragraph (xiii).
- (xiii) The conditions referred to in paragraph (xii) are that the collateral:
 - (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
 - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
 - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and

- (d) can be fully enforced by the *scheme* at any time.
- (xiv) For the purpose of calculating the limits in paragraphs (viii) and (xi), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
 - (a) comply with the conditions set out in Part 7 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the *Banking Consolidation Directive*; and
 - (b) are based on legally binding agreements.
- (xv) In applying this rule, all *derivatives* transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
 - (a) it is backed by an appropriate performance guarantee; and
 - (b) it is characterised by a daily marked-to-market valuation of the *derivative* positions and an at least daily margining.

5.2.12 Guidance: Spread: general

Rules 5.2.11(x) to (xv) (Spread: general) reflect the provisions of Article 5 of the European Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (in this section referred to as the “European Commission Recommendation on the use of financial derivative instruments”).

The attention of *managers* is specifically drawn to paragraph (d) in rule 5.2.11(xiii) (Spread: general) under which the collateral has to be legally enforceable at any time. It is advisable for a *manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. *Trustees* will also need to exercise reasonable care to review the collateral arrangements in accordance with their duties under rule 6.6.4 (General duties of the trustee).

In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *trustee* holds should be included in calculating the total sum of the *deposits* held by it and other companies in its group on behalf of the *authorised scheme*.

5.2.13 Spread: government and public securities

- (i) This *rule* applies to *government and public securities* (“**such securities**”).
- (ii) Where no more than 35% in value of the *scheme property* is invested in such *securities* issued by any one body, there is no limit on the amount which may be invested in such *securities* or in any one issue.
- (iii) An *authorised scheme* may invest more than 35% in value of the *scheme property* in such *securities* issued by any one body provided that:
 - (a) the *manager* has before any such investment is made consulted the *trustee* and as a result considers that the issuer of such *securities* is

- one which is appropriate in accordance with the investment objectives of the *scheme*;
- (b) no more than 30% in value of the *scheme property* consists of such *securities* of any one issue;
 - (c) the *scheme property* includes such *securities* issued by that or another issuer of at least six different issues; and
 - (d) the disclosures in paragraph (iv) have been made.
- (iv) Where it is intended that paragraph (iii) may apply, the *principal documents*, and the most recently published *prospectus*, must prominently state:
- (a) the fact that more than 35% of the *scheme property* is or may be invested in such *securities* issued by one issuer; and
 - (b) the names of the individual states, the local authorities or public international bodies issuing such *securities* in which the *authorised scheme* may invest over 35% of its assets.
- (v) In this *rule*, in relation to such *securities*:
- (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
 - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.
- (vi) Notwithstanding rule 5.2.11(i) and subject to (ii) and (iii), in applying the 20% limit in rule 5.2.11(xi) with respect to a single body, *government and public securities* issued by that body shall be taken into account.

5.2.14 Investment in collective investment schemes

An *authorised scheme* must not invest in *units* in a *collective investment scheme* (“**second scheme**”) unless the second scheme satisfies all of the following conditions, and provided that no more than 30% of the value of the *authorised scheme* is invested in second schemes within paragraphs (i)(b) to (d):

- (i) the second scheme must:
 - (a) satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
 - (b) be recognised under the provisions of section 270 of FSMA (Schemes authorised in designated countries or territories); or
 - (c) be authorised as a *non-UCITS retail scheme* (provided the requirements of Article 19(1)(e) of the *UCITS Directive* are met); or
 - (d) be authorised in another *EEA State* (provided the requirements of Article 19(1)(e) of the *UCITS Directive* are met);
- (ii) the second scheme must comply, where relevant, with rule 5.2.15 (Investment in associated collective investment schemes) and rule 5.2.16 (Investment in other group schemes);

- (iii) the second scheme must have terms which prohibit more than 10% in value of the *scheme property* consisting of *units* in *collective investment schemes*; and
- (iv) where the second scheme is an *umbrella fund*, the provisions in paragraphs (ii) and (iii) and rule 5.2.11 (Spread: general) apply to each *sub-fund* as if it were a separate scheme.

5.2.15 Investment in associated collective investment schemes

An *authorised scheme* must not invest in or dispose of *units* in another *collective investment scheme* (the second scheme) if the second scheme is managed or operated by (or, for a *company scheme*, whose *manager* is) the *manager* of the investing *authorised scheme* or an *associate* of that *manager*, unless:

- (i) the *prospectus* of the investing *authorised scheme* clearly states that the property of that investing *authorised scheme* may include such *units*; and
- (ii) rule 5.2.16 (Investment in other group schemes) is complied with.

5.2.16 Investment in other group schemes

- (i) Where:
 - (a) an investment or disposal is made under rule 5.2.15 (Investment in associated collective investment schemes); and
 - (b) there is a charge in respect of such investment or disposal,

the *manager* of the *authorised scheme* making the investment or disposal must pay the second scheme the amounts referred to in paragraph (ii) or (iii) within four *business days* following the date of the agreement to invest or dispose.
- (ii) When an investment is made, the amount referred to in paragraph (i)(a) is either:
 - (a) any amount by which the consideration paid by the *authorised scheme* for the *units* in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the *units* been newly issued or sold by it; or
 - (b) if such price cannot be ascertained by the *manager* of the *authorised scheme*, the maximum amount of any charge permitted to be made by the seller of *units* in the second scheme.
- (iii) When a disposal is made, the amount referred to in paragraph (i)(a) is any charge made for the account of the *manager* or *operator* of the second scheme or an *associate* of any of them in respect of the disposal.
- (iv) In this *rule*:
 - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second scheme, which is applied for the benefit of the second scheme and is, or is like, a *dilution levy* made in accordance with rule 6.3.8 (Dilution) is to be

treated as part of the *price* of the *units* and not as part of any charge;
and

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

5.2.17 Investment in nil- and partly-paid securities

- (i) A *transferable security* or an *approved money-market instrument* on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the *authorised scheme*, at the time when payment is required, without contravening the *rules* in this chapter.

5.2.18 Derivatives: general

- (i) A transaction in *derivatives* or a forward transaction must not be effected for an *authorised scheme* unless:
 - (a) the transaction is of a kind specified in rule 5.2.20 (Permitted transactions (derivatives and forwards)); and
 - (b) the transaction is covered, as required by rule 5.3.3 (Cover for transactions in derivatives and forward transactions).
- (ii) Where an *authorised scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in rule 5.2.11 (Spread: general) and rule 5.2.13 (Spread: government and public securities) save as provided in paragraph (iv).
- (iii) Where a *transferable security* or an *approved money-market instrument* embeds a *derivative*, this must be taken into account for the purposes of complying with this section.
- (iv)
 - (a) A *transferable security* or an *approved money-market instrument* will embed a *derivative* if it contains a component which fulfils the following criteria:
 - (I) by virtue of that component some or all of the cash flows that otherwise would be required by the *transferable security* or *approved money-market instrument* which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone *derivative*;
 - (II) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
 - (III) it has a significant impact on the risk profile and pricing of the *transferable security* or *approved money-market instrument*.

- (b) A *transferable security* or an *approved money-market instrument* does not embed a derivative where it contains a component which is contractually transferable independently of the *transferable security* or the *approved money-market instrument*. That component shall be deemed to be a separate instrument.
- (v) Where an *authorised scheme* invests in an index-based *derivative*, provided the relevant index falls within rule 5.2.33 (Relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of rule 5.2.11 (Spread: general) and rule 5.2.12 (Guidance: Spread: general).
- (vi) The relaxation in paragraph (v) is subject to the *manager* taking account of rule 5.2.3 (Prudent spread of risk).

5.2.19 Guidance on transferable securities and money-market instruments embedding derivatives

- (i) Collateralised debt obligations (CDOs) or asset-backed securities using *derivatives*, with or without an active management, will generally not be considered as embedding a *derivative* except if:
 - (a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors' loss can be higher than their initial investment; or
 - (b) they are not sufficiently diversified.
- (ii) Where a *transferable security* or *approved money-market instrument* embedding a *derivative* is structured as an alternative to an *OTC derivative*, the requirements set out in rule 5.2.23 with respect to transactions in *OTC derivatives* will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a *scheme*, which should be considered as embedding a *derivative*. Such a product offers an alternative to the use of an *OTC derivative*, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.
- (iii) The following list of *transferable securities* and *approved money-market instruments*, which is illustrative and non-exhaustive, could be assumed to embed a *derivative*:
 - (a) credit linked notes;
 - (b) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a bond index;
 - (c) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a basket of shares, with or without active management;
 - (d) *transferable securities* or *approved money-market instruments* with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;

- (e) convertible bonds; and
- (f) exchangeable bonds.
- (iv) Schemes cannot use *transferable securities* or *approved money-market instruments* which embed a *derivative* to circumvent the rules in this section.
- (v) *Transferable securities* and *approved money-market instruments* which embed a *derivative* are subject to the rules applicable to *derivatives* as required by this section. It is the *authorised fund manager's* responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded *derivatives* and on their impact on the *scheme*, taking into account its stated investment objective and risk profile.

5.2.20 Permitted transactions (derivatives and forwards)

- (i) A transaction in a *derivative* must:
 - (a) be in an *approved derivative*; or
 - (b) be one which complies with rule 5.2.23 (OTC transactions in derivatives).
- (ii) The underlying of a transaction in a *derivative* must consist of any one or more of the following to which the *authorised scheme* is *dedicated*:
 - (a) *transferable securities* permitted under rule [5.2.8(iii)(a) to (c) and (e)];
 - (b) *approved money-market instruments* permitted under rule 5.2.8(iii)(a) to (d);
 - (c) *deposits* permitted under rule 5.2.26 (Investment in deposits);
 - (d) *derivatives* permitted under this *rule*;
 - (e) *collective investment scheme* units permitted under rule 5.2.14 (Investment in collective investment schemes);
 - (f) financial indices which satisfy the criteria set out in rule 5.2.20A;
 - (g) interest rates;
 - (h) foreign exchange rates; and
 - (i) currencies.
- (iii) A transaction in an *approved derivative* must be effected on or under the *rules* of an *eligible derivatives* market.
- (iv) A transaction in a *derivative* must not cause an *authorised scheme* to diverge from its investment objectives as stated in the *principal documents* and the most recently published *prospectus*.
- (v) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more

transferable securities, approved money-market instruments, units in collective investment schemes or derivatives provided that a sale is not to be considered as uncovered if the conditions in rule 5.2.22(iii) (Requirement to cover sales) are satisfied.

- (vi) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (vii) A *derivative* includes an instrument which fulfils the following criteria:
 - (a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
 - (b) it does not result in the delivery or the transfer of assets other than those referred to in rule 5.2.6A (authorised schemes: permitted types of scheme property) including cash;
 - (c) in the case of an *OTC derivative*, it complies with the requirements in rule 5.2.23 (OTC transactions in derivatives); and
 - (d) its risks are adequately captured by the risk management process of the *manager*, and by its internal control mechanisms in the case of risks of asymmetry of information between the *manager* and the counterparty to the *derivative*, resulting from potential access of the counterparty to non-public information on *persons* whose assets are used as the underlying by that *derivative*.
- (viii) An *authorised scheme* may not undertake transactions in *derivatives* on *commodities*.

5.2.20A Financial indices underlying derivatives

- (i) The financial indices referred to in rule 5.2.20(ii)(f) are those which satisfy the following criteria:
 - (a) the index is sufficiently diversified;
 - (b) the index represents an adequate benchmark for the market to which it refers; and
 - (c) the index is published in an appropriate manner.
- (ii) A financial index is sufficiently diversified if:
 - (a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
 - (b) where it is composed of assets in which an *authorised scheme* is permitted to invest, its composition is at least diversified in accordance with the requirements with respect to spread and concentration set out in this section; and
 - (c) where it is composed of assets in which an *authorised scheme* cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.

- (iii) A financial index represents an adequate benchmark for the market to which it refers if:
 - (a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;
 - (b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and
 - (c) the underlyings are sufficiently liquid, allowing users to replicate it if necessary.
- (iv) A financial index is published in an appropriate manner if:
 - (a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and
 - (b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.
- (v) Where the composition of underlyings of a transaction in a *derivative* does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to rule 5.2.20(ii), be regarded as a combination of those underlyings.

5.2.20B Guidance on financial indices underlying derivatives

- (i) An index based on *derivatives* on *commodities* or an index on property may be regarded as a financial index of the type referred to in rule 5.2.20(ii)(f) provided it satisfies the criteria for financial indices set out in rule 5.2.20A.
- (ii) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the *authorised scheme* when assessing compliance with the requirements on cover for transactions in *derivatives* and forward transactions set out in rule 5.3.3 and spread set out in rule 5.2.11.
- (iii)
 - (a) In order to avoid undue concentration, where *derivatives* on an index composed of assets in which an *authorised scheme* cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
 - (b) If *derivatives* on that index are used for risk-diversification purposes, provided that the exposure of the *authorised scheme* to that index complies with the 5%, 10% and 40% ratios required by rule 5.2.11(iv)

and (v), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

- (iv) When assessing whether a hedge fund index satisfies the requirements for a financial index set out in this section, *firms* should consider The Committee of European Securities Regulators' guidelines on the classification of hedge fund indices as financial indices (CESR/07-434).

5.2.21 Transactions for the purchase of property

A *derivative* or forward transaction which will or could lead to the delivery of property for the account of the *authorised scheme* may be entered into only if:

- (i) that property can be held for the account of the *authorised scheme*; and
- (ii) the *manager*, having taken reasonable care, determines that delivery of the property under the transaction will not occur or will not lead to a breach of these *rules*.

5.2.22 Requirement to cover sales

- (i) No agreement by or on behalf of an *authorised scheme* to dispose of property or rights may be made unless:
 - (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the *authorised scheme* by delivery of property or the assignment of rights; and
 - (b) the property and rights at paragraph (a) are owned by the *authorised scheme* at the time of the agreement.
- (ii) Paragraph (i) does not apply to a *deposit*.
- (iii) Paragraph (i) does not apply where:
 - (a) the risks of the underlying financial instrument of a *derivative* can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
 - (b) the *manager* or the *trustee* has the right to settle the *derivative* in cash, and cover exists within the *scheme property* which falls within one of the following asset classes:
 - (I) cash;
 - (II) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or
 - (III) other highly liquid assets having regard to their correlation with the underlying of the financial *derivative* instruments, subject to appropriate safeguards (e.g. haircuts where relevant).
- (iv) In the asset classes referred to in paragraph (iii), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven *business days* at a price closely corresponding to the current valuation of the financial instrument on its own market.

5.2.22A Guidance on requirement to cover sales

Rules 5.2.22(iii) to (iv) (Requirement to cover sales) reflect the provisions of Article 7 of the European Commission Recommendation on the use of financial derivative instruments.

5.2.23 OTC transactions in derivatives

A transaction in an *OTC derivative* under rule 5.2.20(i)(b) (Permitted transactions (derivatives and forwards)) must be:

- (i) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:
 - (a) an *eligible institution* or an *approved bank*; or
 - (b) a *person* licensed under the Law;
- (ii) on approved terms; the terms of the transaction in *derivatives* are approved only if, before the transaction is entered into, the *trustee* is satisfied that the counterparty has agreed with the *company scheme* or the *manager*:
 - (a) to provide a reliable and verifiable valuation in respect of that transaction, at least daily and at any other time at the request of the *company scheme* or *manager*, corresponding to its fair value (being the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction) and which does not rely only on market quotations by the counterparty; and
 - (b) that it or an alternative counterparty will, at the request of the *company scheme* or *manager*, enter into a further transaction to *sell*, liquidate or *close out* that transaction at any time, at a fair value arrived at under reliable market value basis or the pricing model agreed under paragraph (iii);
- (iii) capable of reliable valuation; a transaction in *derivatives* is capable of reliable valuation only if the *manager*, having taken reasonable care, determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:
 - (a) on the basis of an up-to-date market value which the *manager* and the *trustee* have agreed is reliable; or
 - (b) if the value referred to in (a) is not available, on the basis of a pricing model which the *manager* and the *trustee* have agreed uses an adequate recognised methodology; and
- (iv) subject to verifiable valuation; a transaction in *derivatives* is subject to verifiable valuation only if, throughout the life of the *derivative* (if the transaction is entered into) verification of the valuation is carried out by:

- (a) an appropriate third party which is independent from the counterparty of the *derivative*, at an adequate frequency and in such a way that the *manager* is able to check it; or
- (b) a department within the *manager* which is independent from the department in charge of managing the *scheme property* and which is adequately equipped for such a purpose.

5.2.24 Risk management

- (i) A *manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of an *authorised scheme's* positions and their contribution to the overall risk profile of the *authorised scheme*.
- (ii) The following details of the risk management process must be notified by the *manager* to the *Commission* in advance of the use of the process as required by paragraph (i):
 - (a) the methods for estimating risks in *derivative* and forward transactions; and
 - (b) the types of *derivatives* and forwards to be used within the *authorised scheme* together with their underlying risks and any relevant quantitative limits.
- (iii) The *manager* must notify the *Commission* in advance of any material alteration to the details in paragraph (ii)(a) or (b).

5.2.25 Risk management process

- (i) The risk management process should take account of the investment objectives and policy of the *authorised scheme* as stated in the most recent *prospectus*.
- (ii) The *trustee* should take reasonable care to review the appropriateness of the risk management process in line with its duties under rule 6.6.4 (General duties of the trustee) and rule 6.6.13(i) (Duties of the trustee and the manager: investment and borrowing powers), as appropriate.
- (iii) A *manager* is expected to demonstrate more sophistication in its risk management process for an *authorised scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- (iv) A *manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- (v) The risk management process should enable the analysis required by rule 5.2.24 (Risk management: derivatives) to be undertaken at least daily or at each *valuation point*, whichever is the more frequent.
- (vi) *Firms* carrying out the risk management process should note the methodologies set out in Article 3 (Appropriately calibrated standards to

measure market risk) of the European Commission Recommendation on the use of financial derivative instruments.

- (vii) In assessing the risk of *OTC derivatives*, *firms* should note the methodologies set out in Article 5.3 (Invitation to use the standards laid down in Directive 2000/12/EC as a first reference) of the European Commission Recommendation on the use of financial *derivative* instruments.
- (viii) A *manager* should undertake the risk assessment with the highest care when the Counterparty to the *derivative* is an *associate* of the *manager* or the credit issuer.

5.2.26 Investment in deposits

An *authorised scheme* may invest in *deposits* only if it:

- (i) is with an *approved bank*;
- (ii) is:
 - (a) repayable on demand; or
 - (b) has the right to be withdrawn; and
- (iii) matures in no more than 12 *months*.

5.2.27 Significant influence for company schemes

- (i) A *company scheme* must not acquire *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that *body corporate* if:
 - (a) immediately before the acquisition, the aggregate of any such *securities* held by the *company scheme* gives the *company scheme* power to influence significantly the conduct of business of that *body corporate*; or
 - (b) the acquisition gives the *company scheme* that power.
- (ii) For the purpose of paragraph (i), a *company scheme* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held by it, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

5.2.28 Significant influence for managers of unit trust schemes

- (i) A *manager* must not acquire, or cause to be acquired for a *unit trust scheme* of which it is the *manager*, *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the *body corporate* if:
 - (a) immediately before the acquisition, the aggregate of any such *securities* held for that *unit trust scheme*, taken together with any such *securities* already held for other *unit trust schemes* of which it is

also the *manager*, gives the *manager* power significantly to influence the conduct of business of that *body corporate*; or

- (b) the acquisition gives the *manager* that power.
- (ii) For the purpose of paragraph (i), a *manager* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held for all the *unit trust schemes* of which it is the *manager*, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

5.2.29 Concentration

An *authorised scheme*:

- (i) must not acquire *transferable securities* (other than *debt securities*) which:
 - (a) do not carry a right to vote on any matter at a general meeting of the *body corporate* that issued them; and
 - (b) represent more than 10% of those *securities* issued by that *body corporate*;
- (ii) must not acquire more than 10% of the *debt securities* issued by any single body;
- (iii) must not acquire more than 25% of the *units* in a *collective investment scheme*;
- (iv) must not acquire more than 10% of the *approved money-market instruments* issued by any single body; and
- (v) need not comply with the limits in paragraphs (ii), (iii) and (iv) if, at the time of acquisition, the net amount in issue of the relevant *investment* cannot be calculated.

5.2.30 Class A schemes that are umbrella funds

- (i) In relation to an *authorised scheme* which is an *umbrella fund*, the provisions in rules 5.2 (General investment powers and limits) to 5.5 (Cash, borrowing, lending and other provisions) apply to each *sub-fund* as they would for an *authorised scheme*, except the following *rules* which apply at the level of the *umbrella fund* only:
 - (a) rule 5.2.27 (Significant influence for company schemes);
 - (b) rule 5.2.28 (Significant influence for managers of unit trust schemes); and
 - (c) rule 5.2.29 (Concentration).
- (ii) A *sub-fund* must not invest in another *sub-fund* of the same *umbrella fund*.

5.2.31 Schemes replicating an index

- (i) Notwithstanding rule 5.2.11 (Spread: general), an *authorised scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the investment policy of that *authorised scheme* as stated in the most recently published *prospectus* is to replicate the composition of a relevant index which satisfies the criteria specified in rule 5.2.33 (Relevant indices).
- (ii) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments permitted for the purpose of *efficient portfolio management*.
- (iii) The limit in paragraph (i) can be raised for a particular *scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

5.2.32 Guidance: Index replication

- (i) Where the 20% limit (see rule 5.2.31(i)) is raised (subject to the maximum of 35% permitted by rule 5.2.31(ii)), the *manager* should provide appropriate information in the *prospectus*, in order to explain the *manager's* assessment of why this increase is justified by exceptional market conditions.
- (ii) In the case of an *authorised scheme* replicating an index under rule 5.2.31 (Schemes replicating an index) the *scheme property* need not consist of the exact composition and weighting of the underlying in the relevant index in cases where the *scheme's* investment objective is to achieve a result consistent with the replication of an index rather than an exact replication.

5.2.33 Relevant indices

- (i) The indices referred to in rule 5.2.31 (Schemes replicating an index) are those which satisfy the following criteria:
 - (a) the composition is sufficiently diversified;
 - (b) the index represents an adequate benchmark for the market to which it refers; and
 - (c) the index is published in an appropriate manner.
- (ii) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.
- (iii) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (iv) An index is published in an appropriate manner if:
 - (a) it is accessible to the public;

- (b) the index provider is independent from the index-replicating *authorised scheme*; this does not preclude index providers and the *authorised scheme* from forming part of the same *group*, provided that effective arrangements for the management of conflicts of interest are in place.

5.3 Derivative exposure

5.3.1 Application

This section applies to a *manager* of an *authorised scheme* and to a *company scheme*.

5.3.2 Guidance: Introduction

- (i) A *scheme* may invest in *derivatives* and forward transactions as long as the exposure to which the *authorised scheme* is committed by that transaction itself is suitably covered from within its *scheme property*. Exposure will include any *initial outlay* in respect of that transaction.
- (ii) Cover ensures that an *authorised scheme* is not exposed to the risk of loss of property, including *money*, to an extent greater than the net value of the *scheme property*. Therefore, an *authorised scheme* is required to hold *scheme property* sufficient in value or amount to match the exposure arising from a *derivative* obligation to which the *authorised scheme* is committed. Rule 5.3.3 (Cover for transactions in derivatives and forward transactions) sets out detailed requirements for cover of an *authorised scheme*.
- (iii) In accordance with rule 5.1.2(ii)(b) (Treatment of obligations), cover used in respect of one transaction in *derivatives* or forward transaction should not be used for cover in respect of another transaction in *derivatives* or a forward transaction.

5.3.3 Cover for transactions in derivatives and forward transactions

- (i) A transaction in *derivatives* or forward transaction may be entered into only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person*, is covered globally under paragraph (ii).
- (ii) Exposure is covered globally if adequate cover from within the *scheme property* is available to meet the *authorised scheme's* total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk and the time available to liquidate any positions.
- (iii) Cash not yet received into the *scheme property* but due to be received within one *month* is available as cover for the purposes of paragraph (ii).
- (iv) Property the subject of a transaction under rule 5.4 (Stock lending) is only available for cover if the *manager* has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

- (v) The global exposure relating to *derivatives* held in an *authorised scheme* may not exceed the net value of the *scheme property*.

5.3.4 Guidance: cover

A *manager* should note that the scope of rule 5.3.3 (Cover for transactions in derivatives and forward transactions) is extended in relation to underwriting commitments by rule 5.5.8(iv) (General power to accept or underwrite placings).

5.3.5 Borrowing

- (i) Cash obtained from borrowing, and borrowing which the *manager* reasonably regards an *eligible institution* or an *approved bank* to be committed to provide, is not available for cover under rule 5.3.3 (Cover for transactions in derivatives and forward transactions), except if paragraph (ii) applies.
- (ii) Where, for the purposes of this section, the *company scheme* or the *trustee* for the account of the *unit trust scheme* on the instructions of the *manager*:
 - (a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and
 - (b) keeps an amount in another currency, at least equal to the borrowing for the time being in paragraph (a), on *deposit* with the lender (or his agent or nominee),

then this section applies as if the borrowed currency, and not the deposited currency, were part of the *scheme property*.

5.3.6 Continuing nature of limits and requirements

- (i) A *manager* must (as frequently as necessary) recalculate the amount of cover required in respect of *derivatives* and forward positions already in existence under this section.
- (ii) *Derivatives* and rights under forward transactions may be retained in the *scheme property* only so long as they remain covered globally under rule 5.3.3 (Cover for transactions in derivatives and forward transactions).

5.4 Stock lending

5.4.1 Application

- (i) This section applies to a *trustee* of an *authorised scheme*.
- (ii) Rule 5.4.3 (Stock lending: general) also applies to:
 - (a) a *company scheme*; and
 - (b) a *manager* of a *unit trust scheme*.
- (iii) Rule 5.4.4 (Stock lending: requirements) also applies to a *company scheme*.

5.4.2 Guidance: Permitted stock lending

- (i) This section covers techniques relating to *transferable securities* and *approved money-market instruments* which are used for the purpose of *efficient portfolio management*. It permits the generation of additional income for the benefit of the *authorised scheme*, and hence for its investors, by entry into *stock lending* transactions for the account of the *authorised scheme*.
- (ii) The specific method of *stock lending* permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather, it is an arrangement under which the lender transfers *securities* to the borrower otherwise than by way of sale and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the “lender” to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

5.4.3 Stock lending: general

The *stock lending* permitted by this section may be exercised by an *authorised scheme* when it reasonably appears to the *company scheme* or to the *manager* to be appropriate to do so with a view to generating additional income for the *authorised scheme* with an acceptable degree of risk.

5.4.4 Stock lending: requirements

- (i) A *company scheme*, or the *trustee*, may enter into a *stock lending* arrangement, but only if:
 - (a) all the terms of the agreement under which *securities* are to be reacquired by the *trustee* are in a form which is acceptable to the *trustee* and are in accordance with good market practice;
 - (b) the counterparty is:
 - (I) a *person* authorised by an *EEA regulator* or any other person approved by the Commission;
 - (II) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
 - (III) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to OTC derivatives by at least one of the following federal banking supervisory authorities of the United States of America:
 - (A) the Office of the Comptroller of the Currency;
 - (B) the Federal Deposit Insurance Corporation;
 - (C) the Board of Governors of the Federal Reserve System; and
 - (D) the Office of Thrift Supervision; and

- (c) *collateral* is obtained to secure the obligation of the counterparty under the terms referred to in paragraph (a) and the *collateral* is:
 - (I) acceptable to the *trustee*;
 - (II) adequate within rule 5.4.6(i) (Treatment of collateral); and
 - (III) sufficiently immediate within rule 5.4.6(ii) (Treatment of collateral).
- (ii) The counterparty for the purpose of paragraph (i) is the *person* who is obliged under the agreement referred to in paragraph (i)(a) to transfer to the *trustee* the *securities* transferred by the *trustee* under the *stock lending* arrangement or *securities* of the same kind.

5.4.5 Stock lending: treatment of collateral

Where a *stock lending* arrangement is entered into, the *scheme property* remains unchanged in terms of value. The *securities* transferred cease to be part of the *scheme property*, but there is obtained in return an obligation on the part of the counterparty to transfer back equivalent *securities*. The *trustee* will also receive *collateral* to set against the risk of default in transfer, and that *collateral* is equally irrelevant to the valuation of the *scheme property* (because it is transferred against an obligation of equivalent value by way of re-transfer). Rule 5.4.6 (Treatment of collateral) accordingly makes provision for the treatment of the *collateral* in that context.

5.4.6 Treatment of collateral

- (i) *Collateral* is adequate for the purposes of this section only if it is:
 - (a) transferred to the *trustee* or its agent;
 - (b) at least equal in value, at the time of the transfer to the *trustee*, to the value of the *securities* transferred by the *trustee*; and
 - (c) in the form of one or more of:
 - (I) cash;
 - (II) a certificate of *deposit*;
 - (III) a letter of *credit*; or
 - (IV) a *readily realisable security*.
- (ii) *Collateral* is sufficiently immediate for the purposes of this section if:
 - (a) it is transferred before or at the time of the transfer of the *securities* by the *trustee*; or
 - (b) the *trustee* takes reasonable care to determine at the time referred to in paragraph (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.
- (iii) The trustee must ensure that the value of the *collateral* at all times is at least equal to the value of the *securities* transferred by the *trustee*.

- (iv) The duty in paragraph (iii) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire or has expired where the trustee takes reasonable care to determine that sufficient *collateral* will again be transferred at the latest by the close of business on the *day* of expiry.
- (v) Any agreement for transfer at a future date of *securities* or of *collateral* (or of the equivalent of either) under this section may be regarded, for the purposes of valuation under rule 6.3 (Valuation and pricing) or this chapter, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the *authorised scheme*.
- (vi) *Collateral* transferred to the trustee is part of the *scheme property* for the purposes of these *rules*, except in the following respects:
 - (a) it does not fall to be included in any valuation for the purposes of rule 6.3 (Valuation and pricing) or this chapter, because it is offset under paragraph (v) by an obligation to transfer; and
 - (b) it does not count as *scheme property* for any purpose of this chapter other than this section.
- (vii) Paragraphs (v) and (vi)(a) do not apply to any valuation of *collateral* itself for the purposes of this section.

5.4.7 Limitation by value

There is no limit on the value of the *scheme property* which may be the subject of *stock lending* transactions within this section.

5.4.8 Guidance relating to the use of cash collateral

- (i) The use of *stock lending* or the reinvestment of cash collateral should not result in a change of the *scheme's* declared investment objectives or add substantial supplementary risks to the *scheme's* risk profile.
- (ii) Collateral taking the form of cash may only be invested in:
 - (a) one of the investments coming within rule 5.4.6(i)(c)(iii) to (vii) (Treatment of collateral); or
 - (b) *deposits*, provided they:
 - (I) are capable of being withdrawn within five *business days*, or such shorter time as may be dictated by the *stock lending* agreement; and
 - (II) satisfy the requirements of rule 5.2.26(i) (Investment in deposits).

5.4.9 Where a *scheme* generates leverage through the reinvestment of collateral, this should be taken into account in the calculation of the *scheme's* global exposure.

5.5 Cash, borrowing, lending and other provisions

5.5.1 Application

This section applies to a *company scheme*, a *manager*, a *manager of a unit trust scheme* and a *trustee*.

5.5.2 Table of application

This table belongs to rule 5.5.1 (Application).

Rule	Company scheme	Manager	Trustee
5.5.3		x	
5.5.4(i) to (iii)	x		x
5.5.4(iv) and (v)		x	
5.5.4(vi)			x
5.5.4(vii)	x	x	x
5.5.4(viii)	x		
5.5.5(i) to (iii)		x	
5.5.6(i) and (ii)	x	x	X
5.5.6(iii)	x		
5.5.7(i) to (iii)	x	x	X
5.5.7(iv)	x		X
5.5.8	x	x	
5.5.9	x		X
5.5.10	x	x	X

5.5.3 Cash and near cash

- (i) Cash and *near cash* must not be retained in the *scheme property* except to the extent that this may reasonably be regarded as necessary in order to enable:
 - (a) the pursuit of the *authorised scheme's* investment objectives;
 - (b) *redemption of units*;
 - (c) efficient management of the *authorised scheme* in accordance with its investment objectives; or
 - (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the *authorised scheme*.
- (ii) During the period of the *initial offer* the *scheme property* may consist of cash and *near cash* without limitation.

5.5.4 General power to borrow

- (i) The *company scheme* or *trustee* (on the instructions of the *manager*) may, in accordance with this *rule* and *rule* 5.5.5 (Borrowing limits), borrow money for the use of the *authorised scheme* on terms that the borrowing is to be repayable out of the *scheme property*.
- (ii) Paragraph (i) is subject to the obligation of the *authorised scheme* to comply with any restriction in the *principal documents*.
- (iii) The *company scheme* or *trustee* may borrow under paragraph (i) only from an *eligible institution* or an *approved bank*.
- (iv) The *manager* must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the *manager* must have regard in particular to:
 - (a) the duration of any period of borrowing; and
 - (b) the number of occasions on which resort is made to borrowing in any period.
- (v) In addition to complying with paragraph (iv), the *manager* must ensure that no period of borrowing exceeds three *months*, whether in respect of any specific sum or at all, without the prior consent of the *trustee*.
- (vi) The *trustee* may only give its consent as required under paragraph (v) on such conditions as appear to the *trustee* appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
- (vii) This *rule* does not apply to “back-to-back” borrowing under rule 5.3.5(ii) (Borrowing).
- (viii) A *company scheme* must not issue any *debenture* unless it acknowledges or creates a borrowing that complies with paragraphs (i) to (vi).

5.5.5 Borrowing limits

- (i) The *manager* must ensure that the *authorised scheme's* borrowing does not, on any *day*, exceed 10% of the value of the *scheme property*.
- (ii) This *rule* does not apply to “back-to-back” borrowing under rule 5.3.5(ii) (Borrowing).
- (iii) In this *rule*, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of money into the *scheme property* in the expectation that the sum will be repaid.

5.5.6 Restrictions on lending of money

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

- (ii) Acquiring a *debenture* is not lending for the purposes of paragraph (i), nor is the placing of money on deposit or in a current account.
- (iii) Paragraph (i) does not prevent a *company scheme* from providing an *officer* of the *company scheme* with funds to meet expenditure to be incurred by him for the purposes of the *company scheme* (or for the purposes of enabling him properly to perform his duties as an *officer* of the *company scheme*) or from doing anything to enable an officer to avoid incurring such expenditure.

5.5.7 Restrictions on lending of property other than money

- (i) The *scheme property* of an *authorised scheme* other than *money* must not be lent by way of deposit or otherwise.
- (ii) Transactions permitted by rule 5.4 (Stock lending) are not to be regarded as lending for the purposes of paragraph (i).
- (iii) The *scheme property* must not be mortgaged.
- (iv) Nothing in this *rule* prevents the *company scheme* or the *trustee*, at the request of the *manager*, from lending, depositing, pledging or charging *scheme property* for *margin* requirements where transactions in *derivatives* or forward transactions are used for the account of the *scheme* in accordance with any other of the *rules* in this chapter.

5.5.8 General power to accept or underwrite placings

- (i) Any power in this chapter to invest in *transferable securities* may be used for the purpose of entering into transactions to which this *rule* applies, subject to compliance with any restriction in the *principal documents*.
- (ii) This *rule* applies to any agreement or understanding which:
 - (a) is an underwriting or sub-underwriting agreement; or
 - (b) contemplates that *securities* will or may be issued or subscribed for or acquired for the account of the *scheme*.
- (iii) Paragraph (ii) does not apply to:
 - (a) an *option*; or
 - (b) a purchase of a *transferable security* which confers a right to:
 - (I) subscribe for or acquire a *transferable security*; or
 - (II) convert one *transferable security* into another.
- (iv) The exposure of an *authorised scheme* to agreements and understandings within paragraph (ii) must, on any *day*, be:
 - (a) covered under rule 5.3.3 (Cover for transactions in derivatives and forward transactions); and
 - (b) such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

5.5.9 Guarantees and indemnities

- (i) A *company scheme* or *trustee* for the account of an *authorised scheme* must not provide any guarantee or indemnity in respect of the obligation of any *person*.
- (ii) None of the *scheme property* may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any *person*.
- (iii) Paragraphs (i) and (ii) do not apply to:
 - (a) any indemnity or guarantee given for *margin* requirements where the *derivatives* or forward transactions are being used in accordance with the *rules* in this chapter;
 - (b) for a *company scheme*:
 - (I) an indemnity against any liability incurred by an officer of the *company scheme* in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted or in connection with any application relating to proceedings for negligence, default, breach of duty or breach of trust or proceedings against the *trustee* for failure to exercise due care and diligence in the discharge of his functions in respect of the *company scheme* in respect of which relief is granted to him by the court;
 - (II) given to the *trustee* against any liability incurred by it as a consequence of the safekeeping of any of the *scheme property* by it or by anyone retained by it to assist it to perform its function of the safekeeping of the *scheme property*; and
 - (III) an indemnity given to a *person* winding up a *scheme* if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that *scheme* becomes the first property of the *company scheme* and the *holders* of *units* in that *scheme* become the first unitholders in the *company scheme*; and
 - (c) for a *unit trust scheme*, an indemnity given to a *person* winding up a body corporate or other *authorised scheme* in circumstances where those assets are becoming part of the *scheme property* by way of a *unitisation*.

5.6 Optional additional investment powers and borrowing limits for authorised schemes

5.6.1 Application

These rules allow for the relaxation of certain investment and borrowing powers from the requirements of the UCITS Directive; therefore, *authorised schemes* which take advantage of these relaxations are not UCITS III compliant. Consequently, *authorised schemes* which take advantage of these relaxations will

not qualify for the cross-border passporting rights conferred by the UCITS Directive and the other provisions of these rules on *authorised schemes*.

5.6.2 Investment in property

- (i) Any investment in land or a building held within the *scheme property* of an *authorised scheme* must be an immovable within paragraphs (ii) to (v).
- (ii) An immovable must:
 - (a) be situated in a country or territory identified in the *prospectus* for the purpose of this *rule*; and
 - (b) if situated in:
 - (I) England and Wales or Northern Ireland, be a freehold or leasehold interest; or
 - (II) Scotland, be any interest or estate in or over land or heritable right including a long lease; or
 - (c) if not situated in the jurisdictions referred to in paragraph (b)(I) or (II), be equivalent to any of the interests in paragraph (b)(I) or (II).
- (iii) The *manager* must have taken reasonable care to determine that the title to the immovable is a good marketable title.
- (iv) The *manager* or the *company scheme* must:
 - (a) have received a report from an *appropriate valuer* which:
 - (I) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
 - (II) states that in the *appropriate valuer's* opinion the immovable would, if acquired by the *authorised scheme*, be capable of being disposed of reasonably quickly at that valuation; or
 - (b) have received a report from an *appropriate valuer* as required by paragraph (iv)(a)(I) and stating that:
 - (I) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property* or is another legal interest as defined in paragraph (ii) or (c) in an immovable which is already included in the *scheme property*; and
 - (II) in the opinion of the *appropriate valuer*, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.
- (v) An immovable must:
 - (a) be bought or be agreed by enforceable contract to be bought within six *months* after receipt of the report of the *appropriate valuer* under paragraph (iv);

- (b) not be bought, if it is apparent to the *manager* that the report in paragraph (a) could no longer reasonably be relied upon; and
- (c) not be bought at more than 105% of the valuation for the relevant immovable in the report in paragraph (iv).
- (vi) Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.
- (vii) An *appropriate valuer* must be a *person* who:
 - (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a *standing independent valuer* of an *authorised scheme* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;
 - (c) is independent of the *company scheme*, the *trustee* and each of the *directors* of the *company scheme* or of the *manager*; and
 - (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *authorised scheme* or the finding of the *authorised scheme* for the immovable.

5.6.3 Investment limits for immovables

The following limits apply in respect of immovables held as part of the *scheme property* of an *authorised scheme*:

- (i) not more than 15% in value of the *scheme property* is to consist of any one immovable;
- (ii) in paragraph (i), immovables within rule 5.6.2(iv)(b) (Investment in property) must be regarded as one immovable;
- (iii) the figure of 15% in paragraph (i) may be increased to 25% once the immovable has been included in the *scheme property* in compliance with paragraph (i);
- (iv) the income receivable from any one *group* in any accounting period must not be attributable to immovables comprising:
 - (a) more than 25%; or
 - (b) in the case of a government or public body, more than 35%,
of the value of the *scheme property*;
- (v) not more than 20% in value of the *scheme property* is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value in rule 5.6.2(iv) (Investment in property) (on the assumption the immovable is not mortgaged);
- (vi) the aggregate value of:
 - (a) mortgages secured on immovables under paragraph (v);

- (b) borrowing of the *authorised scheme* under rule 5.5.5 (Borrowing limits); and
 - (c) any *transferable securities* that are not *approved securities*,
- must not at any time exceed 20% of the value of the *scheme property*;
- (vii) not more than 50% in value of the *scheme property* is to consist of immovables which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and
 - (viii) no option may be granted to a third party to buy any immovable comprised in the *scheme property* unless the value of the relevant immovable does not exceed 20% of the value of the *scheme property* together with, where appropriate, the value of investments in:
 - (a) unregulated *collective investment schemes*; and
 - (b) any *transferable securities* which are not *approved securities*.

5.6.4 Standing independent valuer and valuation

- (i) The following requirements apply in relation to the appointment of a valuer:
 - (a) the *manager* must ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *manager*, and
 - (b) the appointment must be made with the approval of the *trustee* or *manager* at the outset and upon any vacancy.
- (ii) The standing independent valuer in paragraph (i) must be independent of the *authorised scheme, directors, manager* and *trustee*.
- (iii) The following requirements apply in relation to the functions of the *standing independent valuer*:
 - (a) the *manager* must ensure that the *standing independent valuer* values all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
 - (b) for the purposes of paragraph (a), any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;
 - (c) the *manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
 - (d) if either the *manager* or the *trustee* becomes aware of any matters that appear likely to:
 - (l) affect the outcome of a valuation of an immovable; or

- (II) cause the valuer to decide to value under paragraph (a) instead of under paragraph (c),

it must immediately inform the *standing independent valuer* of that matter;

- (e) the *manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within paragraph (d); and
 - (f) any valuation by the *standing independent valuer* must be on the basis of an “Open Market value” as defined in Practice Statement 3 in the Royal Institute of Chartered Surveyors’ Appraisal and Valuation Manual (first edition published September 1995) but subject to rule 6.3 (Valuation and pricing).
- (iv) In relation to an immovable:
 - (a) any valuation under rule 6.3 (Valuation and pricing) has effect, until the next valuation under that rule, for the purposes of the value of immovables; and
 - (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *manager* to be legally enforceable.

5.6.5 Gold

The *scheme property* of an authorised scheme seeking to take advantage of the relaxations under this rule 5.6 (Optional additional investment powers and borrowing limits for authorised schemes) may also consist of gold up to a limit of 10% in value of the *scheme property*.

Part 6 - Operating Duties and Responsibilities

6.1 Introduction and Application

6.1.1 Application

This chapter applies to:

- (i) a *manager* of a *unit trust scheme* or a *company scheme*;
- (ii) any other *director* of a *company scheme*;
- (iii) a *trustee*; and
- (iv) a *company scheme*.

6.1.2 Explanation of this chapter

- (i) The *manager* operates the *authorised scheme* on a day-to-day basis. Its operation is determined by the *rules* in this chapter, which require appropriate powers in the *principal documents* or refer to the need to state the relevant operating procedures in the *prospectus* of the *authorised scheme*.
- (ii) The *manager* does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other *persons*. The *rules* in this chapter set out the parameters of such delegation.
- (iii) The *trustee's* duty is, generally speaking, to ensure the safe *custody* of *scheme property* and to oversee certain functions of the *manager* (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a *trustee* of a *unit trust scheme* are similar to, but not the same as, the oversight responsibilities for a *trustee* of a *company scheme*. These differences result from the different legal structure of the *schemes* and the *trustee's* obligations under trust law.

6.2 Dealing

6.2.1 Application

This section applies to a *manager*, a *trustee*, a *company scheme* and any *directors* of a *company scheme*.

6.2.2 Purpose

- (i) This section helps in achieving the regulatory objective of securing an appropriate degree of protection for investors. This section is also concerned with ensuring the *manager* pays due regard to the interests of investors and treats them fairly.
- (ii) A *manager* is responsible for arranging for the *issue* and the *cancellation* of *units* for the *authorised scheme*, and is permitted to *sell* and *redeem units* for its own account. The rules in this section are intended to ensure that the *manager* treats the *authorised scheme* fairly when arranging for the *issue* or *cancellation* of *units*, and treats investors fairly when they purchase or *sell units*.

- (iii) This section also sets out common standards for how the amounts in relation to *unit* transactions are paid. These arrangements include the *initial offer* of *units*, the exchange of *units* for *scheme property* and *issues* and *cancellations* of *units* by a *company scheme*, or by the *trustee* of a *unit trust scheme*, carried out directly with the *unitholder*.
- (iv) This section also sets out rules and guidance relating to the *manager's* controls over the *issue* and *cancellation* of *units* including any box holdings.
- (v) The requirements in this section are to be applied separately to each *sub-fund* of an *authorised scheme* which is an *umbrella fund*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella fund*.

6.2.3 Initial offers

- (i) During the *initial offer* period, *units* may only be issued at the *initial price*.
- (ii) The length of any *initial offer* should not be unreasonable when considered alongside the characteristics of the *authorised scheme*.
- (iii) The *manager* must, as soon as practicable after receiving the *initial price* from the purchaser and no later than the fourth *business day* following the end of the *initial offer*, pay the *trustee* in respect of any *unit* it has agreed to *sell* during the period of the *initial offer*.
 - (a) in the case of a *single-priced authorised scheme*, the *initial price* of that *unit*; or
 - (b) in the case of a *dual-priced authorised scheme*, the *initial price* of that *unit* less, where relevant, an amount not exceeding the amount of any *preliminary charge* stated in the *prospectus*.
- (iv) The period of the *initial offer* comes to an end if the *manager* reasonably believes the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the *initial price*.

6.2.4 Initial offer: guidance

- (i) Details of any *initial offer* period must be provided in the relevant prospectus as described in Schedule 2 paragraph (17)(h) (Table: contents of the prospectus).
- (ii) It may be appropriate that the *initial offer* for an *authorised scheme* operating limited *issue* or limited *redemption arrangements*, or intending to invest in illiquid assets, is longer than one for an *authorised scheme* which does not have these features.

6.2.5 Issue and cancellation of units in a company scheme

- (i) *Units* in a *company scheme* are *issued* or *cancelled* by the *directors* making a record of the *issue* or *cancellation* and of the number of *units* of each *class* concerned, and cannot be *issued* or *cancelled* in any other manner, unless Schedule 1 paragraph (11) (Table: contents of the principal documents) applies.

- (ii) The time of the *issue* or *cancellation* under paragraph (i) is the time when the record is made.

6.2.6 Issue and cancellation of units in a unit trust scheme

- (i) The *trustee* must *issue* or *cancel units* in a *unit trust scheme* when instructed by the *manager*.
- (ii) Any instructions given by the *manager* must state, for each *class* of *unit* to be *issued* or *cancelled*, the number to be *issued* or *cancelled*, expressed either as a number of *units* or as an amount in value (or as a combination of the two).
- (iii) If the *trustee* is of the opinion that it is not in the interests of *unitholders* that any *units* should be *issued* or *cancelled* or that to do so would not be in accordance with the *trust deed* or *prospectus*, it must notify the *manager* of that fact and it is then relieved of the obligation to *issue* or *cancel* those *units*.

6.2.6A Issue and cancellation of units in multiple classes

If an *authorised scheme* has two or more *classes* of *unit* in issue, the *manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be issued or cancelled by reference to a particular valuation point, if:

- (i) the *trustee* gives its prior agreement; and
- (ii) the relevant *classes*:
 - (a) have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the *scheme property*; or
 - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

6.2.7 Issue and cancellation of units through a manager

- (i) The *manager* may require, on agreement with the *trustee*, or may permit, on the request of the investor, direct *issues* and *cancellations* of *units* by a *company scheme* or by the *trustee* of a *unit trust scheme*.
- (ii) If paragraph (i) applies:
 - (a) the *principal documents* must provide for this; and
 - (b) the *prospectus* must provide details of the procedure to be followed which must be consistent with the *rules* in this section.

6.2.8 Controls over the issue and cancellation of units

- (i) A *manager* must ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* for that *class*.
- (ii) A *manager* must not:

- (a) for a *unit trust scheme*, when giving instructions to the *trustee* for the *issue* or *cancellation* of *units*; or
- (b) for a *company scheme*, when arranging for the *issue* or *cancellation* of *units*,

do, or omit to do, anything that would, or might, confer on itself or an *associate* a benefit or advantage at the expense of a *unitholder* or a potential *unitholder*.

- (iii) For the purpose of paragraph (i), the *manager* may take into account instructions to *redeem units* at the following *valuation point* received before any time agreed with the *trustee* for such purpose.

6.2.9 Controls over the issue and cancellation of units - guidance

- (i) As the *manager* normally controls the *issue*, *cancellation*, *sale* and *redemption* of a *scheme's units*, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its investors.
- (ii) The *manager* must take reasonable care to establish and maintain such systems and controls as are appropriate to its business and is required to manage conflicts of interest between itself and an investor fairly.
- (iii) To manage the conflict of interest that arises, when a *manager* gives an instruction to *issue* or *cancel units*, the *price* of the *units* should be calculated at the *valuation point* before or after the instruction has been given, in accordance with paragraph (iv).
- (iv) A *manager* should agree a period of time with the *trustee* during which it will give instructions to *issue* or *cancel units*. Where the *manager* operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise, a longer period (for example, up to the next *valuation point* but in all cases within 24 hours) may be acceptable, provided the principles in paragraph (ii) are followed.
- (v) The last *valuation point* should be used for the pricing of *units* where instructions are given before the expiry of the period of time agreed in paragraph (iv); otherwise, the next *valuation point* should be used.
- (vi) Where an *in specie issue* or *cancellation* occurs, it should be undertaken using the next *valuation point's price*.

6.2.10 Modification to number of units issued or cancelled

- (i) Any instruction for the *issue* or *cancellation* of *units* under rule 6.2.5 (Issue and cancellation of units in a company scheme) or rule 6.2.6 (Issue and cancellation of units in a unit trust scheme) may be modified, but only if the *trustee* agrees and has taken reasonable care to determine that:
 - (a) the modification corrects an error in the instruction; and
 - (b) the error is an isolated one.

- (ii) Any error in paragraph (i) must be corrected within the payment period applicable under rule 6.2.13 (Payment for units issued) or rule 6.2.14 (Payment for cancelled units).

6.2.11 Compensation for box management errors

- (i) Where the *manager* has not complied with rule 6.2.8(i) (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the *authorised scheme* for any costs it may have incurred in correcting the position.
- (ii) The *manager* need not reimburse the *authorised scheme* when:
 - (a) the amount under paragraph (i) is not, in the *trustee's* opinion, material to the *authorised scheme*;
 - (b) the *manager* can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
 - (c) the requirements of rule 6.2.10 (Modification to number of units issued or cancelled) are complied with.

6.2.12 Box management errors guidance

Explanatory table: This table belongs to rule 6.2.2(iv) (Purpose).

Correction of box management errors	
1	Controls by a <i>manager</i>
	A <i>manager</i> needs to be able to demonstrate that it has effective controls over:
(i)	its calculations of what <i>units</i> are owned by it (its " box "); and
(ii)	compliance with rule 6.2.8 (Controls over the issue and cancellation of units) which is intended to prevent a negative box.
2	Controls by trustee
(i)	Under rule 6.6.4 (General duties of the trustee), a <i>trustee</i> should take reasonable care to ensure that an <i>authorised scheme</i> is managed in accordance with rule 6.2 (Dealing) and rule 6.3 (Valuation and pricing).
(ii)	The <i>trustee</i> should therefore make a regular assessment of the <i>manager's</i> box management procedures (including supporting systems) and controls. This should include reviewing the <i>manager's</i> controls and procedures when the <i>trustee</i> assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and significant effect on the accuracy of the controls and procedures.
3	Recording and reporting of box management errors
(i)	A <i>manager</i> should record all errors which result in a breach of rule 6.2.8 (Controls over the issue and cancellation of units) and, as soon as an error is discovered, the <i>manager</i> should report the fact to the

		<i>trustee</i> , together with details of the action taken, or to be taken, to avoid repetition of the error.
	(ii)	A <i>trustee</i> should report material box management errors to the <i>Commission</i> immediately. Materiality should be determined by taking into account a number of factors including:
		(a) the implications of the error for the sufficiency of controls put into place by the <i>manager</i> ;
		(b) the significance of any breakdown in the <i>manager's</i> management controls or other checking procedures;
		(c) the significance of any failure of systems or back-up arrangements;
		(d) the duration of an error; and
		(e) the level of compensation due to the <i>scheme</i> , and a <i>manager's</i> ability (or otherwise) to meet claims for compensation in full.

6.2.13 Payment for units issued

- (i) The *manager* must, by the close of business on the fourth *business day* following the *issue* of any *units*, arrange for payment to the *trustee* or the *company scheme* of:
 - (a) in the case of a *single-priced authorised scheme*, the price of the *units issued* and any payment required under rule 6.3.8 (Dilution); or
 - (b) in the case of a *dual-priced authorised scheme*, the *issue price* of the *units*.
- (ii) The *manager* must make the payment referred to in paragraph (i) in cash or cleared funds unless rule 6.2.15 (*In specie* issue and cancellation) applies.
- (iii) Where the *manager* has not complied with paragraph (i), it must reimburse the *authorised scheme* for any lost interest unless the amount involved is not, in the *trustee's* opinion, material to the *authorised scheme*.

6.2.14 Payment for cancelled units

- (i) On cancelling *units* the *manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *trustee* or the *company scheme* of such evidence of title to the *units* as it may reasonably require, require the *trustee* to pay:
 - (a) in the case of a *single-priced authorised scheme*, the *price* of the *units* (less any deduction required under rule 6.3.8 (Dilution)); or
 - (b) in the case of a *dual-priced authorised scheme*, the *cancellation price* of the *units* to the *manager* or, where relevant, the *unitholder* or,

for a relevant pension scheme, in accordance with the relevant provisions of the *trust deed*.

- (ii) If the *manager* has not ensured that the *scheme property* includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in rule 5 (Investment and borrowing powers)) within the period in paragraph (i), that period is extended, for any relevant currency, until the shortage is rectified.
- (iii) If paragraph (ii) applies, the *manager* must take reasonable steps to rectify the currency shortage as quickly as possible.
- (iv) This rule does not apply where rule 6.2.16 (Sale and redemption) is in operation.

Nothing in this section requires a *company scheme*, a *trustee*, or a *manager* to part with *money* or to transfer *scheme property* for a *cancellation* or *redemption* of *units* where any *money* due on the earlier *issue* or *sale* of those *units* has not been received.

6.2.15 ***In specie* issue and cancellation**

The *trustee* may take into or pay out of *scheme property* assets other than cash as payment for the *issue* or *cancellation* of *units*, but only if:

- (i) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of *unitholders*; and
- (ii) the *principal documents* so provide.

6.2.16 **Sale and redemption**

- (i) In accordance with Schedule 2 paragraph (17) (Table: contents of the prospectus), the *manager* must describe the arrangements for the *sale* and *redemption* of *units* in the *prospectus*.
- (ii) The *manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* in the *authorised scheme*, in accordance with the conditions in the *principal documents* and the *prospectus* unless:
 - (a) it has reasonable grounds to refuse such *sale*; or
 - (b) the *issue* of *units* is prevented under rule 6.2.18 (Limited issue).
- (iii) Subject to rule 6.2.19 (Limited redemption) and rule 6.2.20 (Deferred redemption), the *manager* must, at all times during the *dealing day*, on request of any qualifying *unitholder*, effect the *redemption* of *units* in accordance with the conditions in the *principal documents* and the *prospectus* unless it has reasonable grounds to refuse such *redemption*.
- (iv) On agreeing to a *redemption* of *units* in paragraph (iii), the *manager* must pay the *unitholder* the appropriate proceeds of *redemption* within the period specified in paragraph (v) unless the *manager* has reasonable grounds for withholding all or any part of the proceeds.

- (v) The period in paragraph (iv) expires at the close of business on the fourth *business day* following the later of:
 - (a) the *valuation point* at which the *price* for the *redemption* was determined; or
 - (b) the time when the *manager* has all the duly executed instruments and authorisations to effect (or enable the *manager* to effect) the transfer of title to the *units*.
- (vi) Except where paragraph (vii) applies, and subject to rule 6.2.20 (Deferred redemption), the *manager* must *sell* or *redeem units* at a *price* determined no later than the end of the *business day* immediately following the receipt and acceptance of an instruction to do so, or at the next *valuation point* for the purposes of *dealing* in *units* if later (or, for a *sale* or *redemption* at an *historic price*, at the *price* determined at the last *valuation point*).
- (vii) Where the *authorised scheme* operates *limited redemption arrangements*, the *manager* must *sell* or *redeem units* at a *price* determined no later than the expiry of a period of 185 *days* from the date of the receipt and acceptance of the instruction to *sell* or *redeem*.
- (viii) Paragraphs (iv), (v) and rule 6.3.5 (Sale and redemption prices for single-priced authorised schemes) do not apply where the *manager* is buying *units* as *principal* on an investment exchange (for a *unit trust scheme* in accordance with a power in the *trust deed*) and settlement will be made in accordance with the rules of that exchange.

6.2.17 Sale and redemption: guidance

- (i) The *prospectus* of an *authorised scheme* that does not operate on the basis of *historic prices* may allow the *manager* to identify a point in time in advance of a *valuation point* (a cut-off point) after which it will not accept instructions to *sell* or *redeem units* at that *valuation point*. In order to protect *customers'* interests, the cut-off point should be no earlier than the close of business on the *business day* before the *valuation point* it relates to. If there is more than one *valuation point* in a *day* the cut-off should not be before any previous *valuation point*.
- (ii) Where the *authorised scheme* operates *limited redemption arrangements*, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying investments provided the 185-day limit in rule 6.2.16(vii) (Sale and redemption) is complied with.
- (iii) Where paragraph (i) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to *sell* or *redeem* to the *manager* but not to differentiate between *unitholders* or potential *unitholders*.

6.2.18 Limited issue

- (i) If an *authorised scheme* limits the *issue* of any *class* of *unit*, the *prospectus* of an *authorised scheme* must provide for the circumstances and conditions when *units* will be *issued*.
- (ii) Where paragraph (i) applies, the *manager* may not provide for the further *issue* of *units* unless, at the time of the *issue*, he is satisfied on reasonable grounds that the proceeds of that subsequent *issue* can be invested without compromising the *authorised scheme's* investment objective or materially prejudicing existing *unitholders*.
- (iii) Within an *authorised scheme*, *unit classes* may operate different arrangements for the *issue* of *units* provided there is no prejudice to the interests of any *unitholder*.

6.2.19 Limited redemption

- (i) These rules relating to *limited redemption arrangements* allow for the relaxation of certain investment and borrowing powers from the requirements of the UCITS Directive; therefore, *authorised schemes* which take advantage of these relaxations are not UCITS III compliant.
- (ii) The *principal documents* and the *prospectus* of an *authorised scheme* that invests substantially in *immovables* or whose investment objective is to provide a specified level of return, may provide for *limited redemption arrangements* appropriate to its aims and objectives.
- (iii) Where (i) applies, the *authorised scheme* must provide for *redemptions* at least once in every six *months*.
- (iv) Within an *authorised scheme*, *unit classes* may operate different arrangements for *redemption* of *units* provided there is no prejudice to the interests of any *unitholder*.

6.2.20 Deferred redemption

- (i) The *principal documents* and the *prospectus* of an *authorised scheme* which has at least one *valuation point* on each *business day* may permit deferral of *redemptions* at a *valuation point* to the next *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised scheme's* value.
- (ii) Any deferral of *redemptions* under paragraph (i) must be undertaken in accordance with the procedures explained in the *prospectus* which must ensure:
 - (a) the consistent treatment of all *unitholders* who have sought to *redeem units* at any *valuation point* at which *redemptions* are deferred; and
 - (b) that all *deals* relating to an earlier *valuation point* are completed before those relating to a later *valuation point* are considered.

6.2.21 Deferred redemption: guidance

In times of high levels of *redemption*, deferred *redemption* will enable the *manager* to protect the interests of continuing *unitholders* by allowing it to match the *sale* of *scheme property* to the level of redemptions. This should reduce the impact of *dilution* on the *authorised scheme*.

6.3 Valuation and pricing

6.3.1 Application

This section applies to a *manager*, a *trustee*, a *company scheme* and any other *director* of a *company scheme*. The requirements in this section are to be applied separately to each *sub-fund* of an *authorised scheme* which is an *umbrella fund*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella fund*.

6.3.2 Valuation

- (i) To determine the *price* of *units* the *manager* must carry out a fair and accurate valuation of all the *scheme property* in accordance with the principal documents and the *prospectus*.
- (ii) For a *dual-priced authorised scheme*, each valuation of the *scheme property* must consist of two parts, carried out on an *issue* basis and a *cancellation* basis, respectively.

6.3.3 Valuation points

- (i) An *authorised scheme* must not have fewer than two regular *valuation points* in any *month* and, if there are only two *valuation points* in any *month*, the regular *valuation points* must be at least two weeks apart.
- (ii) The *prospectus* of an *authorised scheme* must contain information about its regular *valuation points* for the purposes of *dealing* in *units* in accordance with Schedule 2 paragraph (16) (Table: contents of the *prospectus*).
- (iii) Where an *authorised scheme* operates *limited redemption arrangements*, paragraph (i) does not apply and the *valuation points* must be stated in the *prospectus* but must not be set more than six *months* apart.
- (iv) Where an *authorised scheme* operates *limited redemption arrangements*, it must be valued and *prices* published in the manner set out in rule 6.3.7 (Publication of prices) at least once in every *month*.
- (v) In paragraph (iv), a *valuation point* for the purpose of publishing *prices* only does not make it a *valuation point* for the purpose of paragraph (ii) unless it is disclosed as such in the *prospectus*.
- (vi) *Higher volatility funds* must have at least one *valuation point* every *business day*.
- (vii) No *valuation points* are required during the period of any *initial offer*.
- (viii) The *manager* may determine to have an additional *valuation point* for an *authorised scheme* as a result of market movement under rule 6.3.9

(Forward and historic pricing) or otherwise, in which case it must inform the *trustee*.

6.3.4 Price of a unit

- (i) A *manager* must ensure that the *price* of a *unit* of any *class* is calculated:
 - (a) with reference to the net value of the *scheme property*; and
 - (b) in accordance with the provisions of the *prospectus*.
- (ii) Any *unit price* calculated in accordance with 6.3.5(i) must be expressed in a form that is accurate to at least four significant figures.
- (iii) For each *class* of *units* in a *single-priced authorised scheme*, a single *price* must be calculated at which *units* are to be *issued* and *cancelled*.
- (iv) For each *class* of *units* in a *dual-priced authorised scheme*, an *issue price* and a *cancellation price* must be calculated by reference to the respective parts of the valuation carried out under rule 6.3.9 (Forward and historic pricing).

6.3.5 Sale and redemption prices for single-priced authorised schemes

The *manager* of a *single-priced authorised scheme* must not:

- (i) *sell* a *unit* for more than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any *preliminary charge* permitted and any payments required under rule 6.3.8 (Dilution); or
- (ii) *redeem* a *unit* for less than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deductions under rule 6.3.8 (Dilution).

6.3.6 Sale and redemption price parameters for dual-priced authorised schemes

- (i) The *manager* of a *dual-priced authorised scheme* must not:
 - (a) *sell* a *unit* for more than the maximum *sale price* of a *unit* of the relevant *class* at the relevant *valuation point*; or
 - (b) *redeem* a *unit* for less than the *cancellation price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted.
- (ii) The maximum *sale price* of *units* under paragraph (i)(a) is the total of:
 - (a) the *issue price*; and
 - (b) the current *preliminary charge*.
- (iii) The *sale price* of *units* under paragraph (i)(a) must not be less than the relevant *redemption price* under paragraph (i)(b).
- (iv) The redemption price under paragraph (i)(b) must not exceed the relevant *issue price* of the relevant *units*.
- (v) Subject to rule 6.7.9 (Charges for the exchange of units in an umbrella fund), in the case of an *umbrella fund*:

- (a) the maximum *price* at which *units* in one *sub-fund* that is a *dual-priced authorised scheme* may be acquired in exchange for *units* in another *sub-fund* must not exceed the relevant maximum *sale price* (less any *preliminary charge*) of the new *units*; and
- (b) the minimum *price* at which the old *units* in a *sub-fund* that is a *dual-priced authorised scheme* may be taken in exchange must not be less than the equivalent *cancellation price*.

6.3.7 Publication of prices

The *prospectus* may make provision for *large deals* to be carried out at a higher *sale price* or a lower *redemption price* than those published, provided they do not exceed the relevant maximum and minimum parameters.

6.3.8 Dilution

- (i) When arranging to *sell, redeem, issue or cancel units*, or when *units* are *issued or cancelled* under rule 6.2.7(i) (Issue and cancellation of units through a manager), a *manager* is permitted to:
 - (a) require the payment of a *dilution levy*;
 - (b) make a *dilution adjustment*; or
 - (c) neither require a *dilution levy* nor make a *dilution adjustment*,

in accordance with its statements in the *prospectus* required by Schedule 2 paragraph (18) (Table: contents of the prospectus).

- (ii) A *manager* operating either a *dilution levy* or a *dilution adjustment* must operate that measure in a fair manner to reduce *dilution* and solely for that purpose.
- (iii) A *dilution levy* becomes due at the same time as payment or transfer of property becomes due for the *issue, sale, redemption or cancellation* and any such payment in respect of a *dilution levy* must be paid to the *trustee* to become part of *scheme property* as soon as practicable after receipt.
- (iv) A *dilution adjustment* may be made as part of the calculation of the *unit price* for the purpose of reducing *dilution* in the *authorised scheme* or to recover any amount which the *manager* had already paid or reasonably expects to pay in the future in relation to the *issue or cancellation* of *units*.
- (v) Where the *manager* decides to make or not to make a *dilution adjustment*, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an *affected person*.
- (vi) As soon as practicable after a *valuation point*, the *manager* must provide the *trustee* with the amount or rate of any *dilution adjustment* made to the *price* or any *dilution levy* applied.

6.3.9 Forward and historic pricing

- (i) For the *sale* and *redemption* of *units*, the *manager* must, in accordance with the *prospectus* of an *authorised scheme*, operate on the basis of *forward prices* only or *historic prices*.
- (ii) If *forward prices* only are to be used, all *deals* must be at a *forward price*.
- (iii) *Forward prices* for the *sale* and *redemption* of *units* must be used:
 - (a) for a *higher volatility fund*;
 - (b) where the regular *valuation points* are more than one *business day* apart;
 - (c) if the request to deal reaches the *manager* through the post or by any similar form of non-interactive communication;
 - (d) for an *issue* or *cancellation* under rule 6.2.7 (Issue and cancellation of units through a manager);
 - (e) if the applicant for the *sale* or *redemption* so requests; or
 - (f) where the *manager* has reason to believe at any time that the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the last calculated *price*, unless the *manager* has decided to carry out an additional valuation.
- (iv) If a *manager* operates *historic prices*, the *prospectus* must detail the circumstances under which *deals* in the *authorised scheme*, individually or otherwise, will nevertheless be carried out on a *forward price* basis or when the *authorised scheme* will elect to move to *forward prices* or declare an additional *valuation point*.
- (v) Where the *authorised scheme* elects to move to *forward prices* temporarily in accordance with paragraph (iv), such election will only apply until the next *valuation point*.
- (vi) All *sub-funds* of an *authorised scheme* which is an *umbrella fund* must adopt the same pricing basis, but this does not apply merely because of a requirement to price on a *forward price* basis temporarily under this rule.

6.3.10 Publication of prices

Where the *manager* is prepared to *deal* in *units*, or is willing to *issue* or *cancel units*, under rule 6.2.7 (Issue and cancellation of units through a manager), it must make the *dealing prices* public in an appropriate manner.

6.3.11 Maintaining the value of a qualifying money market fund

- (i) The *manager* of a *qualifying money market fund* must:
 - (a) carry out a valuation of the *scheme property* on a mark to market basis at least once every week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis; and

- (b) ensure that the value of the *scheme property* when valued on a mark to market basis does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.
- (ii) The *manager* should advise the *trustee* when the mark to market value of a *qualifying money market fund* varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *manager* of a *qualifying money market fund* should agree procedures with the *trustee* designed to stabilise the value of the *scheme* in these events.

6.4 Title and registers

6.4.1 Application

- (i) This section applies to a *manager* and a *trustee* of a *unit trust scheme*.
- (ii) Rule 6.4.9 (Plan registers) also applies to the *directors* and the *trustee* of a *company scheme*.

6.4.2 Purpose

The aim of this section is to protect investors by setting out the requirements for a *register of unitholders* for a *unit trust scheme* and for a *plan register* for an *authorised scheme*, so a proper record of ownership of *units* is maintained, whether held directly or indirectly through a *group savings plan*.

6.4.3 Explanation of this section

- (i) This section deals with matters relating to the *register of unitholders* of *units* in a *unit trust scheme*, including its establishment and contents. The *manager* or *trustee* may be responsible for the *register*. In any event, the *person* responsible for the *register* must be stated in the *trust deed* and this section details what his duties are. The provisions relating to *documents evidencing title to units*, are dependent on the provisions in the *trust deed* and their operation should be set out in the *prospectus*.
- (ii) Rule 6.4.9 (Plan registers) makes provision to ensure that if the cost of the *plan register* is borne by the *authorised scheme, plan* investors have the same rights in respect of notice and disclosure as *unitholders* on the main *register*.

6.4.4 Register: general requirements and contents

- (i) Either the *manager* or the *trustee* (as nominated in the *trust deed*) must establish and maintain a *register of unitholders* as a *document* in accordance with this section.
- (ii) The *manager* or *trustee* in accordance with their duties under paragraph (i) must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (iii) The *register* must contain:
 - (a) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered);

- (b) the number of *units* of each *class* held by each *unitholder*;
 - (c) the date on which the *unitholder* was registered for *units* standing in his name; and
 - (d) the number of *units* of each *class* currently in *issue*.
- (iv) No notice of any trust, express, implied or constructive, which may be entered in the *register* is binding on the *manager* or *trustee*, but this does not affect their obligations under rule 6.4.9(i) (Plan registers).
 - (v) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
 - (vi) The *person* responsible for the *register* in paragraph (i) must:
 - (a) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
 - (b) in relation to a change of name in paragraph (a), where a certificate has been issued, either endorse the existing certificate or issue a new one;
 - (c) make the *register* available for inspection free of charge in *Guernsey* by or on behalf of any *unitholder* (including the *manager*), during office hours, but it may be closed for periods not exceeding 30 *business days* in any one year;
 - (d) supply free of charge to any *unitholder* or his authorised representative a copy of the entries on the *register* relating to that *unitholder* on request;
 - (e) where a *unitholder* defaults on paying for the *issue* or *sale* of *units*, make an alteration or deletion in the *register* to compensate for the default, after which the *manager* becomes entitled to those *units* (until those *units* are either *cancelled* or re-sold and paid for); and
 - (f) carry out any conversion of *units* allowed for by rule 6.4.8 (Conversion of units) after consultation with the *manager* or *trustee*, as appropriate.

6.4.5 The manager as unitholder

- (i) If no *person* is entered in the *register* as the *unitholder* of a *unit*, the *manager* must be treated as the *unitholder* of each such *unit* which is in *issue*.
- (ii) Where *units* are transferred to the *manager*, they need not be *cancelled* and the *manager* need not be entered on the *register* as the new *unitholder*.

6.4.6 Transfer of units by act of parties

- (i) Every *unitholder* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *trust deed* or *prospectus*.

- (ii) Every instrument of transfer of *units* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers*) authorised to sign it and, unless the transferee is the *manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (iii) Every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
 - (a) any necessary documents that may be required by legislation; and
 - (b) any other evidence reasonably required by the *person* responsible for the *register*.
- (iv) The details of instruments of transfer must be kept for a period of six years from the date of registration of the transfer.
- (v) On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

6.4.7 Certificates

- (i) Following the *sale* of *units* or as a result of rule 6.4.6 (Transfer of units by act of parties) a document recording title to those *units* may be issued in such a form as the *trust deed* permits.
- (ii) The *person* responsible for the *register* must issue any document in paragraph (i) or provide relevant information in a timely manner where the procedures for *redemption* of *units* require the *unitholder* to surrender that document.

6.4.8 Conversion of units

Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

6.4.9 Plan registers

- (i) The *directors* of a *company scheme* or the *person* responsible for the *register* of a *unit trust scheme* may arrange for a *plan register* to be established and maintained.
- (ii) Where payments are made out of *scheme property* to establish and maintain a *plan register*, *plan investors* must be treated as *unitholders* for the purposes of rules 4.3 (Approvals and notifications) to 4.5 (Reports and accounts) and rule 6.4.4 (Register: general requirements and contents).

6.5 Appointment and replacement of the manager and the trustee

6.5.1 Application

This section applies in accordance with rule 6.5.2 (Table of application).

6.5.2 Table of application

This table belongs to rule 6.5.1 (Application).

Rule	Company scheme	Directors of a company scheme	Manager	Trustee
6.5.1	x	x	x	x
6.5.3		x		x
6.5.4	x			x
6.5.5			x	x
6.5.6			x	x
6.5.7			x	x
6.5.8	x		x	x

6.5.3 Directors

- (i) Any *directors* of a *company scheme* must exercise reasonable care to ensure that the *manager* undertakes the responsibilities allocated under rule 6.6.3(i) (Functions of the *manager*) in a competent manner and the *manager* must give those *directors* the information and explanations they consider necessary for this purpose.
- (ii) A *director* of a *company scheme* must not appoint an alternate *director*.

6.5.4 Company scheme without a director

If the *company scheme* ceases or is about to cease to have any *directors*, the *trustee* shall either:

- (i) appoint an alternate director to act as director of the *company scheme* and to carry out the functions referred to in rules 6.6.3(iii)(a) and 6.6.3(i)(b) (Functions of the manager); or
- (ii) manage the *scheme property* itself on behalf of the *company scheme* until the winding-up of the *company scheme* is commenced provided it is not prohibited from doing so by any law or *rule*.

6.5.5 Replacement of a manager

- (i) The *manager* of a *unit trust scheme* is subject to removal by written notice by the *trustee* upon any of the following events:
 - (a) the calling of a meeting to consider a resolution for winding up the *manager*;
 - (b) an application being made to dissolve the *manager* or to strike it off the Register of Companies;
 - (c) the presentation of a petition for the winding-up of the *manager*;
 - (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *manager's* creditors;

- (e) the appointment of a receiver to the *manager* (whether an administrative receiver or a receiver appointed over particular property);
 - (f) anything equivalent to paragraphs (a) to (e) above occurring in respect of the *manager* in a jurisdiction outside *Guernsey*;
 - (g) the *trustee* forming the reasonable opinion, and stating in writing, that a change of *manager* is desirable in the interest of *unitholders*;
 - (h) a resolution of *unitholders* being passed to remove the *manager*; or
 - (i) the *unitholders* of three-quarters in value of all of the *units* then in issue (excluding *units* held or treated as held by the *manager* or by any *associate* of the *manager*) making a request in writing to the *trustee* that the *manager* should be removed.
- (ii) On receipt of a notice by the *trustee* under paragraph (i), the *manager* of the *unit trust scheme* ceases to be the *manager*, and the *trustee* must by deed appoint another *person* eligible under the *Law* to be the *manager* of the *unit trust scheme* upon and subject to that other entering into such deed or deeds as the *trustee* may require.
 - (iii) If the name of the *unit trust scheme* contains a reference to the name of the former *manager*, the former *manager* is entitled to require the new *manager* and the *trustee* immediately on receipt of a notice under paragraph (i) to propose a change in the name of the *unit trust scheme*.

6.5.6 Retirement of a manager of a unit trust scheme

- (i) The *manager* of a *unit trust scheme* has the right to retire in favour of another *person* eligible under the *Law* and approved in writing by the *trustee* upon:
 - (a) the retiring *manager* appointing that *person* by deed as *manager* in its place and assigning to that *person* all its rights and duties as such a *manager*; and
 - (b) the new *manager* entering into such deeds as the *trustee* reasonably considers necessary or desirable to be entered into by that *person* in order to secure the due performance of its duties as the *manager* of the *unit trust scheme*.
- (ii) Upon retirement, the retiring *manager*:
 - (a) subject to paragraph (iii), is released from all further obligations under these *rules* and under the *trust deed*; and
 - (b) may retain any consideration paid to it in connection with the change without having to account for it to any *unitholder*.
- (iii) Sub-paragraph (ii)(a) above does not affect the rights of the *trustee* or any other *person* in respect of any act or omission on the part of the retiring *manager* before his retirement.

6.5.7 Consequences of removal or retirement of a manager of a unit trust scheme

- (i) Upon the removal or retirement of the *manager*, the removed or retiring *manager*:
 - (a) is entitled to be recorded in the *register* for those *units* that continue to be held or treated as held by it; and
 - (b) may require the *trustee* to issue to it a certificate for those *units* (if not previously issued).
- (ii) Paragraph (i) is subject to any restriction in the *prospectus* relating to the permitted categories of *unitholders*.

6.5.8 Retirement of the trustee

- (i) The *trustee* of an *authorised scheme* may not retire voluntarily except upon the appointment of a new *trustee*.
- (ii) The *trustee* of an *authorised scheme* must not retire voluntarily unless, before its retirement, it has ensured that the new *trustee* has been informed of any circumstance of which the retiring *trustee* has informed the *Commission*.
- (iii) When the *trustee* of a *scheme* wishes to retire or ceases to be licensed under the *Law*, the *manager* may, subject to the approval of the *Commission*, appoint another *person* eligible to be the *trustee* in its place.

6.6 Powers and duties of the scheme, the manager and the trustee

6.6.1 Application

This section applies in accordance with rule 6.6.2 (Table of application).

6.6.2 Table of application

This table belongs to rule 6.6.1 (Application).

Rule	Company scheme	Directors of a company scheme	Manager	Trustee
6.6.1	x	x	x	x
6.6.3	x		x	x
6.6.4				x
6.6.5		x	x	x
6.6.6			x	
6.6.7	x			
6.6.8			x	x
6.6.9			x	x
6.6.10				x

Rule	Company scheme	Directors of a company scheme	Manager	Trustee
6.6.11				x
6.6.12		x	x	x
6.6.13			x	x
6.6.14	x	x	x	x
6.6.15			x	x
6.6.16		x	x	x
6.6.17		x	x	x
Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.				

6.6.3 Functions of the manager

- (i) The *manager* must manage the *authorised scheme* in accordance with:
 - (a) the *principal documents*;
 - (b) these *rules*;
 - (c) the most recently published *prospectus*; and
 - (d) the *Designated Persons Rules*.
- (ii) The *manager* must take such steps as are necessary to ensure compliance with these *rules* to the extent that they impose obligations upon the *company scheme*.
- (iii) The *manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *authorised scheme*;
 - (b) instruct the *trustee* in writing as to how rights attaching to the ownership of the *scheme property* are to be exercised, but not where rule 6.6.12(ii) (Exercise of rights in respect of the scheme property) applies; and
 - (c) take action immediately to rectify any breach of rule 6.3 (Valuation and pricing) and, where the breach relates to the incorrect pricing of *units* or to the late payment in respect of the *issue* of *units*, the rectification must (unless the *trustee* otherwise directs under paragraph (iv)) extend to the reimbursement or payment, or arranging the reimbursement or payment, of *money*:
 - (I) by the *manager* to *unitholders* and former *unitholders*;
 - (II) by the *directors* to the *company scheme*;

- (III) by the *company scheme* to the *directors*;
 - (IV) by the *manager* to the *trustee*; or
 - (V) by the *trustee* (for the account of the *unit trust scheme*) to the *manager*.
- (iv) Rectification under paragraph (iii)(c) need not, unless the *trustee* so directs, extend to any such reimbursement or payment where it appears to the *trustee* that such breach is of minimal significance.

6.6.4 General duties of the trustee

- (i) The *trustee* of an *authorised scheme* must take reasonable care to ensure that the *authorised scheme* is managed by the *manager* in accordance with:
 - (a) rule 5 (Investment and borrowing powers);
 - (b) rule 6.2 (Dealing);
 - (c) rule 6.3 (Valuation and pricing);
 - (d) rule 6.8 (Income: accounting, allocation and distribution); and
 - (e) any provision of the *principal documents* or *prospectus* that relates to the provisions referred to in paragraphs (a) to (d).
- (ii) The *trustee* must, insofar as not required under paragraph (i)(c), take reasonable care to ensure on a continuing basis that:
 - (a) the *manager* is adopting appropriate procedures to ensure that the *price* of a *unit* is calculated for each *valuation point* in accordance with rule 6.3 (Valuation and pricing); and
 - (b) the *manager* has maintained sufficient records to show compliance with rule 6.3 (Valuation and pricing).
- (iii) The *trustee*, when acting in its capacity as *trustee*, must act solely in the interests of the *unitholders*.
- (iv) The *trustee*:
 - (a) must also take reasonable care to ensure that:
 - (I) the *manager* considers whether or not to exercise the power provided by rule 6.3.8 (Dilution) (as the case may be) and, if applicable, the amount of any *dilution levy* or *dilution adjustment* that is imposed;
 - (II) the *manager* has, in relation to paragraph (I), taken account of all factors that are material and relevant to the *manager's* decision; and
 - (III) when the *manager* considers whether or not to exercise the power under rule 6.3.8 (Dilution), the *manager* has acted in accordance with the restrictions imposed by that *rule*; and

- (b) has no duty in respect of the *manager's* exercise of the discretion referred to in paragraph (a).

6.6.5 Duties of the manager and the trustee under the general law

- (i) The duties and powers of the *manager*, the *directors* of a *company scheme* and the *trustee* under these *rules* and under the *principal documents* are in addition to the powers and duties under the general law.
- (ii) Paragraph (i) applies only insofar as the relevant general law is not qualified by these *rules* or the *principal documents*.

6.6.6 Maintenance of records

- (i) The *manager* must make and retain for six years such records as are necessary to enable:
 - (a) the *authorised scheme* and the *manager* to comply with these *rules*; and
 - (b) it to demonstrate at any time that such compliance has been achieved.
- (ii) The *manager* must make and retain for six years a daily record of the *units* in the *authorised scheme* held, acquired or disposed of by the *manager*, including the *classes* of such *units*, and of the balance of any acquisitions and disposals.
- (iii) Where relevant, a *manager* must make and retain for a period of six years a daily record of:
 - (a) how it calculates and estimates *dilution*; and
 - (b) its policy and method for determining the amount of any *dilution levy* or *dilution adjustment*.
- (iv) The *manager* must on the request of the *trustee* immediately supply it with such information concerning the management and administration of the *authorised scheme* as the *trustee* may reasonably require.

6.6.7 Maintenance of capital: notification

The *directors* must immediately notify the *Commission* in writing if the *company scheme's* capital falls below the minimum or exceeds the maximum stated in the *instrument of incorporation*.

6.6.8 Auditor: unit trust schemes

- (i) The *manager* of a *unit trust scheme* must, upon any vacancy for the position of auditor for a *unit trust scheme*, with the approval of the *trustee*, appoint as auditor for the *unit trust scheme* a *person eligible* for appointment as auditor.
- (ii) The audit fees of the auditor are determined by the *manager* with the approval of the *trustee*.

- (iii) The *manager* of a *unit trust scheme* may, with the approval of the *trustee*, at any time, remove the auditor of a *unit trust scheme*; this power exists notwithstanding anything in any agreement between the *persons* concerned.

6.6.9 Dealings in scheme property

- (i) The *manager* may give instructions to deal in the property of the *authorised scheme*.
- (ii) The *manager* must obtain the consent of the *trustee* for the acquisition or disposal of immovable property.
- (iii) Where the *trustee* is of the opinion that a deal in property is not within these *rules* and the *principal documents*, the *trustee* may require the *manager* to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.
- (iv) Where the *trustee* is of the opinion that:
 - (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a *person* other than the *trustee*; and
 - (b) the *trustee* cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit *custody* by that other *person*,

the *manager* must, if the *trustee* so requests, either cancel the transaction or make a corresponding disposal.

6.6.10 Duty to inform the *Commission*

The *Designated Persons Rules* contain *rules* on matters that should be notified to the *Commission*. Such matters include, but are not limited to, any circumstance that the *trustee* becomes aware of whilst undertaking its functions or duties in rule 6.6.4(i) (General duties of the trustee) that the *Commission* would reasonably view as significant.

6.6.11 Control by the trustee over the scheme property

- (i) The *trustee* of an *authorised scheme* is responsible for the safekeeping of all of the *scheme property* (other than tangible movable property) entrusted to it and must:
 - (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the *authorised scheme*;
 - (b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *trustee*, its nominee or a *person* retained by it under rule 6.6.14(i) (Committees and delegation);
 - (c) take into its *custody* or under its control documents of title to the *scheme property* other than for transactions in *derivatives* or forward transactions; and

- (d) ensure that any transaction in *derivatives* or a forward transaction is entered into so as to ensure that any resulting benefit is received by the *trustee*.
- (ii) The *trustee* is responsible for the collection of income due to be paid for the account of the *scheme*.
- (iii) The *trustee* must keep for six years such records as are necessary:
 - (a) to enable it to comply with these *rules*; and
 - (b) to demonstrate that it has achieved such compliance.

6.6.12 Exercise of rights in respect of the scheme property

- (i) The *trustee* must take all necessary steps to ensure that instructions given to it by the *manager* for the exercise of rights attaching to the ownership of *scheme property* are carried out.
- (ii) Where the *scheme property* of an *authorised scheme* contains *units* in any other *scheme* managed or otherwise operated by the *manager* of the *unit trust scheme* or, as the case may be, by any *director* of the *company scheme* or by any *associate* of either, the *trustee* must exercise any voting rights associated with those *units* in accordance with what he reasonably believes to be the interests of the *unitholders* in the *authorised scheme*.

6.6.13 Duties of the trustee and the manager: investment and borrowing powers

- (i) The *manager* must avoid the *scheme property* being used or invested contrary to rule 5 (Investment and borrowing powers), or any provision in the *principal documents* or the *prospectus* as referred to in rule 5.2.4 (Investment powers: general), except to the extent permitted by paragraph (iii)(b).
- (ii) The *manager* must, immediately upon becoming aware of any breach of a provision listed in paragraph (i), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within paragraph (iii).
- (iii) The *manager* must restore compliance with rule 5 (Investment and borrowing powers) as soon as reasonably practicable having regard to the interests of the *unitholders* and, in any event, within the period specified in paragraph (v) or, when applicable, paragraph (vi) where:
 - (a) the *scheme property* is:
 - (I) used or invested contrary to rule 5 (Investment and borrowing powers) (other than a provision excusing a failure to comply on a temporary basis); and
 - (II) the contravention is beyond the control of both the *manager* and the *trustee*; or
 - (b) there is a transaction (“**subsequent transaction**”) deriving from a right (such as the right to convert stock or subscribe to a rights issue)

attributable to an *investment* (“**original investment**”) of the *authorised scheme* if:

- (I) the subsequent transaction, but for this rule, would constitute a breach of rule 5 (Investment and borrowing powers); and
- (II) at the time of the acquisition of the original *investment*, it was reasonable for the *manager* to expect that a breach would not be caused by the subsequent transaction, and

in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the *trustee* or the *manager*.

- (iv) Immediately upon the *trustee* becoming aware of any breach of any provision listed in paragraph (i), it must ensure that the *manager* complies with paragraph (ii).
- (v) The maximum period for restoration of compliance under paragraph (iii) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under paragraph (vi):
 - (a) for six *months*;
 - (b) where the transaction in question was a transaction in *derivatives* or a forward transaction under rule 5.2.20 (Permitted transactions (derivatives and forwards)), until the close of business five *business days* later; or
 - (c) where the transaction relates to an immovable, for two years.
- (vi) The period specified at paragraph (v)(b) is extended where:
 - (a) the transaction involved a delivery of a *commodity*, from five to 20 *business days*; or
 - (b) the reason for the contravention in paragraph (iii)(a) is the inability of the *manager* to *close out* a transaction because of a limit in the number or value of transactions imposed by an *eligible derivatives* market, until five *business days* after:
 - (I) the inability resulting from any such limit is removed; or
 - (II) it becomes, to the knowledge of the *manager*, reasonably practicable and reasonably prudent for the transaction to be *closed out* in some other way.

6.6.14 Committees and delegation

- (i) The *directors* of a *company scheme* may delegate to any one or more of their number any of the *directors*' powers or duties but remain responsible for the acts or omissions of any such *directors*.
- (ii) The *manager* of an *authorised scheme* and the *directors* of a *company scheme* have the power to retain the services of anyone to assist in the performance of their respective functions, provided that:

- (a) a mandate in relation to *management* of the *scheme property* is not given to:
 - (I) the *trustee*;
 - (II) any other *person* whose interests may conflict with those of the *manager* or the *unitholders*;
 - (III) a *person* operating from an establishment in the Bailiwick of Guernsey unless such *person* is duly licensed by the *Commission* for *management*; or
 - (IV) any other *person* operating from an establishment in a country other than the Bailiwick of Guernsey unless such *person*:
 - (A) is authorised or registered in such country for the purpose of asset management; and
 - (B) is subject to prudential supervision in such country; and in addition if that *person* is not an *EEA firm*, co-operation is ensured between the *Commission* and the overseas *regulator* of the *person*;
- (b) the *manager* ensures that at all times it can monitor effectively the relevant activities of any *person* so retained;
- (c) the mandate permits the *manager* to:
 - (I) give further relevant instructions to the *person* so retained; and
 - (II) withdraw the mandate with immediate effect when this is in the interests of the *unitholders*; and
- (d) the mandate does not prevent effective supervision of the *manager* and it must not prevent the *manager* from acting, or the *authorised scheme* from being managed, in the best interests of the *unitholders*.
- (iii) Where services are retained under paragraph (ii), the responsibility which the *manager* had in respect of such services prior to that retention of services will remain unaffected.
- (iv) The *trustee* of an *authorised scheme* may delegate any function to any *person* save to:
 - (a) the *company scheme* or any *director* of the *company scheme* or the *manager* of an *authorised scheme*, to assist the *trustee* to perform:
 - (I) any function of oversight in respect of the *authorised scheme*, its *directors* or the *manager*, as the case may be; or
 - (II) any function of *custody* or control of the *scheme property*;
 - (b) an *associate* of the *company scheme* or of any of the *directors* of the *company scheme* or of the *manager* of the *scheme* (as the case may

- be) to assist the *trustee* in performing any function in paragraph (a)(l); or
- (c) a *nominee company* or anyone else to assist it to perform the function of being a custodian of *documents* evidencing title to *scheme property* of the *authorised scheme* unless the arrangements with the custodian prohibit the custodian from releasing the *documents* into the possession of a third party without the consent of the *trustee*.
- (v) Where a *trustee* retains services under paragraph (iv):
- (a) if it retains the services of a *director* of the *company scheme* or an *associate* or such a *director* or its own *associate*, then its liability for those services shall remain unaffected; and
- (b) in any other case, it will not be held responsible by virtue of these *rules* for any act or omission of the *person* so retained if it can show that:
- (l) it was reasonable for it to obtain assistance to perform the function in question;
- (ll) the *person* retained was and remained competent to provide assistance in the performance of the function in question; and
- (lll) it had taken reasonable care to ensure that the assistance in question was provided by the *person* retained in a competent manner.

6.6.15 Guidance: Delegation

- (i) In considering delegation, note should be taken of the Commission's Guidance Note on Outsourcing of Functions by Entities Licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, or any successor guidance issued by the Commission.
- (ii) For the purpose of rule 6.6.14(ii)(a)(IV) adequate co-operation will be ensured where the Commission has entered into a co-operation agreement of the kind referred to in article 50(4) of the *UCITS Directive* with the relevant *overseas regulator*.

6.6.16 Conflicts of interest

- (i) The *manager*, any other *director* of a *company scheme* and the *trustee* must take reasonable care to ensure that a transaction within paragraphs (a) to (f) is not carried out on behalf of the *authorised scheme*:
- (a) putting cash on *deposit* with an *affected person*, unless that *person* is an *eligible institution* or an *approved bank* and the arm's length requirement in paragraph (ii) is satisfied;
- (b) lending *money* by an *affected person* to, or for the account of, the *authorised scheme*, unless the *affected person* is an *eligible*

- institution* or an *approved bank*, and the arm's length requirement in paragraph (ii) is satisfied;
- (c) dealing in property by an *affected person* to, or with, the *authorised scheme* (or the *trustee* for the account of the *authorised scheme*), unless paragraph (iii) applies;
 - (d) vesting of property (other than cash) by an *affected person* in the *authorised scheme* or the *trustee* for the account of the *authorised scheme* against the *issue of units* in the *authorised scheme*, unless:
 - (I) paragraph (iii) applies; or
 - (II) the purpose of the vesting is that the whole or part of the property of a *body corporate* or a *collective investment scheme* becomes the first property of the *authorised scheme* and the *unitholders* of shares or units in the *body corporate* or *collective investment scheme* become the first *unitholders* in the *authorised scheme*;
 - (e) the acquisition of *scheme property* by an *affected person* from the *scheme* (or the *trustee* acting for the account of the *authorised scheme*), unless rule 6.2.15 (*In specie* issue and cancellation) applies, or unless paragraph (iii) applies; and
 - (f) transactions within rule 5.4 (Stock lending) by an *affected person* with, or in relation to, the *authorised scheme*, unless the arm's length requirement in paragraph (ii) is satisfied.
- (ii) Any transaction in paragraph (i)(a), (b) or (f) must be at least as favourable to the *authorised scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length between the *affected person* and an independent party.
 - (iii) There is no breach of paragraph (i)(c), (d) or (e) if the transaction meets the requirements of paragraph (iv) (best execution *on-exchange*), paragraph (v) (independent valuation) or paragraph (vi) (arm's length transaction).
 - (iv) There is best execution *on-exchange* for the purposes of paragraph (iii) if:
 - (a) the property is an *approved security* or an *approved derivative*;
 - (b) the transaction is effected under the rules of the relevant exchange with or through a *person* who is bound by those rules;
 - (c) there is evidence in writing of the effecting of the transaction and of its terms; and
 - (d) the *manager* has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the *authorised scheme*.
 - (v) There is independent valuation for the purposes of paragraph (iii) if:

- (a) the value of the property is certified in writing for the purpose of the transaction by a *person* approved by the *trustee* as:
 - (I) independent of any *affected person*; and
 - (II) qualified to value property of the relevant kind; and
- (b) the *trustee* is of the opinion that the terms of the transaction are not likely to result in any material prejudice to *unitholders*.
- (vi) There is an arm's length transaction for the purposes of paragraph (iii) if:
 - (a) paragraph (iv)(a) is not satisfied;
 - (b) it is not reasonably practicable to obtain an independent valuation under paragraph (v); and
 - (c) the *trustee* has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in paragraph (ii).

6.6.17 Conflicts of interest: guidance

- (i) The *manager* (and, in the case of a *company scheme*, the company and its *directors*) and the *trustee* must each take all reasonable steps to ensure that there is no breach of any of the following requirements of this rule by any "**affected person**", meaning:
 - (a) the *trustee*;
 - (b) any *investment adviser*;
 - (c) in the case of a *company scheme*, the company;
 - (d) in the case of a *company scheme*, a *director* of the company; and
 - (e) any *associate* of any *person* in paragraph (a), (b), (c) or (d).
- (ii) *Cash* forming part of the *scheme property* or standing to the credit of the *distribution account* may be placed in any current, deposit or loan account with an *affected person* only if it is an *approved bank* and the arm's length requirement in paragraph (viii) is satisfied.
- (iii) An *affected person* may lend money to the *authorised scheme* only if he is an *approved bank* and the arm's length requirement in paragraph (viii) is satisfied.
- (iv) An *affected person* may not *sell* or deal in the *sale* of property to the *authorised scheme* unless paragraph (ix) applies and, for the purpose of this paragraph, a *sale* shall include any lease or other transaction under which movable or immovable property is made available by the *authorised scheme*.
- (v) An affected person may not vest property in the *authorised scheme* against the issue of *units*, unless:
 - (a) paragraph (ix) applies; or

- (b) it is vested for the purpose of arrangements whereby the whole or part of such property becomes the first property of the *authorised scheme*.
- (vi) An *affected person* may not purchase *scheme property* from the *trustee* acting for the account of the *authorised scheme* unless paragraph (ix) applies and, for the purpose of this paragraph, a purchase shall include any lease or other transaction under which *scheme property* that is movable or immovable property is made available by the *trustee*.
- (vii) An *affected person* may not enter into stock lending transactions in relation to the *authorised scheme* unless the arm's length requirement in paragraph (viii) is satisfied.
- (viii) An *affected person* within paragraph (i)(b), (i)(d), or (i)(e) above may not provide services for the *authorised scheme* unless the *trustee* has reliable evidence that the services are provided on terms which satisfy the arm's length requirement in paragraph (ix).
- (ix) The arm's length requirement is that the arrangements are at least as favourable to the *authorised scheme* as would be any comparable arrangement effected on normal commercial terms negotiated at arm's length between the *affected person* and an independent party.
- (x) There is no breach of paragraph (iv), (v) or (vi) if paragraph (xi), (xii) or (xiii) applies.
- (xi) There is best execution on-exchange for the purposes of paragraph (x) if:
 - (a) the property is an *approved security* or an *approved derivative*;
 - (b) the transaction is effected with or through a member of the relevant exchange under the rules of that exchange;
 - (c) there is evidence in writing of the effecting of the transaction and of its terms; and
 - (d) the *manager* has taken all reasonable steps to effect the transaction or to ensure that it is effected on the terms which are the best available for the *authorised scheme* in the circumstances.
- (xii) There is independent valuation for the purposes of paragraph (x) if:
 - (a) the value of the property is certificated in writing for the purpose of the transaction by a person selected or approved by the *trustee* as:
 - (I) independent of any *affected person*; and
 - (II) qualified to value property of the relevant kind; and
 - (b) the *trustee* is of the opinion that the terms of the transaction are not likely to result in any material prejudice to holders.
- (xiii) There is an arm's length transaction for the purposes of paragraph (x) if:
 - (a) paragraph (xi)(a) is not satisfied;

- (b) it is not reasonably practicable to obtain an independent valuation under paragraph (xii); and
 - (c) the *trustee* has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in paragraph (ix).
- (xiv) Paragraphs (ii) to (vii) are subject to any provision in the *principal documents* forbidding the taking of advantage of all or any of them.

6.7 Payments

6.7.1 Application

This section applies in accordance with rule 6.7.2 (Table of application).

6.7.2 Table of application

This table belongs to rule 6.7.1 (Application).

Rule	Company scheme	Manager	Trustee
6.7.1 to 6.7.5	x	x	x
6.7.6	x	x	
6.7.7		x	
6.7.8		x	
6.7.9		x	
6.7.10		x	x
6.7.11		x	x
6.7.12	x	x	
6.7.13	x	x	
6.7.14	x		
6.7.15	x	x	x
6.7.16		x	x
6.7.17	x	x	

6.7.3 Purpose

- (i) This section assists in protecting investors through requirements which govern the payments out of *scheme property* and charges imposed on investors when buying or selling *units*.
- (ii) The requirements clarify the nature of permitted charges and payments and ensure the disclosure to *unitholders* of any increases in charges and payments to the *manager*.
- (iii) The *prospectus* should make adequate provision for payments from a *scheme*. This section:

- (a) prohibits, or stipulates the conditions on which, payments out of the *scheme property* can be made;
- (b) requires certain payments to be conditional on disclosure in the *prospectus*; and
- (c) governs the allocation of payments between capital and income.

6.7.4 Payments out of scheme property

- (i) The only payments which may be recovered from the *scheme property* of an *authorised scheme* are those in respect of:
 - (a) remunerating the parties operating the *authorised scheme*;
 - (b) the administration of the *authorised scheme*; or
 - (c) the investment or safekeeping of the *scheme property*.
- (ii) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.
- (iii) Paragraphs (i) and (ii) do not apply to any payments in relation to any taxation payable by the *authorised scheme*.

6.7.5 Payments out of scheme property: guidance

- (i) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with Schedule 2 paragraph (13) and Schedule 2 paragraph (14) (Table: contents of the prospectus).
- (ii) A *manager* should ensure that its charges made in connection with the *authorised scheme* are not excessive in determining whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (iii) Rule 6.7.4(ii) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes of unit* that relates solely to the payments that may be taken out of *scheme property*.

6.7.6 Performance fees

- (i) For the *manager's* periodic charge or for payments out of *scheme property* to the *investment adviser*, the *prospectus* may permit a payment based on a comparison of one or more aspects of the *scheme property* or *price* in comparison with fluctuations in the value or *price* of property of any description or index or other factor designated for the purpose (a "**performance fee**").
- (ii) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with rule 6.7.4 (Payments out of scheme property). In determining whether the performance fee is consistent the *manager* should have regard to factors such as:

- (a) it should be calculated and paid after consideration of all other payments;
 - (b) where it is made on the basis of performance of the *scheme* against any index or any other factor, that benchmark must be reasonable given the investment objectives of the *scheme* and must be consistently applied;
 - (c) it may be based on performance above a defined positive rate of return (the “**hurdle rate**”), which may be fixed or variable;
 - (d) where paragraph (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;
 - (e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and
 - (f) except where allowed by rule 6.7.4(i) (Payments out of scheme property), there are to be no arrangements to adjust the *price* or value of *sale* or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.
- (iii) In accordance with Schedule 2 paragraph (13) (Table: contents of the prospectus) the *prospectus* should contain the maximum amount or percentage of *scheme property* that the performance fee might represent in an *annual accounting period*. This disclosure should be given in plain language together with examples of the operation of the performance fee.

6.7.7 Charges on buying and selling units

- (i) No *person* other than the *manager* may impose charges on *unitholders* or potential *unitholders* when they buy or *sell units*.
- (ii) A *manager* must not make any charge or levy in connection with:
 - (a) the *issue* or *sale* of *units*, except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be either a fixed amount or calculated as a percentage of the *price* of a *unit*, or
 - (b) the *redemption* or *cancellation* of units, except a *redemption charge* made in accordance with the *prospectus* current at the time the relevant *units* were purchased by the *unitholder*.
- (iii) This rule is subject to rule 6.3.8 (Dilution).

6.7.8 Charges on buying and selling units: guidance

- (i) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services, or to increase the rate stated in the *prospectus*, the *manager* will need to comply with Schedule 2 (Table: contents of the prospectus) and rule 4.3 (Approvals and notifications).
- (ii) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during

which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However, any *redemption charge* should not be such that it could be reasonably regarded as restricting any right of *redemption*.

- (iii) The *prospectus* should contain a statement as to the determination of the order in which *units* which have been acquired at different times by a *unitholder* are to be taken to be *redeemed* or *cancelled* for the purpose of the imposition of the *redemption charge*.

6.7.9 Charges for the exchange of units in an umbrella fund

For an *authorised scheme* which is an *umbrella fund*, a *manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

6.7.10 Allocation of payments to income or capital

- (i) The *manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised scheme*, and in doing so the *manager* must:
 - (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *authorised scheme*; and
 - (b) agree the treatment of any payment with the *trustee*.
- (ii) Where, for any *annual accounting period*, the amount of the *income property* is less than the income distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

6.7.11 Allocation of payments to income or capital: guidance

- (i) Any payment as a result of effecting transactions for the *authorised scheme* should be made from the *capital property* of the *authorised scheme*.
- (ii) Other than the payments in paragraph (i), all other payments should be made from *income property* in the first instance but may be transferred to the *capital account* in accordance with rule 6.7.10(i) (Allocation of payments to income or capital).
- (iii) For payments transferred to the *capital property* of the *authorised scheme* in accordance with paragraph (ii), the *prospectus* should disclose the matters in Schedule 2 paragraph (14) (Table: contents of the prospectus).
- (iv) If the *manager* wishes to make a change in relation to the allocation of payments, the procedures in rule 4.3 (Approvals and notifications) will be relevant.

6.7.12 Prohibition on promotional payments

No payment may be made from *scheme property* to any *person*, other than a payment to the *manager* permitted by these *rules*, for the acquisition or promotion of the *sale of units* in an *authorised scheme*.

6.7.13 Prohibition on promotional payments: guidance

Examples of payments which are not permitted by rule 6.7.12 (Prohibition on promotional payments) include:

- (i) commission payable to intermediaries (such payments should normally be borne by the *manager*);
- (ii) payments or costs in relation to the preparation or dissemination of *financial promotions*; and
- (iii) payments to third parties for maintaining details of beneficial *unitholders*.

6.7.14 Movable or immovable property

A *company scheme* must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

6.7.15 Payment of liabilities on transfer of assets

- (i) Where the property of an *authorised scheme* is transferred to a second scheme (or to the *trustee* for the account of the *authorised scheme*) in consideration of the *issue of units* in the second scheme to *unitholders* in the first *authorised scheme*, paragraph (ii) applies.
- (ii) The *company scheme*, its *trustee* or the *trustee* of the *authorised scheme* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:
 - (a) there is nothing in the *principal documents* expressly forbidding the payment; and
 - (b) the *manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

6.7.16 Exemptions from liability to account for profits

An *affected person* is not liable to account to another *affected person* or to the *unitholders* of any *authorised scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (i) *dealings* in the *units* of an *authorised scheme*;
- (ii) any transaction in *scheme property*; or
- (iii) the supply of services to the *authorised scheme*,

where disclosure of the non-accountability has been made in the *prospectus* of the *authorised scheme*.

6.7.17 Allocation of scheme property

For an *authorised scheme* which is an *umbrella fund*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only must be allocated by the *manager* between the *sub-funds* in a manner which is fair to the *unitholders* of the *umbrella fund* generally.

6.8 Income: accounting, allocation and distribution

6.8.1 Application

- (i) This section applies to a *manager*.
- (ii) Rule 6.8.4(i) (Unclaimed, *de minimis* and joint unitholder distributions) also applies to the *trustee* of an *authorised scheme*.
- (iii) Except in the case of rule 6.8.2(i) (Accounting periods) and rule 6.8.3(i) (Income allocation and distribution), rule 6.8 (Income: accounting, allocation and distribution) applies as if each *sub-fund* were a separate *authorised scheme*.

6.8.2 Accounting periods

- (i) An *authorised scheme* must have:
 - (a) an *annual accounting period*;
 - (b) a *half-yearly accounting period*; and
 - (c) an *accounting reference date*.
- (ii) A *half-yearly accounting period* begins with the first *day* of an *annual accounting period* and ends on:
 - (a) the day which is six months before the last day of that *annual accounting period*; or
 - (b) some other reasonable date as set out in the prospectus of the *authorised scheme*.
- (iii) The first *annual accounting period* of an *authorised scheme* must begin:
 - (a) on the first day of any period of the *initial offer*; or
 - (b) in any other case, on the date of receiving authorisation under the Law,and in either case must end on the next *accounting reference date*, except where paragraph (iv) applies.
- (iv) When the *accounting reference date* of an *authorised scheme* falls less than six months after the beginning of the first *annual accounting period*, that period may be extended until the subsequent accounting reference date.
- (v) Each *annual accounting period* of an *authorised scheme* subsequent to the first period is to run for a period of 12 months, beginning on the next day after the *accounting reference date*, except where paragraph (vi) applies.

- (vi) Following a revision to the prospectus of the *authorised scheme* that includes a change to the *accounting reference date*, the *annual accounting period* may be shortened, or extended by up to six months, so as to end on the new *accounting reference date*.
- (vii) The *manager* must consult the *trustee* and the *authorised scheme's* auditor before shortening or extending an accounting period in accordance with paragraph (iv) or (vi).

6.8.3 Income allocation and distribution

- (i) When the *annual accounting period* of an *authorised scheme* is extended under rule 6.8.2(iv) or (vi) (Accounting periods), resulting in a longer than usual period before the publication of reports to *unitholders*, the *manager* should make summary information about the investment activities of the *authorised scheme* available to unitholders during that period.
- (ii) An *authorised scheme* must have an *annual income allocation date*, which must be within four *months* of the *accounting reference date*.
- (iii) An *authorised scheme* may have an *interim income allocation date* and *interim accounting periods* and, if it does, the *interim income allocation date* must be within four *months* of the end of the relevant *interim accounting period*.
- (iv) An *authorised scheme* must have a *distribution account* to which the *income property* is transferred at the end of the relevant accounting period.
- (v) If income is allocated and distributed during an accounting period:
 - (a) with effect from the end of the relevant accounting period, the amount of income allocated to *unit classes* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *scheme property* to which they relate if other *classes* of *units* are in *issue* during the period;
 - (b) the adjustment in paragraph (a) must ensure the *price* of *units* remains unchanged despite the transfer of income; and
 - (c) the amount of any interim distribution may not be more than the amount which, in the opinion of the *manager*, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period*, taken together, were an *annual accounting period*.

6.8.4 Unclaimed, *de minimis* and joint unitholder distributions

- (i) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the *prospectus*, must become part of the *capital property*.
- (ii) The *manager* and the *trustee* may agree a *de minimis* amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.

- (iii) Distributions made to the first-named joint *unitholder* on the *register* will be as effective a discharge to the *trustee* and *manager*, as if the first-named joint *unitholder* had been a sole *unitholder*.

6.8.5 Guidance: contents of the prospectus

Schedule 2 (Table: contents of the prospectus) requires the details of rule 6.8.2 (Accounting periods), rule 6.8.3(i) (Income allocation and distribution), rule 6.8.3(ii) (Income allocation and distribution), rule 6.8.4(i) (Unclaimed, *de minimis* and joint unitholder distributions) and rule 6.8.4(ii) (Unclaimed, *de minimis* and joint unitholder distributions) to be contained in the *prospectus* as well as when, and how, the distribution will be paid (e.g. by cheque or BACS) and also how any unclaimed distributions are to be processed.

6.9 Independence and names

6.9.1 Application

This section applies to a *manager*, a trustee, a *company scheme* and any *directors* of a *company scheme*.

6.9.2 Independence of trustees

- (i) The *manager* and the *trustee* of an *authorised scheme* shall:
 - (a) be different *persons* and act independently of each other;
 - (b) each be licensed under the *Law* and administered, and have a place of business, in *Guernsey*;
 - (c) not be a subsidiary of the other; and
 - (d) not have *directors* or other officers in common.
- (ii) In the case of a *company scheme*, the *trustee* shall not have *directors* or other officers in common with those of the company.
- (iii) The *Commission* shall be entitled to require such undertakings, bonds, guarantees and assurances as the *Commission* may determine to secure compliance with paragraphs (i)(a) and (b) of this rule.
- (iv) If any of the links in paragraphs (i)(a) to (d) exist, the *Commission* will have regard to the Guidance Note on the “Independence of Managers and Trustees of Class A Collective Investment Schemes”.

6.9.3 Undesirable or misleading names

- (i) An authorised *scheme's* name must not be undesirable or misleading. This section contains guidance on some specific matters the *Commission* will consider in determining whether the name of an *authorised scheme* is undesirable or misleading.
- (ii) The *Commission* will take into account whether the name of the *authorised scheme*:
 - (a) is substantially similar to the name of another *authorised scheme*;
 - (b) implies that the *authorised scheme* has merits which are not, or might not be, justified;

- (c) implies that the *manager* has particular qualities, which may not be justified;
 - (d) is inconsistent with the *authorised scheme's* investment objectives or policy;
 - (e) implies that the *authorised scheme* is not an *authorised scheme* (for example, describing the *scheme* as a “plan” or “account” is unlikely to be acceptable); and
 - (f) might mislead investors into thinking that *persons* other than the *manager* are responsible for the *authorised scheme*.
- (iii) The *Commission* is unlikely to approve a name of a *scheme* that includes the word “guaranteed” unless:
- (a) the guarantee is given by:
 - (I) a *person* duly authorised under the *Law*; or
 - (II) a *person* subject to prudential supervision in accordance with criteria defined by the laws of the European Union or prudential rules at least as stringent as those laid down by the laws of the European Union,
 other than the *manager* or the *trustee*;
 - (b) the *manager* can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
 - (c) the guarantee covers all *unitholders* within the *authorised scheme* and is legally enforceable by each *unitholder* who is intended to benefit from it or by a *person* acting on that *unitholder's* behalf;
 - (d) the guarantee relates to the total amount paid for a *unit* which includes any charge or other costs of buying or *selling units* in the *authorised scheme*;
 - (e) the guarantee provides for payment at a specified date or dates and is unconditional, although reasonable commercial exclusions such as force majeure may be included; and
 - (f) where the guarantee applies to different *classes* of *unit*, it is identical in its application to all *classes* except for the differences attributable to income already received or charges already suffered by the different *classes* of *unit*.
- (iv) The name of an *authorised scheme* may indicate a guaranteed capital return or income return or both, but only if the total amount paid for a *unit* is guaranteed in accordance with paragraph (iii).
- (v) The *Commission* is unlikely to approve a name of an *authorised scheme* that includes words implying a degree of capital security (such as “capital protected” or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *prospectus*, and:

- (a) the principles in paragraph (iii) are satisfied except that, for the purposes of paragraph (iii)(d), the guarantee may relate to an amount not materially less than the total amount paid for a *unit*; or
 - (b) the investment objective and investment policy for the *scheme* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.
- (vi) When determining whether paragraph (v) is complied with, the *Commission* will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a case-by-case basis.

6.9.4 Undesirable or misleading names: umbrella funds

The *manager* must ensure that the name of a *sub-fund* or of a *class* of *unit* is not undesirable or misleading.

6.9.5 Guidance: Undesirable or misleading names: umbrella funds

When deciding whether rule 6.9.4 (Undesirable or misleading names: umbrella funds) is complied with, the *Commission* will take into account rule 6.9.3 (Undesirable or misleading names). Rule 6.9.4 (Undesirable or misleading names: umbrella funds) applies generally and not just to the names that include the words “guaranteed” or “capital protected”.

Part 7 - Suspension and Termination

7.1 Introduction

This chapter sets out the circumstances in which a *manager* must or may suspend *dealing* in *units* in the *authorised scheme* and the manner in which a suspension is to be carried into effect. This chapter contains provisions relating to the winding-up of an *authorised scheme*, including the circumstances in which an *authorised scheme* falls to be wound up.

7.2 Suspension and resumption of dealings in units

7.2.1 The *manager* may, at any time, with the prior agreement of the *trustee*, or shall without delay, if the *trustee* so requires, suspend the *issue, cancellation, sale and redemption of units* (referred to in this rule as “*dealings in units*”) if it, or the *trustee* in the case of any requirement by the *trustee*, is of the opinion that due to exceptional circumstances there is good and sufficient reason to do so having regard to the interests of *holders*.

7.2.2 At the time of suspension under rule 7.2.1 the *manager*, or the *trustee* if it has required the *manager* to suspend *dealings in units*, shall:

- (i) inform the *Commission* of the suspension, stating the reason for its action; and
- (ii) forthwith give written confirmation of the suspension and the reasons for it to:
 - (a) the *Commission*; and
 - (b) the authorities in any jurisdiction in which the *scheme* is registered for public sale.

7.2.3 During the period of a suspension, none of the obligations in Part 6 (Operating duties and responsibilities) relating to the creation, *cancellation, sale or redemption of units* or to the valuation of *scheme property* shall apply.

7.2.4 The suspension of *dealings in units* shall cease as soon as practicable after the *manager*, or the *trustee* in the case of a requirement by it, is no longer of the opinion referred to in rule 7.2.1 and in any event within 28 *days* of the commencement of the suspension of *dealings in units*.

7.2.5 Before the suspension of *dealings in units* ceases, the *manager* shall inform the *Commission* of the proposed resumption and forthwith after the resumption shall confirm the resumption by giving notice in writing to the authorities specified in rule 7.2.2(ii).

7.2.6 Nothing in this rule shall prevent the *manager* from agreeing, during the period of the suspension, to *sell* or to *redeem units* or to arrange for the *trustee* in the case of a *unit trust scheme* (or, in the case of a *company scheme*, the company) to create or cancel them at a *price* calculated by reference to the first *valuation point* after resumption of *dealings in units*.

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

trustee of the *class* or *classes* related to the *sub-fund* and to the *scheme property* attributable to the *sub-fund*; however, for the purpose of rule 7.2.1, the *manager* or the *trustee* (as the case may be) shall have regard to the interests of all of the *holders* in the *authorised scheme* (or *umbrella fund*).

7.3 When a unit trust scheme is to be wound up

Forthwith upon the happening of any of the events specified in rule 7.7 (Winding-up events) the *trustee* shall cease the *creation* and *cancellation* of *units* in the *authorised scheme*, the *manager* shall cease the *sale* and *redemption* of *units* in the *authorised scheme* and the *trustee* shall proceed to wind up the *authorised scheme* in accordance with rule 7.4 (Manner of winding up a unit trust scheme).

7.4 Manner of winding up a unit trust scheme

7.4.1 Upon the passing of an *extraordinary resolution* approving the *reconstruction* of the *scheme* with another body or *authorised scheme*, the *trustee* shall wind up the *authorised scheme* in accordance with that resolution or the terms of the approved reconstruction.

7.4.2 In any other case the *trustee* shall as soon as practicable after the *authorised scheme* falls to be wound up under rule 7.3 (When a unit trust scheme is to be wound up) realise the *scheme property* and, after paying or providing for all liabilities properly 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 *authorised 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.

7.4.3 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 therefrom any expenses incurred by it in making that distribution.

7.5 When a company scheme is to be wound up

Forthwith upon the happening of any of the events specified in rule 7.7 (Winding-up events) the company shall cease the *creation* and *cancellation* of *units* in the *authorised scheme*, the *manager* shall cease the *sale* and *repurchase* of *units* in the *authorised scheme* and:

7.5.1 where rule 7.7.1 applies, the *directors* of the *company scheme* shall convene an extraordinary general meeting of the *authorised 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 scheme*; or

7.5.2 where either rule 7.7.2, 7.7.3, 7.7.4 or 7.7.5 applies, the *authorised scheme* shall be wound up in accordance with the terms of the *principal documents* and applicable law.

7.6 Manner of winding up a company scheme

On a winding-up, subject to applicable law, the assets available for distribution among the *holders of units* in a *company scheme* shall be applied first in the payment to the *holders of units* in the *company scheme* of *shares of the scheme property* in accordance with their respective interests, and thereafter in the payment to the *holders of management securities* and *nominal securities* of sums in accordance with their respective entitlements as provided in the *prospectus*.

7.7 Winding-up events

The events referred to in rules 7.3 (When a unit trust scheme is to be wound up), 7.5 (When a company scheme is to be wound up) and 7.8 (Winding-up of a sub-fund of an umbrella fund) are:

- 7.7.1 when the authorisation of the *authorised scheme* is revoked or, in the case of the *sub-fund* of an *umbrella fund*, when the authorisation of that *sub-fund* is revoked, where there is a separate authorisation for that *sub-fund*, or when the authorisation of the *umbrella fund* is amended to refer only to the other *sub-funds*, where there is not a separate authorisation for that *sub-fund* (unless the *Commission* in any particular case otherwise directs);
- 7.7.2 when an *extraordinary resolution* passed by the *holders* determines that the *authorised scheme* shall be wound up;
- 7.7.3 where the *prospectus* so provides, when the date for the termination of the *authorised scheme* is reached without an *extraordinary resolution* passed by the *holders* postponing the termination;
- 7.7.4 when any agreement by the *Commission* to a request by the *manager* in the case of a *unit trust scheme* (or, in the case of a *company scheme*, the *directors*) for the revocation of the *declaration of authorisation* in respect of the *scheme* (or, in the case of the *sub-fund* of an *umbrella fund*, for the revocation of the *declaration of authorisation* in respect of that *sub-fund*, where there is a separate *declaration of authorisation* in respect of that *sub-fund*, or for the amendment of the *declaration of authorisation* in respect of the *umbrella fund* to refer only to the other *sub-funds*, where there is not a separate declaration of authorisation in respect of that sub-fund) becomes effective, albeit that such agreement is subject to there being no material change in any relevant factor prior to the date of revocation; or
- 7.7.5 where the *prospectus* so provides, when the value of the *scheme property* calculated in accordance with Part 6 (Operating duties and responsibilities) falls below the value prescribed in the *prospectus* for the requisite period (if any) and the *manager*, in the case of a *unit trust scheme* (or, in the case of a *company scheme*, the *directors*), elect to wind up the *authorised scheme*.

7.8 Winding-up of a sub-fund of an umbrella fund

- 7.8.1 For the purposes of this rule, rules 7.3 (When a unit trust scheme is to be wound up), 7.4 (Manner of winding up a unit trust scheme) and 7.7 (Winding-up events) shall, except where the context otherwise requires, be construed as if references to:
 - (i) “**holders**” were references to *holders* of *units* of the *class(es)* related to the *sub-fund* to be terminated;
 - (ii) “**the authorised scheme**” were references to the *sub-fund* to be terminated;
 - (iii) “**extraordinary resolution**” were references to an *extraordinary resolution* passed at a meeting of *holders* as defined in paragraph (i);
 - (iv) “**scheme property**” were references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
 - (v) “**liabilities**” were references to liabilities of the *umbrella fund* allocated or attributable to the *sub-fund* to be terminated.
- 7.8.2 A *sub-fund* of an *umbrella fund* shall be wound up in accordance with rules 7.3 (When a unit trust scheme is to be wound up) and 7.4 (Manner of winding up a unit

trust scheme), in the case of a *unit trust scheme*, and rules 7.5 (When a company scheme is to be wound up) and 7.6 (Manner of winding up a company scheme), in the case of a *company scheme*.

7.9 Additional provisions applicable to certain umbrella funds

- 7.9.1 In the case of a *company scheme* and subject to applicable law, liabilities of an *umbrella fund* attributable, or allocated, to a particular *sub-fund* shall be met first out of the *scheme property* attributable or allocated to such *sub-fund*.
- 7.9.2 In the case of a *company scheme* other than a *company scheme* which is a protected cell company or an incorporated cell company, and subject to applicable law, if the liabilities to be met out of a particular *sub-fund* of an *umbrella fund* are greater than the proceeds of the realisation of the *scheme property* attributable or allocated to that *sub-fund*, the deficit shall be met out of the *scheme property* attributable or allocated to *sub-funds* (the “**solvent sub-funds**”) of the *umbrella fund* in respect of which the proceeds of realisation exceed liabilities and divided between those *sub-funds* in a manner that is fair to the *holders* in the solvent *sub-funds*.
- 7.9.3 In the case of a *company scheme* other than a *company scheme* which is a protected cell company or an incorporated cell company, and subject to applicable law, rule 7.9.2 shall apply in respect of any deficit arising as a result of additional liabilities accruing to a *sub-fund* through the operation of rule 7.9.2.

7.10 Reconstruction and unitisation

- 7.10.1 Where, for the purpose of a *reconstruction*, it is proposed that the *scheme property* of an *authorised scheme*, or *scheme property* attributable to a *sub-fund* of an *umbrella fund*, should become the property of another body or *authorised scheme*, the proposal shall not be implemented without the sanction of an *extraordinary resolution* of the *holders* of the *authorised scheme* or (as the case may be) of the *class(es)* of *units* related to the *sub-fund* and the prior written approval of the *Commission*.
- 7.10.2 Where it is proposed that an *authorised scheme* or *sub-fund* of an *umbrella fund* should receive property as a result of a unitisation, then the proposal shall not be implemented without the sanction of an *extraordinary resolution* of the *holders* of the *authorised scheme* or (as the case may be) of the *class(es)* of *units* related to the *sub-fund* and the prior written approval of the *Commission* unless rule 7.10.3 applies.
- 7.10.3 This rule applies if the *trustee* in the case of a *unit trust scheme* (or, in the case of a *company scheme*, the *directors*) is (or are) reasonably satisfied that the inclusion of the property concerned:
- (i) is not likely to result in any material prejudice to the interests of the *holders* in the *authorised scheme*;
 - (ii) is consistent with the objectives of the *authorised scheme* or the *sub-fund*; and
 - (iii) could be effected without any breach of Part 6 (Operating duties and responsibilities).

Schedule 1
Table: contents of the principal documents

This table belongs to rule 3.2.4 (Matters which must be included in the principal documents):

	Name of authorised scheme
1	A statement of the name of the <i>authorised scheme</i> .
	Investment powers in eligible markets
2	A statement that, subject to any restriction in these <i>rules</i> or the <i>principal documents</i> , the <i>authorised scheme</i> has the power to invest in any <i>eligible</i> securities market or <i>deal</i> on any <i>eligible</i> derivatives market to the extent that power to do so is conferred by rule 5 (Investment and borrowing powers).
	Unitholder's liability to pay
3	A provision that a <i>unitholder</i> is not liable to make any further payment after he has paid the <i>price</i> of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> which he holds.
	Base currency
4	A statement of the <i>base currency</i> of the <i>authorised scheme</i> .
	Valuation and pricing
5	A statement setting out the basis for the valuation and pricing of the <i>authorised scheme</i> .
	Duration of the authorised scheme
6	If the <i>authorised scheme</i> is to be wound up after a particular period expires, a statement to that effect.
	Object of the authorised scheme
7	A statement:
	(i) as to the object of the <i>authorised scheme</i> , in particular the types of <i>investments</i> and assets in which it and each <i>sub-fund</i> (where applicable) may invest; and
	(ii) that the object of the <i>authorised scheme</i> is to invest in property of that kind with the aim of spreading <i>investment</i> risk and giving <i>unitholders</i> the benefits of the results of the <i>management</i> of that property.
	Government and public securities: investment in one issuer
8	A statement in accordance with rule 5.2.13 (Spread: government and public securities) as to the individual states or bodies in which over 35% of the value of the <i>authorised scheme</i> may be invested in <i>government and public securities</i> .
	Classes of unit
9	A statement:
	(i) specifying the <i>classes</i> of <i>unit</i> that may be issued and, for an <i>authorised scheme</i> which is an <i>umbrella fund</i> , the <i>classes</i> that may be issued in respect of each <i>sub-fund</i> ; and

	(ii) if the rights of any <i>class of unit</i> differ, a statement describing those differences in relation to the differing <i>classes</i> .
	Manager's charges and expenses
10	A statement setting out the basis on which the <i>manager</i> may make a charge and recover expenses out of the <i>scheme property</i> .
	Issue or cancellation directly through the company scheme or trustee
11	Where relevant, a statement authorising the <i>issue</i> or <i>cancellation</i> of <i>units</i> to take place through the <i>company scheme</i> or <i>trustee</i> directly.
	In specie issue and cancellation
12	Where relevant, a statement authorising payment for the <i>issue</i> or <i>cancellation</i> of <i>units</i> to be made by the transfer of assets other than <i>cash</i> .
	Restrictions on sale and redemption
13	Where relevant, the restrictions which will apply in relation to the <i>sale</i> and <i>redemption</i> of <i>units</i> under rule 6.2.17 (Sale and redemption: guidance).
	Voting at meetings
14	The manner in which votes may be given at a meeting of <i>unitholders</i> under rule 4.4.8 (Voting rights).
	Certificates
15	A statement authorising the <i>person</i> responsible for the <i>register</i> to charge for issuing any <i>document</i> recording, or for amending, an entry on the <i>register</i> , other than on the <i>issue</i> or <i>sale</i> of <i>units</i> .
	Income
16	A statement setting out the basis for the distribution or re-investment of income.
	Income equalisation
17	Where relevant, a provision for <i>income equalisation</i> .
	Redemption or cancellation of units on breach of law or rules
18	A statement that where any holding of <i>units</i> by a <i>unitholder</i> is (or is reasonably considered by the <i>manager</i> to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.
	Company schemes: larger and smaller denomination shares
19	A statement of the proportion of a <i>larger denomination share</i> represented by a <i>smaller denomination share</i> for any relevant <i>unit class</i> .
	Company schemes: resolution to remove a director
20	A statement that the <i>company scheme</i> may, by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of <i>unitholders</i> , remove a <i>director</i> before his period of office expires, despite anything else in the <i>company scheme's instrument of incorporation</i> or in any agreement between the <i>company scheme</i> and that <i>director</i> .

	Company schemes: unit transfers
21	A statement that the <i>person</i> designated is the <i>person</i> who, for the time being, is the <i>manager</i> of the <i>company scheme</i> .
	Company schemes: charges and expenses
22	A statement that charges or expenses of the <i>company scheme</i> may be taken out of the <i>scheme property</i> .
	Unit trust schemes: governing law for a trust deed
23	A statement that the <i>trust deed</i> is made under and governed by the law of Guernsey.
	Unit trust schemes: trust deed to be binding and authoritative
24	A statement that the <i>trust deed</i> :
	(i) is binding on each <i>unitholder</i> as if it had been a party to it and that it is bound by its provisions; and
	(ii) authorises and requires the <i>trustee</i> and the <i>manager</i> to do the things required or permitted of them by its terms.
	Unit trust schemes: declaration of trust
25	A declaration that, subject to the provisions of the <i>trust deed</i> and Guernsey rules and regulations for the time being in force:
	(i) the <i>scheme property</i> (other than sums standing to the credit of the <i>distribution account</i>) is held by the <i>trustee</i> on trust for the <i>unitholders</i> according to the number of <i>units</i> held by each <i>unitholder</i> or, where relevant, according to the number of undivided shares in the <i>scheme property</i> represented by the <i>units</i> held by each <i>unitholder</i> ; and
	(ii) the sums standing to the credit of the <i>distribution account</i> are held by the <i>trustee</i> on trust to distribute or apply them in accordance with rule 6.8 (Income: accounting, allocation and distribution).
	Unit trust schemes: trustee's remuneration
26	Where relevant, a statement authorising payments to the <i>trustee</i> by way of <i>remuneration</i> for its services to be paid (in whole or in part) out of the <i>scheme property</i> .
	Unit trust schemes: responsibility for the register
27	A statement identifying the <i>person</i> responsible under the <i>rules</i> for the maintenance of the <i>register</i> .

Schedule 2
Table: contents of the prospectus

This table belongs to rule 4.2.2 (Publishing the prospectus).

	Document status
1	A statement that the <i>document</i> is the <i>prospectus</i> of the authorised scheme valid as at a particular date (which shall be the date of the <i>document</i>).
	Authorised scheme
2	A description of the authorised scheme including:
	(a) its name;
	(b) whether it is a <i>company scheme</i> or a <i>unit trust scheme</i> and that:
	(i) <i>unitholders</i> are not liable for the debts of the authorised scheme;
	(ii) for a <i>company scheme</i> , other than a <i>company scheme</i> which is a protected cell company or an incorporated cell company, a statement that the sub-funds of a scheme which is an <i>umbrella fund</i> are not "ring fenced" and, in the event of the <i>umbrella fund</i> being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, that the remaining liabilities may have to be met out of the assets attributable to other sub-funds; and
	(iii) for a <i>company scheme</i> which is a protected cell company or an incorporated cell company, a statement that the cells of the scheme are ring-fenced and, in the event of the protected cell company or incorporated cell company being unable to meet liabilities attributable to any particular cell out of the assets attributable to that cell, that the remaining liabilities may not be met out of the assets attributable to the other cells;
	(c) for it, the address of its head office and the address of the place in Guernsey for service on the <i>company scheme</i> of notices or other <i>documents</i> required or authorised to be served on it;
	(d) the effective date of the <i>declaration of authorisation</i> made by the <i>Commission</i> and relevant details of termination, if the duration of the <i>authorised scheme</i> is limited;
	(e) its <i>base currency</i> ;
	(f) for a <i>company scheme</i> , the maximum and minimum sizes of its capital; and
	(g) the circumstances in which it may be wound up under the rules and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding-up.
	Investment objectives and policy
3	The following particulars of the <i>investment</i> objectives and policy of the authorised scheme:
	(a) the <i>investment</i> objectives, including its financial objectives;
	(b) the authorised scheme's <i>investment</i> policy for achieving those <i>investment</i> objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
	(c) an indication of any limitations on that <i>investment</i> policy;

	(d) the description of assets which the <i>capital property</i> may consist of;
	(e) the proportion of the <i>capital property</i> which may consist of an asset of any description;
	(f) the description of transactions which may be effected on behalf of the authorised scheme and an indication of any techniques and instruments or borrowing powers which may be used in the <i>management</i> of the authorised scheme;
	(g) a list of the <i>eligible</i> markets through which the authorised scheme may invest or deal in accordance with rule 5.2.10(ii)(b) (Eligible markets: requirements);
	(h) for a <i>company scheme</i> , a statement as to whether it is intended that the scheme will have an interest in any immovable property or movable property (in accordance with rule 5.2.4(ii) (Investment powers: general)) or rule 5.2.6(ii) (Class A schemes: general)) for the direct pursuit of the <i>company scheme's</i> business;
	(i) where rule 5.2.13(iii) (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the <i>scheme property</i> is or may be invested in <i>government and public securities</i> and the names of the individual states, local authorities or public international bodies in whose securities the authorised scheme may invest more than 35% of the <i>scheme property</i> ;
	(j) the policy in relation to the exercise of borrowing powers by the authorised scheme;
	(k) for an authorised scheme which may invest in other schemes, the extent to which the <i>scheme property</i> may be invested in the units of schemes which are managed by the <i>manager</i> or by its <i>associate</i> ;
	(l) where an authorised scheme invests principally in authorised scheme units, <i>deposits</i> or <i>derivatives</i> , or replicates an index in accordance with rule 5.2.31 (Schemes replicating an index), a prominent statement regarding this <i>investment</i> policy;
	(m) where <i>derivatives</i> transactions may be used in an authorised scheme, a prominent statement as to whether these transactions are for the purposes of <i>efficient portfolio management</i> (including hedging or meeting the <i>investment</i> objectives or both and the possible outcome of the use of <i>derivatives</i> on the risk profile of the authorised scheme;
	(n) information concerning the profile of the typical investor for whom the authorised scheme is designed;
	(o) information concerning the historical performance of the authorised scheme;
	(p) for an authorised scheme which invests a substantial portion of its assets in other authorised schemes, a statement of the maximum level of management fees that may be charged to that authorised scheme and to the authorised schemes in which it invests;
	(q) where the net asset value of an authorised scheme is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect; and

	(r) for an authorised scheme, a statement that any <i>unitholder</i> may obtain on request the types of information (which must be listed) referred to in rule 4.2.3(ii) (Availability of prospectus and long report).
	Reporting, distributions and accounting dates
4	Relevant details of the reporting, accounting and distribution information which includes:
	(a) the accounting and distribution dates;
	(b) procedures for:
	(i) determining and applying income (including how any distributable income is paid);
	(ii) unclaimed distributions; and
	(iii) if relevant, calculating, paying and accounting for <i>income equalisation</i> ; and
	(c) the <i>accounting reference date</i> and when the long report will be published in accordance with rule 4.5.11 (Publication and availability of annual and half-yearly reports).
	Characteristics of the units
5	Information as to:
	(a) where there is more than one <i>class</i> of unit in available for issue, the name of each such <i>class</i> and the rights attached to each <i>class</i> in so far as they vary from the rights attached to other <i>classes</i> ;
	(b) how unitholders may exercise their <i>voting rights</i> and what these amount to;
	(c) where a mandatory <i>redemption, cancellation</i> or conversion of <i>units</i> from one <i>class</i> to another may be required, in what circumstances it may be required; and
	(d) for a <i>unit trust scheme</i> , the fact that the nature of the right represented by units is that of a beneficial interest under a trust.
	Manager
6	The following particulars of the <i>manager</i> :
	(a) its name;
	(b) the nature of its corporate form;
	(c) the date of its incorporation;
	(d) the address of its registered office;
	(e) the address of its head office, if that is different from the address of its registered office;
	(f) if neither its registered office nor its head office is in Guernsey, the address of its principal place of business in Guernsey;
	(g) if the duration of its corporate status is limited, when that status will or may cease; and
	(h) the amount of its issued share capital and how much of it is paid up.
	Directors of a company scheme

7	The following particulars of the directors of a company scheme:
	(a) The names and positions in a <i>company scheme</i> of any other <i>directors</i> (if any).
	(b) The manner, amount and calculation of the <i>remuneration</i> of such <i>directors</i> .
	Trustee
8	The following particulars of the <i>trustee</i> :
	(a) its name;
	(b) the nature of its corporate form;
	(c) the address of its registered office;
	(d) the address of its head office, if that is different from the address of its registered office;
	(e) if neither its registered office nor its head office is in Guernsey, the address of its principal place of business in Guernsey; and
	(f) a description of its principal business activity.
	Investment adviser
9	If an <i>investment adviser</i> is retained in connection with the business of an authorised scheme:
	(a) its name; and
	(b) if it carries on a significant activity other than providing services to the authorised scheme as an <i>investment adviser</i> , what that significant activity is.
	Auditor
10	The name of the <i>auditor</i> of the authorised scheme.
	Contracts and other relationships with parties
11	The following relevant details:
	(a) for a company scheme:
	(i) a summary of the material provisions of the contract between the <i>company scheme</i> and the <i>manager</i> which may be relevant to <i>unitholders</i> including provisions (if any) relating to <i>remuneration</i> , termination, compensation on termination and indemnity;
	(ii) the main business activities of each of the <i>directors</i> (other than those connected with the business of the <i>company scheme</i>) where these are of significance to the <i>company scheme's</i> business;
	(iii) if any <i>director</i> is a <i>body corporate</i> in a <i>group</i> of which any other corporate <i>director</i> of the <i>company scheme</i> is a member, a statement of that fact;
	(iv) the main terms of each contract of service between the <i>company scheme</i> and a <i>director</i> in summary form; and
	(v) for a <i>company scheme</i> that does not hold annual general meetings, a statement that copies of contracts of service between the <i>company scheme</i> and its directors will be provided to a unitholder on request;

	(b) the names of the <i>directors</i> of the <i>manager</i> and the main business activities of each of the <i>directors</i> (other than those connected with the business of the authorised scheme) where these are of significance to the authorised scheme's business;
	(c) a summary of the material provisions of the contract between the <i>company scheme</i> or the <i>manager</i> of the <i>unit trust scheme</i> and the <i>trustee</i> which may be relevant to <i>unitholders</i> , including provisions relating to the <i>remuneration</i> of the <i>trustee</i> ;
	(d) if an <i>investment adviser</i> retained in connection with the business of the authorised scheme is a <i>body corporate</i> in a <i>group</i> of which any <i>director</i> of the <i>company scheme</i> or the <i>manager</i> of the <i>unit trust scheme</i> is a member, that fact;
	(e) a summary of the material provisions of any contract between the <i>manager</i> or the <i>company scheme</i> and any <i>investment adviser</i> which may be relevant to <i>unitholders</i> ;
	(f) if an investment adviser retained in connection with the business of the authorised scheme has the authority of the <i>manager</i> or the <i>company scheme</i> to make decisions on behalf of the <i>manager</i> or the <i>company scheme</i> , that fact, and a description of the matters in relation to which it has that authority;
	(g) what functions (if any) the <i>manager</i> has delegated and to whom; and
	(h) in what capacity (if any), the <i>manager</i> acts in relation to any other <i>authorised</i> schemes and the name of such schemes.
	Register of unitholders
12	Details of:
	(a) the address in Guernsey where the <i>register</i> of <i>unitholders</i> , and where relevant the <i>plan register</i> , is kept and can be inspected by <i>unitholders</i> ; and
	(b) the <i>registrar's</i> name and address.
	Payments out of scheme property
13	In relation to each type of payment from the <i>scheme property</i> , details of:
	(a) who the payment is made to;
	(b) what the payment is for;
	(c) the rate or amount where available;
	(d) how it will be calculated and accrued;
	(e) when it will be paid; and
	(f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.
	Allocation of payments
14	If, in accordance with rule 6.7.10 (Allocation of payments to income or capital), the <i>manager</i> and the <i>trustee</i> have agreed that all or part of any income expense payments may be treated as a capital expense:
	(a) that fact;

	(b) the policy for allocation of these payments; and
	(c) a statement that this policy may result in capital erosion or constrain capital growth.
	Movable and immovable property (company scheme only)
15	An estimate of any expenses likely to be incurred by the <i>company scheme</i> in respect of movable and immovable property in which the <i>company scheme</i> has an interest.
	Valuation and pricing of scheme property
16	In relation to the valuation of <i>scheme property</i> and <i>pricing of units</i> :
	(a) either:
	(i) in the case of a <i>single-priced authorised scheme</i> , a provision that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point; or
	(ii) in the case of a <i>dual-priced authorised scheme</i> the <i>manager's</i> policy for determining <i>prices</i> for the <i>sale</i> and <i>redemption</i> of <i>units</i> by reference to a particular <i>valuation point</i> and an explanation of how those prices may differ;
	(b) details of:
	(i) how the value of the <i>scheme property</i> is to be determined in relation to each purpose for which the <i>scheme property</i> must be valued;
	(ii) how frequently and at what time or times of the <i>day</i> the <i>scheme property</i> will be regularly valued for <i>dealing</i> purposes and a description of any circumstance in which the <i>scheme property</i> may be specially valued;
	(iii) where relevant, how the <i>price</i> of units of each <i>class</i> will be determined for <i>dealing</i> purposes;
	(iv) where and at what frequency the most recent prices will be published; and
	(v) where relevant in the case of a <i>dual-priced authorised scheme</i> , the <i>manager's</i> policy in relation to <i>large deals</i> ; and
	(c) if the provisions in paragraph (a) and (b) do not take effect when the <i>principal documents</i> or (where appropriate) supplemental <i>trust deed</i> takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.
	Dealing
17	The following particulars:
	(a) the procedures, the <i>dealing</i> periods and the circumstances in which the <i>manager</i> will effect:
	(i) the sale and <i>redemption</i> of <i>units</i> and the settlement of transactions (including the minimum number or value of units which one <i>person</i> may hold or which may be subject to any transaction of sale or redemption) for each <i>class</i> of <i>unit</i> in the authorised scheme; and

	(ii) any direct issue or <i>cancellation of units</i> by a <i>company scheme</i> or by the <i>trustee</i> (as appropriate) through the <i>manager</i> in accordance with rule 6.2.7(ii) (Issue and cancellation of units through a manager);
	(b) the circumstances in which the <i>redemption of units</i> may be suspended;
	(c) whether certificates will be issued in respect of registered units;
	(d) the circumstances in which the <i>manager</i> may arrange for, and the procedure for the issue or <i>cancellation of</i> , units <i>in specie</i> ;
	(e) the <i>investment exchanges</i> (if any) on which units in the <i>authorised scheme</i> are listed or dealt;
	(f) the circumstances and conditions for issuing units in an authorised scheme which limit the issue of any <i>class</i> of units in accordance with rule 6.2.18 (Limited issue);
	(g) the circumstances and procedures for the limitation or deferral of redemptions in accordance with rule 6.2.21 (Deferred redemption: guidance); and
	(h) in a <i>prospectus</i> available during the period of any <i>initial offer</i> .
	(i) the length of the <i>initial offer</i> period;
	(ii) the <i>initial price</i> of a unit, which must be in the <i>base currency</i> ;
	(iii) the arrangements for issuing units during the <i>initial offer</i> , including the <i>manager's</i> intentions on investing the subscriptions received during the <i>initial offer</i> ;
	(iv) the circumstances when the <i>initial offer</i> will end;
	(v) whether units will be sold or issued in any other currency; and
	(vi) any other relevant details of the <i>initial offer</i> .
	Dilution
18	In the case of a <i>single-priced authorised scheme</i> , details of what is meant by <i>dilution</i> including:
	(a) a statement explaining:
	(i) that it is not possible to predict accurately whether <i>dilution</i> is likely to occur; and
	(ii) which of the policies the <i>manager</i> is adopting under rule 6.3.8(i) (Dilution) together with an explanation of how this policy may affect the future growth of the authorised scheme; and
	(b) if the <i>manager</i> may require a <i>dilution levy</i> or make a <i>dilution adjustment</i> , a statement of:
	(i) the <i>manager's</i> policy in deciding when to require a <i>dilution levy</i> , including the <i>manager's</i> policy on <i>large deals</i> , or when to make a <i>dilution adjustment</i> ;
	(ii) the estimated rate or amount of any <i>dilution levy</i> or <i>dilution adjustment</i> based either on historical data or future projections; and
	(iii) the likelihood that the <i>manager</i> may require a <i>dilution levy</i> or make a <i>dilution adjustment</i> and the basis (historical or projected) on which the statement is made.
	Forward and historic pricing

19	The <i>manager's</i> normal basis of pricing under rule 6.3.9 (Forward and historic pricing).
	Preliminary charge
20	Where relevant, a statement authorising the <i>manager</i> to make a <i>preliminary charge</i> and specifying the basis for and current amount or rate of that charge.
	Redemption charge
21	Where relevant, a statement authorising the <i>manager</i> to deduct a <i>redemption charge</i> out of the proceeds of <i>redemption</i> ; and if the <i>manager</i> makes a <i>redemption charge</i> :
	(a) the current amount of that charge or, if it is variable, the rate or method of calculating it;
	(b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the <i>manager</i> on request; and
	(c) how the order in which units acquired at different times by a <i>unitholder</i> is to be determined so far as necessary for the purposes of the imposition of the <i>redemption charge</i> .
	General information
22	Details of:
	(a) the address at which copies of the <i>principal documents</i> , any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;
	(b) the manner in which any notice or <i>document</i> will be served on <i>unitholders</i> ;
	(c) the extent to which and the circumstances in which:
	(i) the authorised scheme is liable to pay or suffer tax on any appreciation in the value of the <i>scheme property</i> or on the income derived from the <i>scheme property</i> ; and
	(ii) deductions by way of withholding tax may be made from distributions of income to <i>unitholders</i> and payments made to <i>unitholders</i> on the <i>redemption of units</i> ;
	(d) any possible fees or expenses not described in paragraphs 13 (Payments out of scheme property) to 21 (Redemption charge), distinguishing between those to be paid by a <i>unitholder</i> and those to be paid out of <i>scheme property</i> ; and
	(e) for a <i>company scheme</i> , whether or not annual general meetings will be held.
	Information on the umbrella fund
23	In the case of an <i>authorised scheme</i> which is an <i>umbrella fund</i> , the following information:
	(a) that a <i>unitholder</i> is entitled to exchange units in one sub-fund for units in any other sub-fund (other than a sub-fund which has limited the issue of units);
	(b) that an exchange of units in one sub-fund for units in any other sub-fund is treated as a <i>redemption</i> and sale;
	(c) that in no circumstances will a <i>unitholder</i> who exchanges units in one sub-fund for units in any other sub-fund be given a right by law to withdraw from or cancel the transaction;

	(d) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the <i>scheme property</i> which are not attributable to any particular sub-fund;
	(e) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund;
	(f) for each sub-fund, the currency in which the <i>scheme property</i> allocated to it will be valued and the <i>price</i> of units calculated and payments made, if this currency is not the <i>base currency</i> of the <i>authorised scheme</i> which is an <i>umbrella fund</i> ; and
	(g) if there are units for less than two sub-funds in issue, the effect of rule 3.2.5 (Umbrella fund with only one sub-fund).
	Application of the prospectus contents to an umbrella fund
24	For an <i>authorised scheme</i> which is an <i>umbrella fund</i> , information required must be stated:
	(a) in relation to each sub-fund where the information for any sub-fund differs from that for any other; and
	(b) for the <i>umbrella fund</i> as a whole, but only where the information is relevant to the <i>umbrella fund</i> as a whole.
	Marketing in another EEA state
25	A <i>prospectus</i> of an authorised scheme which is prepared for the purpose of <i>marketing units</i> in an EEA State must give details as to:
	(a) what special arrangements have been made:
	(i) for paying in that <i>EEA State</i> amounts distributable to <i>unitholders</i> resident in that <i>EEA State</i> ;
	(ii) for redeeming in that <i>EEA State</i> the units of <i>unitholders</i> resident in that <i>EEA State</i> ;
	(iii) for inspecting and obtaining copies in that <i>EEA State</i> of the <i>principal documents</i> and amendments to it, the <i>prospectus</i> and the annual and half-yearly long report; and
	(iv) for making public the <i>price of units</i> of each <i>class</i> ; and
	(b) how the <i>company scheme</i> or the <i>manager of a unit trust scheme</i> will publish in that <i>EEA State</i> notice:
	(i) that the annual and half-yearly long reports are available for inspection;
	(ii) that a distribution has been declared;
	(iii) of the calling of a meeting of <i>unitholders</i> ; and
	(iv) of the termination of the authorised scheme or the revocation of its authorisation.
	Additional information
26	Any other material information which is within the knowledge of the <i>directors</i> of a <i>company scheme</i> or the <i>manager of a unit trust scheme</i> , or which the <i>directors</i> or <i>manager</i> would have obtained by making reasonable enquiries, including, but not confined to, the following matters:

	(a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the <i>prospectus</i> , for the purpose of making an informed judgement about the merits of investing in the authorised scheme and the extent and characteristics of the risks accepted by so participating;
	(b) a clear and easily understandable explanation of any risks which <i>investment</i> in the authorised scheme may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
	(c) if there is any arrangement intended to result in a particular capital or income return from a holding of units in the authorised scheme or any <i>investment</i> objective of giving protection to the capital value of, or income return from, such a holding:
	(i) details of that arrangement or protection;
	(ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;
	(iii) a description of the risks that could affect achievement of that return or protection; and
	(iv) details of the arrangements by which the <i>manager</i> will notify <i>unitholders</i> of any action required by the <i>unitholders</i> to obtain the benefit of the guarantee; and
	(d) whether any notice has been given to <i>unitholders</i> of the <i>manager's</i> intention to propose a change to the authorised scheme and, if so, its particulars.

Guidance on contents of the prospectus

- (i) In relation to Schedule 2 paragraph (3)(b), the *prospectus* might include a description of the extent (if any) to which that policy does not envisage the authorised scheme remaining fully invested at all times.
- (ii) In relation to Schedule 2 paragraph (13), the types of payments are likely to include management fees (such as periodic and performance fees), *trustee* fees, custodian fees, transaction fees, *registrar* fees, audit fees and *Commission* fees. Expenses which represent properly incurred costs of the *authorised scheme* may also be treated as a type of payment for this purpose.
- (iii) In relation to Schedule 2 paragraph (27), the *prospectus* might include a statement of the *manager's* policy in relation to holding units in the *authorised scheme* as principal, and in particular whether it seeks to make a profit from doing so. It might also include a prominent statement of non-accountability as referred to in rule 6.7.16 (Exemptions from liability to account for profits).