

**GUERNSEY FINANCIAL SERVICES COMMISSION**

**PROTECTION OF INVESTORS (BAILIWICK OF  
GUERNSEY) LAW, 1987**

**THE AUTHORISED COLLECTIVE INVESTMENT  
SCHEMES (CLASS B) RULES 2013  
("Class B Rules")**

# **THE AUTHORISED COLLECTIVE INVESTMENT SCHEMES (CLASS B) RULES 2013**

<b>PART 1</b>	<b>INTRODUCTORY</b>	<b>5</b>
<b>PART 2</b>	<b>APPLICATION OF RULES, CONSTITUTION OF AN AUTHORISED SCHEME AND PRINCIPAL DOCUMENTS</b>	<b>15</b>
<b>PART 3</b>	<b>TITLE TO UNITS AND DEALINGS THEREIN</b>	<b>27</b>
<b>PART 4</b>	<b>THE MANAGER AND THE TRUSTEE</b>	<b>32</b>
<b>PART 5</b>	<b>ALLOCATION AND DISTRIBUTION OF INCOME</b>	<b>40</b>
<b>PART 6</b>	<b>REPORTS TO HOLDERS</b>	<b>41</b>
<b>PART 7</b>	<b>MEETINGS OF HOLDERS</b>	<b>44</b>
<b>PART 8</b>	<b>TERMINATION AND SUSPENSION OF THE SCHEME</b>	<b>47</b>
<b>PART 9</b>	<b>SERVICE OF NOTICES AND DOCUMENTS</b>	<b>51</b>
<b>PART 10</b>	<b>TRANSITIONAL PROVISIONS</b>	<b>52</b>
<b>SCHEDULE</b>	<b>SCHEME PARTICULARS</b>	<b>53</b>

# THE AUTHORISED COLLECTIVE INVESTMENT SCHEMES (CLASS B) RULES 2013

## CONTENTS

CONTENTS		2
1. Introductory		
1.01	Citation and commencement	5
1.02	Interpretation	5
1.03	Umbrella funds	14
2. Application of Rules, constitution of an authorised scheme and principal documents		
2.01	Application of rules	15
2.02	Constitution	15
2.03	Derogations	16
2.04	Undertakings	16
2.05	Application for Class B declaration	16
2.06	The principal documents	17
2.07	Payments out of and into the scheme property	17
2.08	Investment objectives and powers	18
2.09	Borrowing and hedging powers	20
2.10	Prior notifications	21
2.11	Changes to authorised schemes requiring immediate notification to the Commission	22
2.12	Preparation of scheme particulars	22
2.13	Contents of scheme particulars	22
2.14	Publication of scheme particulars	23
2.15	Compensation for false or misleading scheme particulars	23
2.16	Exemption from liability to pay compensation	24
2.17	Undesirable or misleading names	24
2.18	Undesirable or misleading names: umbrella funds	26
3. Title to units and dealings therein		
3.01	The register	27
3.02	Certificates or contract notes	28
3.03	Suspension of dealings	28
3.04	Default by holder	28
3.05	Transfer of units by act of parties	28
3.06	Transfer of units by operation of law	29
3.07	Change of name or address of holder	30
3.08	Payment of fees on production of certificates	30
3.09	Inspection of the register and copies of entries	30
3.10	Pricing of units and dealings by trustee and designated administrator	31

4.	The manager and the trustee	
4.01	Management of the scheme	32
4.02	Auditor	33
4.03	Inspection and obtaining copies of principal documents and scheme particulars	34
4.04	Record of units held by manager	34
4.05	General powers and duties of the trustee	34
4.06	Retirement of the trustee	35
4.07	Replacement and retirement of the manager	36
4.08	Conflicts of interest	37
5.	Allocation and distribution of income	
5.01	Amount available for income allocation	40
5.02	Unclaimed and joint holder distributions	40
6.	Reports to holders	
6.01	Annual reports and accounts	41
6.02	Publication of annual reports and accounts	42
6.03	Annual reports to be offered to purchasers of units	43
6.04	Annual report by the trustee	43
6.05	Interim reports and accounts	43
7.	Meetings of holders	
7.01	Convening of meetings, attendance and voting	44
7.02	Powers of a meeting of holders	44
7.03	Notices of meetings of holders	45
7.04	Quorum	45
7.05	Minutes	45
7.06	Meaning of "resolution"	46
8.	Termination and suspension of the scheme	
8.01	Suspension and resumption of dealings in units	47
8.02	When a unit trust scheme or limited partnership scheme is to be wound up	48
8.03	Manner of winding up a unit trust scheme or limited partnership scheme	48
8.04	When a company scheme is to be wound up	48
8.05	Manner of winding up a company scheme	49
8.06	Winding-up events	49
8.07	Winding-up of a sub-fund of an umbrella fund	49
8.08	Additional provisions applicable to umbrella funds which are companies	50
8.09	Reconstruction	50

9.	Service of notices and documents	
9.01	Service of notices and documents	51
10.	Transitional provisions	
10.01	Continuing authorisation of existing authorised schemes	52
10.02	Amendment of principal documents and scheme particulars	52
	SCHEDULE	53

**GUERNSEY FINANCIAL SERVICES COMMISSION  
PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY)  
LAW, 1987**

**THE AUTHORISED COLLECTIVE INVESTMENT  
SCHEMES (CLASS B)  
RULES 2013**

The Guernsey Financial Services Commission (the “*Commission*”), in exercise of the powers conferred on it by Sections 12, 14, 15, 16, 17 18 and 20 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the “*Law*”) as amended, hereby makes the following rules:-

**PART 1- INTRODUCTORY**

**1.01 Citation and commencement**

These rules (including the schedule hereto) may be cited as the Authorised Collective Investment Schemes (Class B) Rules 2013 (the “*Class B Rules*”) and come into operation on 2 January 2014.

**1.02 Interpretation**

- (1) Unless the context otherwise requires, in these Class B Rules expressions defined in the *Law* have the same meanings as they have in the *Law*. In the event of any conflict between the *Law* and the Class B Rules, the definition in the Class B Rules takes precedence. The following expressions have the meanings assigned to them:

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

“**affected person**” means:

- (a) a *company scheme*;
- (b) the *trustee*;
- (c) a director of a *company scheme*;
- (d) the *manager*;
- (e) any *investment adviser* of a scheme;
- (f) any *associate* of any person in paragraph (a), (b), (c), (d) or (e); and
- (g) the *auditor* of the *authorised scheme*;

“**annual accounting period**” is the period of 12 months between dates specified for that purpose or ending on a particular day specified in any calendar year in the *principal documents*;

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

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

**“approved bank”** means 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 authorised to undertake Class 1 Deposit-taking Business under the Isle of Man Financial Services Act 2008 or is authorised and regulated to carry on a banking or deposit-taking business under the Financial Services and Markets Act 2000 or 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”** means a derivative which is traded or dealt on an *eligible market* for derivatives;

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

**“approved security”** means 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 market* (otherwise than by the specific permission of the authority responsible for supervising the *eligible market*);

**“associate”** in relation to a *licensee* means:

- (a) an undertaking in the same *group* as that *licensee*;
- (b) any body corporate at least one-fifth of the issued equity share capital of which is beneficially owned by that *licensee* or an *associate*;
- (c) any other person whose business or domestic relationship with the *licensee* or its *associate*, or with the partners, *directors*, managers or employees of the *licensee*, or its *associate*, places the person in a position to exercise significant influence over the *licensee* which might reasonably be expected to give rise to a conflict of interest in dealings with third parties;

**“auditor”** means the auditors for the time being of an *authorised scheme*;

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

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

**“collective investment scheme”** has the meaning given in the *Law*;

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

**“Commission”** means the Guernsey Financial Services Commission

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

**“controller”** means

- (a) in relation to a body corporate, any person who, either alone or with any *associate* or *associates* is entitled to exercise, or control the exercise of, 15 per cent 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 *subsidiary*; and

- (b) in relation to an unincorporated entity:
- (i) any person (legal or natural) in accordance with whose directions or instructions, either alone or with those of any *associate* or *associates*, the officers or members of the governing body of the entity are accustomed to act (but disregarding advice given in a professional capacity), and
  - (ii) any person (legal or natural) who, either alone or with any related person or related persons is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the entity; and for the purposes of this definition “related person”, in relation to any person, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any *subsidiary* of that body corporate and any employee of any such *subsidiary*;

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

**“declaration of authorisation”** means the declaration of the *Commission* issued under section 8 of the Law that a *collective investment scheme* is an *authorised scheme* of a specified class;

**“designated administrator”** in relation to an *authorised scheme*, means the person designated by the *Commission* to be the designated manager for the purposes of the *Law* (as designated in the *Commission*’s authorisation of the scheme under section 8 of the *Law*);

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

**“EEA State”** means 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;

**“eligible institution”** means:

- (a) a credit institution authorised by an *EEA State* regulator;
- (b) an investment firm authorised by an *EEA State* regulator;
- (c) a firm authorised under the *Law*; or
- (d) a firm licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended,

or in each case under any European Union directives or other laws or regulations;

**“eligible market”** means

- (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 not falling within paragraphs (a) and (b) but which is eligible for the purposes of these rules if:



- (i) 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*;
- (ii) the market is included in a list in the *scheme particulars*; and
- (iii) 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.

In paragraph (c), a market must not be considered eligible unless it:

- (i) is regulated;
- (ii) operates regularly;
- (iii) is recognised as a market or exchange or as a self-regulating organisation by an *overseas regulator*;
- (iv) is open to the public;
- (v) is adequately liquid; and
- (vi) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

**“enactment”** includes rules and regulations;

**“existing scheme”** means a *collective investment scheme* which, at the *commencement date*, had obtained a Class B *declaration of authorisation* under the *Law*;

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

**“general partner”** has the meaning given in section 2(1)(a) of the Limited Partnerships (Guernsey) Law 1995;

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

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

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

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

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

- (a) a company is deemed to be a *subsidiary* of another if (but only if):  
that other either:-
  - (i) is a member of it and controls the composition of its board of *directors*; or
  - (ii) holds more than half in nominal value of its equity share capital; or
  - (iii) the first mentioned company is a *subsidiary* of any company which is that other’s *subsidiary*;
- (b) a company is deemed to be another’s holding company if (but only if) the other is its *subsidiary*; and
- (c) 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
- (d) any reference to a “company” in this definition includes any body corporate;

**“Guernsey”** means the Bailiwick of Guernsey;

**“hedging transaction”** means a transaction:

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

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

**“incorrect pricing guidance note”** means the Incorrect Pricing of Authorised Collective Investment Schemes – Guidance Note on Correction and Compensation as issued by the Guernsey Financial Services Commission and as amended or replaced from time to time;

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

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

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

**“issue”** means the sale of *units* and “issue price” shall be construed accordingly;

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

**“licensee”** means a firm licensed to conduct controlled investment business under the *Law*;

**“limited partnership”** has the meaning given in the Limited Partnerships (Guernsey) Law, 1995 as amended;

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

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

- (a) are held solely for the benefit of persons employed or engaged in or about the management of the assets of the *company scheme* (or any *associate* thereof); and
- (b) carry no right or expectation to participate, directly or indirectly, in any of the profits of the *company scheme*; and
- (c) on a winding-up or on *redemption*, carry no right to receive anything other than the return of the price paid for the securities;

**“manager”** means:

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

**“Member State”** means a country within the European Union;

**“MiFID”** means The European Parliament and Council Directive on Markets in Financial Instruments (No. 2004/39/EC);

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

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

as the *principal documents* or *scheme particulars* may, or the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust* scheme with no *principal manager*, the *trustee*), from time to time prescribe the minimum holding a person must have in order to qualify to become a *holder* of *units* of that type in the *authorised scheme* or in order to remain a *holder* of *units* of that type in the *authorised scheme* (after *redemption* or *conversion*);

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

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

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

**“money market fund”** means an *authorised scheme* the sole object of which is to enable investors to participate in or receive profits or income arising from the acquisition, holding, management or disposal of any one or more of the following, or of any one or more of the following and transferable securities:

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

**“overseas regulator”** in relation to a country or territory outside *Guernsey*, an authority discharging in that place

- (a) functions corresponding to any function of the *Commission* under the *Law*, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended, or under the *regulatory laws*; or
- (b) such other functions as the *Commission* may by regulation prescribe;

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

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

**“principal documents”**, in relation to:

- (a) a *unit trust scheme*, means the *trust instrument* and *management agreement* (if any);
- (b) a *company scheme*, means 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*;
- (c) a *collective investment scheme* other than a *unit trust scheme* or a *company scheme*, means the documents dealing collectively with the same or similar obligations and duties as the *principal documents* constituting a *unit trust scheme* or a *company scheme*;

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

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

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

**“redemption”** means the purchase of *units* from a *holder* and “redeem” and “redemption price” shall be construed accordingly;

**“register”** has the meaning assigned to it in rule 3.01(5) and must contain the items of information required at 3.01(3);

**“registrar”** the person who maintains the register in accordance with rule 3.01(1);

**“regulated market”** means in accordance with Article 4(1)(14) of *MiFID*, a multilateral system operated and/or managed by a market operator as defined by *MiFID*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments 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*;

**“regulatory laws”** shall mean collectively the Protection of Investors (Bailiwick of *Guernsey*) Law, 1987, as amended; the Banking Supervision (Bailiwick of *Guernsey*) Law, 1994, as amended; The Insurance Managers and Insurance Intermediaries (Bailiwick of *Guernsey*) Law 2002, as amended; The Insurance Business (Bailiwick of *Guernsey*) Law 2002, as amended and the Regulation of Fiduciaries, Administration Business and Company Directors etc (Bailiwick of *Guernsey*) Law, 2000 as amended;

**“resolution”** has the meaning given to it in rule 7.06;

**“scheme particulars”** means written particulars of an *authorised scheme* prepared, revised

and published in accordance with these rules;

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

“**subsidiary**” has the meaning discussed in *group* above;

“**trust instrument**” means a written instrument, whether or not under seal, made between the *principal manager* and the *trustee* or by the *trustee* alone or, if there is no *principal manager*, the *trustee* alone, constituting the trust and includes supplemental instruments;

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

- the person designated as such by the *Commission* for the purposes of the *Law* (as designated in the *Commission*’s authorisation of the *authorised scheme* under section 8 of the *Law*),
- the designated trustee in the case of a *unit trust scheme*
- the designated custodian in the case of an *authorised scheme* other than a *unit trust scheme*;

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

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

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

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

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

of the document, notice or instructions can be made.

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

### **1.03 *Umbrella funds***

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

## PART 2- APPLICATION OF RULES, CONSTITUTION OF AN AUTHORISED SCHEME AND PRINCIPAL DOCUMENTS

### 2.01 Application of rules

- (1) Unless specifically agreed otherwise by the *Commission* in accordance with rule 2.03, all of these Class B rules apply to every *authorised scheme*.
- (2) An *authorised scheme* which is an *umbrella fund* does not qualify to be authorised unless each *constituent part* would, if it were the subject of a separate application for authorisation, qualify for separate authorisation under these rules.

#### GUIDANCE NOTE

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

Certain rules distinguish that compliance with the requirement in question is the responsibility of the *principal manager* (if there is one), the board of the scheme, the *designated administrator* or, in the case of a *unit trust scheme* with no *principal manager*, the *trustee*. Also there will be instances where, in the absence of a *Guernsey principal manager*, this role will be undertaken by an *investment adviser* that is not based in *Guernsey*. Other requirements simply state ‘*manager*’, which could mean either the *principal manager* or the *designated administrator*, reference the definition under Part 1.

In the *Commission*’s experience, there are certain decision-making and operational duties that are undertaken by specific parties. For example, the *principal manager* (where it exists) takes responsibility for, and the *investment adviser* makes, the scheme’s investment decisions. If the *investment adviser* is not resident in *Guernsey* it does not require a licence under the *Law*. In any event, ultimate responsibility would always fall to the board of a *company scheme*, the *general partner* of a *limited partnership*, or the *trustee* in the case of a *unit trust scheme* with no *principal manager*. The *designated administrator* would be responsible for the monitoring of the *scheme property* to ensure ongoing adherence to investment restrictions. There are also certain duties that could fall to any of the aforementioned parties, with whoever is ultimately responsible being a matter of contractual arrangement. These rules have been drafted to reflect the aforementioned observations whilst still maintaining a degree of flexibility to accommodate the varying circumstances that can occur. In the absence of a formal contractual obligation to undertake investment management services, the *Commission* would not expect *designated administrators* to be responsible for the management of objectives and performance, other than those explicitly referred to in these rules. For the avoidance of doubt, the *Commission* will take into account the contractual arrangements of the *authorised scheme* when assessing compliance with these rules.

### 2.02 Constitution

- (1) An *authorised scheme* that is a *company scheme* incorporated in *Guernsey* under Part 1 of The Companies (Guernsey) Law, 2008 shall also be required to comply with the provisions of The Companies (Guernsey) Law, 2008. In instances where these rules and The Companies (Guernsey) Law, 2008 state common or conflicting requirements, the requirements of The Companies (Guernsey) Law, 2008 shall take precedence over these rules.
- (2) An *authorised scheme* that is a *unit trust scheme* must be constituted by a *trust instrument* made in writing.



- (3) An *authorised scheme* that is a *limited partnership* scheme must be constituted by a written *limited partnership* agreement.

### **2.03 Derogations**

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

### **2.04 Undertakings**

- (1) As a condition of the authorisation of a scheme as an *authorised 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.

### **2.05 Application for Class B declaration**

- (1) A person seeking an *authorised scheme declaration of authorisation* from the *Commission* shall submit the appropriate application form to the *Commission* and shall also provide:
  - (a) a statement signed by the *manager* or an *approved law firm* confirming either that the *principal documents* and *scheme particulars* comply with all of these rules relating to their contents or detailing those rules relating to the contents of the *principal documents* or *scheme particulars* with which the *authorised scheme* will not comply, together with the reasons for such non-compliance, and why it is not considered necessary to comply in the interests of investors; and
  - (b) copies of the *principal documents*, *scheme particulars* and other agreements material to the *authorised scheme* signed or certified by the *manager* or an *approved law firm*; and
  - (c) the application fee as prescribed from time to time by regulations made under section 22 of the *Law*; and
  - (d) such other information as the *Commission* may require.

*Declarations of authorisation* shall also be issued in respect of the *constituent parts* of an *umbrella fund*. Any such declaration shall be subject to a timeframe of 1 year, whereby any *constituent part* or class not activated within 1 year of the granting of the declaration shall be revoked. Any new class added to the *umbrella fund* must be declared approved by the *Commission*, any such declaration being subject to a timeframe of 1 year, whereby inactivation for 1 year would lead to the declaration being revoked as above.

- (2) The *Commission* may, but need not, grant an *authorised scheme declaration of authorisation* if it is satisfied either:
  - (a) that the scheme's *principal documents* and *scheme particulars* appear to the *Commission* to comply with all of these rules relating to their contents; or

- (b) that it is unnecessary in the interests of investors for the scheme's *principal documents* and/or *scheme particulars* to comply with any of these rules relating to their contents with which they do not comply.
- (3) An *authorised scheme declaration of authorisation* granted in the circumstances set out in sub-paragraph (2)(b) shall specify the rules with which the scheme's *principal documents* and/or *scheme particulars* do not comply.

## **2.06 The principal documents**

- (1) Subject to rule 2.05(3), the *principal documents* of an *authorised scheme* shall state
  - (a) the name of the scheme;
  - (b) the *applicable law* under which the *principal documents* are made and governed.
- (2) Subject to rule 2.05(3), the *principal documents* or *scheme particulars* of an *authorised scheme* shall state:
  - (a) the investment objectives and restrictions;
  - (b) the hedging powers and restrictions (or an appropriate negative statement);
  - (c) the borrowing powers and restrictions (or an appropriate negative statement);
  - (d) the arrangements for the appointment and removal of the *manager* and *trustee* of the *authorised scheme*;
  - (e) the arrangements for the appointment and removal of the *auditors* of the *authorised scheme*.
- (3) A signed or certified copy of the *principal documents* and *scheme particulars* and any subsequent amendments or variations thereto shall be filed with the *Commission*.
- (4) An *authorised scheme* shall operate and conduct its affairs in accordance with its *principal documents* and *scheme particulars*.

## **2.07 Payments out of and into the scheme property**

- (1) The following expenses may be paid out of the *scheme property* if and to the extent that there is authority for such payment in the *principal documents*:
  - (a) any *periodic charge* payable to the *manager* and the *investment adviser* of the *authorised scheme*; and
  - (b) the fees of the *trustee*; and
  - (c) any expenses or disbursements of the *trustee* and *manager* and *investment adviser* which are of descriptions authorised by the *principal documents* to be paid out of the *scheme property*.

- (2) In addition to the expenses described at sub-paragraph (1), other expenses, fees or charges may be paid out of the *scheme property* provided that the nature of such expenses, fees or charges and how the amounts will be determined are disclosed in the *scheme particulars* and that the amounts charged are disclosed in the next annual or interim report to *holders*.
- (3) No other expenses, fees or charges may be paid out of the *scheme property* except with prior notification having been made to the *trustee* and provided that sufficient notice is given to *holders* to enable them to redeem *units* in the scheme before the amendment takes effect and the *scheme particulars* are revised to disclose such expenses, fees or charges and any such approved payments are specifically disclosed in the next annual or interim report to *holders*.
- (4) In the case of an *umbrella fund* any expenses, fees or charges which can be paid out of the *scheme property* under this rule and any sums received which are not attributable to one *constituent part* only shall be allocated amongst the *constituent parts* in accordance with the *scheme particulars*, if applicable.

## **2.08 Investment objectives and powers**

- (1) The property of an *authorised scheme* shall be invested with the aim of spreading risk.
- (2) The property of an *authorised scheme* shall only comprise assets permitted to be held under its *principal documents* or *scheme particulars* and of a nature or type described in its *scheme particulars*.
- (3) The property of an *authorised scheme* shall not be invested in contravention of limits or restrictions imposed under its *principal documents* or *scheme particulars* and disclosed in its *scheme particulars*; and if the limits or restrictions disclosed in the *scheme particulars* are more restrictive than those imposed under the *principal documents*, no departure may be made from the limits or restrictions disclosed in the *scheme particulars* unless written notice is given to *holders* in accordance with paragraph (8) and the *scheme particulars* are duly amended.
- (4) The *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*) shall take all reasonable steps and exercise all due diligence to avoid the *scheme property* being invested in contravention of paragraphs (1) to (3). The *trustee* shall take all reasonable steps to oversee that the *principal manager*, or in the case of a company scheme, the *directors* properly discharge their duties in this regard.
- (5) Subject to paragraph (6), if a *manager* becomes aware that the *scheme property* is invested in contravention of paragraphs (1) to (3), the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*) shall immediately take such steps as are necessary to rectify the position and notify the *trustee*. The *manager* or *trustee* shall notify the *Commission* in writing if the position has not been rectified within one month of the date on which the *manager* became aware of the contravention.

## GUIDANCE NOTE

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

The *designated administrator*'s responsibility is to monitor the adherence to paragraphs (1) to (3). Any breaches should be brought to the attention of the *principal manager* (if there is one) and, if a *company scheme*, the *directors* or, in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a limited partnership with no *principal manager*, the *general partner*. The *designated administrator* should also ensure that the *investment adviser* has been informed.

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

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

- (6) Paragraph (5) does not apply:
- (a) during whichever is the shorter period of one year from the date on which persons are invited to become investors in the *authorised scheme* or the period beginning with that date and ending on the first date on which the value of the *scheme property* exceeds £5,000,000 or its equivalent but the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*) and *trustee* shall take all reasonable steps and exercise all due diligence to ensure that the *scheme property* is invested with the aim of spreading risk and in a manner consistent with the manner in which the property must be invested at the end of the relevant period; or
  - (b) in the event of a breach of the limits or restrictions beyond the control of the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*), the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), shall each take such steps as are necessary, having regard to the interests of investors, to ensure that the position is rectified as soon as is reasonably practicable and in any event within six months from the earliest date on which the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*), became aware of the breach.
- (7) Any proposal to amend the types of assets permitted to be held by an *authorised scheme* or to its investment limits or restrictions shall be subject to the requirements of section 2.10.
- (8) Subject to rule 2.10, no amendment may be made to the types of assets permitted to be held by an *authorised scheme* or to its investment limits or restrictions

unless:

- (a) sufficient written notice is given to *holders* to enable them to redeem *units* in the *authorised scheme* before the amendment takes effect; and
  - (b) the *principal documents* and/or *scheme particulars* are amended forthwith.
- (9) *Units* in a *collective investment scheme* which is managed or operated by the *principal manager*, by a person in the same *group* as the *principal manager* or by a person who is a *controller* of the *principal manager* or of whom the *principal manager* is a *controller* may not be acquired for an *authorised scheme* unless the *principal manager* procures, in such way as the *manager* shall think fit, that any charge payable by the target *collective investment scheme* is not suffered directly or indirectly by the *authorised scheme* or any investors in that scheme.
- (10) *Units* in a *collective investment scheme* which has the same *investment adviser*, or a person in the same *group* as the *investment adviser* or by a person who is a *controller* of the *investment adviser* or of whom the *investment adviser* is a *controller* may not be acquired for an *authorised scheme* unless any charge payable by the target *collective investment scheme* is not suffered directly or indirectly by the *authorised scheme* or any investors in that scheme.
- (11) Paragraphs (9) and (10) do not apply to a *feeder fund* structure. In such instances, the relevant fee structure in the target *collective investment scheme* should be fully disclosed.

## **2.09 Borrowing and hedging powers**

- (1) No *hedging transaction* or borrowing shall be undertaken by an *authorised scheme* unless permitted under its *principal documents* or *scheme particulars* and disclosed in its *scheme particulars*.
- (2) No *hedging transaction* or borrowing shall be undertaken by an *authorised scheme* which exceeds the limits or restrictions laid down in its *principal documents* or *scheme particulars* and disclosed in its *scheme particulars*; and if the limits or restrictions disclosed in the *scheme particulars* are more restrictive than those imposed under the *principal documents*, no departure may be made from the limits or restrictions disclosed in the *scheme particulars* unless written notice is given to *holders* in accordance with paragraph (6) and the *scheme particulars* are duly amended.
- (3) The *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), shall take all reasonable steps and exercise all due diligence to avoid any contravention of paragraphs (1) and (2). The *trustee* shall take all reasonable steps to oversee that the *manager* properly discharges its duties in this regard.
- (4) If a *principal manager* or alternative contractual provider becomes aware of any contravention of paragraphs (1) or (2) it shall, as soon as is reasonably practicable having regard to the interests of investors, take such steps as are necessary to rectify the position and notify the *trustee*. The *manager* or *trustee* shall notify the *Commission* in writing if the position has not been rectified within six months of the date on which the *manager* first became aware of the contravention.

## GUIDANCE NOTE

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

The *designated administrator*'s responsibility is to monitor the adherence to paragraphs (1) to (3). Any breaches should be brought to the attention of the *principal manager* (if there is one) and, if a *company scheme*, the *directors* or, in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*. The *designated administrator* should also ensure that the *investment adviser* has been informed.

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

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

- (5) Any proposal to amend the borrowing or hedging powers of an *authorised scheme* shall be subject to the requirements of 2.10.
- (6) Subject to rule 2.10, no amendment may be made to an *authorised scheme*'s borrowing or hedging powers unless:
  - (a) sufficient written notice is given to *holders* to enable them to redeem *units* in the *authorised scheme* before the amendment takes effect; and
  - (b) the *principal documents* or *scheme particulars* are amended forthwith.

## 2.10 Prior notifications

- (1) The *manager* of an *authorised scheme* shall give prior written notice to the *Commission* of any proposed material alteration to the scheme's investment, borrowing and hedging powers. Any notice given in respect of a proposed alteration involving a change in the *principal documents* or *scheme particulars* shall be accompanied by a certificate from the *manager* or an *approved law firm* either confirming that following the change or alteration the *principal documents* or *scheme particulars* will continue to comply with such of these rules as relate to the contents of the *principal documents* or *scheme particulars* or giving such confirmation subject to such exceptions as are detailed in that certificate.

## GUIDANCE NOTE

The *manager* may delegate to a third party, for example an *approved law firm*, the alteration of the *scheme particulars* and production of the written notification to the *Commission*. However the *manager* remains responsible for compliance with 2.10(1).

- (2) The *trustee* of an *authorised scheme* shall give written notice to the *Commission* of any proposal to replace the *designated administrator* of the scheme. The incumbent and the replacement *designated administrator* shall be subject to the requirements of section 4.07(7).

- (3) The *manager* of an *authorised scheme* shall give prior written notice to the *Commission* of any proposal to replace the *trustee* of the scheme. The incumbent and the replacement *trustee* shall be subject to the requirements of section 4.06(3).
- (4) The *designated administrator* or *trustee* of an *authorised scheme* shall give prior written notice to the *Commission* of any proposal to replace the *principal manager*, or *investment adviser*, as may be applicable.

## 2.11 Changes to authorised schemes requiring immediate notification to the Commission

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

## 2.12 Preparation of scheme particulars

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

### GUIDANCE NOTE

Whether a change is deemed material depends upon its effect on the *authorised scheme* and its *holders*. Ultimately, the *manager* will need to determine whether in each case a particular change is material in nature. Generally, any change requiring the prior sanction of the *holders* by *resolution*, or a change which is significant enough to warrant prior notice to *holders* enabling a sufficient timeframe to redeem units, would be considered by the *Commission* to be material.

## 2.13 Contents of scheme particulars

- (1) Subject to rule 2.05(3) the *scheme particulars* of an *authorised scheme* shall comply with the requirements in the Schedule to these rules.

## 2.14 Publication of scheme particulars

- (1) The *principal manager*, or in the case of there being no *principal manager*, the *directors* of an *authorised scheme* or in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*:
  - (a) shall not market *units* in that *authorised scheme* unless:
    - (i) *scheme particulars* have been prepared in accordance with rule 2.13 in English, or another language elected by the *holders*, provided the language is that of the jurisdiction into which the *authorised scheme* is to be marketed, provided a certified true translation into English is made available; and
    - (ii) arrangements have been made for a document containing those particulars to be available in what the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*) reasonably considers to be sufficient numbers, or is suitably available via a web site to enable it to comply with the requirements of subparagraph (b); and
    - (iii) a copy of that document has been sent to the *Commission*, and to the *trustee*;
  - (b) shall not effect any sale of *units* in that *authorised scheme* to any person (other than a *holder of units* in the scheme) until it has offered that person free of charge a copy of the *scheme particulars*.

## 2.15 Compensation for false or misleading scheme particulars

- (1) The *principal manager*, or in the case of there being no *principal manager*, the *directors* of an *authorised scheme* or in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner* is to be treated as responsible for any *scheme particulars*.
- (2) The *principal manager* of an *authorised scheme*, or in the case of there being no *principal manager*, the *directors* of a *company scheme*, or in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner* shall be liable to pay compensation to any person who has purchased or agreed to purchase *units* in the *authorised scheme* and suffered loss as a result of:
  - (a) any untrue or misleading statement in any *scheme particulars* or the omission therefrom of any matter required by these rules to be included in the *scheme particulars*; or
  - (b) any untrue or misleading statement or omission arising as a result of a failure to revise, update or correct any *scheme particulars*.
- (3) The omission from the *scheme particulars* of any information required under these rules shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.



## 2.16 Exemption from liability to pay compensation

- (1) The *principal manager* of an *authorised scheme*, or in the case of a *company scheme* with no *principal manager* the *directors* or in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner* is not liable to pay compensation under paragraph 2.15(2) if, at the time when the *scheme particulars* were made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:
  - (a) it continued to take such reasonable care until the time of the relevant acquisition of *units* in the *authorised scheme*;
  - (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers;
  - (c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
  - (d) the person who acquired the *units* was not materially influenced or affected by that statement or omission in making the decision to invest.
- (2) The *principal manager* of an *authorised scheme*, or in the case of a *company scheme* with no *principal manager*, the *directors* or in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner* is also not liable to pay compensation under 2.15(2) 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.
- (3) The *principal manager* of an *authorised scheme* or in the case of a *company scheme* with no *principal manager*, the *directors*, or in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner* is not liable to pay compensation under paragraph 2.15(2) 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.
- (4) For the purposes of this rule, revised *scheme particulars* will be treated as different *scheme particulars* from any preceding and the original.
- (5) References in this rule to the acquisition of *units* include references to contracting to acquire them.

## 2.17 Undesirable or misleading names

- (1) 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 *principal manager* or *investment adviser* has particular qualities, which might 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 *authorised scheme* as a "plan" or "account" is unlikely to be acceptable); and
  - (f) might mislead investors into thinking that persons other than the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*) are responsible for the *authorised scheme*.
- (2) The *Commission* is unlikely to approve a name of an *authorised scheme* that includes the word "guaranteed" unless:
- (a) the guarantee is given by:
    - (i) a person duly licensed, authorised or registered under the *regulatory laws*;
    - 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 *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
  - (c) the guarantee covers all *holders* within the *authorised scheme* and is legally enforceable by each *holder* who is intended to benefit from it or by a person acting on that *holder*'s behalf;
  - (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 *units*, it is identical in its application to all classes except for the differences attributable to income already received or charges already suffered by the different classes of *unit*.
- (3) 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 (2).

- (4) The *Commission* is unlikely to approve a name of an *authorised scheme* that includes words implying a degree of capital security (such as “capital protected” or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *scheme particulars*, and:
- (a) the principles in paragraph (2) are satisfied except that the protection 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 *authorised scheme* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.
- (5) When determining whether paragraph (4) 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.

## **2.18 Undesirable or misleading names: umbrella funds**

- (1) The *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), must ensure that the name of a *sub-fund* or of a class of *unit* is not undesirable or misleading.
- (2) When deciding whether rule 2.18(1) is complied with, the *Commission* will take into account rule 2.17. Rule 2.17 applies generally and not just to the names that include the words “guaranteed” or “capital protected”.

## PART 3- TITLE TO UNITS AND DEALINGS THEREIN

### 3.01 The register

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

#### GUIDANCE NOTE

The *registrar* shall be licensed under the *Law* for, at least, the restricted activity of Registration. Typically the *registrar* will be either the *designated administrator* or *trustee* but it does not need to be limited to these parties and the *Commission* would expect the arrangement to be covered by a contractual agreement in all instances. The *trustee's* oversight role will continue to ensure the proper maintenance of the *register* and the *Commission* would expect the contractual arrangement to allow the *trustee* access to the *registrar's* records in order that the *trustee* may properly discharge its duties.

- (2) The *registrar* must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (3) The *register* must contain:
  - (a) The name and address of each *holder* (for joint *holders*, no more than four need to be registered);
  - (b) The number of *units* of each class held by each *holder*;
  - (c) The date on which the *holder* was registered for *units* standing in his name;
  - (d) The date on which a person ceased to be a *holder*; and
  - (e) The number of *units* of each class currently in issue and not yet redeemed.
- (4) No notice of any trust, express, implied or constructive, which may be entered in the *register* is binding on the *registrar*.
- (5) The *register* is conclusive evidence of the persons entitled to the *units* entered in it.
- (6) A body corporate may be registered as a *holder* or as one of joint *holders*.
- (7) The *registrar* must:
  - (a) Supply to any *holder* or his authorised representative a copy of the entries on the *register* relating to that *holder* on request;
  - (b) Carry out any *conversion* of *units* after consultation with the *designated administrator* and *trustee* as appropriate.

### **3.02 Certificates or contract notes**

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

### **3.03 Suspension of dealings**

- (1) If dealings in *units* are suspended the *designated administrator* shall notify the *Commission* forthwith stating the reason for the suspension.

### **3.04 Default by holder**

- (1) If:
  - (a) such evidence is furnished to the *registrar* to show that default has been made by a *holder* in making any payment in money or a transfer of property due to the *authorised scheme* under the provisions of these or any other rules made by the *Commission* or the *principal documents* in respect of the creation and *issue* of *units* to that *holder*, and
  - (b) any certificate, if issued, in respect of those *units* which has been signed or issued in accordance with rule 3.02(1) is received by the *registrar*,

the *registrar* shall cancel or make any necessary amendments to that certificate and make any necessary deletion or alteration in the *register*.

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

- (1) Subject to paragraph (2), every *holder* shall be entitled to transfer *units* held by him in respect of which he is entered in the *register* by an instrument of transfer in any usual or common form or in such other form as the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*), may from time to time approve.
- (2) The *registrar* is not under any duty to accept a transfer:
  - (a) if the transfer is of some only of the *units* of any class held by a *holder* if such transfer would result in the *holder*, or the transferee, being a *holder* of such number of the *units* of the class in question as would be less than the *minimum holding of units*; or
  - (b) if the *principal documents* or any condition imposed on the *authorised scheme* by the *Commission* contain a limitation upon the categories of persons who may be *holders* and the transferee is not within one of those categories; or

- (c) unless and until the *registrar* has been furnished with such evidence and declarations as to status, residence or otherwise as he may require; or
  - (d) of *units* over which the *trustee*, the *principal manager* or the *authorised scheme* may have a lien; or
  - (e) if the instrument of transfer relates to *units* of more than one class.
- (3) Every instrument of transfer of *units* shall be executed by or on behalf of the *holder* transferring the *units* but need not be executed by the transferee unless the *units* are partly paid; and, unless the transferee is the *manager*, the transferor shall be deemed to remain the *holder* until the name of the transferee has been entered in the *register*.
  - (4) Every instrument of transfer which is required to be stamped by *applicable law* must be duly stamped and left with the *registrar* for registration accompanied by any necessary declarations or other documents that may be required by *applicable law* and by the certificate or certificates, if issued, relating to the *units* to be transferred and by such other evidence as the *registrar* may require to prove the title of the transferor or his right to transfer the *units* or, in the case of a body corporate, the authority of the signatory(ies) on its behalf. The *registrar* may dispense with the production of any certificate which has been lost, stolen or destroyed, upon compliance by the transferor with the requirements which apply in the case of an application by him for the replacement thereof.
  - (5) All instruments of transfer which are registered shall be retained by the *registrar* for a period of six years and a reference shall be made on the *register* enabling the name of the transferor and the transferee and the date of transfer to be identified.
  - (6) Subject to rule 3.08 no fee shall be charged for the registration of any transfer or the issue of a new confirmation in the name of the transferee; and if some only of the *units* represented by a certificate are transferred the transferor shall be entitled free of charge to a new confirmation in respect of the balance.

### **3.06 Transfer of units by operation of law**

Subject to *applicable law*:

- (1) On the death of any one of joint *holders* the survivor or survivors shall be the only person or persons recognised by the *registrar* as having any title to or any interest in the *units*; and upon producing such evidence of death as the *registrar* may require and delivering up the relevant certificate if issued the survivor or survivors shall be entitled to have such certificate duly marked or to have a fresh certificate issued in his name or their names as may be appropriate.
- (2) The legal personal representative of a deceased *holder* (not being one of two or more joint *holders*) shall be the only person recognised by the *registrar*, *trustee* and the *manager* as having title to the *units* held by him.
- (3) (a) Any person becoming entitled to a *unit* in consequence of the death of any sole *holder* or of the survivor of joint *holders*, in consequence of bankruptcy, desastre, curatelle or similar proceedings or under an order of a *Guernsey* court may, subject as hereafter

provided, upon producing such evidence as to his title as the *registrar* may reasonably require, either be registered himself as *holder* of such *unit* upon giving to the *registrar* notice in writing of such his desire or transfer such *unit* to some other person.

- (b) All the provisions of these rules relating to the transfer of *units* shall be applicable to any such notice or transfer as if it were a transfer signed by such *holder*.
- (c) Subject to sub-paragraph (d), a person becoming entitled to a *unit* in consequence of death, bankruptcy, desastre, curatelle or similar proceedings or under an order of a *Guernsey* court may give a discharge for all monies payable in respect of the *unit* but shall not be entitled in respect of such *unit* to receive notices of, or attend or vote at, any meeting of *holders* until he has been registered as a *holder*.
- (d) The *designated administrator* may at his discretion retain any monies payable in respect of any *unit* of which any person under the provisions of this paragraph is entitled to be registered as the *holder*, or is entitled to transfer, until such person is registered as the *holder* of such *unit* or duly transfers it.

### **3.07 Change of name or address of holder**

- (1) The *registrar* shall:-
  - (a) upon receipt of notice in writing of a change of name, or of a change of address, of any *holder*; and
  - (b) upon being satisfied thereof; and
  - (c) on compliance with such formalities, including in the case of a change of name, the surrender of any certificate previously issued to such *holder*, as may be required

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

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

- (1) If authorised by the *principal documents* to do so the *registrar* may make the registration of any document relating to or affecting the title to any *unit* conditional upon the payment to him of such reasonable fee as the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust* scheme with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*) may agree.

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

- (1) The *registrar* shall make the *register* available for inspection in *Guernsey* by a *holder* or his authorised representative or the *manager* free of charge during ordinary office hours (subject to such reasonable restrictions as the *registrar* may impose but so that not less than two hours in each business day shall be allowed for inspection) except that the *register* may be closed at

such times and for such periods (not exceeding 30 days in any one year) as the *registrar* may from time to time determine, with the approval of the *trustee*.

- (2) The *registrar* must supply the *manager* and *trustee* with a copy of the *register* or any part of it on request.
- (3) The *registrar* shall supply a *holder* or his authorised representative free of charge with a copy of the entries on the *register* relating to that *holder*.

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

- (1) The *manager* and *trustee* of an *authorised scheme* must comply with the *principal documents* and *scheme particulars* in relation to the creation, cancellation, *issue* and *redemption* of *units*, the pricing thereof, and settlement therefor.
- (2) In respect of the pricing of *units*, the *manager* and *trustee* must comply with the *incorrect pricing guidance note*.
- (3) On the *issue*, *redemption* or *conversion* of *units*, contract notes shall be issued in accordance with Part 10 of the Licensees (Conduct of Business) Rules, 2009.



## PART 4 - THE MANAGER AND THE TRUSTEE

### 4.01 Management of the scheme

- (1) (a) The *manager* and the *trustee* of an *authorised scheme* shall:
    - (i) be different persons and act independently of each other;
    - (ii) each be incorporated in or a branch in, be administered in, and have a place of business in, *Guernsey*;
    - (iii) each be licensed under the *Law*;
    - (iv) not be a *subsidiary* of the other; and
    - (v) not have executive *directors* or other officers in common.
  - (b) In the case of a *company scheme*, the *trustee* shall not have executive *directors* or other officers in common with those of the company.
  - (c) The *Commission* shall be entitled to require such undertakings, bonds, guarantees and assurances as the *Commission* may determine to secure compliance with paragraphs (a) and (b) of this rule.
- (2) Subject to the Guidance Notes under rules 2.01, 2.08(5) and 2.09(4) it is the duty of the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), to manage the *authorised scheme* and to make decisions as to the constituents of the *scheme property* from time to time in accordance with:
    - (a) the *principal documents*; and
    - (b) the provisions of any *applicable law*; and
    - (c) subject to rule 2.03, these rules; and
    - (d) the most recently published *scheme particulars*; and
    - (e) in the case of a *company scheme*, subject to any directions from time to time given by the *directors*.
  - (3) Taking into account the Guidance Notes under rules 2.01, 2.08(5) and 2.09(4) it is the duty of the *designated administrator* to administer the *authorised scheme* and to monitor the constituents of the *scheme property* in accordance with:
    - (a) the *principal documents*; and
    - (b) the provisions of any *applicable law*; and
    - (c) subject to rule 2.03, these rules; and
    - (d) the most recently published *scheme particulars*.

- (e) in the case of a *company scheme*, subject to any directions from time to time given by the *directors*.
  - (f) in the case of a *limited partnership*, subject to any directions from time to time given by the *general partner*.
- (4) It is the duty of the *trustee*:
- (a) to take reasonable care to ensure that the *authorised scheme* is properly managed and administered by the *principal manager* (if there is one) and *designated administrator* in accordance with paragraphs (2) and (3); and
  - (b) to discharge its duties under the *principal documents* and these rules.
- (5) In the case of a *company scheme*, it is the duty of the *directors* not to give any directions or exercise any powers, duties or discretions which would or might cause the company to operate otherwise than in accordance with the *principal documents* and *scheme particulars* or these rules.
- (6) The *manager* and, in the case of a *company scheme*, the company and the *directors* shall on the request of the *trustee* forthwith supply the *trustee* with such information concerning the management and administration of the scheme as the *trustee* may reasonably require.
- (7) The *trustee* of a *money market fund* shall be a bank registered in accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended.

#### **4.02 Auditor**

- (1) (a) In the case of an *authorised scheme*, the *principal manager* (in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), shall, at the outset and upon any vacancy, appoint a *qualified auditor* as *auditor* for the *authorised scheme*.
  - (b) In the case of a *company scheme*, the *holders* or *directors* shall, at the outset and upon any vacancy, in accordance with the *principal documents* or *scheme particulars* and *applicable law* appoint a *qualified auditor* as *auditor* for the scheme.
- (2) The audit fees of the *auditor* shall be determined, in the case of a *company scheme*, by the *directors* and, in the case of a *limited partnership* scheme, by the *general partner* and, in the case of a *unit trust scheme* the *trustee* in accordance with the *principal documents* or *scheme particulars* and *applicable law*.
- (3) The *manager* shall have the accounts required to be included in the annual report in accordance with rule 6.01 audited by the *auditor*, and that report shall be accompanied by a report of the *auditor* to the *holders* that those accounts have been audited in accordance with *generally accepted auditing standards* and include the income statement and financial position of the *authorised scheme* as at the end of the *annual accounting period*.
- (4) An *auditor* may at any time be removed by:
- (a) the *manager* with prior notification to the *trustee*;

- (b) the *holders* or *directors* of a *company scheme* with prior notification to the *trustee* and in accordance with the *principal documents* or *scheme particulars* and *applicable law*;
- (c) in the case of a *unit trust scheme*, the *principal manager* with prior notification to the *trustee*, or by the *trustee* alone if no *principal manager*;
- (d) in the case of a *limited partnership*, the *general partner* with prior notification to the *trustee*.
- (e) notwithstanding anything in any agreement between the persons concerned in (a) to (d), but subject to *applicable law*, the *manager* shall forthwith give notice to the *Commission* of any such removal with a statement of the reasons therefor.

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

- (1) The *manager* and the *trustee* shall allow any person to obtain a copy of the *principal documents* and of the *scheme particulars*, either via fax or e-mail, subject to the provisions of the Companies (Guernsey) Law, 2008, or in hard copy form upon the payment of a reasonable fee.

#### **GUIDANCE NOTE**

Rule 4.03 may also be satisfied through availability on a relevant web site.

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

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

#### **4.05 General powers and duties of the trustee**

- (1) Subject to paragraph (7) and save where it is contrary to rule 4.01, it is the duty of the *trustee* to carry out the instructions of the *principal manager* or other person with appropriate authority as to the investments which are from time to time to comprise the *scheme property*.
- (2) The *trustee* shall be responsible for the safe custody of all the *scheme property*. The *trustee* shall be liable to the *authorised scheme* in the event that the loss of any *scheme property* occurs as a result of the *trustee*'s unjustifiable failure to perform its obligations or its improper performance of them.
- (3) Subject to paragraph (5), the *trustee* may at its discretion entrust the documents of title or the documents evidencing title to all or part of the *scheme property* for safe keeping to some other person (not being the *manager*) and may arrange for such a person to become the registered holder of *scheme property* the title to which is in registered form.

- (4) Subject to paragraph (5), the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the *directors*; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*) may, with the agreement of the *trustee* and if the *principal documents* permit it and the *scheme particulars* disclose it, arrange for part of the *scheme property* to be loaned through the agency of any person approved in writing by the *trustee*; and any income received on account of the loan shall form part of the *scheme property*. It is hereby declared, for the avoidance of doubt, that this rule shall not apply to the deposit of cash forming part of the *scheme property* in accordance with the *principal documents*.
- (5) The *trustee* may take advantage of paragraph (3) or paragraph (4) only if:
- (a) it is satisfied at the outset after making reasonable enquiries, and continues thereafter after repeating those enquiries at reasonable intervals to be satisfied, that the custodian or borrower, as the case may be, is a fit and proper person to be such a custodian or borrower; and
  - (b) arrangements have been and continue to be made with the custodian or borrower, as the case may be, to protect the rights of the *trustee* in priority to other creditors of the custodian or borrower which the *trustee* is satisfied are sufficient under the law of the country or territory where the documents or property will be kept to safeguard the interests of investors in the scheme.
- (6) The *trustee* shall take reasonable care to ensure that the methods used by the *manager* in calculating prices at which *units* are issued and redeemed are in accordance with the *principal documents* and *scheme particulars*.
- (7) The *trustee* shall be entitled to give notice to the *principal manager* or alternative contractual provider if there is no *principal manager*, that it is not prepared to accept the transfer of any property which in the opinion of the *trustee* infringes the terms of these rules or of the *principal documents* or *scheme particulars*; and the *trustee* shall be entitled to require the *principal manager* or alternative contractual provider if there is no *principal manager*, to secure the transfer in place of any such property of other property acceptable to the *trustee*.
- (8) If services are provided under paragraph (3) by an *approved bank* or a *subsidiary* of an *approved bank* which is an *associate* of the *manager* or *trustee*, neither the *trustee*, the *manager* nor the person providing the custodial services shall be liable to account either to the other or others of them or to the *holders* or any of them for any profits or benefits made by or derived from payments made by way of remuneration for the custodial services.

#### **4.06 Retirement of the trustee**

- (1) The *trustee* shall not be entitled to retire voluntarily other than upon the appointment of a new *trustee*.
- (2) Subject to rule 2.10(3) in the event of the *trustee* desiring to retire or ceasing to be licensed under the *Law* then,

- (a) in the case of a *unit trust scheme*, the *manager* may by an instrument supplemental to the *trust instrument* signed by the *manager*, or
- (b) in the case of a *company scheme*, the company may by new *trustee agreement*, or
- (c) in the case of a *limited partnership*, the *general partner* may by new *limited partnership agreement*

appoint another person licensed under the *Law* to be the *trustee* in place of the retiring *trustee* in accordance with the provisions of rule 2.10.

- (3) No change of *trustee* is effective for the purposes of the *Law* until such time as the *Commission* formally varies the *declaration of authorisation* of the scheme. Until such time as that variation is issued the current *trustee* remains formally responsible for the *authorised scheme* and its compliance with these rules and the relevant *regulatory laws*.

#### **4.07 Replacement and retirement of the manager**

- (1) Subject to rule 4.07(7) the *manager* may be removed by notice in writing given by the *trustee*, or in the case of a *company scheme*, the *directors* or in the case of a *limited partnership*, the *general partner* to the *manager* in any of the following events:
  - (a) if an order is made or a *resolution* is passed for the winding-up of the *manager* (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the *trustee*) or if its affairs are declared to be in a state of desastre; or
  - (b) if a receiver is appointed; or
  - (c) if for good and sufficient reason the *trustee* is of the opinion and so states in writing to the *holders*, with reasons, that a change of *manager* is desirable in the interests of the *holders*; or
  - (d) if a *resolution* is passed removing the *manager*; or
  - (e) if the *holders* of three-quarters majority in value of the *units* (excluding *units* held or deemed to be held by the *manager*) make a request in writing to the *trustee* that the *manager* be removed; or
  - (f) if the *manager* ceases to be licensed under the *Law*.
- (2) Subject to rule 4.07(7) the *manager* shall on receipt of such notice cease to be the *manager* and the *authorised scheme* shall by a new *management agreement*; appoint some other person licensed under the *Law* to be the *manager of the authorised scheme* in accordance with the provisions of rule 4.07(7); and any such instrument or agreement shall contain such provisions as the *trustee* may be advised are necessary or desirable or as the *Commission* requires to be entered into by the new *manager* in order to secure the due performance of its duties as *manager*.
- (3) If the name of the scheme contains a reference to the name of the former *manager*, the former *manager* shall be entitled to require the new *manager* and the *trustee* forthwith to propose a change in the name of the *authorised scheme*.

- (4) The *manager* shall have the right to retire in favour of some other person licensed under the *Law* approved in writing by the *trustee* upon and subject to fulfilment of the conditions set out in paragraph (2).
- (5) Upon the appointment of a new *manager*:
- (a) the removed or retiring *manager* shall be released from all further obligations under these rules and under the *principal documents* but without prejudice to the rights of any person in respect of any act or omission on the part of the removed or retiring *manager* prior to its retirement or removal; and
  - (b) the new *manager* shall thereafter have all the powers, rights, duties and obligations of the *manager* under these rules and under the *principal documents* as fully as if it had been originally a party to the *principal documents*.
- (6) Upon the removal or retirement of the *manager*:
- (a) the removed or retiring *manager* shall remain entitled to all *units* held or deemed to be held by it and shall be entitled to require the issue to it of a certificate or certificates in respect thereof (if not previously issued) and to be registered in the *register* in respect thereof and thereafter to have and exercise all rights of a *holder* of such *units*; and
  - (b) the removed or retiring *manager* shall, in the case of a *company scheme*, transfer or procure the transfer at cost to the new *manager* of any *management securities* held for its benefit immediately prior to such removal or retirement. If the removed or retiring *manager* refuses or fails to effect or procure such transfer within 30 days after the date of its removal or retirement the company shall be entitled to transfer such *units* on behalf of the removed or retiring *manager* or its *associate*, and to account to such person for the proceeds less any costs incurred.
- (7) No change of *designated administrator* is effective for the purposes of the *Law* until such time as the *Commission* formally varies the *declaration of authorisation* of the scheme. Until such time as that variation is issued the current *designated administrator* remains formally responsible for the *authorised scheme* and its compliance with these rules and the relevant *regulatory laws*.

#### **4.08 Conflicts of interest**

- (1) The *manager*, any *director* of a *company scheme*, the *general partner* of a *limited partnership* 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 rule 4.08(2) is satisfied;
  - (b) lending money by an *affected person* to, or for the account of, the *authorised scheme*, unless the *affected person* is an *eligible institution* or an *approved bank*, and the arm's length requirement in rule 4.08(2) 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 rule 4.08(3) 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) rule 4.08(3) applies; or
    - (ii) the purpose of the vesting is that the whole or part of the property of a body corporate or a *collective investment scheme* becomes the first property of the *authorised scheme* and the *unitholders* of shares or *units* in the body corporate or *collective investment scheme* become the first *holders* in the *authorised scheme*;
  - (e) the acquisition of *scheme property* by an *affected person* from the *authorised scheme* (or the *trustee* acting for the account of the *authorised scheme*) unless rule 4.08(3) applies, and
  - (f) transactions in respect of stock lending by an *affected person* with, or in relation to, the *authorised scheme*, unless the arm's length requirement in rule 4.08(6) is satisfied.
- (2) Any transaction in rule 4.08(1) (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.
  - (3) There is no breach of rule 4.08(1) (c), (d) or (e) if the transaction meets the requirements of rule 4.08(4) – best execution, rule 4.08(5) – independent valuation or rule 4.08(6) – arm's length transaction.
  - (4) The transaction satisfies the criteria for best execution on exchange for the purposes of rule 4.08(3) if:
    - (a) the property is an *approved security* or an *approved derivative*;
    - (b) the transaction is effected under the rules of the *eligible market* with or through a person who is bound by those rules;
    - (c) there is evidence in writing of the effecting of the transaction and of its terms; and
    - (d) the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the *authorised scheme*.
  - (5) There is independent valuation for the purposes of rule 4.08(3) if:
    - (a) The value of the property is certified in writing for the purpose of the transaction by a person approved by the *trustee* as:
      - (i) independent of the *authorised scheme* and any *affected person*; and

- (ii) qualified to value property of the relevant kind; and
  - (b) the *trustee* is of the opinion that the terms of the transaction are not likely to result in any material prejudice to *holders*.
- (6) If
- (a) Rule 4.08(4)(a) is not satisfied; and
  - (b) it is not reasonably practicable to obtain an independent valuation under rule 4.08(5)

there is an arm's length transaction for the purposes of rule 4.08(3) if the *trustee* has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in rule 4.08(2).

#### GUIDANCE NOTE

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



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

### **5.01 Amount available for income allocation**

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

### **5.02 Unclaimed and joint holder distributions**

- (1) Where an authority in writing has been received by the *registrar* from the *manager* or the registered *holder* or in the case of joint *holders* from all of them in such form as the *registrar* or, in the case of a *company scheme*, the *directors*, consider sufficient, the *authorised scheme* shall pay the amount payable to the *manager* or the *holder* or joint *holders*, as the case may be, to his or their nominated bank or other agent with the same effect as before provided as though such nominated bank or other agent were the sole *holder*.
- (2) Any distribution payment which remains unclaimed shall be dealt with in accordance with the provisions of the *principal documents* or if there are no such provisions after a period of six years from the date of payment of the same shall then be transferred to and become part of the *scheme property*, and thenceforth neither the payee nor the *holder* nor any successor in title of his shall have any right thereto or therein except as part of the *scheme property*.

## PART 6- REPORTS TO HOLDERS

### 6.01 Annual reports and accounts

- (1) The *manager* shall, in relation to each *annual accounting period*, prepare a report and accounts which shall at least contain:
  - (a) the names and addresses of:
    - (i) the *manager*;
    - (ii) the *trustee*;
    - (iii) any *investment adviser*;
    - (iv) the *registrar*;
    - (v) the *auditor*;
    - (vi) the *directors*, in the case of a *company scheme*;
  - (b) a statement that the scheme is an *authorised scheme*;
  - (c) a review of the *authorised scheme's* investment activities during the period to which the report relates;
  - (d) details of any significant change in the *scheme particulars* during the period to which the report relates;
  - (e) a statement of the value per *unit* of the *scheme property* (calculated on a consistent basis) at the beginning and end of the period to which the report relates;
  - (f) any other significant information which would enable *holders* to make an informed 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 the period;
  - (g) a portfolio statement specifying the investments comprised in the *scheme property* at the end of the accounting period, the percentage of the value of the *scheme property* that each holding represents and a description of any significant changes in the portfolio during the period;
  - (h) a statement of the net income per *unit* distributed or, in the case of *accumulation units*, allocated during that period;
  - (i) a copy of a report of the *auditor* on the accounts of the scheme reporting in accordance with *generally accepted auditing standards*;
  - (j) a copy of the report to *holders* which is required by rule 6.04 to be delivered to the *manager*, stating whether in the *trustee's* opinion the *manager* has managed the *authorised scheme* in that period in accordance with the provisions of the *principal documents*, the *scheme particulars* and these rules;
  - (k) a balance sheet, including a description and the amount of any contingent liabilities;

- (l) a detailed income statement;
  - (m) a statement of the bases for valuation of the *scheme property*, and for converting amounts in currencies other than the *base currency* into amounts in the *base currency*.
- (2) The accounts shall be prepared in accordance with *generally accepted accounting principles* and shall include the income statement and financial position of the *authorised scheme* as at the end of the period to which the accounts relate.
  - (3) Annual reports shall be signed in accordance with the *principal documents*.
  - (4) In the case of an *umbrella fund* the *manager* shall have the following additional obligations:
    - (a) to include in each report the following information in relation to each *constituent part* in the *umbrella fund*
      - (i) the name of the *constituent part*; and
      - (ii) a description of the investment objectives; and
      - (iii) such statements about the changes over the period to which the report relates in the capital value of *units* in the *constituent part* and the income therefrom as the *manager* considers appropriate to enable a *holder* to judge the relative merits of investment in that *constituent part* as compared with investment in any other *constituent part*; and
    - (b) to supply to any person to whom a report relating to a *constituent part* has been sent the corresponding report relating to any of the other *constituent parts* if that person requests that such report be sent to him; and
    - (c) to state in each report relating to a *constituent part* the fact that the corresponding report for any other *constituent part* will be sent to any *holder* who requests it.

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

- (1) The *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*) shall, within six months after the end of the *annual accounting period*, publish the annual report in accordance with paragraphs (2) and (3) and the disclosures made in the *scheme particulars*.
- (2) The *manager* shall send a copy of the report to each *holder* (or to the first named of joint *holders*) entered in the *register* on the date of issue or, if permitted by the *principal documents*, the *manager* or the *directors* may, upon giving notice to the holders, make the report available on a website;
- (3) The *manager* and the *trustee* shall make the most recent annual report available in English for inspection by the public free of charge during ordinary office hours at each place specified for

the purpose in the most recently published *scheme particulars*, or make them available on a relevant web site.

- (4) The *manager* shall send a copy of the report in English to the *Commission* when it is published but in any case no later than six months after the end of the *annual accounting period*.

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

- (1) The *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*) shall not effect any sale of *units* in an *authorised scheme* to any person other than a person who is already a *holder* of *units* in the scheme until it has offered that person free of charge a copy of the most recent annual report and accounts, or the annual report and accounts are available on a relevant web site.

### **6.04 Annual report by the trustee**

- (1) It is the duty of the *trustee* to enquire into the conduct of the *manager* and, in the case of a *company scheme*, the *directors*, in the management of the *authorised scheme* in each *annual accounting period* and to report thereon to the *holders*. Such enquiries by the *trustee* are to be carried out under the provisions of rule 4.01(6).
- (2) The *trustee's* report shall contain the matters set out in Rule 6.01(1)(j) and shall be delivered to the *manager* in good time to enable him to include a copy of the report in the *authorised scheme's* annual report to the *holders*.

### **6.05 Interim reports and accounts**

- (1) Any report and accounts published in relation to an *interim accounting period* shall:-
  - (a) to the extent that it contains the information, be prepared on a basis consistent with the requirements of rule 6.01;
  - (b) be sent to each *holder* in accordance with rule 6.02(2), made available for inspection in accordance with rule 6.02(3) and offered to purchasers of *units* in accordance with rule 6.03.

## PART 7- MEETINGS OF HOLDERS

### 7.01 Convening of meetings, attendance and voting

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

### 7.02 Powers of a meeting of holders

- (1) Subject to paragraph (2), a meeting of *holders* duly convened and held in accordance with this part of these rules shall (subject to *applicable law*) be competent by *resolution*:
  - (a) to sanction any modification, alteration or addition to the provisions of the *principal documents* which shall be agreed by the *trustee* and the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*); and
  - (b) to remove the *manager* as provided in rule 4.07(1)(d); and
  - (c) to approve an arrangement for the reconstruction or amalgamation of the *authorised scheme* with another body or scheme whether or not that other scheme is a *collective investment scheme*; and
  - (d) to approve any change in the investment, borrowing or hedging powers of the scheme; and
  - (e) to terminate the *authorised scheme* as provided in rule 8;and shall have such further or other powers as are:
  - (i) permitted by *applicable law* and not inconsistent with these rules; or

- (ii) required by *applicable law*.
- (2) An increase in the *periodic charge* cannot occur without sufficient notice being given such that an investor may redeem his shares prior to the increase coming into effect.
- (3) If a meeting of *holders* is convened by the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*) to consider a *resolution* for the removal of the *trustee* or the *manager*, the person convening the meeting shall ensure that the notice is accompanied by a statement of the reasons for proposing the *resolution*.

### **7.03 Notices of meetings of holders**

- (1) A minimum of ten days' notice (or any longer period of notice specified for the purpose in the *principal documents* or by *applicable law*), inclusive of the day on which the notice is served and of the day for which the notice is given, of every meeting shall be given to the *holders* in the manner provided for in rule 9.01.
- (2) The notice shall specify the place, day and hour of the meeting and the terms of the *resolutions* to be proposed.
- (3) A copy of the notice shall be sent by post by the *manager* to the *trustee* or by the *trustee* to the *manager* as the case may be and, in the case of a *company scheme*, by the company to the *manager*, the *trustee* and the *directors*.

### **7.04 Quorum**

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

### **7.05 Minutes**

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

## 7.06 Meaning of “resolution”

- (1) In these rules “*resolution*” means as passed by a simple majority of the *holders* (or class of *holders*);
- (2) A written *resolution* is passed by a simple majority if it is passed by *holders* representing a simple majority of the total voting rights of *holders* eligible to vote;
- (3) A *resolution* passed at a meeting on a show of hands is passed by a simple majority of
  - (a) the *holders* who, being entitled to do so, vote in person on the *resolution*, and
  - (b) the persons who vote on the *resolution* as duly appointed proxies of *holders* entitled to vote on it.
- (4) A *resolution* passed on a poll taken at a meeting is passed by a simple majority if it is passed by *holders* representing a simple majority of the total voting rights of *holders* who, being entitled to do so, vote in person or by proxy on the *resolution*.

## PART 8- TERMINATION AND SUSPENSION OF THE SCHEME

### 8.01 Suspension and resumption of dealings in units

- (1) The *manager* may, at any time, with the prior agreement of the *trustee*, or shall without delay, if the *trustee* so requires, or as required or permitted by the *principal documents* 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*.
- (2) At the time of suspension under paragraph (1) the *manager*, or the *trustee* if it has required the *manager* to suspend dealings in *units*, shall forthwith give written confirmation of the suspension and the reasons for it to:
  - (a) the *holders*;
  - (b) the *Commission*; and
  - (c) the authorities in any jurisdiction in which the *authorised scheme* is registered for public sale.
- (3) During the period of a suspension, none of the obligations relating to the creation, cancellation, sale or *redemption* of *units* or to the valuation of *scheme property* shall apply.
- (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 8.01(1).
- (5) Once 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 paragraph 8.01(2)(c).
- (6) Nothing in this rule shall prevent the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), 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) 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*. In such application reference must be made to the *trustee* of the class or classes related to the *sub-fund* and to the *scheme property* attributable to the *sub-fund*. For the purpose of rule 8.01(1), the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *unit trust scheme* with no *principal manager*, the *trustee* or, in the case of a *limited partnership* with no *principal manager*, the *general partner*), and the *trustee* shall have regard to the interests of all of the *holders* in the *authorised scheme* (or *umbrella fund*).



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

- (1) Forthwith upon the happening of any of the events specified in rule 8.06 (Winding-up events) the *trustee* shall cease the creation and cancellation of *units* in the *authorised scheme*, the *manager* and *registrar* shall cease the sale and *redemption* of *units* in the *authorised scheme* and the *trustee* and the *principal manager* or, in the case of a *unit trust scheme* with no *principal manager*, the *trustee* shall proceed to wind up the *authorised scheme* in accordance with rule 8.03.

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

- (1) Upon the passing of a *resolution* approving the reconstruction of the *authorised scheme* with another body or *authorised scheme*, the *authorised scheme* shall be wound up in accordance with that *resolution* or the terms of the approved reconstruction.
- (2) In any other case the *trustee* shall, as soon as practicable after the *authorised scheme* falls to be wound up under rule 8.02 and with consideration to the best interests of the *holders*, realise the *scheme property* and, after paying or providing for all liabilities properly payable and retaining provision for the costs of the winding-up, distribute the proceeds of that realisation to the *holders* and the *principal manager* or, in the case of a *limited partnership*, the *general partner* as they may direct (upon production by them of evidence as to their entitlement thereto) proportionately to their respective interests in the *authorised scheme*, provided that if the *principal manager* or, in the case of a *limited partnership*, the *general partner* so directs or the *principal documents* so require, the *trustee* shall rather than realising any of the *scheme property* distribute it in specie amongst the *holders* in satisfaction of their proportionate entitlements.
- (3) Any unclaimed net proceeds or other cash held by the *trustee* after the expiration of 12 months from the date on which the same became payable shall be distributed by the *trustee* in accordance with *applicable law* subject to the *trustee* having a right, if *applicable law* so permits, to retain therefrom any expenses incurred by it in making that distribution.

### GUIDANCE NOTE

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

## 8.04 When a company scheme is to be wound up

- (1) Forthwith upon the happening of any of the events specified in rule 8.06 the company shall cease the creation and cancellation of *units* in the *authorised scheme*, the *manager* and *registrar* shall cease the sale and repurchase of *units* in the *authorised scheme*; and
- (2) where rule 8.06 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
- (3) where rule 8.06 applies, the *authorised scheme* shall be wound up in accordance with the terms of the *principal documents* and *applicable law*.

### 8.05 Manner of winding up a company scheme

- (1) On a winding-up, subject to *applicable law* and the *principal documents*, 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 *scheme particulars*.

### 8.06 Winding-up events

- (1) The events referred to in rules 8.02, 8.04 and 8.07 are:
  - (a) 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);
  - (b) when a *resolution* passed by the *holders* determines that the *authorised scheme* shall be wound up;
  - (c) where the *scheme particulars* so provide, when the date for the termination of the *authorised scheme* is reached without a *resolution* being passed by the *holders* postponing the termination;
  - (d) where the *scheme particulars* so provide, when the value of the *scheme property* falls below the value prescribed in the *scheme particulars* for the requisite period (if any) and the *principal manager*, if any, of an *authorised scheme* (or in the case of a *company scheme*, the company; in the case of a *limited partnership*, the *general partner*; in the case of a *unit trust scheme* with no *principal manager*, the *trustee*) elects (or elect) to wind up the *authorised scheme*.

#### GUIDANCE NOTE

The *Commission*'s expectations are for an orderly wind-down with reference to the interests of investors as under the guidance in section 8.03.

### 8.07 Winding-up of a sub-fund of an umbrella fund

- (1) For the purposes of this rule, rules 8.02, 8.03, 8.04, 8.05 and 8.06 shall, except where the context otherwise requires, be construed as if references to:
  - (a) “*holders*” were references to *holders of units* of the class(es) related to the *sub-fund* to be terminated;
  - (b) “the *authorised scheme*” were references to the *sub-fund* to be terminated;
  - (c) “*resolution*” were references to a *resolution* passed at a meeting of *holders* as defined in paragraph (a);

- (d) “*scheme property*” were references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
  - (e) “liabilities” were references to liabilities of the *umbrella fund* allocated or attributable to the *sub-fund* to be terminated.
- (2) A *sub-fund* of an *umbrella fund* shall be wound up in accordance with rules 8.02 and 8.03, in the case of a *unit trust scheme*, and rules 8.04 and 8.05 in the case of a *company scheme*.

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

- (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*.

### **8.09 Reconstruction**

- (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 a *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*.
- (2) Where it is proposed that an *authorised scheme* or *sub-fund* of an *umbrella fund* should receive property as a result of a reconstruction, then the proposal shall not be implemented without the sanction of a *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 8.09(3) applies.
- (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* or, in the case of a *limited partnership*, the *general partner*) 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 these rules.

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

### **9.01 Service of notices and documents**

- (1) Without prejudice to any other method of service under *applicable law*, any notice or document required to be served upon a *holder* shall be deemed to have been duly given in the case of *units* held by a registered *holder*, if it is sent by post to, or left at, his address as appearing in the *register*, or sent via fax or e-mail subject to the provisions of The Companies (Guernsey) Law, 2008 regardless of the constitution of the *authorised scheme*.

## PART 10 - TRANSITIONAL PROVISIONS

### 10.01 Continuing authorisation of existing authorised schemes

- (1) An existing *authorised scheme* is deemed to have been granted a *declaration of authorisation* in accordance with section 8 of the *Law* and rule 2.05(2) of these rules on the date when it in fact obtained authorisation under the Collective Investment Schemes (Class B) Rules, 1990.

### 10.02 Amendment of principal documents and scheme particulars

- (1) Subject to rule 2.05(3), the *principal documents* of an *existing scheme* must be revised to comply with all of these Class B rules relating to their contents either on the next occasion when any amendment to the *principal documents* is required to be approved by the *holders* of *units* in the scheme or by not later than two years from the *commencement date*.
- (2) Subject to rules 2.05(3) and 2.12(3), the *scheme particulars* of an *existing scheme* must be revised to comply with the Schedule to these rules by not later than one year from the date which these rules were made.
- (3) Until such time as is referred to in paragraphs (1) and (2), and subject to rule 2.10, no amendment may be made to the *principal documents* or *scheme particulars* of *existing schemes* unless the amendment complies with these rules relating to their contents.
- (4) The Collective Investment Schemes (Class B) Rules 1990 shall be revoked upon the *commencement date* of these rules.

## **SCHEDULE Rule 2.13(1)**

### **SCHEME PARTICULARS**

*Scheme particulars* shall state their effective date and at least contain the matters set out below.

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

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

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

Names and addresses of the following (as applicable):-

- (i) the *principal manager* or *general partner*, as applicable;
- (ii) the *trustee*;
- (iii) the *designated administrator*;
- (iv) the *investment adviser*;
- (v) the *registrar*;
- (vi) the *auditor*;
- (vii) the *directors* (if applicable).

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

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

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

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

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

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

- (i) The accounting standards that will be applied to the preparation of the accounts; and
- (ii) the duration of the first accounting period; and
- (iii) the accounting date of the *authorised scheme*; and
- (iv) when reports will be published and distributed to *holders*, taking into account the requirements of rule 6.02(1).

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

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

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

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

#### **8. Holders' rights (this shall include limited partners in appropriate structures)**

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

## 9. The distribution policy

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

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

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

## 11. Fees and expenses

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

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

## 12. Risk warnings

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

## 13. Tax

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

### GUIDANCE NOTE

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



#### **14. Additional information**

The *scheme particulars* shall state any other material information that an investor would reasonably require to enable the person to make an informed judgement about the merits of investing in the *units* offered. Such information would include:

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