

# THE COLLECTIVE INVESTMENT SCHEMES (CLASS A) RULES 2002

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# THE COLLECTIVE INVESTMENT SCHEMES (CLASS A) RULES 2002

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

## Part 1 - Introduction

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

### 1.01 Citation and commencement

These rules (including the Schedules hereto) may be cited as the Collective Investment Schemes (Class A) Rules 2002 (the “Class A rules”) are made on 3 September 2002 and, with the exception of Part 15, shall come into operation on 1 October 2002.

### 1.02 Interpretation

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

“**accounting reference date**” means the date or day stated in the most recently published scheme particulars as the date or day on which the authorised scheme’s annual accounting period is to end in each year;

“**accumulation unit**”: see rule 2.05;

“**affected person**”: see rule 7.16;

“**annual accounting period**”: see rule 9.01;

“**annual income allocation date**”: see rule 9.02;

“**annual report**” means a report for each annual accounting period of an authorised scheme;

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

“**approved bank**” means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 1994 or is registered under The Banking Business (Jersey) Law, 1991 or is authorised to carry on a banking or deposit-taking business under the law of any member State or under the law of any other country or territory which may be listed in notices issued from time to time by the Commission;

“**approved 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**”: see rule 5.07;

“**approved derivative**”: see rule 5.09;

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

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

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

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

“**authorised person**” has the same meaning as in the FSA;

“**authorised scheme**” means a Class A Scheme;

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

“**bearer certificate**” means a certificate representing bearer units;

“**business day**” means any day normally treated as a business day in Guernsey and under the applicable law of an authorised scheme;

“**capital account**” means an account relating to the capital property of an authorised scheme;

“**capital property**” means the scheme property (other than income property and any amount for the time being standing to the credit of the distribution account);

“**cash**” includes foreign currency;

“**CGO system**” means the computer based system operated by the Central Gilts Office of the Bank of England to facilitate the transfer of securities, without the need for a written instrument;

“**class**”, in relation to units, means, according to the context, all of the units related to a single sub-fund or a particular class of units of an authorised scheme or a particular class of units related to a single sub-fund;

“**Class A Scheme**” means a scheme which is declared by the Commission to be a Class A Scheme;

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

“**Class Q Scheme**” means a scheme which is declared by the Commission to be a scheme falling under The Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998;

“**class meeting**” means a separate meeting of holders of a class of units;

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

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

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

“**Companies Law**” means The Companies (Guernsey) Law 1994;

“**company scheme**” means any authorised scheme constituted as a body corporate;

“**contracts for differences**” means contracts the rights under which constitute an investment falling within paragraph 2 (1)(h) of schedule 1 to the Law;

“**covered**” in relation to a derivatives or forward transaction, see rule 5.51;

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

“**current preliminary charge**” (and “**current charge**”): see rule 8.02.2;

“**dealing day**” means the period in each business day (or in each other day when the manager of an authorised scheme (or in the case of a company scheme, the company) is open for business) during which the manager of an authorised scheme (or in the case of a company scheme, the company) keeps its premises or any of them open to the public or otherwise available for business of any kind;

“**dealing costs**” include fiscal charges or commissions or other charges;

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

“**debt securities**” means:

- (a) any investment falling within paragraph 2 (1)(b) of Schedule 1 to the Law; or
- (b) any investment falling within paragraph 2(1)(e) of Schedule 1 to the Law which confers a right related to an investment within paragraph (a) above;

“**declaration of authorisation**” means the declaration of the Commission that a scheme is an authorised scheme under these rules;

“**dedicated**” in the context of an authorised scheme, means that the manager (or in the case of a company scheme, the company) intends holders to participate in or receive:

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

“**delivery by value**” or “**DBV**” means a transaction type, described as “delivery by value”, used to deliver and receive securities within CREST or through the CGO system, as the case may be;

“**deposit**” has the same meaning as in section 2 of The Banking Supervision (Bailiwick of Guernsey) Law, 1994;

“**derivative**”: see rule 5.09;

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

“**dilution**” means the amount of dealing costs incurred, or expected to be incurred, by the authorised scheme to the extent that they may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the authorised scheme as a consequence (whether or not immediate) of the increase or decrease in the authorised scheme’s cash resources resulting from the creation or cancellation of units over a period. For the purpose of this definition, dealing costs include both the costs of dealing in an investment and, where there is a spread between the buying and selling prices of the investment, the indirect cost resulting from the differences between such prices;

“**dilution levy**” means a charge of such amount or at such rate as may be determined by the manager to be made in the case of an authorised scheme which has adopted a single pricing regime for the purpose of reducing the effect of dilution;

“**directors**” means the directors, or other members of the principal managing body, of a company scheme, and “**director**” means any one of them;

“**distribution account**”: see rule 9.03.1;

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

“**dual pricing regime**” means a system of dual pricing adopted by an authorised scheme in accordance with rule 4.01;

“**eligible**” in the context of a securities market, means any market which the manager of an authorised scheme (or in the case of a company scheme, the company) is, for the time being,

entitled to regard as one through which more than 10% of the property of the authorised scheme may be invested for the purposes of rule 5.06, and, in the context of a derivatives market, means any market or exchange which the manager of an authorised scheme (or in the case of a company scheme, the company) is, for the time being, entitled to regard as one through which transactions for the account of the authorised scheme may be effected for the purposes of that rule;

“**existing scheme**” means a scheme which on the commencement date was an authorised scheme;

“**extraordinary resolution**” means a resolution proposed and passed as an extraordinary or special resolution at a meeting of holders duly convened and held in accordance with the rules and carried, whether on a show of hands or on a poll, by a majority consisting of 75% (or any other proportion specified under applicable law) of the total number of votes cast for and against such resolution at a general meeting of holders or (as the case may be) class meeting, of which notice specifying the intention to propose the resolution as an extraordinary or special resolution has been duly given;

“**FSMA**” means the Financial Services and Markets Act 2000 of the United Kingdom;

“**feeder fund**”: see rule 2.06.8;

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

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

“**fund of funds**”: see rule 2.06.9;

“**futures**” means contracts the rights under which constitute an investment falling within paragraph 2(1)(g) of schedule 1 to the Law;

“**futures and options fund**”: see rule 2.06.4;

“**geared futures and options fund**”: see rule 2.06.5;

“**generally accepted accounting principles**” means the standard accounting practice or the generally accepted accounting principles of:

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

or the generally accepted accounting principles issued from time to time by the International Accounting Standards Committee;

“**Government and other public securities**”: see rule 5.14.5;

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

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

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

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

"**Guernsey**" means the Bailiwick of Guernsey;

"**guidance note**" means any note or document issued by the Commission and incorporating guidance in relation to any matter contemplated by or relating to these rules;

"**half-yearly accounting period**": see rule 9.01;

"**historic price**" means a price calculated by reference to the valuation point immediately preceding the manager's agreement to sell, or, as the case may be, to redeem the units in question;

"**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 a bearer certificate or the first named holder in the case of joint holders;

"**income account**" means an account relating to the income property of an authorised scheme;

"**income equalisation**": see rule 9.07;

"**income property**" means all sums deemed by the manager of an authorised scheme (or in the case of a company scheme, the company), after consultation with the auditor, to be in the nature of income received or receivable by the trustee in respect of the scheme property, but excluding any amount for the time being standing to the credit of the distribution account;

"**income unit**": see rule 2.05;

"**initial offer**" means an offer for sale of units in an authorised scheme, or units in respect of a sub-fund, (otherwise than pursuant to arrangements of the type described in rule 13.09 (reconstruction and unitisation)) where all or part of the consideration paid to the trustee for the units is to be used to acquire the initial scheme property of the authorised scheme, or the initial scheme property attributable to the sub-fund;

"**initial outlay**": see rule 5.52.2;

"**initial price of units**": see rule 4.03.1;

"**interim accounting period**": see rule 9.06.1;

"**interim income allocation date**": see rule 9.06;

"**investment adviser**" in relation to the manager of an authorised scheme (or in a case of a company scheme, the company), means a person who is retained by the manager (or the company) under a commercial arrangement not being a mere contract of employment:

(a) to supply them with advice in relation to the authorised scheme as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities; or

(b) to exercise for the manager (or the company) any function concerning the management of the scheme property;

"**large deal**" means a transaction in units of such size or description as is stated in the scheme particulars;

"**Law**" means The Protection of Investors (Bailiwick of Guernsey) Law, 1987;

"**management agreement**" means an agreement under which a person is appointed manager of an authorised scheme other than a unit trust scheme to discharge the duties contemplated by these rules to be undertaken by the manager;

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

“**manager**” means:

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

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

“**marketing**” in relation to units in an authorised scheme and a particular country, means:

- (a) issuing or causing to be issued in that country any advertisement inviting persons to become or offer to become holders in that authorised scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become holders in that authorised scheme; or
- (b) advising or procuring any person in that country to become a holder in that authorised scheme,

and “**to market**” shall be construed accordingly;

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

“**money market fund**”: see rule 2.06.3;

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

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

- (a) money deposited with an approved bank which is in:
  - (i) a current account; or
  - (ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding seven days’ interest calculated at ordinary commercial rates;
- (b) certificates of deposit issued by an approved bank if immediately redeemable at the option of the holder of the certificate of deposit;
- (c) Government and other public securities, if redeemable at the option of the holder of the security or bound to be redeemed within two years;
- (d) a bill of exchange issued by any government or body within rule 5.14 (Government and other public securities); and
- (e) deposits with a local authority of a kind which fall within paragraph 9 of part II of the first schedule to the United Kingdom Trustee Investments Act 1961, and equivalent deposits with any local authority in a member State, if the money can be withdrawn immediately and without payment of a penalty as described in paragraph (a);

“**nominal securities**” means securities which, in the case of a company scheme, are issued to the manager or its nominee solely for the purpose of preserving the share capital of the company;

“**notified point**”: see rule 4.05.2;

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

“**off-exchange derivative**” (or an off-exchange future, option or contract for differences): see rule 5.10;

“**options**” has the meaning given in paragraph 2(1)(f) of schedule 1 to the Law and includes, where appropriate, contracts for differences resembling options;

“**period of the initial offer**”: see rule 4.02.2;

“**preliminary charge**”: see rule 8.03;

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

“**price**” in relation to a unit, means the price of the unit calculated in accordance with Part 4 of these rules;

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

- (a) a unit trust scheme, means the trust instrument;
- (b) a company scheme, means the articles of association of a Guernsey company (or an equivalent document under the applicable law of a non-Guernsey body corporate), the management agreement and the trustee agreement; and
- (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**” means the principal manager appointed under the principal documents;

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

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

“**property fund**”: see rule 2.06.6;

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

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

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

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

“**recognised scheme**” means a scheme which is either declared to be an authorised scheme or a recognised scheme under the provisions of the FSMA;

“**reconstruction**” in relation to an authorised scheme (which in this definition includes a sub-fund), is a scheme of arrangement whereby all or part of the scheme property of the authorised scheme becomes the property (including the first property) of another body or scheme or of two or more bodies or schemes and whereby holders in the authorised scheme being reconstructed receive shares or units in that body or scheme (or those bodies or schemes) in exchange for the property received into such body or scheme (or bodies or schemes);

“**redemption**” in relation to units in an authorised scheme, means the purchase of units from a holder by the manager as a principal;

“**redemption charge**”: see rule 8.05;

“**register**”: see rule 6.01;

“**registrar**” means the person who maintains the register;

“**roll-up fund**” means an authorised scheme consisting only of roll-up units;

“**roll-up unit**”: see rule 2.05;

“**sale**” in relation to units (except where the context otherwise requires), means the sale of units by the manager as a principal;

“**scheme**” means:

- (a) a unit trust scheme;
- (b) a company scheme; or
- (c) a collective investment scheme other than a unit trust scheme or a company scheme;

“**scheme particulars**” means particulars of an authorised scheme prepared, revised and published in accordance with Part 3 and Schedule 2;

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

“**securities fund**”: see rule 2.06.2;

“**short form accounts**” means an abbreviated version of the relevant accounts of an authorised scheme;

“**single pricing regime**” means a system of single pricing adopted by an authorised scheme in accordance with rule 4.01;

“**sub-fund**” means a part of the scheme property of an umbrella fund that is pooled separately;

“**subsidiary**” has the meaning given in section 56(1) of The Banking Supervision (Bailiwick of Guernsey) Law, 1994;

“**synthetic cash**”: see rule 5.51.5;

“**synthetic future**”: see rule 5.11;

“**transferable security**”: see rule 5.05;

“**trustee**” in relation to an authorised scheme, means the designated trustee in the case of a unit trust scheme or designated custodian in the case of a scheme other than a unit trust scheme;

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

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

“**UCITS Directive**” means the Council Directive No. 85/611/EEC (as amended) of the Council of the European Communities relating to undertakings for collective investment in transferable securities;

“**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 property and that investors in each separate part may exchange rights in one part for rights in another and where the context so admits includes a recognised scheme which would be defined as an umbrella fund if it were an authorised scheme;

“**unit**” means a unit or share or similar interest in an authorised scheme;

“**unitisation**” means a scheme of arrangement whereby the whole or part of the property of a body or scheme becomes the property of an authorised scheme and whereby holders of shares or units in the body or scheme receive units in the authorised scheme and references in this definition to an authorised scheme include a sub-fund of such an authorised scheme;

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

“**valuation point**”: see rule 4.05.2;

“**voting rights**” means a right to vote at general meetings of a body corporate on all, or substantially all matters;

“**warrant**”: see rule 5.08;

“**warrant fund**”: see rule 2.06.7;

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

## NOTES

1. Any note contained in these rules forms part of them.
2. The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules.

## **Part 2 - Application of Rules and Constitution of an Authorised Scheme**

**Explanation.** *An authorised scheme will be governed by its principal documents, which must comply with Schedule 1 of these rules and must not contain any provision which is unfair, misleading or insufficiently clear or which conflicts with any guidance note issued by the Commission. A copy of the principal documents must be made available for inspection by the public.*

*This Part lists the different categories of authorised scheme that may be formed. An authorised scheme may not change from one category to another unless prior consent to the change has been obtained from the Commission and the change has been approved by a resolution of holders.*

*In accordance with these rules the principal documents of an authorised scheme must state the type or types of unit of which the authorised scheme will consist. For this purpose the principal documents may cross-refer to the types of units described in this Part. These consist of “income units”, “accumulation units” and “roll-up units”.*

### **2.01 Application of rules**

- 1** All of these rules apply to a Class A Scheme.
- 2** Where these rules confer on the manager, or on the trustee, or on the directors of a company scheme, or on any two of them or on all of them together a discretion to do or refrain from doing an act of any description or to make a decision of any description, such person or persons may not so act, so refrain from acting or make such a decision if expressly forbidden to do so by any of the principal documents.
- 3** A scheme which is an umbrella fund does not qualify to be authorised unless each sub-fund would, if it were the subject of a separate application for authorisation, qualify for separate authorisation under these rules.
- 4** Subject to rule 5.02.4, in the case of a scheme which is a feeder fund or a fund of funds the Commission shall not designate the scheme an authorised scheme unless it is satisfied that any scheme in which the authorised scheme invests or intends to invest is also an authorised scheme or a recognised scheme.
- 5** The principal manager and the designated manager or, where there is more than one designated manager, each such person shall be jointly and severally responsible for compliance with these rules, provided that where:
  - (a) the principal documents provide for compliance with particular rules by the designated manager, or where there is more than one designated manager, by one designated manager only; and
  - (b) the Commission is satisfied that together the managers comply with these rules,each such manager shall be severally responsible for compliance with the particular rules specified under the principal documents.

### **2.02 The principal documents**

- 1** The principal documents of an authorised scheme shall:
  - (a) comply with the requirements of Schedule 1;
  - (b) subject to paragraph (a) and paragraph 5, make no provision concerning matters which are dealt with elsewhere in these rules.

- 2 Part 5 has effect in relation to any authorised scheme subject to any restriction imposed by the principal documents under paragraph 3 of Part II of Schedule 1.
- 3 The principal documents must not include any provision which is unfair, misleading or insufficiently clear or conflicts with any guidance note issued by the Commission on or before the authorisation of the relevant scheme.
- 4 The manager and trustee of an authorised scheme shall operate and conduct the affairs of the authorised scheme in accordance with its principal documents.
- 5 The principal documents may provide that, if any units are owned or held by any person in circumstances which the manager (or in the case of a company scheme, the company) considers might result in the authorised scheme or any holder incurring any liability to taxation or infringing any law or rule or suffering any regulatory, pecuniary or administrative disadvantage which the authorised scheme or holder might not otherwise have incurred or suffered, the units shall be redeemed, cancelled or transferred and, if the principal documents contain such a provision, they shall also provide the procedure for that redemption, cancellation or transfer.

### **2.03 Public availability of principal documents**

- 1 The manager and the trustee shall each make available a copy of the principal documents (and of any subsequent amendments to the principal documents) for inspection free of charge by any member of the public in accordance with paragraph 2.
- 2 The copy shall be made available at all times during ordinary office hours:
  - (a) in the case of the trustee, at the principal place of business in Guernsey where it carries on the business of acting as the trustee of authorised schemes; and
  - (b) in the case of the manager, at the principal place of business in Guernsey where it carries on the business of managing authorised schemes.
- 3 The manager and the trustee shall allow any person to obtain (on payment of a reasonable fee) a copy of any of the principal documents.

### **2.04 Units**

The interests of the holders in an authorised scheme shall consist of units (including fractions of a unit), each unit representing one undivided share in the scheme property; but this general rule is modified in one special circumstance as set out in rule 2.05.4.

### **2.05 Types and classes of unit**

- 1 Units may be of three types:
  - (a) income units, in respect of which income is distributed periodically to holders under rule 9.05;
  - (b) accumulation units, in respect of which income is credited periodically to capital under rule 9.04; or
  - (c) roll-up units, in respect of which income is not distributed periodically to holders, but is retained and forms part of the scheme property, and in respect of which the manager (or in the case of a company scheme, the directors) shall determine what income is allocated to the income account and what income is allocated to the capital account and any transfers to be made between such accounts,

and an authorised scheme may consist of income units only, accumulation units only, roll-up units only or a combination of income units and accumulation units, and the principal documents must state the type or types of unit of which the authorised scheme will consist.

- 2 An authorised scheme may have units of different classes with different rights from any other class of units in the authorised scheme, in which event the principal documents shall provide how the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class shall be calculated. Classes of units may comprise income units, accumulation units, roll-up units or both income and accumulation units.

- 3 Without prejudice to the provisions of paragraphs 1 and 2:
- (a) in the case of an authorised scheme which is not an umbrella fund, the principal documents must not provide for any class of units in respect of which:
    - (i) the extents of the rights to participate in the capital property, income property or distribution account would be determined differently from the extents of the corresponding rights for any other class of units; or
    - (ii) payments or accumulation or retention of income or capital would differ in source or form from those of any other class of units;
  - (b) in the case of an authorised scheme which is an umbrella fund, the provisions in paragraph (a) apply to classes of units in respect of each sub-fund as if each sub-fund were a separate authorised scheme;
  - (c) the prohibitions in paragraphs (a) and (b) shall not be regarded as breached by reason of any difference between the rights attached to one class of units and another class of units that relates solely to:
    - (i) the accumulation of income by way of periodical credit to capital rather than distribution; and/or
    - (ii) charges and expenses that may be taken out of the scheme property or payable by the holder; and/or
    - (iii) the currency in which prices or values are expressed or payments made.
- 4 The system of single undivided shares in rule 2.04 is modified where both income and accumulation units of the same class are in existence:
- (a) since, when income is accumulated and capitalised under rule 9.04, this is achieved by increasing the number (including fractions) of undivided shares which together constitute the accumulation units of the same class then in existence; and
  - (b) since any accumulation units issued thereafter must each represent when issued the same number (including fractions) of undivided shares in the capital property of the authorised scheme as each other accumulation unit of the same class then in existence.
- 5 The principal documents of a roll-up fund or of an authorised scheme in which there are only to be accumulation units may, subject to applicable law, prohibit the distribution of income to holders.

## 2.06 Categories of scheme

- 1 An authorised scheme must belong to one only of the following categories:
- (a) a securities fund;
  - (b) a money market fund;
  - (c) a futures and options fund;
  - (d) a geared futures and options fund;
  - (e) a property fund;
  - (f) a warrant fund;
  - (g) a feeder fund;
  - (h) a fund of funds; or
  - (i) an umbrella fund.
- 2 A “**securities fund**” is an authorised scheme dedicated to transferable securities, excluding a scheme which is a warrant fund, a feeder fund or a fund of funds.
- 3 A “**money market fund**” is an authorised scheme dedicated to:

- (a) deposits; and
  - (b) instruments creating or evidencing indebtedness which are not transferable securities,
- whether with or without transferable securities.

- 4** A “**futures and options fund**” is an authorised scheme dedicated to approved and other derivatives (where most or all of the transactions are fully covered by cash, securities or other derivatives), whether with or without transferable securities.
- 5** A “**geared futures and options fund**” is an authorised scheme dedicated to approved and other derivatives (where most or all of the extent of investment is limited by the amount of property available to be put up as initial outlay), whether with or without transferable securities.
- 6** A “**property fund**” is an authorised scheme dedicated to permitted immovables and property related assets, whether with or without transferable securities.
- 7** A “**warrant fund**” is an authorised scheme which would be a securities fund within paragraph 2 except that it is permitted to invest entirely in warrants.
- 8** A “**feeder fund**” is an authorised scheme dedicated to a single authorised scheme or recognised scheme.
- 9** A “**fund of funds**” is an authorised scheme dedicated to a number of authorised schemes or recognised schemes.
- 10** An “**umbrella fund**” is an authorised scheme as defined in rule 1.02 which has sub-funds which consist of any of the categories (a) to (h) in paragraph 1.
- 11** An authorised scheme may not change from one category to another, nor may its objectives be changed so as to achieve that effect, unless prior specific consent to the change has been obtained from the Commission and the change has been approved by a resolution of holders.

### **Part 3 - Scheme Particulars**

**Explanation.** *The manager of an authorised scheme must draw up and keep up to date scheme particulars (which may, in the case of a company scheme, take the form of a prospectus) that give information about the constitution, objectives and operation of the authorised scheme and the persons responsible for it. Scheme particulars must include, for instance, a description of the authorised scheme's investment objectives and policy, the arrangements for the management of its investments and the types of expense that may be deducted from the scheme property. In the case of a company scheme, the scheme particulars and any revisions to them must be approved by the directors. This Part covers who is responsible for the scheme particulars and what changes to them require the prior approval of the holders.*

#### **3.01 Drawing up of scheme particulars**

- 1** Scheme particulars, which may (in the case of a company scheme) take the form of a prospectus, shall be drawn up by the manager of an authorised scheme (and in the case of a company scheme, approved by the directors) and shall contain the matters specified in Schedule 2.
- 2** Scheme particulars may contain any other matter the inclusion of which is expressly contemplated in these rules.

#### **3.02 Availability of scheme particulars**

- 1** The manager of an authorised scheme (and in the case of a company scheme, the company) shall not market units in that scheme unless:
  - (a) scheme particulars have been drawn up in English and, in the case of a company scheme, approved in accordance with rule 3.01;
  - (b) arrangements have been made for the scheme particulars to be available to enable the manager (and in the case of a company scheme, the company) to satisfy those who accept the offer referred to in paragraph 2; and
  - (c) a copy of the scheme particulars has been sent:
    - (i) to the Commission; and
    - (ii) to the trustee.
- 2** Subject to paragraph 3, the manager (and in the case of a company scheme, the company) shall not effect any sale of units in the authorised scheme to any person (other than a holder of units in the authorised scheme) until it has offered that person free of charge a copy of the scheme particulars in English.
- 3** The requirement in paragraph 2 to offer a copy of the scheme particulars before effecting a sale of units in the authorised scheme does not apply if the sale is effected otherwise than in the course of a conversation conducted face to face or by telephone, but the manager (and in the case of a company scheme, the company) must send free of charge a copy of the scheme particulars to the purchaser if he asks for it.

#### **3.03 False or misleading scheme particulars**

- 1** Subject to paragraphs 4, 5 and 6, the person or persons responsible for the scheme particulars shall:
  - (a) ensure that the scheme particulars do not contain any untrue or misleading statement or omit any matter required by these rules to be included in the scheme particulars; and
  - (b) without prejudice to any liability incurred apart from this rule, be liable to pay compensation to any person who has acquired any units in the authorised scheme and suffered loss in respect of them as a result of any such statement or omission.

- 2 The following persons are responsible for the scheme particulars:
- (a) each person who was a manager (and in the case of a company scheme, a director) of the authorised scheme when the scheme particulars were drawn up (or in the case of a director, approved);
  - (b) each person who has authorised himself to be named, and is named, in the scheme particulars as a manager (and in the case of a company scheme, a director) of an authorised scheme or as having agreed to become a manager (and in the case of a company scheme, a director) of an authorised scheme either immediately or at a future time; and
  - (c) each person who accepts, and is stated in the scheme particulars as accepting, responsibility for, or for any part of, the scheme particulars.
- 3
- (a) A person shall not be responsible under paragraph 2(a) if the scheme particulars are published without his knowledge or consent and, on becoming aware of publication, he forthwith gives reasonable public notice that it was so published; and
  - (b) where a person has accepted responsibility for only part of the scheme particulars, he is responsible under paragraph 2(c) for only that part and only if it is included in the scheme particulars in (or substantially in) the form and context to which he has agreed.
- 4 A person is not in breach of paragraph 1(a) and shall not incur liability under paragraph 1(b) if at the time when the scheme particulars were drawn up (or in the case of a director, approved) he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading, or that the omission was proper, and that:
- (a) he continued in that belief 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) he had already taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of potential purchasers; or
  - (d) the person who acquired the units was not materially influenced or affected by that statement or omission in making his decision.
- 5 A person is also not in breach of paragraph 1(a) and shall not incur any liability under paragraph 1(b) if:
- (a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the units in question;
  - (b) he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the units were acquired; or
  - (c) the person who acquired the units knew at the time of his acquisition that the statement was untrue or misleading or of the omission.
- 6 For the purposes of this rule the revised scheme particulars shall be treated as different scheme particulars from the scheme particulars to which the revision was made.
- 7 References in this rule to the acquisition of units include references to contracting to acquire them.

### **3.04 Revision of scheme particulars**

- 1 Scheme particulars shall be:
- (a) revised immediately upon the occurrence of any materially significant change in the matters stated therein or upon the arising of any materially significant new matter which ought to be stated therein in advance of an annual review so far as is necessary to take account of that change or matter; and

- (b) reviewed at least once in every 12 months, and revised to take account of any change or any new matter, other than one which reasonably appears to the manager (or in the case of a company scheme, the directors) to be insignificant.
- 2 A revision of the scheme particulars may take the form of a complete substitution for the previous scheme particulars or of a supplement to the scheme particulars but, whichever it is, the date as at which the revision was made must be prominently displayed.
- 3 Without prejudice to rule 3.03.6, references in these rules to the scheme particulars drawn up in accordance with rule 3.01 include references to the scheme particulars revised in accordance with this rule.
- 4 This rule is subject to the procedural requirements affecting certain amendments to the scheme particulars in rule 3.05.

### **3.05 Changes to scheme particulars**

- 1 Subject to paragraph 3, any change to, or introduction of, any of the provisions of the scheme particulars referred to in paragraph 2 shall require the prior approval of a resolution of the holders or, in the case of a change that affects only the holders of the units of a particular class or classes, resolution(s) of class meeting(s) of those holders.
- 2 The provisions referred to in paragraph 1 are those required to be included in the scheme particulars in order to comply with the following paragraphs of Schedule 2 (including when the paragraph listed applies to a sub-fund by virtue of paragraph 22(b)(i) of that Schedule):
  - (a) 11 (investment objectives and policy);
  - (b) 14(b)(i) (calculation, accrual and payment of the manager's remuneration) except if it is a change that is of minimal significance;
  - (c) 14(c) (other payments out of the scheme property); and
  - (d) 20 (policy on dilution levy, if applicable),
 and, in the case of the provisions included to comply with paragraphs 11 or 14(b) of Schedule 2 the resolution giving the approval must be an extraordinary resolution.
- 3 Paragraph 1 shall not apply to a change to the scheme particulars which is required:
  - (a) solely to fulfil a requirement resulting from a change in the law (including a change to these rules);
  - (b) in order to comply with paragraph 11(d) of Schedule 2 if the change is, in the context of the investment policy of the authorised scheme or sub-fund concerned, of minimal significance only, and the manager and the trustee have so agreed in writing, or the manager (or in the case of a company scheme, the company) has not less than 90 days before the intended change:
    - (i) given notice in writing of the intended change to the trustee and the holders; and
    - (ii) revised the scheme particulars to reflect the intended change and the date of its commencement; or
  - (c) solely to reflect an amendment to the principal documents:
    - (i) made either in accordance with rule 11.14.3(a)(viii) or by a resolution passed at a meeting or, when appropriate, class meeting, of holders and which is not a change to any of the provisions of the scheme particulars included to comply with paragraphs 11 or 14(b) of Schedule 2; or
    - (ii) of the type described in rule 11.14.3(b).
- 4 No significant departure may be made in the management of the scheme property of an authorised scheme from the statements in its scheme particulars current at the relevant time in fulfilment of the requirements of paragraph 11 of Schedule 2.

## **Part 4 - Pricing and Dealing**

**Explanation.** *This Part of these rules permits an authorised scheme to issue units, which may be of different classes. The price of a unit of any class is calculated by valuing the scheme property attributable to units of that class and dividing that value by the number of units of the class in issue. The valuation of the scheme property must be in accordance with Section G of this Part.*

*The manager may hold units for its own account (in the “box”): so a purchaser of units from the manager may receive units which have just been created or units that have previously been issued (and have been redeemed by the manager from a previous holder). In addition to selling and redeeming units for its own account, the manager may arrange for the trustee (or in the case of a company scheme, the company) to issue units directly to an investor or to redeem an investor’s units.*

*The manager must be prepared to purchase units from an owner of units who wishes to realise the value of them.*

*The price at which a unit of any class is created, cancelled, sold or redeemed will be determined in accordance with the rules contained in this Part. The rules provide separately for authorised schemes which have adopted a single pricing regime, and authorised schemes which have adopted a dual pricing regime.*

*In the case of an authorised scheme which has adopted a single pricing regime, the price at which a unit of any class is created, cancelled, sold or redeemed will be a single mid-market price determined in accordance with this Part.*

*In the case of an authorised scheme which has adopted a dual pricing regime, the price will be inside the bracket derived from these rules.*

*Units come into existence when they are created by the trustee on the instruction of the manager (or in the case of a company scheme, when the manager records the creation) and the manager must then pay to the trustee cash (or other assets) for them.*

*Units cease to be in existence when they are cancelled by the trustee on the instruction of the manager (or in the case of a company scheme, when the manager records their cancellation). Payment for cancelled units is normally made on the fourth business day after the cancellation.*

### **Section A General**

#### **4.01 General**

- 1** In the case of a unit trust scheme, units may be created or cancelled by the trustee only upon the receipt of written instructions given by the manager and in the case of a company scheme, units may be created or cancelled only upon receipt by the company and the trustee of written instructions given by the manager, but no units in a company scheme may be created or cancelled without the consent of the trustee. In the case of a company scheme, units are created by the company issuing such units and units are cancelled by the company redeeming such units.
- 2** An authorised scheme shall have the choice of adopting a single pricing regime or a dual pricing regime and must state in the scheme particulars which regime has been adopted.
- 3** The manager and the trustee (or in the case of a company scheme, the directors) may elect to change from one pricing regime to the other provided that such a change may only be made with the

approval of the Commission and if, not less than 90 days before the change, the manager has given notice in writing to all holders of the change and of the date of its commencement, and the manager has revised the scheme particulars to reflect the change and the date of its commencement and has made the revised scheme particulars available in accordance with rule 3.04.

## Section B Initial Offers

### **4.02 Introduction to this Part and to Section B**

- 1 Rules 4.03 and 4.04 apply to, and to the period of, an initial offer of units in an authorised scheme.
- 2 The period of the initial offer is not to exceed 21 days and an initial offer must, subject to rule 4.04, be kept open for the period of the initial offer.
- 3 Where an initial offer is of units in respect of a sub-fund, rules 4.03 and 4.04 shall apply as if references in those rules to a unit were to a unit in respect of that sub-fund.

### **4.03 Initial price**

- 1 The price to be paid to the trustee for each unit of any class created during the period of the initial offer shall be the initial price of a unit of that class as determined by the manager (and in the case of a company scheme, the directors) and notified in writing to the trustee prior to the start of the period of the initial offer.
- 2 For the purpose of paragraph 1 a unit is treated as created during the period of the initial offer if the manager had agreed to the sale of it or received an order for it to be sold before the close of the period, and it was created only afterwards.
- 3 The manager shall, by the close of business on the fourth business day after the manager has received the price from the purchaser, pay to the trustee the price of any unit agreed to be sold by the manager during the period of the initial offer, unless payment by the manager is due earlier under rule 4.06, but the manager may retain for its own account any preliminary charge made by it under rule 8.03.
- 4 During the period of the initial offer, the manager shall not agree to arrange the creation of units pursuant to rule 4.15 at a price other than the initial price (to which may be added, for the account of the manager, any preliminary charge permitted under rule 8.03).
- 5 The initial price of a unit shall (subject to rule 12.16) be expressed in the base currency of the authorised scheme but during the period of the initial offer the manager may agree to sell and arrange the creation of units in any other currency, so long as the price in that other currency, compared with the initial price, is not at the time of the agreement likely to result in any material prejudice to the interests of holders or potential holders.
- 6 Where the initial offer is made in a country outside Guernsey, there may be added to the initial price of units offered in that country an amount sufficient to cover additional duty or taxation leviable in that country and the cost of the remittance of money to Guernsey.

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

- 1 If the manager has reason to believe that if the current price of a unit in the base currency were to be calculated by reference to a valuation taken forthwith, it would be likely to vary from the initial price of that unit by 2% or more of the initial price, the manager may carry out such a valuation.
- 2 If:
  - (b) the manager carries out such a valuation and it shows a variation of 2% or more; or
  - (c) the manager has reason to believe for the purposes of paragraph 1, but does not forthwith carry out a valuation for the purpose of that paragraph,then the period of the initial offer comes to an end and the manager must forthwith refrain from:
  - (i) agreeing to sell units at the initial price; and

- (ii) arranging for the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) to create units at the initial price except to fulfil an obligation to sell or an order for the purchase of units at that price which it has already assumed or received.

## Section C Creation and Cancellation

### 4.05 Introduction

- 1 Rules 4.06 to 4.10 apply to the creation and cancellation of units.
- 2 In this Section, a “valuation point” means the valuation point fixed in accordance with rule 4.25, whether on a periodic basis or for a particular valuation, and where a valuation point falls outside normal business hours in Guernsey, it shall be deemed (for the purposes of this rule, rule 4.07 and rule 4.09) to be at 9.00 am on the following business day; and a “notified point” means a subsequent moment, within two hours of a valuation point, and arrived at under paragraph 3.
- 3 If the manager wishes regularly to have a notified point, it may notify the trustee (and in the case of a company scheme, the company) of its intention, indicating the period of time not exceeding two hours after the valuation point at which it wishes the notified point to occur, but any change in the period is ineffective unless agreed upon by the trustee (and in the case of a company scheme, the company).
- 4 Units in a company scheme shall be created or cancelled by virtue of the manager making a record for the company of the creation or cancellation and the number of the units of each class concerned (and, accordingly, the time of the creation or cancellation shall be the time at which the record is made), and references in these rules to arrangements for the company to create or cancel units shall mean arrangements for making a record of such creation or cancellation.
- 5 Subject to these rules, the manager may at any time 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 to cancel units, and units shall not be created or cancelled in any other manner.

### 4.06 Creation of units

- 1 Subject to rule 13.09, the manager may arrange for the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) to create units in exchange for assets other than money provided that the trustee is satisfied that the acquisition of the assets in exchange for the units to be created is not likely to result in any material prejudice to the interests of holders or potential holders.
- 2 The manager shall by the close of business on the fourth business day next after the creation of any units:
  - (a) pay the price of the units (if it remains unpaid) to the trustee in cash or in cleared funds; or
  - (b) in the case of an exchange under paragraph 1, ensure transfer to the trustee of the assets to be taken in exchange.
- 3 In a case of an exchange under paragraph 1, the manager must ensure that the beneficial interest in the assets is transferred to the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) with effect from the creation of the units, even if the legal ownership is not then transferred to the trustee.
- 4 This rule shall apply to a unit created during the period of the initial offer (and for this purpose the time of creation shall not be governed by rule 4.03.2).

### 4.07 Creation of units: to meet the manager’s obligation to sell

Where at any valuation point the manager has any outstanding obligation to sell units of any class, then it must arrange for the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) before:

- (a) two hours have elapsed since that valuation point; or

- (b) the next valuation point (if it is to occur within two hours of the valuation point mentioned in paragraph (a)),

to create units of that class and in such number at least as will enable the manager immediately to fulfil that obligation whether from the units so created or from other units of that class owned by it immediately before the valuation point (or notified point if there is one).

#### **4.08 Cancellation of units**

- 1 The manager shall not arrange for the cancellation of units of any class if, or to the extent that, by so doing the manager would be prevented from immediately fulfilling any outstanding obligation to sell units of that class which had been assumed before the relevant valuation point (or notified point if there is one).
- 2 For the purpose of paragraph 1, the manager shall take account of all units sold or redeemed by reference to the relevant valuation point (or notified point if there is one).
- 3 On the cancellation of units the trustee shall (on behalf of the company in the case of the company scheme), within the period specified in paragraph 4, pay the price of the units to or to the order of the holder or the manager (as the case may be).
- 4 Payment need not be made prior to delivery to the trustee of such evidence of the title to the units as may be reasonably required but, subject to this, the period expires at the close of business on the fourth business day next after the cancellation of the units; however, where the manager has not ensured that the scheme property includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in Part 5) within that period, the period is extended, for any relevant currency, until the shortage is rectified.
- 5 Paragraph 3 does not apply where units are cancelled following a redemption for property transferred or sold under rule 4.18.

#### **4.09 Price of a unit**

- 1 Subject to paragraph 3, the price of a unit of any class shall be calculated as follows:
  - (a) take the proportion, attributable to the units of the class in question, of the value of the scheme property (excluding the distribution account), calculated by reference to the most recent valuation of that scheme property in accordance with Section E: in the case of an authorised scheme which has adopted a dual pricing regime, the relevant valuation shall be taken on the creation basis in relation to the price of a unit on creation and shall be taken on the cancellation basis in relation to the price of a unit on cancellation;
  - (b) compute the number of units of the relevant class which are in existence prior to the valuation in paragraph (a);
  - (c) divide the total at paragraph (a) by the number of units at paragraph (b);
  - (d) express the result in the base currency or, when appropriate, the currency of designation of the units in question, or else comply with paragraph 2; and
  - (e) express the price in a form that is accurate to at least four significant figures.
- 2 A currency other than a currency referred to in paragraph 1(d) may be used if the manager is satisfied that the rate of exchange between the two currencies is not likely to result in any material prejudice to the interests of holders or potential holders.
- 3 A method of calculation other than that in paragraph 1 may be used as long as the manager is sure that it is bound to produce the same result.
- 4 Where any creation or cancellation is made at a time which is less than two hours after the last valuation point and before the next valuation point, it must be made by reference to the price of the relevant class of units calculated (or being calculated) for the last valuation point.
- 5 Any creation or cancellation to be made more than two hours after the last valuation point must be made by reference to the price of the relevant class of units next to be calculated and made only after the next valuation point has been reached.

- 6 In the case of a money market fund, in determining the price at which units may be created, issued, cancelled, redeemed or converted the manager may take into account interest, original issue discount, and other receipts minus expenses and other outgoings that shall accrue between the relevant valuation point and the date on which settlement of the transaction is to take place in accordance with the principal documents provided that the policy of the manager shall be disclosed in the scheme particulars.

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

- 1 The number of units created or cancelled may be modified by the manager provided that:
- (a) the manager ensures that any appropriate consequential payment as between the manager and the scheme property is made; and
  - (b) the requirements of paragraph 2 are satisfied.
- 2 The manager may make a modification under paragraph 1 only with the agreement of the trustee and the trustee may not agree unless it is reasonably satisfied:
- (a) that the purpose of the modification is to rectify the consequences of an error which relates to the number of units held by the manager, or created or cancelled in connection with the sale or redemption of units by the manager; and
  - (b) that in view of the quality of the manager's control systems the circumstance that resulted in the error in question is an isolated one and is unlikely to recur.
- 3 A modification under paragraph 1 shall be of no effect unless the corrected number of units is calculated by the end of the business day next following the relevant valuation point, or, if the trustee agrees, within the payment period applicable to the original creation or cancellation under rule 4.06.2 or 4.08.4.

### **Section D Sale and Redemption**

**Explanation.** *There are two main ways in which the units in an authorised scheme can be bought or sold by an investor. One method is by dealing with the manager as principal, in which case units will be sold or redeemed by it. The other way is when the manager is acting as agent for the trustee (or in the case of a company scheme, the company) in which case units will be sold or redeemed by the manager for the trustee (or in the case of a company scheme, the company). These rules seek to ensure, so far as possible, that the investor receives equitable treatment whether the manager is acting as principal or as agent.*

#### **4.11 Introduction**

- 1 Rules 4.12 to 4.14 and 4.16 to 4.18 apply, so far as the context permits, to creations and cancellations of units effected or to be effected by the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) under rule 4.15.
- 2 If the manager deals under these rules in a currency other than the base currency, or the currency of designation of a unit class, the rate of exchange as between the currencies is to be determined by it so as to be fair to the person with whom, or on whose behalf, it deals.

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

- 1 Subject to Part 13 and the authorised scheme having units in issue, the manager must at all times during the dealing day be willing to sell units in the authorised scheme and, subject to paragraph 2, it must, at the request in writing of any person, agree to sell units of at least one class or, in the case of an umbrella fund, one class in respect of each of its sub-funds (excluding any sub-fund in respect of which no units are in issue), to that person.
- 2 The manager's obligation to sell units pursuant to paragraph 1 does not apply:

- (a) if the manager has reasonable grounds, relating to the circumstances of the person concerned, for refusing to sell units to him; or
  - (b) if the number or value of the units sought to be purchased is less than any number or value stated in the scheme particulars as the minimum number or value that may be purchased or held.
- 3 The price at which the manager shall sell a unit shall be determined in accordance with Section E.
- 4 Units must be sold in the base currency or the currency of designation of the class concerned, unless the person concerned requests and the manager agrees that the units should be sold in another currency.

#### **4.13 Manager's obligation to redeem**

- 1 Subject to Part 13 and except during the period of the initial offer, the manager must at all times during the dealing day be willing to redeem units in the authorised scheme; and, accordingly, must at the request in writing of any holder agree to redeem units owned by that holder at a price arrived at under these rules.
- 2 Paragraph 1 does not apply:
- (a) if the number or value of the units sought to be redeemed is:
    - (i) less than the entirety of the holder's holding of units of the class concerned; and
    - (ii) less than any number or value stated in the scheme particulars as the minimum number or value that may be redeemed;
  - (b) if the number or value of the units sought to be redeemed would result in the holder holding less than any number or value stated in the scheme particulars as the minimum number of units of the class concerned that may be held;
  - (c) if the manager in the case of a unit trust scheme (or in the case of a company scheme, the company) ensures that the holder is able to sell his units on an investment exchange at a price not significantly different from the price at which they would have been redeemed; or
  - (d) where units are redeemed in return for property transferred or sold under rule 4.18.
- 3 The amount to be paid by the manager as the proceeds of redemption of a unit shall be determined in accordance with Section E.

#### **4.14 Payment on redemption**

- 1 On agreeing to redeem units, the manager shall, within the period specified in paragraph 2, pay the appropriate proceeds of redemption (less, where applicable, the cost of remitting the sum abroad) to the holder.
- 2 The period expires at the close of business on the fourth business day next after the later of:
- (i) the valuation point immediately following receipt by the manager of the request to redeem; or
  - (ii) the time when the manager has all duly executed instruments and authorisations as effect (or enable the manager to effect) transfer of title to the units.
- 3 This rule does not apply where the manager is not redeeming units in accordance with this Part of these rules but is buying them as principal on an investment exchange and settlement will be in accordance with the rules of that exchange.
- 4 Nothing in this rule shall require a trustee or a company to part with money in respect of a cancellation or redemption of units where it has not yet received the money due on the earlier creation or sale of those units, or where it considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to applicable law or any other obligation.

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

- 1 At the request of any person, the manager is obliged (1) to arrange for the trustee in the case of a unit trust scheme (and in the case of a company scheme, the company) to create units under this rule in any case where it would otherwise be obliged to sell them under rule 4.12, unless the manager has not received payment on account of an amount estimated by it to be sufficient to meet the price of the units, and (2) to arrange for the trustee in the case of a unit trust scheme (and in the case of a company scheme, the company) to cancel under this rule units held by that person in any case where it would otherwise be obliged to redeem them under rule 4.13.
- 2 The price of a unit created or cancelled under this rule must be the price of a unit of the relevant class notified to the trustee in respect of the next valuation point after the request referred to in paragraph 1.
- 3 (a) In the case of a creation, the manager may require to be paid in addition to the price under paragraph 2:
  - (i) for the account of the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company), any dilution levy permitted under rule 4.23; and
  - (ii) for the account of the manager, any preliminary charge permitted under rule 8.03.(b) In the case of a cancellation, the manager may require to be deducted from the proceeds otherwise payable:
  - (i) for the account of the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company), any dilution levy permitted under rule 4.23; and
  - (ii) for the account of the manager, any redemption charge permitted under rule 8.05.
- 4 The manager shall pay to the trustee in accordance with rule 4.06.2 the price of any units created under this rule whether or not the manager has received the same from the investor.

#### **4.16 Notification of price to the trustee**

- 1 Forthwith upon completion of a valuation under Section G (whether regular or otherwise) the manager shall notify the trustee of the price or prices of a unit or unit of each class or type (as the case may be), including, in the case of an authorised scheme which has adopted a dual pricing regime, the creation price, the cancellation price, the maximum sale price and the minimum redemption price, as determined for the relevant valuation point and of the amount of any dilution levy applicable in respect of any creation or cancellation of units.
- 2 Each notification under paragraph 1 shall include a statement of the number of units (or units of each class) owned by the manager at that valuation point (or notified point if there is one).

#### **4.17 Publication of prices**

- 1 In the case of an authorised scheme which is declared to be a recognised scheme under the provisions of the FSMA, where the manager holds itself out as willing:
  - (a) to sell or redeem units (or units of any class); or
  - (b) 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 units (or units of any class) under rule 4.15,it must make public the prices of units of each of those classes, including, in the case of an authorised scheme which has adopted a dual pricing regime, maximum sale and minimum redemption prices.
- 2 The prices made public under paragraph 1 are to be the price or prices last notified to the trustee under rule 4.16 or, in the case of publication in a newspaper, last notified before the relevant newspaper ceased to accept material for publication in the relevant edition.
- 3 The prices to be made public under paragraph 1 must be published in at least one national newspaper in the United Kingdom, except in respect of any class of units that is marketed predominantly outside of the United Kingdom.

- 4 Where the manager holds itself out as willing to sell and redeem units (or, as the case may be, 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 units under rule 4.15) in any other jurisdiction, it must also comply with any rules relating to the publication of prices which may be provided for in the law of that jurisdiction.

#### 4.18 In specie cancellation

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

## Section E Sale and Redemption Prices

*The following diagram relates only to authorised schemes which have adopted a dual pricing regime.*

*In the two illustrations below, the prices in capitals (e.g. CREATION PRICE) are fixed by the rules, and the other items are arrived at by the manager within limits so fixed. Figure A shows how managers in an expanding fund operate, and Figure B is typical of a contracting fund.*

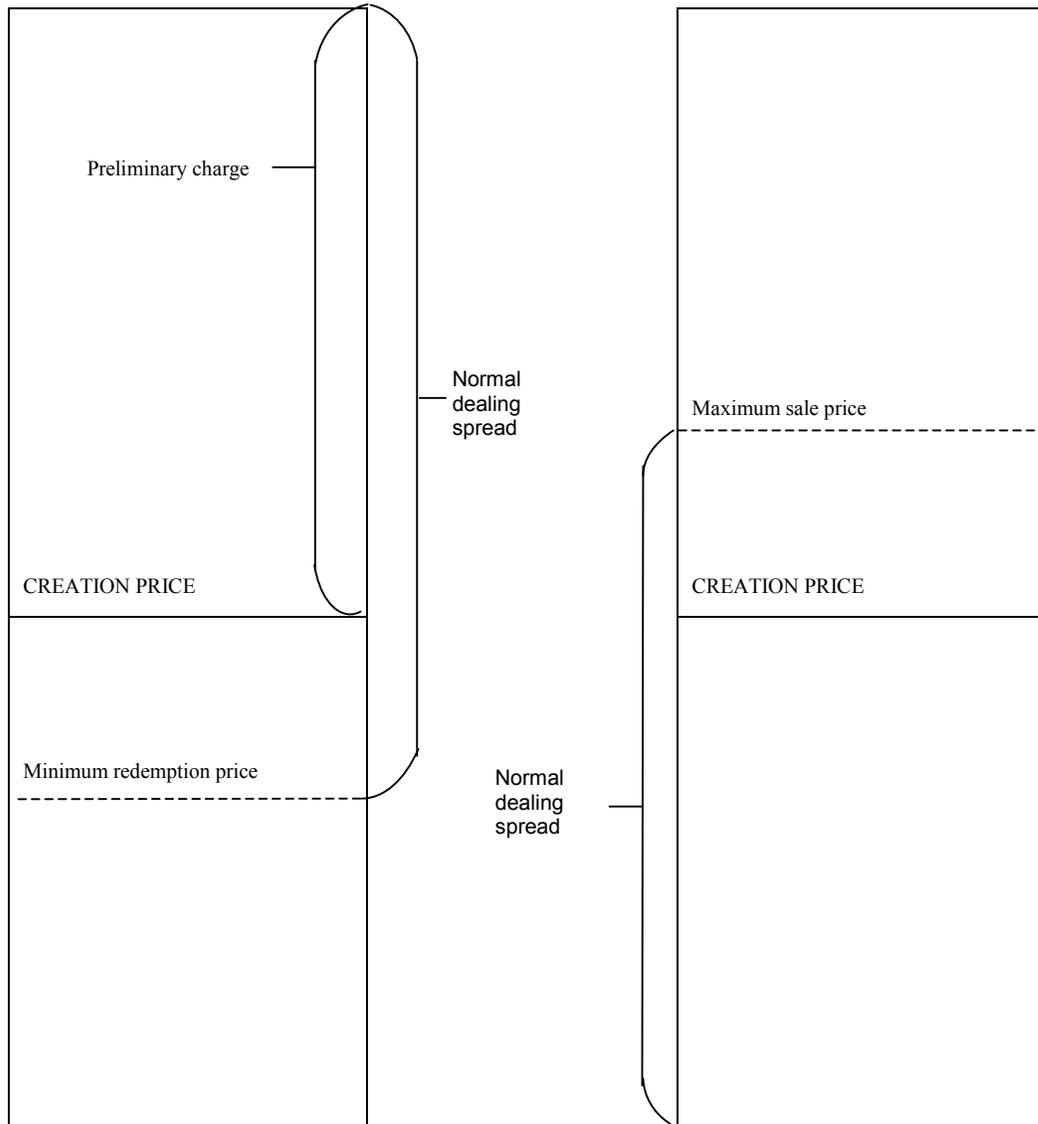
**EXPLANATORY DIAGRAM: DUAL PRICING**

FIGURE A  
("Creation Basis")

FIGURE B  
("Cancellation Basis")

LEVEL ABOVE WHICH MAXIMUM  
SALE PRICE CANNOT BE FIXED

LEVEL ABOVE WHICH MAXIMUM  
SALE PRICE CANNOT BE FIXED



CANCELLATION PRICE BELOW  
WHICH MINIMUM REDEMPTION  
PRICE CANNOT BE FIXED

CANCELLATION PRICE BELOW  
WHICH MINIMUM REDEMPTION  
PRICE CANNOT BE FIXED

Note: On a cancellation basis, the manager will normally be selling units which it has already redeemed, and therefore it may retain the difference between the redemption price and the sale price instead of taking a preliminary charge.

#### **4.19 Sale price: single pricing**

In the case of an authorised scheme which has adopted a single pricing regime, the manager shall not sell a unit for more than the price of a unit of the relevant class notified or to be notified to the trustee in respect of the last valuation point (or, for a sale at a forward price, to be notified to the trustee in respect of the next valuation point) to which may be added:

- (a) any preliminary charge permitted under rule 8.03; and
- (b) any dilution levy permitted under rule 4.23.

#### **4.20 Sale price: dual pricing**

**1** In the case of an authorised scheme which has adopted a dual pricing regime, except in the case of a large deal, the manager shall not sell a unit for more than the maximum sale price, that is the price of a unit of the relevant class fixed by the manager and notified or to be notified to the trustee in respect of the last valuation point (or for a sale at a forward price, to be notified to the trustee in respect of the next valuation point); and the maximum sale price itself must not exceed the total of:

- (a) the relevant creation price; and
- (b) any preliminary charge permitted under rule 8.03.

**2** In the case of a large deal, the manager's sale price for a unit may exceed the maximum sale price but must not exceed the limit above which the maximum sale price could not have been fixed.

**3** The manager's sale price for a unit must not be less than the minimum redemption price under rule 4.22.1.

**4** In applying this rule to dealings after a valuation point but before the price relating to that point has been fixed and notified, the maximum sale price will be the one next to be notified to the trustee in respect of that point or, where relevant, the next point.

#### **4.21 Redemption price: single pricing**

In the case of an authorised scheme which has adopted a single pricing regime, the amount to be paid by the manager as the proceeds of redemption of a unit shall not be less than the price of a unit of the relevant class notified or to be notified to the trustee in respect of the last valuation point (or, for a redemption at a forward price, to be notified in respect of the next valuation point) less:

- (a) any redemption charge permitted under rule 8.05; and
- (b) any dilution levy permitted under rule 4.23.

#### **4.22 Redemption price: dual pricing**

**1** In the case of an authorised scheme which has adopted a dual pricing regime, except in the case of a large deal, the manager's price for redemption of a unit shall not be less than the minimum redemption price of a unit of the relevant class notified or to be notified to the trustee in respect of the last valuation point (or for a redemption at a forward price, to be notified in respect of the next valuation point); and the minimum redemption price shall not be less than the relevant cancellation price.

**2** In the case of a large deal, the manager's redemption price for a unit may be less than the minimum redemption price but must not be less than the relevant cancellation price.

**3** The manager's redemption price for a unit shall not exceed the relevant creation price under rule 4.20.1(a).

**4** In applying this rule to dealings after a valuation point but before the price relating to that point has been notified, the minimum redemption price will be the one next to be notified to the trustee in respect of that point, or where relevant, the next point.

**5** The amount payable as proceeds of redemption may be arrived at after deducting any redemption charge permitted under rule 8.05

#### 4.23 Dilution levy

**Explanation.** *An authorised scheme may suffer dilution (reduction) in the value of its scheme property as a result of the costs incurred in dealing in its underlying investments and of any spread between the buying and selling price of such investments. With a view to countering this, in the case of an authorised scheme which has adopted a single pricing regime, the manager is permitted to require the payment of a dilution levy, as an addition to the price of units on their creation or sale, and as a deduction on their redemption or cancellation. There are provisions to prevent the levy being imposed twice on both the creation and sale, or redemption and cancellation of a unit.*

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

#### Section F Forward and Historic Pricing

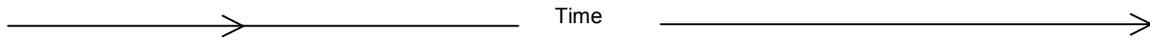
**Explanation.** *There are two different ways in which a manager may sell or redeem units; these are at forward and historic prices. A forward price is one to be fixed at the next valuation point, while a historic price is one fixed on the basis of the last valuation.*

*The two pricing systems have different characteristics. The investor knows that a forward deal will be fairly priced at the next valuation point, but if he is investing a specified sum, he does not know until then how many units he will receive (or, if he is seeking to redeem, how much he will receive in cash). The investor knows, by contrast, that a historic deal may well represent an outdated price (though not by more than 2%), but is able to know at the time of the deal how much he must pay (or will receive) or the time of the relevant valuation which will be relevant to that price.*

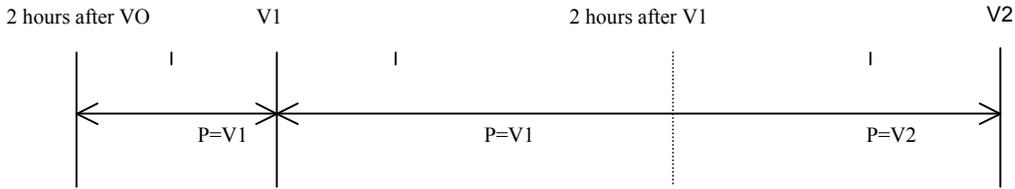
*The rules generally express a preference for forward pricing in that there are numerous occasions when a price must be forward, whether the manager chooses to deal in that way or not. Creations or cancellations by the manager as agent for the trustee (or in the case of a company scheme, the company) under rule 4.15 are always at a forward price.*

*The following diagram sets out the arrangements for creation prices and sale prices in the period between one valuation point and the next. In doing so, it takes account of Table 4.1 below, and also of earlier provisions in this Part, including rule 4.12.*

## EXPLANATORY DIAGRAM: PRICING AT AND AFTER VALUATION POINT



### Creation or cancellation by authorised scheme (whether F or H)



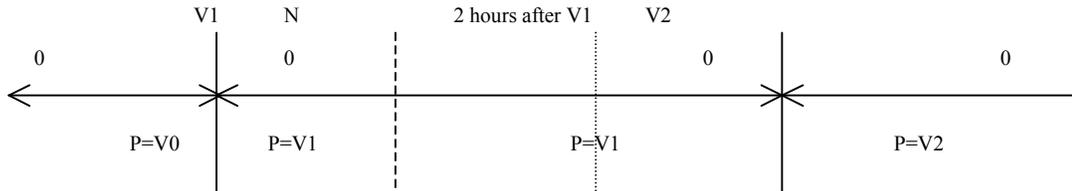
### Sale or redemption by manager

#### Case A - manager on forward

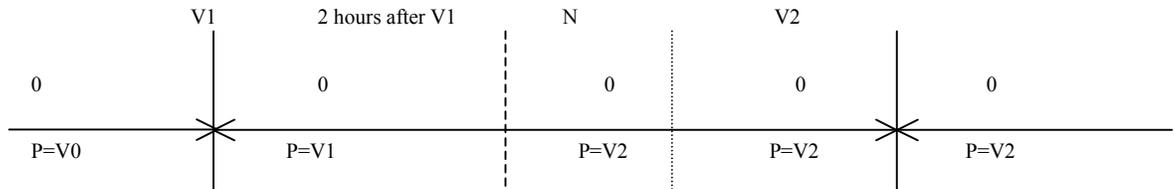


#### Case B - manager on historic

##### (i) $N < V + 2 \text{ hours}$



##### (ii) $N > V + 2 \text{ hours}$



### Note 1 In this diagram:

- F = forward price basis
- H = historic price basis
- I = (time of) arrangements for issue
- N = (time of) notification of trustee of price
- O = (period of accrual of) obligation to sell units
- P = sale price
- V = valuation point

**Note 2** Case A applies whether the valuation is completed within 2 hours or not.

**Note 3** Case B applies provided that:

- (a) the manager has not elected to change to forward dealing under Table 4.1, rule 5; or
- (b) the value of the scheme property has not varied by 2% or more.

**Note 4** This diagram ignores some additional complexity, including the (voluntary) “notified point” system for determining the amount of creations or cancellations required.

#### 4.24 Forward and historic pricing

- 1 In relation to the sale and redemption of units, the manager may, subject to this rule, operate on the basis of forward prices or on the basis of historic prices, and its power to choose, or its duty to operate on one basis only, is conditioned by Table 4.1.
- 2 Paragraph 1 does not apply to warrant funds, geared futures and options funds, and property funds nor to any sub-fund of an umbrella fund designated as such.
- 3 Prices for the sale and redemption of units in funds or sub-funds to which paragraph 2 applies are to be on a forward basis only.

**Table 4.1 - Forward or historic pricing**

##### **RULES**

##### **Notes**

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

##### **Section 1 General dealing**

- 1 Manager’s choice. The scheme particulars must state the manager’s choice for H or else for F Only.
- 2 If the manager’s current choice under Table 4.1, rule 1 is F Only, all its deals must be at a forward price.
- 3 A manager may not choose H if its normal arrangements for valuation envisage valuations more than one business day apart.
- 4 The remainder of this Table applies to a manager with a current choice of H.
- 5 It may at any time elect for F Only in respect of the rest of the then current dealing period.
- 6 If the manager binds itself to switch from H to F Only at a certain point in each dealing period, this must be stated in the scheme particulars.
- 7 An election for (or switch to) F Only will last until the end of the dealing period and will then lapse.
- 8 For general dealing purposes, redemptions must be on the same basis as sales.

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

- 9 **Market movement:** F Only applies once the manager knows or has reason to believe that there would be a 2% or greater difference between the current value of the scheme property, if immediately valued and the last calculated value of the scheme property (taking that as 100% for this purpose), but decides not to carry out an additional valuation under rule 4.25.
- 10 **Valuation taking over two hours:** F Only applies if a new price for units of each class has not been notified to the trustee (and in the case of a company scheme, the company) after two hours (or such longer period as the trustee may agree with the manager generally or in any specific case) from the valuation point.
- 11 In the case of an authorised scheme which has adopted a dual pricing regime, Table 4.1, rule 10 does not apply if, within two hours (or such longer period as the trustee may agree with the manager generally or in any specific case) of the valuation point, the manager has notified the

trustee of the basis (creation or cancellation) on which the next prices will be fixed, and of the spread (reckoned in percentage or money terms) between the maximum sale price and the minimum redemption price.

- 12 F Only under Table 4.1, rules 9 and 10 will start when the relevant moment arrives, will last until the end of the dealing period and will then lapse.

### **Section 3 Individual deviations**

- 13 Table 4.1, rules 14 to 17 apply in relation to an individual transaction without affecting the general position arrived at under Sections 1 and 2.

- 14 **Request:** F Only applies if the applicant for sale or redemption so requests.

- 15 **Large deals:** F Only applies, if the manager so decides, in the case of a large deal.

- 16 **Postal deals:** F Only applies if the order or offer reaches the manager through the post or any similar form of one-way communication.

- 17 **Creation or cancellation through the manager when not acting as principal:** F Only applies in the case of a creation or cancellation under rule 4.15.

### **Section 4 Notification to trustee (and company)**

- 18 The manager must notify the trustee (and in the case of a company scheme, the company) of the fact and time of any adoption of F Only under Table 4.1, rule 5 or Section 2.

## **Section G Valuation**

**Explanation.** *This Section includes provisions which relate to valuation of the scheme property of an authorised scheme for the purposes of determining the price of a unit.*

### **4.25 Valuation of the scheme property**

- 1 For the purposes of determining in accordance with these rules the price at which units of any class in an authorised scheme may be created, cancelled, sold or redeemed, the manager shall carry out a valuation of the scheme property at each valuation point for the authorised scheme or the sub-fund (as the case may be).
- 2 There must be at least two valuation points in each calendar month and if there are only two valuation points in any calendar month they must be two weeks or more apart.
- 3 The frequency of regular valuation points shall be specified in the scheme particulars.
- 4 Notwithstanding paragraphs 2 and 3, no valuation points are required during the period of any initial offer (but see rule 4.03).
- 5 The manager may determine to have an additional valuation point and to carry out an additional valuation of the scheme property (or the scheme property related to a sub-fund) at any time if it considers it desirable to do so.
- 6 Prior to any additional valuation point the manager shall inform the trustee (and in the case of a company scheme, the company) of it.
- 7 Part 12 provides additional or special valuation provisions for certain categories of scheme.
- 8 An investment included in the scheme property for which different prices are quoted according to whether it is being bought or sold, in the case of an authorised scheme which has adopted a single pricing regime, shall be valued at its mid-market price and, in the case of an authorised scheme which has adopted a dual pricing regime, shall be valued in two parts, one at its offered or buying price (plus dealing costs) and one at its bid or selling price (less dealing costs).

- 9** Any part of the scheme property of an authorised scheme that is not an investment shall be valued at a fair value.
- 10** For the purposes of the preceding paragraphs, in the case of an authorised scheme which has adopted a single pricing regime there shall be excluded from the value of an investment or other part of the scheme property any dealing costs (that is to say fiscal charges or commissions or other charges) that were paid or would be payable on the acquisition or disposal of the investment or other part of the scheme property.
- 11** There shall be deducted from scheme property an estimated amount for any tax liabilities including, but not limited to, tax on realised or unrealised capital gains, on income and any other fiscal charges which have accrued and are payable out of the scheme property.
- 12** There shall be deducted from scheme property :-
- (i) an estimated amount for any liabilities payable out of the scheme property (treating any periodic items as accruing from day to day);
  - (ii) the principal amount of any outstanding borrowings whenever payable and any accrued but unpaid interest thereon;
  - (iii) the value of any option written if the premium for writing the option has become part of the scheme property;
  - (iv) in the case of a margined contract, any amount reasonably anticipated to be paid by way of variation margin (that is, the difference in price between the last settlement price, whether or not margin was then payable, and the price of the contract at the valuation point).
- 13** There shall be added to scheme property :-
- (i) an estimated amount for accrued claims for repayment of any tax levied on capital, capital gains or income;
  - (ii) any other credit due to be paid into the scheme property;
  - (iii) in the case of a margined contract, any amount reasonably anticipated to be received by way of variation margin (that is, the difference in price between the last settlement price, whether or not variation margin was then receivable, and the price of the contract at the valuation point).

## **Part 5 - Investment and Borrowing Powers**

**Explanation.** *This Part contains provisions in respect of the investment and borrowing powers of an authorised scheme. Section A (general), applies to all the categories of authorised scheme described in rule 2.06: the same is also true of Sections K, L, M and N. Section A provides the overview; Section K deals with the concept of efficient portfolio management; Section L deals with stocklending; Section M regulates powers of holding cash, borrowing and lending; and Section N contains miscellaneous material. The remaining Sections (B to J) deal one by one with the different categories of authorised scheme as follows (the initials after each are useful for the explanatory table which follows):*

- B securities funds (SF);*
- C money market funds (MMF);*
- D futures and options funds (FOF);*
- E geared futures and options funds (GFOF);*
- F property funds (PF);*
- G warrant funds (WF);*
- H feeder funds (FF);*
- I funds of funds (FFS); and*
- J umbrella funds (UF).*

*The general pattern emerging from this Part may be summarised in the following Table: it is, however, indicative only and does not include all the detail in the Part. Umbrella funds are not treated separately in the Table.*

**TABLE: OVERVIEW OF INVESTMENT AND BORROWING POWERS**  
INDICATIVE TABLE ONLY (not to be relied upon)

POWER CONCERNING	TYPE OF SCHEME							FF/ FFS
	SF	MMF	FOF	GFOF	PF	WF		
1	Transferable securities	YES	80%	YES	YES	80%	YES	NA
	1.1 Transferable but not approved	10%	NA	10%	10%	10%	10%	NA
	1.2 GOPS	35% or 100%	35% or 100%	35% or 100%	35% or 100%	35%	35% or 100%	NO
	1.3 CIS Units	5%	NO	5%	5%	5%	5%	YES
	1.4 Warrants	5%	NA	5%	5%	5%	100%	NO
2	Cash (and Near Cash)	RRD	YES	YES	YES	RRD	RRD	RRD
3	Derivatives	EPM	EPM	YES	YES	EPM	EPM	NO
4	Immovables	NO	NO	NO	NO	80%	NO	NO
5	Gold	NO	NO	10%	10%	NO	NO	NO
6	Efficient portfolio management	YES	YES	YES	YES	YES	YES	YES
7	Stocklending	YES	YES	YES	YES	YES	YES	NO
8	Underwriting	YES	YES	YES	YES	YES	YES	NO
9	Borrowing	10%	10%	10%	10%	10%	10%	10%

**Notes to Table**

- 1 “YES” means can be invested in without specific upper limit (though there may be limits of other kinds);  
“NO” means not available for investment;  
A percentage means an upper limit (though there may be limits of other kinds);  
“CIS” means scheme;  
“EPM” means permitted in the context of efficient portfolio management;  
“FF/FFS” means a feeder fund or a fund of funds;  
“GOPS” means Government and other public securities;  
“NA” means not generally applicable having regard to the scheme’s dedication;  
“RRD” means permitted if reasonable for redemption or in the context of the scheme’s dedication within rule 2.06 (see rule 5.59).
- 2 The umbrella fund is not covered: all of its parts must fall within the table, and each of them must fall within one column.
- 3 In this Table, and in the rules, investments and other items are used with the meaning relevant to these rules: these do not always correspond with the usage in certain markets, the expression “warrant” being a particular example

## 5.01 Introduction

Each of the Sections B to J applies only to schemes of the kind mentioned in the title to the relevant Section.

### Section A General

**Explanation.** *This Section, which sets the scene for Sections B to J, deals with the general investment powers for authorised schemes. The basic investment restrictions for the different categories of scheme, covered in the following Sections, may be supplemented by further restrictions in the principal documents or the scheme particulars. The duties of the manager and trustee concerning rectification of any breach of investment limits are covered in Part 7 (see rule 7.14).*

## 5.02 Investment powers: general

- 1 Subject to this Part, the scheme property of an authorised scheme may comprise any property the holding of which is consistent with the relevant dedication in rule 2.06 and in addition may include movable or immovable property that is necessary for the direct pursuit of the authorised scheme's business of investing in the first mentioned property.
- 2 The scheme property may be invested only in accordance with this Part and within any relevant upper limit (such as "up to 10%") in this Part.
- 3 Paragraphs 1 and 2 are subject to the obligation of the scheme to comply with any restrictions for the time being contained in its principal documents as to:
  - (a) the range of transferable securities in which investment may be made;
  - (b) the proportion of the capital property of the authorised scheme to be invested in assets of any description;
  - (c) the descriptions of transactions permitted; or
  - (d) the borrowing powers of the scheme.
- 4 An authorised scheme may set up a wholly owned subsidiary if to do so would be reasonably expected to enhance or protect the interests of investors in that scheme, and in relation to such an authorised scheme this Part applies to the authorised scheme (the "first tier scheme") which beneficially owns all the units (other than management securities) of another company or unit trust (the "second tier scheme") with the following modifications:
  - (a) the receipts, expenditure, assets and liabilities of the second tier scheme shall be regarded as the receipts, expenditure, assets and liabilities of the first tier scheme; and
  - (b) there shall be left out of account the interest of the first tier scheme in the second tier scheme and any payments made by the second tier scheme to the first tier scheme or by the first tier scheme to the second tier scheme.

## 5.03 Valuation

- 1 For the purpose of this Part, the value of the scheme property of the authorised scheme means the net value of the scheme property after deducting:
  - (a) any outstanding borrowings whether immediately due to be repaid or not; and
  - (b) in the case of a property fund, any capital sum outstanding on a mortgage of an immovable.

- 2 In valuing the scheme property for the purposes of this Part:
  - (a) the time as at which the valuation is being carried out (the “relevant time”) is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of Part 4;
  - (b) initial outlay is regarded as remaining part of the scheme property; and
  - (c) if the manager reasonably believes that the authorised scheme will become entitled to any unrealised profit which has been made on account of a derivatives transaction, that prospective entitlement is regarded as part of the scheme property.

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

In relation to any provision in this Part, whereby investment is permitted to be carried out or retained only if possible obligations arising out of the transaction would not cause any breach of any limit in these rules (examples being rule 5.16.2 (nil or partly paid securities) and rule 5.65.5 (underwriting)), it is to be assumed in applying any of those provisions that the maximum possible liability of the authorised scheme under any other such provision has also to be provided for, but that the value of the scheme property is ascertained in the normal manner.

#### **5.05 Transferable security**

- 1 In these rules, “transferable security” means any investment falling within any of paragraphs 2(1)(a) to (e) of schedule 1 to the Law, unless paragraph 2 or 4 applies.
- 2 An investment is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- 3 In applying paragraph 2 to a security which is issued by a body corporate, and which is an investment falling within paragraph 2(1)(a) or (b) of schedule 1 to the Law, the need for any consent on the part of the body or any members or debenture holders of it may be ignored.
- 4 A security is not a transferable security if the liability of the holder of it to contribute to the debts of the issuer is not limited to any amount for the time being unpaid by the holder of it in respect of it.

#### **5.06 Eligible securities and derivatives markets**

- 1 The following securities markets are eligible for the purposes of these rules:
  - (a) The Channel Islands Stock Exchange; and
  - (b) A market established in a member State on which transferable securities admitted to official listing in the member State are dealt in or traded.
- 2 A securities market not falling within paragraph 1 or a derivatives market is, at any time, eligible for the purposes of these rules if:
  - (a) the manager, after consultation with the trustee, considers that market as one which is, in accordance with paragraphs 3 and 4, appropriate for the purpose of investment of or dealing in the scheme property beyond, where appropriate, any limit which under these rules would otherwise apply;
  - (b) that decision is notified in writing to the trustee and has not been revoked; and
  - (c) the market is included in a list in the scheme particulars.
- 3 For the purposes of paragraph 2, a market may be considered to be appropriate if it:
  - (a) is regulated;
  - (b) operates regularly;
  - (c) is recognised; and

- (d) is open to the public.
- 4** In considering whether a market is appropriate, regard shall in particular be had:
- (a) to the need for adequate liquidity in the market;
  - (b) to the arrangements relevant to the market for unimpeded transmission of income and capital to or to the order of investors; and
  - (c) to any relevant guidance note of the Commission issued on, before or after the date of the making of these rules.

#### **5.07 Approved security**

- 1** A transferable security is an “approved security” if:
- (a) it is admitted to official listing on the Channel Islands Stock Exchange, or in a member State; or
  - (b) it is traded on or under the rules of an eligible securities market (otherwise than by virtue of the specific permission of the market authority).

#### **5.08 Warrants**

In these rules, “warrants” includes, in addition to an investment falling within paragraph 2(1)(d) of schedule 1 to the Law, any other transferable security (not being a nil paid or partly paid security) which is:

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

#### **5.09 Derivative and approved derivative**

- 1** In these rules “derivative” means an option or a future or a contract for differences.
- 2** In these rules “approved derivative” means a derivative which is traded or dealt in on an eligible derivatives market.
- 3** An investment is not a derivative if it is a transferable security.

#### **5.10 Off-exchange derivatives**

- 1** In these rules off-exchange derivative means a future or an option or a contract for differences resembling an option which is:
- (a) with an approved counterparty under paragraph 2;
  - (b) on approved terms under paragraph 3; and
  - (c) capable of valuation under paragraph 4.
- 2** A counterparty to a derivatives transaction is approved for the purposes of paragraph 1 only if it is:
- (a) an approved bank;
  - (b) an authorised person who is regulated by the Financial Services Authority in the United Kingdom in respect of investment business of a kind which includes the writing or purchasing of off-exchange derivatives as principal.

- 3 The terms of a derivatives transaction are approved for the purposes of paragraph 1 only if, before the transaction is entered into, the trustee is satisfied that the counterparty has agreed with it (or in the case of a company scheme, the company):
- (a) to provide a valuation in respect of that transaction:
    - (i) at least once a week; and
    - (ii) at any other time at the request of the trustee (or in the case of a company scheme, the company); and
  - (b) that it will, at the request of the trustee (or in the case of a company scheme, the company), enter into a further transaction to close out that transaction at a reasonable price.
- 4 A derivatives transaction is capable of valuation for the purposes of paragraph 1 only if the manager reasonably believes that, throughout the time of the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy on the basis of a pricing model which has been agreed between the manager and the trustee, or on some other reliable basis reflecting an up-to-date market value which has been so agreed.

#### **5.11 Synthetic futures**

In these rules synthetic future means a derivative transaction in the nature of a composite derivative created out of two options in one of the following ways:

- (a) a bought call option coupled with a written put option will create a synthetic bought future; and
  - (b) a bought put option coupled with a written call option will create a synthetic sold future,
- provided that the two options:
- (i) are bought and written, whether simultaneously or not, on a single eligible derivatives market;
  - (ii) relate to the same underlying security or other asset;
  - (iii) give the purchasers of the options the same rights of exercise (whether at the same price or not); and
  - (iv) will expire, if not exercised, together.

### **Section B Securities Funds**

**Explanation.** *These authorised schemes include schemes investing wholly or largely in Government and other public securities.*

#### **5.12 Securities funds: general**

- 1 Except where otherwise provided in these rules, the scheme property of a securities fund shall consist of transferable securities.
- 2 Up to 10% in value of the scheme property may consist of transferable securities which are not approved securities, but there is no limit on the value of the scheme property which may consist of approved securities.
- 3 Up to 5% in value of the scheme property may consist of transferable securities which are units in schemes but only if they fall within rule 5.15.
- 4 Investment under paragraph 3 counts towards the limit in paragraph 2 (except where the units are approved securities).

- 5 Rules 5.13 and 5.14 do not apply until whichever is the earlier of:
- (a) the expiry of a period of six months after the date of the declaration of authorisation in respect of the authorised scheme; or
  - (b) the date when the value of the scheme property of the authorised scheme first exceeds £1million (or the equivalent in the base currency of the authorised scheme) or on which the initial offer ends, if later,

but the manager, in the case of a unit trust scheme (and in the case of a company scheme, the company) shall ensure, so far as practicable, during the period prior to the application of rules 5.13 and 5.14 that the scheme property is invested with the aim of spreading risk.

- 6 Without prejudice to paragraph 5, the manager shall ensure that, taking account of the investment objectives and policy of the authorised scheme as stated in the most recently published scheme particulars relating to the authorised scheme, the scheme property of the authorised scheme provides a prudent spread of risk.

### **5.13 Spread: general**

- 1 This rule does not apply to Government and other public securities as defined in rule 5.14.5.
- 2 Up to 5% in value of the scheme property may consist of transferable securities issued by any one issuer.
- 3 In applying paragraph 2, investments within paragraph 2(1)(e) of schedule 1 to the Law(certificates representing securities) are treated as equivalent to the underlying security.
- 4 The figure of 5% in paragraph 2 may be regarded as 10% in respect of up to 40% of the value of the scheme property.

### **5.14 Spread: Government and other public securities**

- 1 This rule applies to Government and other public securities only and in this rule they are described as “such securities”.
- 2 As long as 35% or less of the scheme property of an authorised scheme is invested in such securities issued by any one issuer, there is no limit on the amount which may be invested in:
- (a) such securities; or
  - (b) such securities issued by any one issuer or of any one issue.
- 3 Where, however, scheme property is invested as to more than 35% in such securities issued by any one issuer, then:
- (a) up to 30% of the scheme property may consist of such securities of any one issue;
  - (b) the scheme property must include such securities issued by that or another issuer of at least six different issues; and
  - (c) the disclosures in paragraph 4 must have been duly made.
- 4 Where it is intended or anticipated that paragraph 3 may apply, the principal documents, and the most recently published scheme particulars, must clearly state:
- (a) the fact that more than 35% of the scheme property is or may be invested in Government and other public securities issued by one issuer; and
  - (b) the identity of the issuer.

- 5 In these rules, “Government and other public securities” means transferable securities which are investments falling within paragraph 2(1)(b) of schedule 1 to the Law which are issued by or on behalf of:
- (a) the Government of the United Kingdom, of Northern Ireland or of a member State other than the United Kingdom;
  - (b) a local authority in the United Kingdom or in any other member State;
  - (c) the Government of any of the countries listed in paragraph 6; or
  - (d) an international organisation of which the United Kingdom or another member State is a member, and

also includes any investment which would have been such an investment had it been issued, as opposed to merely guaranteed, by a Government or local authority specified in paragraph (a), (b) or (c).

- 6 The countries relevant for paragraph 5(c) are:

- (a) Australia;
- (b) Canada;
- (c) Japan;
- (d) New Zealand;
- (e) Switzerland; and
- (f) United States of America.

- 7 In paragraphs 2, 3 and 4 (but not in paragraph 5), in relation to Government and other public securities:

- (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
- (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other terms of the issue.

#### **5.15 Investment in schemes**

- 1 A securities fund may invest in units in a scheme only if the second scheme is either an authorised scheme or is a scheme that complies with the conditions necessary for it to enjoy the rights conferred by the UCITS Directive or is a scheme that:

- (a) is either:
  - (i) a recognised scheme; or
  - (ii) a scheme in which the investment of the authorised scheme consists of units which are approved securities;
- (b) is dedicated to investing funds raised from the public in transferable securities or money market fund assets (as defined in rule 5.19);
- (c) operates on the principle of risk spreading; and
- (d) has terms which prohibit more than 5% in value of the property of the scheme consisting of units in schemes.

- 2 For the purposes of this rule, a sub-fund of an umbrella fund shall be treated as if it were a separate scheme and a securities fund may invest in units in a sub-fund which is invested as if it was a scheme to which paragraph 1 applies.

### **5.16 Investment in warrants and in nil paid or partly paid securities**

- 1 A warrant falls within any power of investment only if, on the assumption that the right conferred by the warrant will be exercised (whether or not it is intended that it will be), it is reasonably foreseeable that the right conferred by the warrant could be exercised by the authorised scheme without contravening these rules.
- 2 A transferable security on which any sum is unpaid falls within any power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the authorised scheme, at the time when payment is required, without contravening these rules.
- 3 Up to 5% of the value of the scheme property may consist of warrants, but there is no similar limit in respect of securities on which any sum is unpaid.
- 4 A warrant (as defined in rule 5.08) which is an investment falling within paragraph 5 of schedule 1 to the FSA, which is akin to an investment falling within paragraph 4 of that schedule, may not be included in the scheme property unless it is listed on an eligible securities market.

### **5.17 Significant influence**

- 1 Subject to rule 5.02.4, an authorised scheme may only acquire transferable securities issued by a body corporate carrying rights to vote (whether or not on substantially all matters) at a general meeting of that body if:
  - (a) immediately before the acquisition the aggregate of any such securities held by the authorised scheme does not give the authorised scheme power significantly to influence the conduct of business of that body; and
  - (b) the acquisition will not give the authorised scheme that power.
- 2 For the purpose of paragraph 1 an authorised scheme shall be taken to have power significantly to influence the conduct of business of a body corporate if it can, by virtue of the transferable securities held by it, exercise or control the exercise of 20% or more of the voting rights in that body (disregarding for this purpose any temporary suspension of voting rights in respect of the securities of that body).
- 3 An authorised scheme must not hold:
  - (a) transferable securities (other than debt securities) which do not carry a right to vote on any matter at a general meeting of the body corporate that issued them and represent more than 10% of those securities issued by that body corporate;
  - (b) more than 10% of the debt securities issued by any single issuing body; or
  - (c) more than 10% of the issued units of a scheme.

### **5.18 Investment in associated schemes**

Units in a scheme do not fall within rule 5.15 if that scheme is managed or operated by the manager of the investing scheme or an associate of that manager unless:

- (a) the principal documents constituting that scheme state that its investment will be restricted to a particular geographic area or economic sector;
- (b) the principal documents constituting the investing scheme and its scheme particulars clearly state that the property of the investing scheme may include such units; and
- (c) rule 5.67 is complied with.

## Section C Money Market Funds

**Explanation.** *The money market fund is an authorised scheme invested in cash and near cash and, subject to specified restrictions, in bills of exchange and debentures. Rules in this Section governing the investment limits of money market funds ensure that such schemes maintain a high level of liquidity.*

### 5.19 Money market funds: general

- 1 Except where otherwise provided in these rules, the property of a money market fund shall consist of “money market fund assets”.
- 2 For this purpose, “money market fund assets” means any of the following:
  - (a) cash and near cash;
  - (b) bills of exchange accepted by an approved bank, if repayable within twelve months;
  - (c) investments within paragraph 2 (1)(b) of schedule 1 to the Law (debentures) which are:
    - (i) repayable within twelve months;
    - (ii) not subordinated; and
    - (iii) either approved securities within rule 5.07.1(a) or (b), or else are issued by an approved bank otherwise than in return for a deposit in paragraph (a); and
  - (d) a deposit which would be within paragraph (a) except that it is repayable within six months (instead of immediately and without payment of a penalty exceeding seven days’ interest calculated at ordinary commercial rates).
- 3 At least 35% in value of the scheme property must consist of instruments or deposits which are:
  - (a) redeemable or repayable within two weeks; or
  - (b) capable of being transferred without the consent of a third party (any issuer being regarded as a third party for this purpose).
- 4 Up to 80% in value of the scheme property may consist of transferable securities.
- 5 Rule 5.12.5 applies to this Section as if references to rules 5.13 and 5.14 therein were references to rule 5.20.

### 5.20 Spread

- 1 Paragraph 2 does not apply to instruments which are Government and other public securities (as defined in rule 5.14.5), to which rule 5.14 applies.
- 2 Up to 5% in value of the scheme property may consist of instruments issued by any one issuer.
- 3 Up to 10% in value of the scheme property may be kept on deposit with any one person.
- 4 For the purposes of paragraph 3, the trustee and the associates of the trustee are regarded as one person, and the manager and the associates of the manager as another.
- 5 The figure of 10% in paragraph 3 may be regarded as 20% if the person is an approved bank which is not included within paragraph 4, provided that the amount of the deposit does not exceed 10% of that person’s issued capital and reserves as shown in its most recently published annual accounts.
- 6 Paragraphs 3, 4 and 5 do not apply in respect of any deposit of up to £1,000,000 or the equivalent amount in the base currency of the authorised scheme other than sterling with any one person.

### 5.21 Other provisions

The following rules apply to money market funds:

- (a) 5.16.2 (investment in nil paid or partly paid securities); and

- (b) 5.17 (significant influence) (where relevant).

## Section D Futures and Options Funds

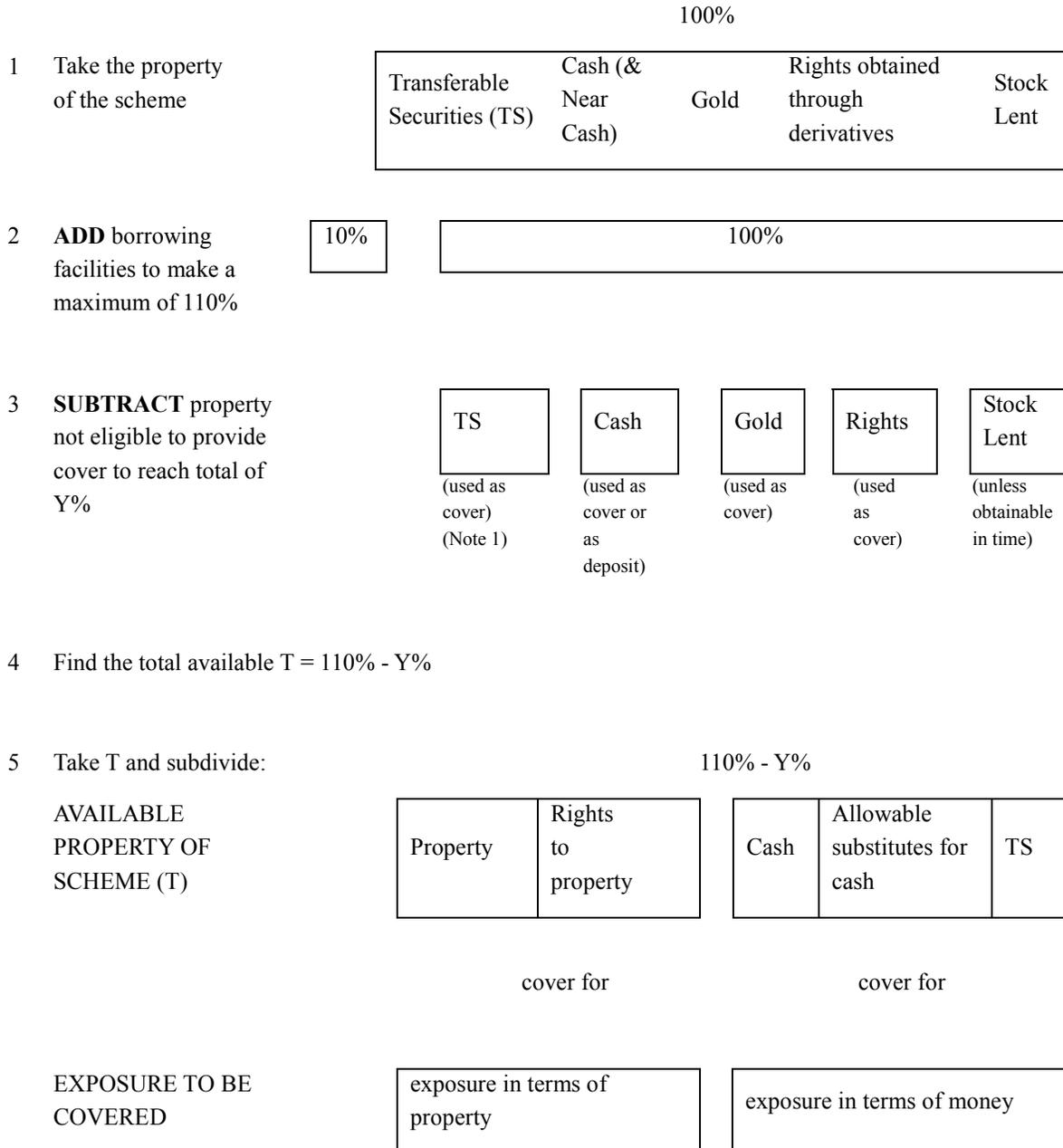
**Explanation.** *This Section and Section E establish a framework for authorised schemes which can be invested in derivatives, that is futures, options, and contracts for differences, not simply by way of efficient portfolio management, but as part of the general investment management policy applicable to the scheme. This Section deals with the futures and options fund as such, and Section E with the geared futures and options fund. While the types of property are virtually the same for both of these categories, there are important differences between them in the degree to which exposure is permitted and in the manner in which the exposure is measured.*

*The futures and options fund is “covered”, in the sense that it is permitted to invest in futures, options etc, as long as the exposure itself is suitably covered from within the property of the scheme (including permitted borrowing as to which see rules 5.60-5.61). Some limited investment without cover is permitted, in the form of purchased options. The geared futures and options fund, on the other hand, is permitted to invest and retain 20% of the property of the scheme in initial outlay (as defined in rule 5.52.2), and this may therefore lead in volatile markets to a greater exposure to profit or loss than in the case of a futures and options fund.*

*The purpose of cover is to ensure that a futures and options fund is not and can not become exposed to the risk of loss of property, or money, or both, to an extent greater than the value of the fund together with permitted borrowings of 10%. At the time when a derivative is bought, sold or written, therefore, the scheme must hold property which is of the right kind and sufficient in value or amount to match the exposure which exists or may arise as a result of the derivative. Since purchased options result in no exposure except that of loss of the premium paid, they can be held on an uncovered basis, but with a cash “set aside” to ensure that holdings of such derivatives do not unbalance the fund.*

*The following table sets out in diagrammatic form the various stages in defining the “cover” requirement. The table is indicative only and does not include all the detail: for example the special rules for currencies are not stated, nor the extent to which derivatives may cover derivatives.*

*Stages in defining "cover":*




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Note 1 TS, Cash, Gold or Rights are not eligible if they are being used as cover under this Section or under Section K (Efficient Portfolio Management).

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## **5.22 Futures and options funds: general**

- 1** Except where otherwise provided in these rules, the scheme property of a futures and options fund shall consist of any or all of the following:
  - (a) transferable securities available to a securities fund;
  - (b) derivatives under this Section;
  - (c) forward transactions in currencies or gold under this Section;
  - (d) cash or near cash (to which no limit applies);
  - (e) units in schemes under rule 5.24; and
  - (f) gold.
- 2** In respect of investment within paragraph 1(a), Section B shall apply as if the scheme were a securities fund, but subject to any specific modification in this Section.
- 3** In respect of investment within paragraph 1(b) or (c), a derivatives or forward transaction may be effected under this Section only if:
  - (a) the transaction is of the kind specified in rule 5.50;
  - (b) the transaction is fully covered, as required by rule 5.51 (but subject to rule 5.25); and
  - (c) the transaction complies with rules 5.52, rule 5.53 and rule 5.54.
- 4** Up to 10% in value of the scheme property may be used for derivatives transactions in the form of uncovered purchased options (taking the current market value of the option as its value for this purpose), but the manager must deduct from that figure of 10% any percentage of the value of the authorised scheme invested in transferable securities in the form of warrants.
- 5** Up to 10% in value of the scheme property may be held in the form of gold.
- 6** Rule 5.12.5 applies to this Section as if references to rules 5.13 and 5.14 therein were references to rule 5.23.

## **5.23 Spread**

- 1** Up to 10% in value of the scheme property may be kept as cash on deposit with any one person.
- 2** For the purposes of paragraph 1, the trustee and the associates of the trustee are regarded as one person, and the manager and the associates of the manager as another.
- 3** The figure of 10% in paragraph 1 may be regarded as 20% if the person is an approved bank which is not included within paragraph 2, provided that the amount of the deposit does not exceed 10% of that person's issued capital and reserves as shown in its most recently published annual accounts.
- 4** Paragraphs 1, 2 and 3 do not apply in respect of any deposit up to £1,000,000 or the equivalent amount in the base currency of the authorised scheme other than sterling with any one person.

## **5.24 Investment in schemes**

- 1** Up to 5% in value of the scheme property may consist of units in a scheme (or a sub-fund of an umbrella fund) only if the second scheme (or sub-fund) is a scheme (or sub-fund) to which rule 5.15 applies, or would apply if rule 5.15.1(b) were extended to cover derivatives.
- 2** Units in a scheme do not fall within paragraph 1 if that scheme is managed or operated by the manager or an associate of the manager of the investing scheme, unless:
  - (a) the principal documents constituting the investing scheme and its scheme particulars clearly state that the property of the investing scheme may include such units; and
  - (b) rule 5.67 is complied with.

### 5.25 Derivatives covering derivatives

**Explanation.** This rule provides the basis for cover where it is sought to use two derivatives on the same underlying asset or security as cover for each other.

The main features are that:

- (a) only a countervailing exposure can provide adequate cover;
- (b) written options may be used as cover for futures only where the option is in the money to the purchaser: if the option is out of the money to him, the option and the future each have to be covered in the ordinary way, though the premium acquired for writing the option will count as cash for that purpose; and
- (c) contracts for differences, such as index contracts, are included in the cover arrangements so far as they resemble futures or options.

The general effect of the rule can be summarised in the following diagram. In applying this rule and the rules it creates in the Table, it may help to regard a future as an obligation, (in that, unless closed out, the future will require something to be delivered, or accepted and paid for); a bought option as a right (in that the purchaser can, but need not, exercise the right to require the writer to deliver or accept and pay for something); and a written option as a potential obligation (in that it both creates exposure and gives the right of exercise to another).

#### Multi cover as between derivatives: diagram

DERIVATIVE A (covers/ is covered by)	DERIVATIVE B (i)	(ii)	(iii)
Bought Future	Sold Future	Bought Put Option	Written Call Option (if in the money)
Sold Future	Bought Future	Bought Call Option	Written Put Option (if in the money)
Bought Call Option	Written Call Option	-	-
Bought Put Option	Written Put Option	-	-

Note: Column B(i) shows the effect of ground rule 1 in Table 5.1. Column B(ii) shows the effect of ground rule 2(a). Column B(iii) shows the effect of ground rules 2(b) and 6.

- 1 Where the manager proposes to use a position resulting from a derivatives transaction as cover (whether in whole or in part) for the exposure of another derivatives transaction, rule 5.51 shall have effect as modified by this rule.
- 2 In this rule “countervailing” means that one of the two derivatives has an exposure which, in terms of risk, is equal and opposite to the exposure of the other, and “offset” means that there is an equal and opposite coverage in terms of risk.
- 3 On the basis that the requirements of rule 5.51 about the amount and right kind of assets used as cover are satisfied, the following Table contains the rules for the purposes of paragraph 1:

### **Table 5.1 - Derivatives covering derivatives: ground rules**

#### **RULES**

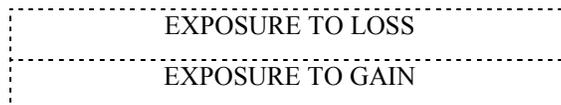
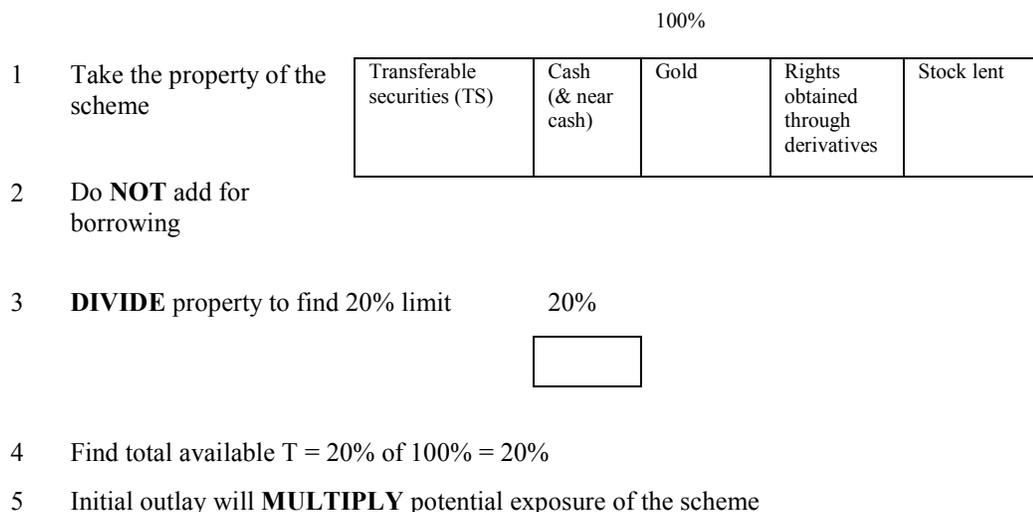
- 1** A derivative of one type provides cover for a countervailing derivative of the same type (e.g. a bought future covers a sold future, and a bought call option covers a written call option).
- 2** A derivative of one type provides cover for a countervailing derivative of a different type if, but only if:
  - (a) the right under one offsets and is offset by the obligation under the other; or
  - (b) Table 5.1, rule 6 applies.
- 3** In applying Table 5.1, rules 1 and 2, differences between the derivatives in terms of price, maturity and exercise price may be ignored, except where Table 5.1, rule 4 applies.
- 4** Table 5.1, rule 1 does not apply if an opportunity to exercise the right under the one derivative will become available to the authorised scheme only after the first date on which the potential obligation under the other may become an actual obligation.
- 5** Where, under Table 5.1, rule 1, the manager decides that a written option and a purchased option should provide mutual cover, the manager must arrange for the trustee to deposit and set aside with an approved bank (and the manager may not use for the purposes of providing cover under these rules) the whole amount of the difference between the exercise value of the two options (that is the amount which would be payable by or to the authorised scheme on exercise of the options) inclusive of any margin requirements of the exchange.
- 6** A written option provides cover for, and is covered by, a countervailing future only if the option is in the money to the purchaser of the option; but if the written option is out of the money to the purchaser, then both it and the future must each be separately covered under rule 5.51.
- 7** A contract for differences may be included in these rules if and to the extent that it has the characteristics of a future or an option.

## Section E Geared Futures and Options Funds

**Explanation.** As mentioned at the outset of Section D above, the geared futures and options fund is permitted to take on exposure to the extent of putting 20% of its property into initial outlay on derivatives. There is no limit on the amount of cash that can be held by the scheme.

The following diagram sets out the various stages in defining the limit on initial outlay. The diagram is indicative only and does not include all the detail: for example, the special rules on an increase in initial margin are not stated, nor those for index based derivatives.

(a) Stages in using limit on initial outlay



(b) Position at a later stage after sales, purchases, exercise of options, closing out, etc.

(i) Successful scheme

(ii) Unsuccessful scheme

120%	Derivatives	TS	Cash (& near cash)	Gold	Rights obtained through derivatives	Stock lent	80%
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Scheme now, say, worth 120% of total at (a)1 above

Scheme now, say, worth 80% of total at (a)1 above

$$T = 20\% \text{ of } 120\% = 24\%$$

$$T = 20\% \text{ of } 80\% = 16\%$$

### **5.26 Geared futures and option funds: general**

- 1** Except where otherwise provided in these rules, the scheme property of a geared futures and options fund shall consist of any or all of the following:
  - (a) transferable securities available to a securities fund;
  - (b) derivatives or forward transactions which are covered on the basis available to a futures and options fund;
  - (c) derivatives under this Section;
  - (d) forward transactions in currencies or gold under this Section;
  - (e) cash or near cash (to which no limit applies);
  - (f) units in schemes under rule 5.29; and
  - (g) gold.
- 2** In respect of investment within paragraph 1(a), Section B shall apply as if the authorised scheme were a securities fund, but subject to any special modification in this Section.
- 3** In respect of derivatives and forward transactions under paragraph 1(b), rules 5.22 and 5.23 shall apply as if the authorised scheme were a futures and options fund, but subject to any special modifications in this Section.
- 4** In respect of derivatives within paragraph 1(c):
  - (a) any derivatives transaction must be in an approved derivative or in an off-exchange derivative; and
  - (b) any transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
- 5** In respect of transactions within paragraph 1(d), this Section, except paragraph 4 and rule 5.27.3, shall apply as if any forward transaction were a derivatives transaction; and the transaction must be with a counterparty which is within rule 5.10.2.
- 6** Up to 10% in value of the scheme property may be held in the form of gold.
- 7** The trustee of a geared futures and options fund does not have power to borrow whether by virtue of this Section or Section M or otherwise.

### **5.27 Limits on investment in initial outlay**

- 1** Subject to paragraph 2, up to 20% in value of the scheme property at any time may be devoted to initial outlay in any derivatives transactions which are at any time outstanding.
- 2** Up to 10% in value of the scheme property may be used for initial outlay on derivatives transactions in the form of purchased options without it counting towards the 20% in paragraph 1, but the manager must deduct from the figure of 10% any percentage of the value of the authorised scheme invested in transferable securities in the form of warrants.
- 3** Where an off-exchange option is written for the authorised scheme the manager shall ascertain at the outset and at each valuation point the amount which is the sum of:
  - (a) 5% of the exercise value of the option (that is the amount which would be payable by the purchaser of the option, on exercise of the option); and
  - (b) the amount, if any, by which the option is “in the money” to the purchaser of the option.
- 4** Subject to paragraphs 1, 2 and 3, rule 5.52 shall apply to this Section.

## **5.28 Spread**

- 1 There is no limit on the value of the scheme property which may be devoted to initial outlay in respect of derivatives on or related to any one category of underlying security, commodity or factor.
- 2 Notwithstanding paragraph 1, the manager must exercise reasonable prudence in relation to the diversification of the scheme property so far as it is devoted to derivatives, account being taken of the extent to which diversification is already achieved by use of derivatives which by their nature are broadly diversified (such as, for instance, derivatives related to a broadly based index).
- 3 Up to 5% in value of the scheme property may be devoted to initial outlay in respect of off-exchange transactions with any one counterparty.
- 4 In paragraph 2, “diversification” relates to diversification in terms of geographical sectors, economic sectors, currencies, commodities, maturity of instruments, exercise price under instruments and any other form of spreading of risk undertaken by a reasonably prudent manager.
- 5 Up to 10% in value of the scheme property may be kept as cash on deposit with any one person.
- 6 For the purposes of paragraph 5, the trustee and the associates of the trustee are regarded as one person, and the manager and the associates of the trustee as another.
- 7 The figure of 10% in paragraph 5 may be regarded as 20% if the person is an approved bank which is not included within paragraph 6, provided that the amount of the deposit does not exceed 10% of that person’s issued capital and reserves as shown in its most recently published annual accounts.
- 8 Paragraphs 5, 6 and 7 do not apply in respect of any deposit of up to £1,000,000 or the equivalent amount in the base currency of the authorised scheme other than sterling with any one person.

## **5.29 Investment in schemes**

- 1 Up to 5% in value of the scheme property may consist of units in a scheme (or a sub-fund of an umbrella fund) only if the second scheme (or sub-fund) is a scheme (or a sub-fund) to which rule 5.15 applies, or would apply if rule 5.15.1(b) were extended to cover derivatives.
- 2 Units in a scheme do not fall within paragraph 1 if that scheme is managed or operated by the manager or an associate of the manager of the investing scheme, unless:
  - (a) the principal documents constituting the investing scheme and its scheme particulars clearly state that the property of the investing scheme may include such units; and
  - (b) rule 5.67 is complied with.

## **5.30 Delivery of property pursuant to a derivatives transaction**

- 1 When entering into any derivatives transaction as a result of which any investment or asset may become part of the scheme property, the manager must comply with paragraph 2 (where the investment or asset is one of which the scheme property could in some measure consist) or with paragraph 3 (in any other case).
- 2 Where this paragraph applies, the manager must reasonably believe that the transaction will not result in any breach of any other of these rules:
  - (a) either because it can readily be closed out; or
  - (b) because the investment or asset concerned will at the expected time be included within the scheme property in a manner which conforms with these rules.
- 3 Where this paragraph applies, the manager must reasonably believe that the transaction can readily be closed out.
- 4 Where, in the event, the belief in paragraph 2 or 3 proves unjustified, and the manager decides with the consent of the trustee, pursuant to rule 7.14, that it is in the interests of the holders that the

property should temporarily be acquired, then the property concerned may, notwithstanding any other of these rules, form part of the scheme property until the position can be rectified.

## Section F Property Funds

**Explanation.** *This Section establishes a framework for authorised schemes to be invested in property. A property fund must obtain £5 million during the initial offer period: if it does not, an application for revocation of the scheme's authorisation must be made. If the fund obtains £5 million or more, it may then be invested within a band of 20%-80% in approved immovables as described in rule 5.32. For funds below £15 million in size there is, for up to two years, some transitional relief from some of the limits: in the early period a fund of small size may not be able to achieve the spread between different properties etc appropriate for ongoing funds.*

*The remainder of the property (also 20%-80%) must be either in so-called property related assets (typically shares in a property fund which must themselves be approved securities or else within one of the other special limits in this Section) or in Government and other public securities, but subject to a maximum of 35% for such securities. In addition 5% may be invested in property related schemes.*

*To assist in illuminating this Section, the Table below takes two notional schemes (schemes A and B) each at opposite ends of the 20%-80% band. Scheme A is invested in immovables to the maximum extent permitted, while scheme B is invested in immovables to the minimum extent permitted. Both schemes are assumed to be fully invested in immovables and transferable securities, although in practice both would be likely to hold some cash as permitted by Section M, and the cash held could therefore drive down to some lower figure the 20% minimum discussed above. The same effect would be produced if the scheme were taking advantage of Section K (efficient portfolio management).*

Scheme A (fully invested in immovables)	Limits for Scheme A	Type of Asset	Limits for Scheme B	Scheme B (fully invested in transferable securities)
80% Immovables	<ul style="list-style-type: none"> <li>up to 10%</li> <li>up to 25%</li> <li>up to 12%</li> <li>up to 15%</li> <li>up to 20%</li> </ul>	<ul style="list-style-type: none"> <li>leases 20-60 years</li> <li>vacant, repairs etc</li> <li>mortgaged immovables any</li> <li>one immovable</li> <li>rent from any one group</li> </ul>	<ul style="list-style-type: none"> <li>up to 10%</li> <li>up to 20%</li> <li>up to 3%</li> <li>up to 15%</li> <li>up to 20%</li> </ul>	Immovables 20%
20% Transferable securities	<ul style="list-style-type: none"> <li>up to 20%</li> <li>0%</li> <li>up to 20%</li> <li>up to 5%</li> <li>up to 5%</li> </ul>	<ul style="list-style-type: none"> <li>transferable securities which are property related assets (if approved) (if non approved)</li> <li>Government and other public securities</li> <li>collective investment schemes</li> <li>any one issue of securities</li> </ul>	<ul style="list-style-type: none"> <li>up to 80%</li> <li>up to 10%</li> <li>up to 35%</li> <li>up to 5%</li> <li>up to 5%</li> </ul>	Transferable securities 80%

Note: this Table is indicative only and does not include all the detail in Section F.

### 5.31 Property funds: general

- 1 Except where otherwise provided in these rules, the scheme property of a property fund shall consist of:
  - (a) approved immovables, as defined in rule 5.32; or
  - (b) property related assets, as defined in rule 5.33; or
  - (c) Government and other public securities; and
  - (d) units in schemes under paragraph 5.
- 2 Up to 80% in value of the scheme property may consist of approved immovables, but this limit is subject to paragraph 6.
- 3 Up to 80% in value of the scheme property may consist of transferable securities, but these must be property related assets which are approved securities or else separately permitted within paragraphs 4, 5 or 6.
- 4 Up to 35% in value of the scheme property may consist of Government and other public securities.
- 5 Up to 5% in value of the scheme property may consist of units in schemes under rule 5.34.
- 6 Up to 10% in value of the scheme property may consist of shares which are property related assets but are not approved securities, under rule 5.33.2; but any shares included pursuant to this paragraph must be included within the 80% limit in paragraph 2, which may therefore on occasion produce a limit of 70% for approved immovables.

- 7 Up to 5% in value of the scheme property may consist of transferable securities within paragraph 3 which are warrants; but these must be property related assets which are approved securities.

### **5.32 Permitted and approved immovables**

- 1 In these rules “permitted immovable” means any interest in any land or building which falls within paragraph 2; and an approved immovable is a permitted immovable:

- (a) which is regarded as transferable or having marriage value within paragraph 3 or 4;
- (b) which is accessible within paragraph 5;
- (c) which has a good root of title within paragraph 6;
- (d) which is unencumbered (or adequately unencumbered) within paragraph 7; and
- (e) which has been or is to be bought promptly and at a reasonable price within paragraph 8.

- 2 An interest in land or a building qualifies for this purpose if:

- (a) it is, in England and Wales or in Northern Ireland, a freehold or leasehold interest, or, in Scotland, any interest or estate in or over land or heritable right including a long lease (or the equivalent outside England and Wales, Scotland and Northern Ireland);
- (b) the land or building is situated in the United Kingdom, or another member State, or a country listed in paragraph 9; and
- (c) where the interest is leasehold (or its equivalent) it has an unexpired term of 20 years or more;

and furniture, fittings or other contents of any building may for this purpose be regarded as part of it.

- 3 An immovable is regarded as transferable if the manager has received a report from an appropriate valuer (as to which see paragraph 10) valuing the immovable (with and without any relevant subsisting mortgage) and stating that, in his opinion, the immovable would, if acquired for the scheme, be capable of being disposed of reasonably expeditiously at that valuation.

- 4 An immovable is regarded as having marriage value if the manager has received a report from an appropriate valuer valuing the immovable and stating that:

- (a) it is adjacent to or contiguous with an immovable included in the scheme property of the authorised scheme; and
- (b) in his opinion, the total value of the immovable, if acquired for the authorised scheme, and of the other immovable in paragraph (a), would be at least equal to the sum of the price payable for the immovable and the existing value of the other immovable in paragraph (a).

- 5 An immovable is regarded as accessible if the manager (after consulting the trustee in any case of substantial doubt) is satisfied that reasonable access to it is assured.

- 6 An immovable is regarded as having a good root of title if the manager (after consulting the trustee in any case of substantial doubt and taking such advice as appears to it (or in such a case both of them) appropriate) reasonably believes that the title to the immovable is a good marketable title.

- 7 An immovable is regarded:

- (a) as unencumbered if there is no subsisting mortgage over or on it; and
- (b) as adequately unencumbered if the only mortgages over or on it are one or more approved mortgages within rule 5.36 which secures or together secure on the immovable repayment of a sum or sums not exceeding 50% of the value at paragraph 3 (that is that part of the value which is valued on the assumption that the immovable is not mortgaged).

- 8** An immovable is regarded as bought promptly and at a reasonable price if:
- (a) it is bought or agreed by enforceable contract to be bought within six months after receipt of a report by the manager within paragraph 3 or 4;
  - (b) at the time of the purchase or agreement it would not reasonably have been apparent to the manager that the report could no longer reasonably be relied upon; and
  - (c) it is bought at no more than 105% of the valuation in the report.
- 9** The countries relevant for paragraph 2(b) are:
- (a) Australia;
  - (b) Canada;
  - (c) Japan;
  - (d) New Zealand;
  - (e) Switzerland; and
  - (f) United States of America.
- 10** In these rules, a person is an appropriate valuer if:
- (a) he has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
  - (b) he is or is qualified to be the standing independent valuer of a property fund or is reasonably considered by the scheme's standing independent valuer to hold equivalent qualifications;
  - (c) he is independent of the manager and the trustee, in the sense required for a standing independent valuer under rule 12.06 of Part 12; and
  - (d) neither he nor any partner (if any) nor fellow director (if any) of his has been engaged, whether as principal or as agent, in relation to the finding of the immovable for the authorised scheme or the finding of the authorised scheme for the immovable.

### **5.33 Property related assets**

- 1** In these rules, "property related assets" means:
- (a) investments falling within paragraph 2(1)(a), 2(1)(b), or 2(1)(d) of schedule 1 to the Law which are issued by a property company; or
  - (b) investments falling within paragraph 2(1)(e) of that schedule which confer rights in respect of an investment within paragraph (a),
- and "property company" means a body corporate a substantial activity of which relates to permitted immovables (whether by way of investing in, dealing in, developing, redeveloping or refurbishing them and whether directly or indirectly).
- 2** Even if not approved securities, property related assets may qualify for investment purposes (under rule 5.31.6) if:
- (a) they are investments falling within paragraph 2(1)(a) of schedule 1 to the Law;
  - (b) they are transferable securities; and
  - (c) they are shares in a body corporate at least 75% of whose total assets (before deduction of liabilities and as shown in the most recently published accounts) consists of permitted immovables.

- 3 Up to 5% in the value of the scheme property may consist of investments of the type referred to in paragraph 2 issued by any one issuer; but that figure may be regarded as 10% if:
- (a) the authorised scheme owns at least 90% of the rights to vote which are exercisable in all circumstances at general meetings of the body corporate;
  - (b) the shares are or were bought within six months after receipt by the manager of:
    - (i) a report from an appropriate valuer relating to permitted immovables owned by the body corporate, indicating that they are transferable (as at rule 5.32.3) or have marriage value (as at rule 5.32.4); and
    - (ii) a report, on the value of any assets other than permitted immovables, from a person then qualified to be an auditor of such company under applicable law;
  - (c) at the time of the purchase it would not have been reasonably apparent to the manager that the report at paragraph (b)(i) or (ii) could no longer reasonably be relied on; and
  - (d) the shares were bought at no more than 105% of the total of the values in the reports at paragraph (b)(i) or (ii).

#### **5.34 Investment in schemes**

- 1 A property fund may invest in units in a scheme only if the second scheme:
- (a) is an authorised scheme or a recognised scheme;
  - (b) complies or is treated as complying with paragraph 4 of Schedule 3 to the Law (units redeemable at a price related to valuation); and
  - (c) is dedicated to approved immovables, with or without transferable securities which are property related assets or Government and other public securities.
- 2 Units in a scheme do not fall within paragraph 1 if the scheme is managed or operated by the manager or an associate of the manager of the investing scheme, unless:
- (a) the principal documents constituting the investing scheme and its scheme particulars clearly state that the property of the investing scheme may include such units; and
  - (b) rule 5.67 is complied with.
- 3 For the purposes of this rule, a sub-fund of an umbrella fund shall be treated as if it were a separate scheme and a property fund may invest in units in a sub-fund which is invested as if it were a scheme to which paragraph 1 applies.

#### **5.35 Property related limits**

- 1 Up to 10% in value of the scheme property may consist of approved immovables which are leasehold interests (or the equivalent: see rule 5.32.2(a)) having an unexpired term of less than 60 years.
- 2 Up to 25% in value of the scheme property may consist of approved immovables which are unoccupied and non-income producing or in course of substantial development, redevelopment or refurbishment.

#### **5.36 Mortgaged property**

- 1 Up to 15% of that part of the scheme property which for the time being consists of immovables may consist of mortgaged immovables.
- 2 An immovable subject to one or more mortgages may be retained in the scheme property only so long as the mortgage or each of the mortgages is an approved mortgage, the total sums outstanding under which do not exceed 50% of the value of the immovable (assuming for this purpose that the immovable is not mortgaged).

- 3 In these rules, a mortgage is an approved mortgage only if the trustee reasonably believes that the mortgage can be discharged on demand or within 28 days by repayment of all the money secured by the mortgage (including, where appropriate, any additional sum provided for under the mortgage) and that the mortgage is a “non-recourse” mortgage, that is that there is no property on which the mortgage is secured, whether immediately or contingently, other than the approved immovable in question.

### 5.37 Spread

- 1 Up to 15% in value of the scheme property may consist of any one immovable.
- 2 In paragraph 1 “one immovable” includes adjacent or contiguous immovables.
- 3 The figure of 15% in paragraph 1 may be regarded as 25% once the immovable has been included in the scheme property in compliance with that paragraph.
- 4 Up to 5% in value of the scheme property may consist of property related assets issued (or conferring rights to investment issued) by any one issuer.
- 5 The figure of 5% in paragraph 4 may be regarded as 10% in respect of up to 40% of the value of the scheme property.
- 6 Up to 20% of the income receivable in any accounting period may derive from members of any group; but there is no restriction on the income receivable from any Government or body within rule 5.14.5.

### 5.38 Initial periods

- 1 During the period of the initial offer, no immovable may be:
- (a) bought or leased; or
  - (b) agreed, by enforceable contract, to be bought or leased,
- unless it appears to the manager and to the trustee that more than £5 million (or the equivalent amount in the base currency of the authorised scheme) has been paid or agreed to be paid for units to be created or sold.
- 2 Subject to paragraph 3, during the first two years starting with the date of the declaration of authorisation in respect of the authorised scheme (or on which the period of the initial offer commenced, if later):
- (a) rules 5.35 and 5.37 do not apply; and
  - (b) the obligation, derived from rule 5.31, that (unless properly held or invested elsewhere) at least 20% in value of the scheme property must consist of approved immovables, does not apply.
- 3 Paragraph 2 ceases to apply if, at any time during the two year period, six months have elapsed from the first date on which the scheme property exceeds £15 million in value (or equivalent amount in the base currency of the authorised scheme).
- 4 Paragraph 2 postpones the application of rule 5.37.4 for a maximum of six months only from the date there mentioned, and not of two years.
- 5 This rule applies, where there is no initial offer, as if:
- (a) the period of the process of unitisation; or
  - (b) the period of 21 days after the date on which persons are first invited to become participants,
- were the period of the initial offer.

### 5.39 Grant of options, mortgages etc.

- 1 No option may be granted to buy any immovable comprised in the scheme property, whether under Section K or otherwise.
- 2 No mortgage other than an approved mortgage may be created on or over any such immovable.

### 5.40 Other provisions

The following rules apply to property funds:

- (a) 5.16 (investment in warrants and in nil or partly paid securities); and
- (b) subject to rule 5.33.3, 5.17 (significant influence).

## Section G Warrant Funds

**Explanation.** *A warrant fund is an authorised scheme which is akin in all respects to a securities fund (as to which see Section B) except that it has an unlimited power to invest in warrants. In this context, “warrant” bears a slightly wider meaning than in paragraph 2(1)(d) of schedule 1 to the Law, and is designed to include any other listed transferable security (not being a nil paid or partly paid security) which is akin to a warrant in the statutory sense, in that it involves a down payment and a right to pay more in due course in order to obtain a transferable security.*

### 5.41 Warrant funds: general

- 1 Subject to Sections A and K and to the subsequent Sections of this Part, the scheme property of a warrant fund shall consist of property which could be the scheme property of a securities fund, except that up to 100% in value of the scheme property may consist of warrants.
- 2 Accordingly, Section B applies to a warrant fund as it applies to a securities fund, except that rules 5.16.1, 5.16.2 and 5.16.3 do not apply.

## Section H Feeder Funds

**Explanation.** *A feeder fund is an authorised scheme, the scheme property of which consists of units in a single authorised or recognised scheme.*

### 5.42 Feeder funds: general

- 1 Except where otherwise provided in these rules, the scheme property of a feeder fund shall consist of units in a single authorised or recognised scheme.
- 2 The scheme property of a feeder fund may consist of cash or near cash provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be redeemed or for the efficient management of the authorised scheme or for other purposes which may reasonably be regarded as ancillary to the objects of the authorised scheme.

## Section I Funds of Funds

**Explanation.** *A fund of funds must invest in at least five authorised and/or recognised schemes and the combinations for those five or more schemes are that any fund of funds may combine investment in money market funds with investment in any one other permitted category of scheme. Alternatively, a fund of funds may invest only in money market funds or only in authorised and/or recognised schemes from any one other permitted category of scheme. These requirements preserve product distinctiveness in the case of funds of funds in the circumstances of the variegation permitted with funds dedicated to futures and options, property etc. For the purposes of this Section each*

*separate part of an umbrella fund or equivalent recognised scheme shall be treated as if it were a separate scheme.*

#### **5.43 Funds of funds: general**

- 1** Except where otherwise provided in these rules, the scheme property of a fund of funds shall consist of units in authorised and/or recognised schemes.
- 2** A fund of funds may not invest in:
  - (a) a feeder fund;
  - (b) a fund of funds;
  - (c) any part of an umbrella fund which is invested as if it were a fund within paragraph (a) or (b); or
  - (d) a recognised scheme which would, if authorised, fall within paragraph (a) or (b).
- 3** Up to 20% in value of the scheme property may consist in units in any one scheme.

#### **5.44 Eligible combinations of schemes**

- 1** A fund of funds may invest in units in schemes within any one only of Sections B, C, D, E, F or G, except as provided in paragraph 2.
- 2** A fund of funds may invest in units in one or more money market funds (within Section C) and in units in any one or more schemes within any one only of the other Sections mentioned in paragraph 1.
- 3** Each constituent part of an umbrella fund and each separate part or sub-fund of any other recognised scheme equivalent to an umbrella fund shall be treated for the purposes of this rule and rule 5.43.3 as if it were a separate scheme.
- 4** A recognised scheme which is not an authorised scheme may be treated for the purposes of this rule as if it were a scheme falling within the Section which would be the relevant Section if the recognised scheme were an authorised scheme.

### **Section J Umbrella Funds**

**Explanation.** *An umbrella fund is a single authorised scheme with at least two sub-funds, providing the opportunity for holders to switch all or part of their investment from one sub-fund to another. Part 12 and other of these rules enable the umbrella fund to be treated as a single scheme and/or as a collection of separate sub-funds as appropriate.*

#### **5.45 Umbrella funds: general**

Subject to rule 5.46, each of the sub-funds of an umbrella fund shall be invested as if it were a single fund within one only of Sections B to I.

#### **5.46 Restriction on investment**

No sub-fund of an umbrella fund may invest in units in another sub-fund of the same umbrella fund.

## Section K Efficient Portfolio Management

**Explanation.** *This Section provides machinery to enable the scheme property to be used for efficient portfolio management.*

*There are three broadly based requirements. First, the transaction must be **economically appropriate**; second, the exposure must be **fully covered**; and third the transactions must be entered into for one or more of three **specific aims**.*

*On the first of these, this Section requires that the transaction must be economically appropriate for the purposes of efficient portfolio management. On the second, the exposure must be fully covered by cash or other scheme property sufficient to meet any obligation to pay or deliver that could arise. On the third, the specific aims, set out in rule 5.47.2 are:*

- (a) the reduction of risk;*
- (b) the reduction of cost; and/or*
- (c) the generation of additional capital or income for the authorised scheme with no, or with an acceptably low level of, risk.*

*The first two aims, together or separately, allow for tactical asset allocation, that is a switch in exposure through use of derivatives rather than through sale and purchase of underlying property. The limits on this are set out in rules 5.48.1 and 5.48.2(a). Authorised schemes have to be, generally speaking, invested in transferable securities, and it therefore follows that an alternative exposure obtained through derivatives in the portfolio should not remain there indefinitely: the authorised scheme must revert to transferable securities of some kind within a reasonable time. Accordingly, any tactical asset allocation of an authorised scheme must be temporary.*

*Similarly, the aim of reduction of risk allows for the use of derivatives with a view to switching the currency exposure of all or part of the scheme property away from a currency which is considered to be unduly prone to risk.*

*The third aim, of taking a no-risk or low-risk gain, is further defined in rule 5.49: the gains are to be derived from arbitrage and from writing covered options. Gains from stocklending are covered in Section L.*

*Cover is fully delineated in rule 5.51. There is a general requirement for “individual” cover of the right kind (stock for stock, or cash sum for cash sum) and rule 5.51.10 provides examples of how the cover is to be found. There is also a “global” cover requirement, to prevent or limit gearing. Property or cash can be used once only for cover, and there must be sufficient available cover for all the transactions concerned.*

*Rule 5.53 deals with two aspects of cover in the context of borrowing. First, borrowed cash, including cash made available for borrowing, goes to swell the scheme property for the purpose of providing cover in the form of cash. Effectively an additional 10% of cover can be found in this way.*

*Second, a back to back currency loan can be regarded as switching the borrowed currency into the scheme property, and switching the deposited currency out. The*

*lending transaction does not require cover, as it is a loan rather than a forward or future.*

*But it enables the authorised scheme by borrowing to have cash in another currency to use as cover. Although rule 5.51.2(b) does not require cash cover to be in a currency matching the exposure, it requires the manager to monitor currency rates, and borrowing in the right currency may thus make the cover more simple to operate.*

*The transactions contemplated in this Part are approved derivatives entered into on, or under the rules of, an eligible derivatives market; off-exchange derivatives; and currency forwards.*

*In brief, therefore, this Section contains provisions to enable derivatives and currency based techniques to be used for the efficient portfolio management of the authorised scheme. It also contains provisions to ensure that mere speculation is not classified as efficient portfolio management, that the purpose is to control or manage risk rather than to attempt to profit by taking risk, and that, in particular, so called enhancement strategies may be undertaken only where the company is reasonably certain to obtain benefit thereby.*

#### **5.47 Appropriate transactions**

- 1** This Section enables the authorised scheme to enter into transactions of the kind specified in rule 5.50 for the purpose of efficient portfolio management, but only when each of the following two conditions is satisfied:
  - (a) the transaction is economically appropriate to that purpose, as required by rule 5.48; and
  - (b) the transaction is fully covered, as required by rule 5.51.
- 2** The purpose of efficient portfolio management is to achieve one or more of the following in respect of the authorised scheme:
  - (a) the reduction of risk;
  - (b) the reduction of cost; and/or
  - (c) the generation of additional capital or income for the authorised scheme with no, or with an acceptably low level of, risk.
- 3** The purpose in paragraph 2 relates to:
  - (a) the scheme property of the authorised scheme;
  - (b) property (whether precisely identified or not) which is to be or is proposed to be acquired for the authorised scheme; and
  - (c) anticipated cash receipts of the authorised scheme, if due to be received at some time and likely to be received within one month.

#### **5.48 Economic appropriateness**

- 1** Any transaction under this Section must be one which (alone or in combination with one or more others) is reasonably believed by the manager to be economically appropriate to the efficient portfolio management of the authorised scheme.
- 2** Accordingly the manager must have a reasonable belief that:
  - (a) for transactions undertaken to reduce risk or cost (or both), the transaction (alone or in combination) will diminish a risk or cost of a kind or level which it is sensible to reduce; and

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

#### **5.49 Generation of additional capital or income**

- 1 There is an acceptably low level of risk, for the purposes of rule 5.47.2(c), in any case where the manager reasonably believes that the authorised scheme is certain (or certain barring events which are not reasonably foreseeable) to derive a benefit:
  - (a) on a basis set out in paragraph 2 or 3; or
  - (b) pursuant to Section L.
- 2 The first basis is taking advantage of pricing imperfections in relation to the acquisition and disposal (or disposal and acquisition) of rights in relation to the same or equivalent property, being property which the authorised scheme holds or may properly hold.
- 3 The second basis is receiving a premium for the writing of a covered call option or a covered put option, even if that benefit is obtained at the expense of surrendering the chance of yet greater benefit.

#### **5.50 Permitted transactions**

- 1 A transaction under this Section must be:
  - (a) a derivatives transaction; or
  - (b) a forward transaction in a currency.
- 2 A derivatives transaction under paragraph 1(a) must be:
  - (a) in an approved derivative (as defined in rule 5.09.2);
  - (b) in an off-exchange derivative (as defined in rule 5.10); or
  - (c) in a synthetic future (as defined in rule 5.11).
- 3 Any transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
- 4 Any forward transaction must be with a counterparty which is:
  - (a) an approved bank;
  - (b) or an authorised person who is regulated by the Financial Services Authority in the United Kingdom in respect of investment business of a kind which includes the writing or purchasing of off-exchange derivatives as principal.
- 5 A derivatives or forward transaction which would or could lead to delivery of property to the trustee may be entered into only if:
  - (a) such property can be held by the authorised scheme; or

- (b) the manager reasonably believes that delivery of the property pursuant to the transaction will not lead to a breach of these rules.

6 A transaction permitted under this rule may at any time be closed out.

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

1 No transaction may be entered into under this Section unless the maximum potential exposure created by the transaction, in terms of the principal or notional principal of the derivative or forward contract, is:

- (a) covered individually under paragraph 2 or 3; or
- (b) covered globally under paragraph 4,

and for this purpose the examples in paragraph 10 may be relevant.

2 Subject to paragraph 3, exposure is covered individually if there is, in the scheme property:

- (a) (in the case of an exposure in terms of property) a transferable security or other property which is the right kind, and sufficient in amount, to match the exposure; and
- (b) (in the case of an exposure in terms of money), cash or near cash (or borrowing pursuant to rule 5.53) or transferable securities which is or are, or, on being turned into money in the right currency, will be, sufficient in amount to match the exposure.

3 Exposure to an index or basket of securities or other assets is covered individually only if the authorised scheme holds securities or other property which (taking into account the closeness of the relationship between fluctuations in the price of the two) can reasonably be regarded as appropriate to provide cover for the exposure, and they may be so regarded even if there is not complete congruence between the cover and the exposure.

4 Exposure is covered globally for the purposes of this Section if, after taking account of all the cover required under paragraph 2 or 3 for other positions already in existence, there is available adequate cover from within the scheme property to enable the fresh transaction to be entered into.

5 A derivative or forward transaction is not available to provide cover for another derivative or forward transaction under this Section, but:

- (a) the two transactions involved in a synthetic future are to be treated as if they were a single derivative, and the net exposure from the combination is to be covered on the basis of the higher of the cover requirements of the options which make up the synthetic future;
- (b) synthetic cash (that is where a position in a derivative offsets an exposure in property to the point where that exposure has effectively been neutralised, and the effect of the combined holding of both property and the position in the derivative is the same as if the authorised scheme had received or stood to receive the value of the property in cash) is available to provide cover for a transaction as if it were cash; and
- (c) a covered currency forward or a covered currency derivative may provide cover for a derivative.

6 Cash not yet received into the scheme property but due to be received within one month is available as cover for the purposes of paragraphs 2(b) and 3.

7 Subject to paragraph 5, to the extent that scheme property has been used for cover in respect of one exposure (whether under this Section or otherwise), it is not available for cover in respect of another.

8 Property anticipated under a derivative transaction does not count as property under paragraph 2(a).

- 9 Property is not available for cover if it is the subject of a transaction under Section L, unless the manager reasonably believes that it is obtainable (by return or reacquisition) in time to meet the obligation for which cover is required.
- 10 Examples of the cover requirements are as follows:
- (a) a bought put option (or a written call option) on 1,000 ordinary £1 shares (fully paid) of ABC plc has to be covered by an existing holding in the company of 1,000 ordinary £1 shares (fully paid) of ABC plc (paragraph 2(a));
  - (b) a bought call option (or written put option) on 1,000 ordinary £1 shares (fully paid) of ABC plc has to be covered by cover (in the form of cash or near cash or transferable securities) which is sufficient in amount to meet the purchase price of the shares on exercise of the option (paragraph 2(b));
  - (c) a sold contract for differences on short-dated sterling has to be covered by cash or near cash or transferable securities, the values of which together at least match the notional principal of the contract (e.g. a LIFFE short sterling contract, or a successive series of such contracts, is covered by £500,000) (paragraphs 2(b) and 7);
  - (d) a sold future on the FT-SE 100 Index has to be covered by holdings of equities, which satisfy the test of appropriateness for cover in paragraph 3 in relation to that future, and the values of which together at least match the current mark to market valuation of the future (e.g. if the multiplier per full index point is £25, and if the eventual obligation under the future is currently at 2,800, the valuation of the futures position is 2,800 x £25 = £70,000) (paragraph 3); and
  - (e) where an authorised scheme has holdings in “blue chip” UK shares and the manager wishes to provide more exposure to the US market and decides to sell a FT-SE index future to the value of those shares (this transaction satisfying the test of appropriateness for cover in paragraph 3), then the sterling “synthetic cash” position created may thereupon be used as cover for a S&P 500 index future provided that the manager ensures that the cover remains sufficient (e.g. by reference to the sterling/US dollar exchange rate) (paragraphs 3 and 5(b)).

#### **5.52 Limits on initial outlay**

- 1 No more than 5% of the value of the scheme property may be directed to initial outlay in respect of off-exchange transactions with any one counterparty.
- 2 In these rules, “initial outlay” means the amount which the authorised scheme is required to pay, transfer or deposit as a fidelity deposit or otherwise in order to obtain rights under a derivatives transaction; and, for these purposes:
- (a) variation margin (that is an additional sum required to be paid to retain the rights following a movement in prices etc.) is not initial outlay;
  - (b) premium which may become payable in the future pursuant to the transaction in respect of an option is regarded as initial outlay from the outset;
  - (c) in the case of a purchased option, the amount mentioned in paragraph 3 is to be regarded as initial outlay;
  - (d) in the case of a written off-exchange option, the amount mentioned in paragraph 4 is to be regarded as initial outlay;
  - (e) in the case of an off-exchange future, the amount mentioned in paragraph 5 is to be regarded as initial outlay; and
  - (f) in the case of a forward transaction, the amount mentioned in paragraph 6 is to be regarded as initial outlay.

- 3 Where an option is purchased for the account of the authorised scheme, the manager shall ascertain the amount, if any, by which 5% of the exercise value of the option (that is the amount which would be payable by the authorised scheme on exercise of the option) exceeds the amount paid by way of premium.
- 4 Where an off-exchange option is written for the account of the authorised scheme the manager shall ascertain at the outset and as at each valuation point the amount which is the sum of:
  - (a) 5% of the exercise value of the option (that is the amount which would be payable by the purchaser of the option, on exercise of the option); and
  - (b) the amount, if any, by which the option is “in the money” to the purchaser of the option.
- 5 Where a transaction in an off-exchange future is entered into for the account of the authorised scheme, the manager shall ascertain at the outset and as at each valuation point the amount which is the sum of:
  - (a) 5% of the value of the amount of property to be bought or sold pursuant to the contract; and
  - (b) the amount, if any, by which the future would cause a loss to the authorised scheme if it were to be closed out.
- 6 Where a forward transaction is entered into for the account of the authorised scheme, the manager shall ascertain at the outset and as at each valuation point the amount which is 5% of the value of the forward contract (that is the amount of currency to be purchased or sold pursuant to the transaction at the current valuation in the currency or one of the currencies relevant for the purposes of the transaction) for each period of three months (or part thereof) between the date of the latest valuation and the date of maturity.

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

- 1 Cash obtained by borrowing, and borrowings which the manager reasonably regards an approved bank to be committed to provide, are available for cover under rule 5.51 as long as the normal limits on borrowing (as to which see rules 5.60 and 5.61) are observed.
- 2 Where, for the purposes of this Section, the authorised scheme:
  - (a) borrows an amount of currency from an approved bank; and
  - (b) keeps an amount in another currency, at least equal to the borrowing for the time being in paragraph (a), on deposit with the lender (or its agent or nominee),

then this Section shall apply as if the borrowed currency, and not the deposited currency, were part of the scheme property, and the normal limits on borrowing under rules 5.60 and 5.61 do not apply to that borrowing.

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

- 1 The manager must, at each valuation point (and more frequently if necessary), recalculate the amount of cover required in respect of positions already in existence under this Section, and derivatives and rights under forward transactions under this Section may be retained in the scheme property only so long as they remain covered both individually and globally under rule 5.51.
- 2 If at any time:
  - (a) any fact or matter relating to the authorised scheme or its economic environment; or
  - (b) the aggregate of all outstanding positions under this Section,

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

## Section L Stocklending

**Explanation.** *This Section should be regarded as an extension to Section K above (efficient portfolio management). Its purpose is to allow authorised schemes to employ the technique known as stocklending subject to the conditions contained within this Section. The specified method of stocklending permitted is in fact not a transaction which is a loan in the normal sense, but rather an arrangement of the kind described in section 263B of the UK Taxation of Chargeable Gains Act 1992, under which the lender transfers securities to the borrower otherwise than by way of sale and the borrower is to transfer those securities, or securities of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing collateral to the “lender” to cover him against the risk that the future transfer back of the securities may not be satisfactorily completed.*

*Other forms of stocklending, whether combined with stock borrowing or by way of loan or transfer of a beneficial interest in stock, are not envisaged in this Section, and, indeed, are prohibited by rule 5.63.*

### 5.55 Stocklending: general

- 1 The powers conferred by this Section may be exercised by an authorised scheme for the purpose of efficient portfolio management, that is when it reasonably appears to it to be economically appropriate to do so with a view to generating additional income for the authorised scheme with no, or an acceptable degree of, risk.
- 2 Paragraph 1 is subject to the obligation of the authorised scheme to comply with any restrictions in the principal documents or scheme particulars.

### 5.56 Permitted stocklending

- 1 The trustee, at the request of the manager (or in the case of a company scheme, the company), may enter into a stocklending arrangement of the kind described in section 263B of the UK Taxation of Chargeable Gains Act 1992 of the United Kingdom (without extension by section 263C), but only if:
  - (a) all the terms of the agreement under which securities are to be reacquired by the trustee (or in the case of a company scheme, the company) are in a form which is acceptable to the trustee and in accordance with good market practice;
  - (b) the counterparty is:
    - (i) an authorised person regulated by the FSA with the relevant permission under Part IV of FSMA to enter into stocklending and borrowing arrangements; or
    - (ii) a person approved by the Commission for the purposes of this rule, either generally or in any particular case; and
  - (c) collateral is obtained to secure the obligation of the counterparty under the terms referred to in paragraph (a) and the collateral is:
    - (i) acceptable to the trustee;
    - (ii) adequate within rule 5.57.1; and
    - (iii) sufficiently immediate within rule 5.57.2.

- 2 The counterparty for the purpose of paragraph 1 is the person who is obliged pursuant to the agreement referred to in paragraph 1(a) to transfer to the trustee the securities transferred by the trustee under the stocklending arrangement or securities of the same kind.

#### **Treatment of collateral**

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

- 1 Collateral is adequate only if it:
- (a) is at least equal in value, at the time of the transfer to the trustee, to the value of the securities transferred by the trustee;
  - (b) is transferred to the trustee or its agent;
  - (c) is the subject of an agreement for transfer of the collateral, or of assets equivalent to the collateral, by the trustee as soon as the need for it has disappeared; and
  - (d) is in the form of one or more of the following:
    - (i) cash;
    - (ii) near cash;
    - (iii) Government and other public securities;
    - (iv) a certificate of deposit;
    - (v) a letter of credit; or
    - (vi) securities transferred in CREST or through the CGO system by a DBV.
- 2 Collateral is sufficiently immediate if:
- (a) it is transferred before or at the time of the transfer of the securities by the trustee; or
  - (b) the trustee reasonably believes at that time that it will be transferred at the latest by the close of business on the day of the transfer.
- 3 The trustee shall take such steps as are necessary to ensure that the value of the collateral at all times is at least equal to the value of the securities transferred by the trustee.
- 4 Any agreement for transfer of securities or of collateral (or of the equivalent of either) under this Section at a future date may be regarded, for the purposes of valuation under Part 4 or this Part, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the scheme property of the authorised scheme.
- 5 Collateral transferred to the trustee is part of the scheme property for the purposes of these rules except in the following respects:
- (a) it does not fall to be included in any valuation for the purposes of Part 4 or this Part, because it is offset under paragraph 4 by an obligation to transfer; or
  - (b) it does not count as property for any purpose of Part 5 (other than this Section).

- 6 Paragraphs 4 and 5(a) do not apply to any valuation of collateral itself for the purposes of this Section.
- 7 The duty in paragraph 3 may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired, where the trustee reasonably believes that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.

#### **5.58 Limitation by value**

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

### Section M Cash, Borrowing, Lending etc.

#### **5.59 Cash and near cash**

- 1 Scheme property may consist of cash and near cash, where this may reasonably be regarded as necessary in order to enable:
- (a) redemption of units;
  - (b) efficient management of the authorised scheme in accordance with its investment objectives; or
  - (c) other purposes which may reasonably be regarded as ancillary to the investment objectives of the authorised scheme.
- 2 Paragraph 1 does not apply during the period of the initial offer, during which the scheme property may consist of cash and near cash without limitation.

#### **5.60 General power to borrow**

- 1 Subject to the obligation of the authorised scheme to comply with any restriction in the principal documents, the trustee, in the case of a unit trust scheme (or in the case of a company scheme, the company) may, in accordance with these rules, borrow money for the use of the authorised scheme on terms that the borrowing is to be repayable out of the scheme property.
- 2 The trustee (or the company, as appropriate) may borrow under paragraph 1 only from an approved bank.
- 3 The manager must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and, for this purpose:
- (a) the manager shall have regard in particular to:
    - (i) the duration of any period of borrowing; and
    - (ii) the number of occasions on which resort is had to borrowing in any period; and
  - (b) without prejudice to paragraph (a), the manager must ensure that no period of borrowing exceeds three months, whether in respect of any specific sum or at all, without the prior consent of the trustee which may be given only on such conditions as appear to the trustee appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
- 4 This rule does not apply to “back to back” borrowing under rule 5.53.2.
- 5 A company scheme shall not issue any debenture falling within paragraph 2 (1)(b) of schedule 1 to the Law.

#### **5.61 Borrowing limits**

- 1 The manager must ensure that the authorised scheme’s borrowing does not, on any business day, exceed 10% of the value of the scheme property.

- 2 In the case of a property fund, the manager must ensure that the borrowing does not, on any business day, exceed 10% of the value of that part of the property of the authorised scheme which for the time being does not consist of immovables.
- 3 In relation to a property fund, an approved mortgage under rule 5.36 does not count as borrowing for the purposes of paragraph 2.
- 4 This rule does not apply to “back to back” borrowing under rule 5.53.2.
- 5 In this rule, “borrowing” includes, as well as borrowing in a conventional manner, any other arrangement designed to achieve a temporary injection of money into the scheme property, in the expectation that the sum will be repaid, for example by way of a combination of derivatives which produces an effect similar to a borrowing, but does not include any arrangement for the authorised scheme to pay to a third party (including the manager) any costs which the authorised scheme is entitled to amortise under rule 8.10 and which were paid on behalf of the authorised scheme by such third party.

#### **5.62 Restriction on lending of money**

- 1 None of the money in the scheme property of an authorised scheme may be lent and, for the purposes of this rule, money is lent by the authorised scheme if it is paid to a person (the “payee”) on the basis that it should be repaid, whether or not by the payee.
- 2 Purchasing a debenture is not lending for the purposes of paragraph 1; nor is the placing of money on deposit or in a current account.
- 3 Paragraph 1 does not prevent a company scheme from providing an officer of the company with funds to meet expenditure to be incurred by him for the purposes of the company scheme (or for the purposes of enabling him properly to perform his duties as an officer of the company) or from doing anything to enable an officer to avoid incurring such expenditure.

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

- 1 None of the scheme property of an authorised scheme other than money may be lent by way of deposit or otherwise.
- 2 Transactions falling within Section L are not lending for the purposes of paragraph 1.
- 3 None of the scheme property of an authorised scheme may be mortgaged except under Section F.
- 4 Nothing in this rule prevents the authorised scheme or its trustee at the request of the manager, in the case of a unit trust scheme (or in the case of a company scheme, the company) from lending, depositing, pledging or charging scheme property for margin requirements where the authorised scheme is using derivatives or forward transactions pursuant to any other of these rules.

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

- 1 Subject to the obligation of the authorised scheme to comply with any restriction in the principal documents, any power in this Part to invest in transferable securities may be used for the purpose of entering into transactions to which this rule applies.
- 2 Subject to paragraph 3, this rule applies to any agreement or understanding (whereby transferable securities will or may become part of the scheme property):
  - (a) which is an underwriting or sub-underwriting agreement; or
  - (b) which contemplates that securities will or may be issued to or subscribed for or acquired by the authorised scheme.
- 3 This rule does not apply to:
  - (a) an option; or
  - (b) purchase of a transferable security which confers a right:

- (i) to subscribe for or acquire a transferable security; or
  - (ii) to convert one transferable security into another.
- 4** No agreement or undertaking to which this rule applies may be entered into if it relates to units in a scheme.
- 5** The exposure of an authorised scheme to agreements and undertakings within paragraph 2 must, on any business day:
- (a) be covered under rule 5.51 as if the exposure had been incurred in the context of Section K by means of transactions in approved derivatives; and
  - (b) be such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in these rules.

#### **5.65 Guarantees and indemnities**

- 1** Subject to paragraph 2, in the case of an authorised scheme which is a company scheme, the company shall not provide any guarantee or indemnity in respect of the obligation of any person and, in the case of any authorised scheme, none of the scheme property may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any person.
- 2** Paragraph 1 does not apply to:
- (a) in the case of a company scheme, an indemnity falling within the provisions of section 67F(2) of the Companies Law;
  - (b) subject in the case of a company scheme to section 67F of the Companies Law, an indemnity given to the trustee against any liability incurred by it as a consequence of its safe keeping of any of the scheme property or incurred by it as a consequence of the safe keeping of any of the deposited property by anyone retained by it to assist it to perform its function of the safe keeping of the scheme property;
  - (c) any indemnity or guarantee given for margin requirements where the authorised scheme is using derivatives or forward transactions pursuant to Part 5 of these rules; or
  - (d) an indemnity given to a person winding-up a scheme if the indemnity is given for the purposes of arrangements whereby the whole or part of the property of that scheme becomes the first property of the authorised scheme and the holders of units in that scheme become the first holders in the authorised scheme.

### Section N Miscellaneous

#### **5.66 Requirement to cover sales**

- 1** No agreement by or on behalf of an authorised scheme to dispose of scheme property may be made:
- (a) unless that obligation, and any other similar obligation, could immediately be honoured by the trustee (or in the case of a company scheme, the company) by delivery of property or the assignment of rights (or like arrangement under the law applicable to the scheme property); and
  - (b) the property and rights at paragraph (a) are owned by the authorised scheme at the time of the agreement.
- 2** Paragraph 1 does not apply to a derivatives or forward transaction under Section K.
- 3** Paragraph 1 does not apply to a futures and options fund or to a geared futures and options fund.

### **5.67 Investment in associated schemes**

- 1** No authorised scheme may invest in or dispose of units in another scheme (the “second scheme”), which is managed by the manager of such authorised scheme or an associate of that manager, unless the manager of the authorised scheme is under a duty to pay to the authorised scheme by the close of business on the fourth business day next after the agreement to buy or to sell:
  - (a) on investment, either any amount by which the consideration paid by the authorised scheme for the units in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the units been newly created or issued by it or, if such price cannot be ascertained by the manager, the maximum amount of any charge permitted to be made by the issuer of units in the second scheme; and
  - (b) on disposal, the amount of any charge made in respect of the disposal.
  
- 2** For the purposes of this rule:
  - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of units in the second scheme, which is applied for the benefit of the second scheme and is, or is akin to, a dilution levy made pursuant to rule 4.23, shall be treated as part of the price of the units and not as part of any charge; and
  - (b) any charge made in respect of an exchange of units in one sub-fund or separate part of the second scheme for units in another sub-fund or separate part of that scheme shall be included as part of the consideration paid for the units.

## **Part 6 - Title to Units and Dealings therein**

**Explanation.** *This Part deals (at rules 6.01-6.04) with the register of holders, kept by the trustee (or in the case of a company scheme, the company), and the supply etc of certificates. It should be noted that although this Part includes standard provisions for the issue of bearer certificates, the Commission will not normally authorise any scheme which makes provision to issue certificates to bearer. Thereafter, this Part deals (at rules 6.10-6.12) with the transferability of units, whether by act of the parties (e.g. trading) or by operation of law (death or bankruptcy). Other matters relating to ownership and documentation are also covered.*

### **6.01 The register**

- 1** The trustee (or in the case of a company scheme, the company) shall establish and maintain in Guernsey a register of the holders (the “register”) in accordance with this rule.
- 2** The trustee (or in the case of a company scheme, the company) may appoint some other person (including the manager and, in the case of a company scheme, the trustee) (the “registrar”) to establish and maintain the register on its behalf in a form and manner approved by the trustee (or in the case of a company scheme, the company) and, if the trustee (or in the case of a company scheme, the company) does so:
  - (a) the trustee (or in the case of a company scheme, the company) will remain responsible for the discharge of all its duties in relation to the register under these rules; and
  - (b) anything required or authorised under these rules to be done in relation to the register by, to or before the trustee (or in the case of a company scheme, the company) may be done by, to or before the registrar.
- 3** The register shall be maintained in a legible form or in a manner capable of being reproduced in a legible form.
- 4** There shall be entered in the register:
  - (a) the name and address (being, in the case of a body corporate, the address of its registered office or principal place of business) of each holder (but so that for any second or subsequent forename an initial shall suffice) and in the case of joint holders the first name shall suffice for any second or subsequent holders, other than one whose units are all for the time being represented by bearer certificates;
  - (b) the number of units (including fractions of a unit) of each class held by each such holder, other than units the title to which is for the time being represented by bearer certificates, and the serial numbers, if any, of the certificates issued in respect of those units;
  - (c) the date on which the holder was registered in the register in respect of the units standing in his name;
  - (d) the number of units (including fractions of a unit) of each class for the time being in issue and represented by bearer certificates and the serial numbers of those certificates; and
  - (e) the date on which any transfer is registered (and a sufficient reference to enable the name and address of the transferee to be identified).
- 5** The trustee (or in the case of a company, the company) will not be bound to register more than four persons as the joint holders of any units.

- 6 The manager and the trustee (or in the case of a company scheme, the manager and the directors) must:
- (a) take all reasonable steps; and
  - (b) exercise all due diligence,
- to ensure that the information contained in the register is at all times complete and up to date.
- 7 In pursuance of paragraph 6, the manager must in particular:
- (a) take such steps as are necessary to obtain and supply information from or concerning any new holder of units to enable the entry in the register to be made; and
  - (b) forthwith notify to the trustee (or in the case of a company scheme, the company) any information which the manager receives relating to the accuracy of or any change to any entry in the register.
- 8 Nothing in this Part of these rules requires the manager or trustee (or in the case of a company scheme, the company) to make or alter any entry in the register or to issue any certificate or other document or to accept any transfer or conversion in any case where either of them considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to a statutory or regulatory obligation.

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

- 1 Subject to rule 6.07, the register shall be conclusive evidence as to the persons entitled to the units entered therein.
- 2 No notice of any trust (express, implied or constructive), which may be entered in the register in respect of any unit shall be binding on the manager or the trustee (or in the case of a company scheme, the company).
- 3 A body corporate may be registered as a holder or as one of joint holders.

#### **6.03 The manager as holder**

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

#### **6.04 Certificates**

- 1 Subject to paragraph 3, the manager or the trustee (or in the case of a company scheme, the company) shall within 21 days after the issue to a person of units in an authorised scheme (or, if it be later, within five business days after receipt by the manager of cleared funds and registration details by way of consideration for the issue of those units) provide that person with a certificate representing those units in such form as may from time to time be agreed between the manager and the trustee (or in the case of a company scheme, the directors) and, subject to paragraph 3, each such certificate shall:
- (a) bear the name of the authorised scheme and, in the case of an umbrella fund, the name of the sub-fund;
  - (b) be dated;
  - (c) bear the names and addresses of the manager and the trustee;
  - (d) subject to paragraph (g), bear a distinctive number in series;
  - (e) specify the number of units represented thereby and, where more than one class of unit in the authorised scheme is available, the class of unit represented thereby;

- (f) state the name, and if the manager so determines the address, of the holder or, if there be more than one, the name and address of the holder first named in the register and the names only of the others; and
  - (g) be signed on behalf of the trustee (or in the case of a company scheme, be signed on behalf of the company or be issued under seal (if such sealing is required under applicable law)) in such manner as is specified in the principal documents (which may in addition dispense with the need for distinguishing numbers on such basis as is therein prescribed).
- 2 If permitted under applicable law the principal documents may authorise the issue of bearer certificates; and in this case a certificate issued under paragraph 1 shall, if the holder to whom it is issued so requests, instead of stating his name and address, state that the bearer of the certificate is entitled to the units represented by the certificate.
  - 3 The principal documents may authorise the manager and the trustee (or in the case of a company scheme, the company) to dispense with all or any of the requirements of this rule but may nonetheless authorise the manager and the trustee (or in the case of a company scheme, the company) to issue bearer certificates and, if they do so, the manager and the trustee (or in the case of a company scheme, the company) shall be obliged to deliver bearer certificates representing such of a holder's units as the holder has requested be so represented.
  - 4 Certificates shall be valid and binding notwithstanding that before the delivery thereof any person whose signature appears thereon as a duly authorised signatory ceases to be an authorised signatory.

#### **6.05 Conversion of units**

- 1 This rule applies to any authorised scheme in which there are units of more than one type or class, and governs the conditions of conversion of units of one type into units of another or of units of one class into units of another.
- 2 Conversion is possible under this rule only if more than one type or class of units is in existence and is offered for issue or sale at the time of the request for conversion.
- 3 If a holder requests the manager to convert units, the manager shall make a request in writing to the trustee (or in the case of a company scheme, the company); but it need not do so, nor need the trustee (or in the case of a company scheme, the company) comply with the request if it does, if the conversion would result in the holder holding less than any number or value of units of any type or class stated in the scheme particulars as the minimum number or value that may be held.
- 4 If the manager makes a request under paragraph 3, the trustee (or in the case of a company scheme, the company) shall, unless excused by paragraph 3, convert the relevant units into the appropriate number of units of another type or class (in the case of a company scheme, by cancellation of the existing units and creation of new units), and that number shall be determined by the manager, after consulting the trustee (or in the case of a company scheme, the company), on terms that are fair to the holder requesting conversion and to other holders.
- 5 Part 4 does not apply when units are converted under this rule.

#### **6.06 Subdivision and consolidation of units**

- 1 The manager may, unless expressly forbidden to do so by the principal documents, at any time or times when no bearer certificates are in issue with the approval of the trustee (or in the case of a company scheme, the company) determine:
  - (a) that each unit shall be subdivided into two or more units (whereupon each unit shall stand subdivided accordingly); or
  - (b) that two or more units shall be consolidated (whereupon those units shall stand consolidated).
- 2 Upon a sub-division of units in accordance with paragraph 6, the trustee (or in the case of a company scheme, the company) shall:

- (a) either issue to each holder of a certificate representing units a new certificate representing the number of additional units to which he has become entitled by reason of the sub-division or endorse his existing certificate to indicate that it represents the original and that additional number of units; and
  - (b) forthwith give notice of the sub-division to each holder (or to the first named of joint holders) whose name is entered in the register accompanied, except where the principal documents have dispensed with this requirement, by an additional certificate or an invitation to submit his certificate for endorsement.
- 3** Upon a consolidation of units in accordance with paragraph 6, the trustee (or in the case of a company scheme, the company) shall:
- (a) either endorse existing certificates to indicate that they represent the consolidated number of units or cancel existing certificates and issue new certificates; and
  - (b) forthwith give notice of the consolidation to each holder (or to the first named of joint holders) whose name is entered in the register accompanied, except where the principal documents have dispensed with this requirement, by an invitation to submit his certificate for endorsement or for cancellation upon the issue of a new certificate.
- 4** If the principal documents relieve the manager and the trustee (or in the case of a company scheme, the company) from any obligation to issue certificates representing units other than bearer units, the manager and the trustee (or in the case of a company scheme, the company) shall be obliged to deliver bearer certificates representing such of a holder's units as the holder has requested, but shall not issue any certificates representing units other than bearer certificates.
- 5** In the case of joint holders, the trustee (or in the case of a company scheme, the company) shall not be bound to issue more than one certificate, and delivery to one such person shall be delivery to all.
- 6** This rule does not require the manager and the trustee (or in the case of a company scheme, the company) to issue certificates in respect of units purchased under an arrangement for the purchase of units at regular intervals unless the holder has requested the issue of certificates in respect of them.
- 7** If the authorised scheme is a "participating issuer" for the purposes of CREST, the manager and the trustee (or in the case of a company scheme, the company) shall not issue certificates representing any units of the authorised scheme which are held in uncertificated form within CREST.

#### **6.07 Default by holder**

If:

- (a) such evidence is furnished to the trustee (or in the case of a company scheme, the company) as the trustee (or the company) shall require to show that default has been made by a holder in making any payment in money or a transfer of property due to the manager or the trustee (or in the case of a company scheme, the company) under the provisions of these or any other rules made by the Commission or the principal documents in respect of the creation and issue of units to that holder; and
- (b) any certificate in respect of those units which has been signed on behalf of the trustee (or in the case of a company scheme, the company) is received by the trustee (or the company),

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

### **6.08 Conversion of registered into bearer certificates and vice versa**

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

### **6.09 Exchange and replacement of certificates**

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

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

- 1 Subject to paragraph 2, every holder shall be entitled to transfer units held by him in respect of which he is entered in the register by an instrument of transfer in any usual or common form or in such other form as the trustee and the manager (or in the case of a company scheme, the directors) may from time to time approve.

- 2 The trustee (or in the case of a company scheme, the company) 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 or value of the units of the class in question as would be less than any number or value stated in the scheme particulars as the minimum number or value that may be held;
  - (b) if the principal documents contain a limitation upon the categories of persons who may be holders and the transferee is not within one of those categories;
  - (c) unless and until the trustee (or in the case of a company scheme, the company) has been furnished with such evidence and declarations as to status, residence or otherwise as it may require;
  - (d) of units over which the trustee, the 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 signed by or on behalf of the holder transferring the units (or in the case of a body corporate, sealed by that body or signed by one of its officers) but need not be signed by the transferee unless the units are partly paid; and, unless the transferee is the manager, the transferor shall be deemed to remain the holder until the name of the transferee has been entered in the register.
- 4 Every instrument of transfer which is required to be stamped by applicable law must be duly stamped and left with the trustee (or in the case of a company scheme, the company) for registration accompanied by any necessary declarations or other documents that may be required by applicable law and by the certificate or certificates relating to the units to be transferred and by such other evidence as the trustee (or in the case of a company scheme, the company) 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 on its behalf. The trustee (or in the case of a company scheme, the company) may dispense with the production of any certificate which has been lost, stolen or destroyed, upon compliance by the transferor with the requirements which apply in the case of an application by him for the replacement thereof.
- 5 All instruments of transfer which are registered shall be retained by the trustee (or in the case of a company scheme, the company) for a period of six years and a reference on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.
- 6 Subject to rule 6.12, no fee shall be charged for the registration of any transfer or the issue of a new certificate in the name of the transferee; and if some only of the units represented by a certificate are transferred, the transferor shall be entitled free of charge to a new certificate in respect of the balance.

#### **6.11 Registration of a transfer in favour of the manager**

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

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

Subject to applicable law:

- (a) on the death of any one of joint holders the survivor or survivors shall be the only person or persons recognised by the trustee and the manager (and in the case of a company scheme, the company) as having any title to or any interest in the units; and upon

producing such evidence of death as the trustee (or in the case of a company scheme, the company) may require and delivering up the relevant certificate, the survivor or survivors shall be entitled to have such certificate duly marked or to have a fresh certificate issued in his name or their names as may be appropriate;

- (b) the legal personal representative of a deceased holder (not being one of two or more joint holders) shall be the only person recognised by the trustee and the manager (and in the case of a company scheme, the company) as having title to the units held by him; and
- (c)
  - (i) 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, désastre, curatelle or similar proceedings or under an order of a Guernsey court may, subject as hereafter provided, upon producing such evidence as to his title as the trustee (or in the case of a company scheme, the company) may reasonably require, either be registered himself as holder of such unit upon giving to the trustee (or in the case of a company scheme, the company) notice in writing of such his desire or transfer such unit to some other person;
  - (ii) 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; and
  - (iii) the trustee (or in the case of a company scheme, the company) may at its 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.

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

- 1 The principal documents shall require any change of name or address on the part of any holder to be forthwith notified to the trustee (or in the case of a company scheme, the company) by the holder or the manager as the case may be.
- 2 The trustee (or in the case of a company scheme, the company) shall:
  - (a) upon receipt of notice in writing of a change of name, or of a change of address, of any holder;
  - (b) upon being satisfied thereof; and
  - (c) on compliance with such formalities, including in the case of a change of name, the surrender of any certificate previously issued to such holder, as the trustee (or in the case of a company scheme, the company) may require,

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

#### **6.14 Payment of fees on issue of certificates**

If authorised by the principal documents to do so, the trustee (or in the case of a company scheme, the company) or the registrar on the trustee's (or company's) behalf may make:

- (a) the issue of a certificate under these rules other than rule 6.04; and
- (b) the registration of any document relating to or affecting the title to any unit,

conditional upon the payment to it of such reasonable fee as the manager and the trustee (or in the case of a company scheme, the company) may agree.

### **6.15 Supply of certificates**

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

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

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

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

## **Part 7 - Powers and Duties of the Manager, the Directors and the Trustee**

**Explanation.** *This Part deals with the powers, duties and responsibilities of the manager, the directors and the trustee. The manager (and in the case of a company scheme, the directors) and trustee have fiduciary duties stemming from the general law, from the principal documents and other documents relating to the individual scheme (scheme particulars) and from these rules. Generally the manager has the executive responsibility for the authorised scheme, in that he manages the investments, performs the valuations and determines the prices. The trustee has the duty of oversight and supervision and safeguards the title to the investments and the interests of the holders in them.*

*The manager of a company scheme is entitled to discharge all the powers, duties and discretions of the directors, subject to rule 7.02.1 and applicable law. The directors of a company scheme may also delegate to any director, or any committee consisting of one or more directors, any of the directors' powers or duties.*

*The manager or directors may retain the services of anyone, including the trustee, to assist them and, subject to rules 7.15.4 and 7.15.5, the trustee may retain the services of anyone, including the manager (and in the case of a company scheme, a director of the company) to assist it.*

*This Part also contains requirements relating to transactions entered into between the authorised scheme and certain persons directly or indirectly connected with it.*

*Finally, this Part includes provisions concerning the appointment and termination of the appointment of the manager.*

### **7.01 Introduction**

This Part defines the relationship between the manager and the trustee, in the case of a unit trust scheme, and the manager, the trustee and the directors, in the case of a company scheme.

## **Section A The Manager**

### **7.02 Management of the authorised scheme**

- 1** It is the duty of the manager to manage the authorised scheme in accordance with:
  - (a) the principal documents;
  - (b) these rules; and
  - (c) the most recently published scheme particulars.
- 2** Subject to paragraph 1, it is the manager's right and duty to make decisions as to the constituents of the scheme property of the authorised scheme in such a way as appears to it likely to secure that the objectives of the scheme are attained and that any particular objectives specified in the scheme particulars are achieved, subject in the case of a company scheme, to any directions from time to time given by the directors.
- 3** In the case of a company scheme, it is the duty of the directors not to give any directions or exercise any powers, duties or discretions which would or might cause the company to operate otherwise than in accordance with the principal documents or these rules.

- 4 The manager of a company scheme is entitled to discharge all the powers, duties and discretions of the directors, subject to paragraph 1 and to any provisions of applicable law; and, if so required, the directors shall execute all such instruments and documents and do everything necessary or desirable to give full effect to this provision.
- 5 The duty at paragraph 1 extends to taking all reasonable steps, and exercising due diligence, to ensure that the units in the authorised scheme are priced in accordance with the provisions of Part 4.
- 6 The duty at paragraph 1 extends to taking action forthwith to rectify any breach of Part 4 and, where the breach relates to the incorrect pricing or late payment in respect of the sale of units, rectification shall, unless the trustee otherwise directs, extend to the reimbursement or payment, or arranging the reimbursement or payment, of money:
  - (a) by the manager to holders or former holders;
  - (b) by the manager to the authorised scheme; or
  - (c) by the authorised scheme to the manager,but rectification need not, unless the trustee otherwise directs, extend to any such reimbursement or payment where it appears to the trustee that the incorrect pricing, or late payment in respect of sale, is of minimal significance.
- 7 The manager must instruct the trustee from time to time in writing as to how rights attaching to the ownership of scheme property are to be exercised; but not in the case where, under rule 7.11.2, the trustee has the right to decide after consultation with the manager.

### **7.03 Dealings in scheme property**

- 1 The manager may without the specific authority of the trustee give instructions as to the acquisition or disposal of property for the account of the authorised scheme.
- 2 Where the trustee is of the opinion that a particular acquisition or disposal of property for the account of the authorised scheme exceeds the powers conferred on the manager (or in the case of a company scheme, the company) by these rules, the trustee may require the manager to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previously existing situation and to meet any resulting expense.
- 3 Where the trustee is of the opinion that:
  - (a) an acquisition of property for the account of the authorised scheme necessarily involves documents of title or documents evidencing title being kept in the custody of a person other than the trustee; and
  - (b) the trustee cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by such other person,

the trustee may require the manager (for the account of the authorised scheme) to cancel the transaction or make a corresponding disposal.

### **7.04 Maintenance of records etc.**

- 1 The manager must keep such accounting and other records as are necessary:
  - (a) to enable it to comply with these rules; and
  - (b) to demonstrate at any time that such compliance has been achieved.
- 2 The manager must keep a daily record of the units held, acquired or disposed of by the manager, including the classes of such units, and of the balance of any acquisitions and disposals and such accounting and other records as are necessary:
  - (a) to enable the manager to comply with these rules; and

- (b) to demonstrate at any time that such compliance has been achieved.
- 3 The manager must make the daily record available for inspection by the trustee in Guernsey free of charge at all times during ordinary office hours and must supply the trustee with a copy of the record or any part of it on request free of charge.

#### **7.05 Audit**

- 1 (a) In the case of a unit trust scheme, the manager shall, at the outset and upon any vacancy, with the approval of the trustee appoint a qualified auditor as auditor for the authorised scheme.
- (b) In the case of a company scheme, the directors shall, at the outset and upon any vacancy, with the approval of the trustee and in accordance with the principal documents and applicable law appoint a qualified auditor as auditor for the authorised scheme.
- 2 The audit fees of the auditor shall be determined or fixed by the manager and the trustee and, in the case of a company scheme, with the sanction of any resolution of holders required under applicable law.
- 3 The manager shall have the accounts required to be included in the annual report in accordance with rule 10.01 audited by the auditor; and that report shall be accompanied by a report of the auditor to the holders that those accounts have been audited in accordance with approved auditing standards and stating whether or not in their opinion they give a true and fair view of the financial position of the 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 the approval of the trustee in the case of a unit trust scheme; or
- (b) the directors in the case of a company scheme with the approval of the trustee and in accordance with the principal documents and applicable law,

notwithstanding anything in any agreement between the persons concerned, but subject to applicable law. The manager shall forthwith give notice to the Commission of any such removal with a statement of the reasons therefor.

#### **7.06 Tax returns**

The manager must from time to time prepare and supply to the trustee such returns relating to the scheme property as are required to be submitted by the trustee (or in the case of a company scheme, by the company) to any fiscal authority.

#### **7.07 Review of scheme's constitution**

The manager must keep under review the principal documents and the scheme particulars with a view to ensuring that they are in compliance with applicable law, including these rules, and from time to time must make or propose the making of such changes therein as are necessary or desirable in the interests of holders.

#### **7.08 Manager to supply information**

The manager must on the request of the trustee (and in the case of a company scheme, the directors) forthwith supply such information concerning the management and administration of the authorised scheme as may be reasonably required.

### **Section B The Trustee**

#### **7.09 General duties of the trustee**

- 1 It is the duty of the trustee to take reasonable care to ensure:
- (a) except in relation to Part 5, that the authorised scheme is managed by the manager in accordance with rule 7.02.1; and

- (b) in relation to Part 5, that decisions about the constituents of the scheme property of the authorised scheme do not exceed the powers conferred on the manager (or in the case of a company scheme, the company).
- 2 The trustee must satisfy itself on reasonable grounds and on a continuing basis that:
    - (a) the manager is adopting such procedures and methods as are appropriate to ensure that the price of a unit is calculated for each valuation point in accordance with Part 4; and
    - (b) the manager has maintained sufficient records to show compliance with Part 4.
  - 3 The trustee, in the context of its role as such, must act solely in the interests of holders.
  - 4 The trustee shall inform the Commission immediately upon becoming aware of any circumstance as a result of which the trustee is not satisfied that:
    - (a) except in relation to Part 5, the authorised scheme is managed by the manager in accordance with rule 7.02.1; and
    - (b) decisions about the constituents of the property of the scheme do not exceed the powers conferred on the manager,

unless the trustee is satisfied that the circumstance in question is not, and is not likely to become, materially significant.
  - 5 Without prejudice to paragraph 4, if the trustee becomes aware of a circumstance which it needs to investigate in order to ascertain whether its duty to inform under paragraph 4 arises and it has not satisfied itself within 90 days of becoming aware of that circumstance that its duty under paragraph 4 has not arisen, then immediately upon the expiration of the 90 days the trustee shall inform the Commission of that circumstance.
  - 6 The trustee shall not retire voluntarily unless, prior to its retirement, it has ensured that the new trustee has been informed of any circumstance of which the retiring trustee has informed the Commission in accordance with paragraph 4 or paragraph 5 or which is being investigated for the purpose of paragraph 5.
  - 7 The person appointed as the trustee must:
    - (a) in the case of a company scheme, be independent of the company and of the persons appointed as directors of the company; and
    - (b) in the case of an authorised scheme, be independent of the manager.

#### **7.10 Control by the trustee over the scheme property**

- 1 The trustee shall be responsible for the safekeeping of all of the scheme property of the authorised scheme (other than tangible movable property) entrusted to it and shall ensure that any of that scheme property in registered form shall, as soon as practicable, be registered in the name of the trustee, or without prejudice to rule 7.15, its nominee and that any transaction entered into for the purposes of Section K of Part 5 is entered into in such manner as to ensure that any resulting benefit is received by the trustee and held by it as part of the scheme property.
- 2 The trustee is responsible for the collection of any income due to be paid for the account of the authorised scheme and shall hold and deal with any income so collected in accordance with these rules.
- 3 The trustee must take all steps and execute all documents which are necessary to ensure that transactions properly entered into for the account of the authorised scheme in accordance with Section A are completed.
- 4 The trustee must keep such records as are necessary:
  - (a) to enable it to comply with these rules; and
  - (b) to demonstrate that such compliance by it has been achieved.

### **7.11 Exercise of rights in respect of the scheme property**

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

## **Section C The Manager, the Trustee and the Directors**

### **7.12 Duties of the manager, the trustee and the directors under applicable law**

- 1** Subject to paragraph 4, the duties of the manager, the trustee and the directors imposed on them by these rules and by the principal documents are in addition to and not in derogation from the duties which are otherwise imposed on them by applicable law.
- 2** Subject to paragraph 4, the manager, the trustee and the directors are required to fulfil those other duties by these rules as well as by applicable law.
- 3** Subject to paragraph 4, the manager, the trustee and the directors have, by virtue of these rules, all the powers conferred on them by applicable law.
- 4** Paragraphs 1, 2 and 3 apply only in so far as the duties imposed or powers conferred by applicable law are not qualified or restricted by these rules in a manner which is effective under applicable law.

### **7.13 Timely performance of duties**

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

### **7.14 Duties of the manager and the trustee: investment and borrowing powers**

- 1** Subject to paragraphs 6 and 7, it is the duty of the manager:
  - (a) to take all reasonable steps; and
  - (b) to exercise all due diligence,to avoid the scheme property being used or invested contrary to any provision in Part 5.
- 2** It is the duty of the trustee:

- (a) to take all reasonable steps; and
  - (b) to exercise all due diligence,
- to monitor the management of the scheme property sufficiently to ensure that the manager complies with paragraph 1.
- 3** Without prejudice to paragraph 1, it is the duty of the manager, forthwith upon becoming aware of any breach of any provision in Part 5, to take action, at its own expense, to rectify that breach, unless the breach occurred as the result of a circumstance of one of the types described in paragraphs 4 and 5.
- 4** Paragraph 6(b) applies:
- (a) where the scheme property is used or invested at any time contrary to any provision of Part 5 (other than a provision excusing a failure to comply on a temporary basis); and
  - (b) the reason for the contravention is beyond the control of both the manager and the trustee.
- 5**
- (a) Paragraph 6 applies to a transaction (“subsequent transaction”) deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an investment (“original investment”) of the authorised scheme, which subsequent transaction, but for this rule, would constitute a breach of Part 5, provided that, at the time of the acquisition of the original investment, it was reasonable for the manager, on the assumption that any right attached to the original investment when it was acquired would be exercised, to expect that a breach would not be caused by the subsequent transaction.
  - (b) In this paragraph 5 the exercise of a right shall be deemed to include the taking effect of a right without any action by or on behalf of the trustee or the authorised scheme.
- 6**
- (a) Nothing in Part 5 prevents the manager (or in the case of a company scheme, the company) from entering into a transaction of the type described in paragraph 5 provided that the manager obtains the prior consent of the trustee in writing.
  - (b) When this paragraph applies by virtue of paragraph 4 or 5, the manager must take such steps as are necessary to ensure a restoration of compliance with Part 5 as soon as is reasonably practicable having regard to the interests of the holders and, in any event, within the period specified in paragraph 8.
- 7** Forthwith upon the trustee becoming aware of any circumstance described in paragraph 4 or any breach resulting from the exercise of, or receipt of a benefit from, a right in the circumstance described in paragraph 5, it must take such steps as are necessary to ensure that the manager complies with paragraph 6(b).
- 8** Subject to paragraph 9, the maximum period for restoration of compliance under paragraph 6(b) starts at the date of discovery of the relevant circumstance and lasts:
- (a) where the transaction in question was entered into under Section K of Part 5, until the close of business five business days later; and
  - (b) in any other case, for six months.
- 9** The period at paragraph 8(a) (five business days) is extended if the reason for the contravention in paragraph 4 is the inability of the manager to close out a transaction because of a limit in the number or value of transactions imposed by an eligible derivatives market, until five business days after:
- (a) the inability resulting from any such limit is removed; or

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

### **7.15 Delegation and appointments**

- 1 Subject to applicable law, the directors may delegate to any director, or any committee consisting of one or more directors, any of the directors' powers or duties, but the directors shall remain responsible for the acts or omissions of any such director or committee as if they were acts or omissions of the directors.
- 2 The manager or the directors may retain the services of anyone, including the trustee, to assist the manager or the directors (as the case may be), to perform their respective functions.
- 3 Subject to paragraphs 4 and 5, the trustee may retain the services of anyone, including the manager (and in the case of a company scheme, a director of the company) to assist the trustee to perform its functions.
- 4 The trustee may not retain the services of the manager (or in the case of a company scheme, the company or any director of the company) to assist the trustee to perform:
  - (a) any function of oversight in respect of the manager (or in the case of a company scheme, the company, its directors or any of them); or
  - (b) any function of custody or control of the scheme property,nor may the trustee retain the services of an associate of the manager (or in the case of a company scheme, the company or of any of the directors of the company) to assist the trustee to perform any function in (a).
- 5 The trustee may not retain the services of a nominee or anyone else to assist it to perform the function of being a custodian of documents of title or documents evidencing title to scheme property unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the trustee.
- 6 If:
  - (a) the manager retains the services of (or in the case of a company scheme, causes the company to retain the services of) anyone to assist the manager to perform any function concerning the management of the scheme property;
  - (b) the manager (or in the case of a company scheme, the directors of the company) retains the services of (or cause the company to retain the services of) the trustee (or in the case of a company scheme, an associate of any of the directors of the company or of the trustee) to assist the manager or the directors (as the case may be) to perform any of their respective functions; or
  - (c) in the case of a company scheme, the trustee retains the services of a director of the company or an associate of such a director or of the trustee to assist the trustee to perform the functions of the trustee,then in the case of (a), the manager and in the case of (b), the manager or the directors and in the case of (c), the trustee, remains responsible for the acts or omissions of the person retained as if they were the acts or omissions of the manager or of the directors or of the trustee (as the case may be).
- 7 Subject to the provisions of applicable law and to paragraphs 1 and 6, the manager (and in the case of a company scheme, the directors of the company) or the trustee (as the case may be) are not responsible by virtue of these rules for any act or omission of any person whose services are retained by any of them to assist them (or it) to perform their (or its) respective functions if such person can show:
  - (a) that it was reasonable for such person to obtain assistance to perform the function in question;

- (b) that the person retained was and remained competent to provide assistance in the performance of the function in question; and
- (c) that the manager (and in the case of a company scheme, the directors) or the trustee (as the case may be) had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.

#### **7.16 Conflict of interest etc.**

- 1** The manager (and in the case of a company scheme, the company and its directors) and the trustee must each take all reasonable steps to ensure that there is no breach of any of the following requirements of this rule by any “affected person”, that is to say:
  - (a) the trustee;
  - (b) any investment adviser;
  - (c) in the case of a company scheme, the company;
  - (d) in the case of a company scheme, a director of the company; and
  - (e) any associate of any person in paragraph (a), (b), (c) or (d).
- 2** Cash forming part of the scheme property or standing to the credit of the distribution account may be placed in any current, deposit or loan account with an affected person only if it is an approved bank and the arm’s length requirement in paragraph 8 is satisfied.
- 3** An affected person may lend money to the authorised scheme only if he is an approved bank and the arm’s length requirement in paragraph 8 is satisfied.
- 4** An affected person may not sell or deal in the sale of property to the authorised scheme unless paragraph 9 applies and for the purpose of this paragraph a sale shall include any lease or other transaction under which movable or immovable property is made available by the authorised scheme.
- 5** An affected person may not vest property in the authorised scheme against the issue of units, unless:
  - (a) paragraph 9 applies; or
  - (b) it is vested for the purpose of arrangements whereby the whole or part of such property becomes the first property of the authorised scheme.
- 6** An affected person may not purchase scheme property from the trustee acting for the account of the authorised scheme unless rule 4.18 applies or unless paragraph 9 applies and for the purpose of this paragraph a purchase shall include any lease or other transaction under which scheme property that is movable or immovable property is made available by the trustee.
- 7** An affected person may not enter into transactions within Section L of Part 5 in relation to the authorised scheme unless the arm’s length requirement in paragraph 8 is satisfied.
- 8** An affected person within paragraph 1b, 1d, or 1f above may not provide services for the authorised scheme unless the trustee has reliable evidence that the services are provided on terms which satisfy the arm’s length requirement in paragraph 9.
- 9** The arm’s length requirement is that the arrangements are at least as favourable to the authorised scheme as would be any comparable arrangement effected on normal commercial terms negotiated at arm’s length between the affected person and an independent party.
- 10** There is no breach of paragraphs 4, 5 or 6 if paragraph 11 (best execution on exchange) or paragraph 12 (independent valuation) or paragraph 13 (arm’s length transaction) applies.
- 11** There is best execution on exchange for the purposes of paragraph 10 if:
  - (a) the property is an approved security or an approved derivative;

- (b) the transaction is effected with or through a member of the relevant exchange under the rules of that exchange;
- (c) there is evidence in writing of the effecting of the transaction and of its terms; and
- (d) the manager has taken all reasonable steps to effect the transaction or to ensure that it is effected on the terms which are the best available for the authorised scheme in the circumstances.

**12** There is independent valuation for the purposes of paragraph 10 if:

- (a) the value of the property is certified in writing for the purpose of the transaction by a person selected or approved by the trustee as;
  - (i) independent of any affected person; and
  - (ii) qualified to value property of the relevant kind; and
- (b) the trustee is of the opinion that the terms of the transaction are not likely to result in any material prejudice to holders.

**13** There is an arm's length transaction for the purposes of paragraph 10 if:

- (a) paragraph 11(a) is not satisfied;
- (b) it is not reasonably practicable to obtain an independent valuation under paragraph 12; and
- (c) the trustee has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in paragraph 9.

**13** Paragraphs 2 to 7 are subject to any provision in the principal documents forbidding the taking of advantage of all or any of them.

**14** Nothing in this rule shall prevent the fulfilment of the relevant provisions of Part 4.

**7.17 General provisions applicable to the manager and the trustee**

- 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 licensed under the Law and administered, and have a place of business, in Guernsey;
  - (iii) not be a subsidiary of the other; and
  - (iv) not have directors or other officers in common.
- (b) In the case of a company scheme, the trustee shall not have 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 1(a) and (b) of this rule.
- 2** The manager of an authorised scheme shall give written notice to the Commission of:
  - (a) any proposed alteration to the authorised scheme; and
  - (b) any proposal to replace the trustee of the authorised scheme.

Any notice given in respect of a proposed alteration involving a change in the principal documents shall be accompanied by a certificate from an approved law firm either confirming that following the alteration the principal documents will continue to comply with such of these rules as relate to the contents of the principal documents or giving such confirmation subject to such exceptions as are detailed in that certificate (in which case rule 14.02.2 shall apply).

- 3 The trustee of an authorised scheme shall give written notice to the Commission of any proposal to replace the manager of the authorised scheme.
- 4 No effect shall be given to any such proposal as is mentioned in paragraph 2 or 3 unless:
  - (a) the Commission has given its approval to the proposal; or
  - (b) one month has elapsed since the notice was given without the Commission having notified the person servicing the notice that the proposal is not approved.

## Section D New Managers and Trustees

### 7.18 Replacement of the manager

- 1 Subject to rule 7.17, the manager for the time being shall be subject to removal by notice in writing given by the trustee to the manager in any of the following events:
  - (a) 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 unitisation upon terms previously approved in writing by the trustee) or if its affairs are declared to be *en désastre*;
  - (b) a receiver is appointed of the undertaking of the manager or any part thereof;
  - (c) for good and sufficient reason the trustee is of the opinion and so states in writing that a change of manager is desirable in the interest of the holders;
  - (d) an extraordinary resolution is passed removing the manager (or to determine that it be removed as soon as this is permitted by law);
  - (e) the holders of a three-quarters majority in value of the units in existence (excluding units held or deemed to be held by the manager or by any associate of the manager) make a request in writing to the trustee that the manager be removed; or
  - (f) the manager ceases to be licensed under the Law.
- 2 Subject to rule 7.17 on receipt of a notice by the trustee under paragraph 1 the manager shall cease to be the manager; and in the case of a unit trust scheme the trustee shall by writing under its seal (or in the case of a company scheme, the company shall by a new management agreement) appoint some other person licensed under the Law to be the manager of the authorised scheme in accordance with rule 7.17 upon and subject to that other person entering into such document or documents as the trustee or the Commission may require in order to secure the due performance of its duties as a manager.
- 3 If the name of the authorised 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.

### 7.19 Retirement of the manager

- 1 Subject to rule 7.17, the manager shall have the right to retire in favour of some other person licensed under the Law and approved in writing by the trustee upon and subject to fulfilment of the conditions set out in rule 7.18.2.
- 2 Upon retirement, the retiring manager:
  - (a) is absolved and 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 retiring manager prior to such retirement; and
  - (b) may retain for its own benefit, and without having to account therefore to the holders or any of them, any consideration paid to it in connection with the change of manager.

- 3 Upon the retirement of the retiring manager, the new manager may exercise all the powers and enjoy all rights and shall be subject to all the duties and obligations of the manager under these rules and under the principal documents as fully as if it had originally been a party to the principal documents.

#### **7.20 Supplementary**

- 1 Upon the removal or retirement of the manager, the removed or retiring manager:
  - (a) remains entitled to all units held or deemed to be held by it;
  - (b) may require the issue to it of a certificate or certificates in respect thereof (if not previously issued);
  - (c) is to be registered in the register in respect thereof; and
  - (d) thereafter has and may exercise all rights of a holder.
- 2 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 securities on behalf of the removed or retiring manager or its associate, and to account to such person for the proceeds less any costs incurred.
- 3 Unless the termination of the appointment of the manager is coterminous with the appointment of a successor manager, the trustee shall ensure that the termination is publicised in such manner as the trustee considers appropriate and the trustee shall be reimbursed for its out-of-pocket expenses in so doing out of the scheme property.

#### **7.21 Replacement and retirement of the trustee**

- 1 Except with the prior consent of the Commission, a trustee shall not be entitled to retire voluntarily other than upon the appointment of a new trustee.
- 2 Subject to rule 7.17.4 in the event of the trustee:
  - (a) desiring to retire;
  - (b) having an order made or a resolution passed for the winding-up of the trustee (except a voluntary liquidation for the purpose of reconstruction or unitisation upon terms previously approved in writing by the manager) or if its affairs are declared to be *en désastre*;
  - (c) having a receiver appointed of the undertaking of the trustee or any part thereof;
  - (d) ceasing to be licensed under the Law; or
  - (e) being removed from office by an extraordinary resolution,

then in the case of a unit trust scheme, the manager may by an instrument supplemental to the trust instrument (or in the case of a company scheme, the company may by a new trustee agreement) appoint another person licensed under the Law to be the trustee in place of the retiring trustee in accordance with the provisions of rule 7.17 and any such instrument or agreement shall contain such provisions as the manager is advised are necessary or desirable or as the Commission requires to be entered into by the new trustee in order to secure the due performance of its duties as trustee.

## Part 8 - Charges and Expenses

**Explanation.** *This Part contains some provisions relating to charges and expenses that may be paid out of scheme property and to charges of the manager that are not payable out of the scheme property, but may be payable by investors upon their acquisition or disposal of units. There are no limits on the amounts of the preliminary, redemption or annual charges of the manager; but, in accordance with Part 3 and Schedule 2, all categories of charges and expenses must be disclosed in the scheme particulars.*

*The only payments that are specifically prohibited by this Part to be made out of scheme property are payments to anyone other than the manager for acquiring or promoting the sale of units, and performance fees, whether paid to the manager or anyone else.*

### 8.01 Payments by the authorised scheme to the manager

No payment may be made or benefit given to the manager (whether as such or in any other capacity) out of the scheme property whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless the scheme particulars specify each type of payment or benefit that may be made or given, each type of expense that may be so reimbursed and, in the case of each category of remuneration (or remuneration related to a class of unit) specifies:

- (a) how it will be calculated and accrue and when it will be paid; and
- (b) the maximum and current rates or amount of such remuneration.

### 8.02 Remuneration of the trustee and reimbursement of trustee's expenses

1 No payment may be made to the trustee out of the property of the scheme, whether by way of reimbursement of expenses or otherwise, except -

- (a) remuneration for the trustee in respect of its services and in respect of which the following have been stated in the scheme particulars-
  - (i) the actual amount or rate of the remuneration; and
  - (ii) the periods in respect of which the remuneration is to be paid; and
  - (iii) how the remuneration is to accrue; and
  - (iv) when the remuneration is to be paid; and
- (b) reimbursement of expenses properly incurred by the trustee in performing or arranging for the performance of the functions conferred on the trustee by these rules.

2 Paragraph 1(a) (I) may be taken to be complied with if the scheme particulars contain -

- (a) the maximum amount or rate of the remuneration which may become payable to the trustee, and
- (b) an explanation as to how the actual amount or rate is to be determined, including the mathematical basis and the relevant factors involved.

### **8.03 Preliminary charge**

- 1 The manager may make a charge (“preliminary charge”) upon a sale of units by the manager whether acting as a principal or not and the trustee shall account to the manager for any preliminary charge received by the authorised scheme as part of a payment to it.
- 2 The preliminary charge shall not in respect of a unit of any class exceed an amount or rate calculated in accordance with a statement in the scheme particulars as to the current charge.
- 3 The manager shall not make any charge or levy in connection with the sale of units except a preliminary charge in accordance with this rule and, in the case of an authorised scheme which has adopted a single pricing regime, a dilution levy in accordance with rule 4.23.
- 4 Paragraph 1 does not apply on an exchange of units within an umbrella fund, but nothing in this rule shall prevent the manager from making a charge on such an exchange in accordance with rule 8.06.

### **8.04 Increase in remuneration or preliminary charge**

The manager may not rely on any introduction of a new category of remuneration for its services or any increase in the current rate or amount of its remuneration payable out of the scheme property up to or towards any maximum stated in the scheme particulars or any introduction of or increase in the preliminary charge payable under rule 8.03, unless not less than 90 days before the introduction or increase:

- (a) the manager has given notice in writing of that introduction or increase and of the date of its commencement (in the case of remuneration payable out of the scheme property) to all holders or (in the case of a preliminary charge) to all the persons who ought reasonably to be known to it to have made an arrangement for the purchase of units at regular intervals; and
- (b) the manager has revised the scheme particulars to reflect the introduction or new current rate or amount of remuneration or preliminary charge and the date of its commencement and has made the revised scheme particulars available in accordance with rule 3.04.

### **8.05 Redemption charge**

- 1 The manager may make a charge (“redemption charge”) upon:
  - (a) a redemption of units by the manager as a principal; or
  - (b) a cancellation of units in accordance with rule 4.15.
- 2 In the case of paragraph 1(b) the trustee, in the case of a unit trust scheme (or in the case of a company scheme, the company) shall deduct the amount of the redemption charge from the payment otherwise due to the holder and pay the redemption charge to the manager.
- 3 A redemption charge shall not exceed an amount calculated by reference to the amounts or rates of redemption charge stated in the scheme particulars current at the date when the relevant units were sold by the manager or created by the trustee, in the case of a unit trust scheme (or in the case of a company scheme, the company) (other than units to be held by the manager) and, if there was no such statement, the redemption or cancellation of such units shall not be subject to any redemption charge.
- 4 The manager may not implement the introduction of a redemption charge or a change to the amount or rate or method of calculation of a current redemption charge which is adverse to holders unless not less than 90 days before the introduction or change:
  - (a) the manager has given notice in writing of that introduction or change and of the date of its commencement to all the persons who ought reasonably to be known to it to have made an arrangement for the purchase of units at regular intervals; and

- (b) the manager has revised the scheme particulars to reflect the introduction or change and the date of its commencement and has made the revised scheme particulars available, in accordance with rule 3.04.
- 5 If scheme particulars contain a statement relating to the amount, or the calculation of the amount, of a redemption charge, they shall also contain a statement as to the determination of the order (if any) in which units, which have been acquired at different times by a holder, are taken to be redeemed or cancelled for the purpose of the imposition of the redemption charge.

#### **8.06 Umbrella funds**

- 1 In the case of an umbrella fund, the manager may make a charge on an exchange of units in one sub-fund for units in another sub-fund, but the charge shall not exceed the aggregate of:
- (a) any excess of the amount of the preliminary charge that would be applicable to a sale of the units being acquired (by reference to the current preliminary charge stated in the most recently published scheme particulars) over the preliminary charge actually paid on the original acquisition of the units being redeemed plus any redemption charge actually levied on the redemption of the units being redeemed; and
  - (b) the amount of any fee payable on switching stated in those scheme particulars.
- 2 The manager may not make a charge in excess of the fee referred to in paragraph 1(b), unless the scheme particulars contain a statement as to the determination of the order in which units which have been acquired at different times by a holder are to be taken to be redeemed or cancelled is to be determined in so far as necessary for calculating the maximum charge for an exchange of units in one sub-fund for units in another sub-fund.

#### **8.07 Restricted payments**

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

#### **8.08 Performance fees**

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

#### **8.09 Movable and immovable property**

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

#### **8.10 Payment of liabilities on transfer of assets**

Where the property of a body or scheme is transferred to the authorised scheme (or to the trustee for the account of the authorised scheme) in consideration of the issue of units in the authorised scheme to holders of shares or units in that body or scheme, the authorised scheme, as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

- (a) there is nothing in its principal documents expressly forbidding the payment; and
- (b) the manager (after consulting the trustee) is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

### **8.11 Amortisation**

Without prejudice to rule 8.07, costs of the authorisation and establishment of an authorised scheme and of its initial offer or creation of units (or initial offer or creation of units in respect of a sub-fund) may be amortised over a period not exceeding five years.

### **8.12 Tax**

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

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

- 1** Any broker's commission, fiscal charges and other disbursements which are necessary to be incurred in effecting transactions for the authorised scheme, and normally shown in contract notes, confirmation notes or difference accounts as appropriate may be charged to the capital account.
- 2** Any interest on borrowings and charges incurred in effecting, terminating, negotiating or varying the terms of borrowings and taxation and duties payable in respect of scheme property and costs of the types described in rule 8.10 may be paid from capital property or income property as the trustee, in the case of a unit trust scheme (or in the case of a company scheme, the directors) considers appropriate.
- 3** All other payments out of the scheme property shall be made from income property in the first instance, but a transfer of the debit item from the income account to the capital account may be made if the expense is considered to be capital in nature.
- 4** Where it is clear from the scheme particulars that the investment objectives of the authorised scheme or the sub-fund of an umbrella fund are:
  - (a) to treat the generation of income as a higher priority than capital growth; or
  - (b) to place an equal emphasis on the generation of income and on capital growth,all or the relevant part of the remuneration of the manager permitted by rule 8.01 may be treated as a capital charge, and a transfer of the relevant debit item from the income account to the capital account made, if the manager and the trustee in the case of a unit trust scheme (or in the case of a company scheme, the directors) so agree.
- 5** An authorised scheme shall not commence (except when the commencement is on the first relevant occasion after the first creation of its units) to charge all or part of the remuneration of the manager to capital in accordance with paragraph 4 or increase the proportion of the remuneration of the manager so charged above the maximum amount or part stated in the scheme particulars, unless that commencement or increase is:
  - (a) made with the prior approval of a resolution of the holders or (as the case may be) holders of the class of units concerned; or
  - (b) after the expiration of not less than 90 days' written notice to the holders or (as the case may be) holders of the class of units, concerned.

## Part 9 - Income

**Explanation.** *Each authorised scheme must have an annual and a half-yearly accounting period and may have additional interim accounting periods each year. Other than in the case of roll-up funds, the manager calculates (or in the case of a company scheme, the directors calculate) income in respect of each accounting period and it is distributed to the holders of income units or allocated to the holders of accumulation units in proportion to their respective interests in the property of the authorised scheme. Rules in this Part relate to the calculation of the amount available for income allocation; how distributions or allocations are to be made and when; income equalisation; and the provision of distribution statements. An authorised scheme may make interim allocations of income, which may be less than, but must not exceed, the income available for allocation in respect of the relevant period.*

### 9.01 Accounting periods

- 1 An authorised scheme must have an annual and a half-yearly accounting period, and this rule determines what they are.
- 2 An authorised scheme must also have an accounting reference date, which is the date or day in any year stated in the most recently published scheme particulars as the date or day on which the authorised scheme's annual accounting period is to end.
- 3 The first annual accounting period shall begin:
  - (a) where the authorised scheme makes an initial offer, on the first day of the period of the initial offer; or
  - (b) in any other case, the date of effect of the declaration of authorisation in respect of the authorised scheme.
- 4 Each annual accounting period shall end either at the end of the day arrived at under paragraph 5 or, if the manager so determines, at the valuation point last preceding the end of that day and each subsequent period shall begin immediately after the end of the one before.
- 5 The day for paragraph 4 is:
  - (a) the next accounting reference date after the beginning of the period in question; or
  - (b) if that period is the first period or a period in the course of which a change in the accounting reference date takes place, and the next accounting reference date in either case is less than six months after the beginning of the period, and the manager after consulting the auditor so determines, subject to applicable law, the next but one accounting reference date.
- 6 A half-yearly accounting period is a period beginning with the first day of an annual accounting period and ending on the day which is:
  - (a) six months before the next accounting reference date; or
  - (b) if the next accounting reference date is less than six months after that first day, six months before the next accounting reference date but one after that first day.
- 7 Notwithstanding paragraphs 4, 5 and 6, if the manager notifies the trustee that a particular annual or half-yearly accounting period shall end on a specified day which is not more than seven days after and not more than seven days before the day on which the period would otherwise end, such notice shall have effect provided it was given prior to the last mentioned day.

### **9.02 Annual income allocation date**

- 1 An authorised scheme other than a roll-up fund must have an annual income allocation date, which is 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.
- 2 The annual income allocation date must be a date within four calendar months after the relevant accounting reference date.

### **9.03 Annual allocation of income**

- 1 At the end of each annual accounting period, the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) shall arrange for the trustee to transfer the income property of the authorised scheme to an account to be known as “the distribution account”.
- 2 The manager (or the directors, as appropriate) is not obliged to comply with paragraph 1 if it appears to it (or them) that the average of the allocations of income to the holders (disregarding holders of bearer units and holders who are the manager or the trustee or associates of either of them) would be less than £5.00 (or the equivalent amount in the base currency).
- 3 Any income that in accordance with paragraph 2 is not transferred to the distribution account must be carried forward to the next accounting period and be regarded as received at the start of that period.
- 4 On or before each annual income allocation date the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) shall calculate the amount available for income allocation in respect of the immediately preceding annual accounting period.
- 5 The calculation of available income is as follows:
  - (a) take the aggregate of the income property received or receivable for the account of the authorised scheme in respect of the period;
  - (b) deduct the charges and expenses of the authorised scheme paid or payable out of income property in respect of the period;
  - (c) add the manager’s best estimate of any relief from tax on such charges and expenses;
  - (d) make such other adjustments that the manager considers appropriate (in the case of paragraph (i) and (ii), after consulting the auditor) in relation to:
    - (i) taxation;
    - (ii) the proportion of the price received or paid for units that is related to income (taking account of any provisions in the principal documents relating to income equalisation);
    - (iii) potential income which is unlikely to be received until 12 months after the income allocation date;
    - (iv) income which should not be accounted for on an accrual basis because of lack of information about how it accrues; and
    - (v) any transfer between income and capital account under rule 8.12; and
  - (e) make any other adjustments (including for amortisation under rule 8.10) that the manager considers appropriate after consulting the auditor.
- 6 On or before the annual income allocation date, the manager shall allocate the available income to the units of each class in issue taking account of the provisions of its principal documents relating to the proportion of available income attributable to each class.
- 7 This rule will not apply to roll-up funds.

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

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

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

- 1 Subject to paragraph 2, where the units in issue in an authorised scheme are or include income units, on or before each annual income allocation date the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) shall give the trustee timely instructions sufficient to enable the trustee to distribute the income allocated to income units amongst their holders in accordance with the number of such units held by them respectively at the end of the relevant annual accounting period and the trustee shall pay the distribution in accordance with the instructions.
- 2 In calculating the amount to be distributed under paragraph 1, the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) shall:
  - (a) deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period; and
  - (b) deduct and carry forward in the income account such amount as shall be necessary to adjust that allocation of income to the nearest one-hundredth of a penny (or the equivalent amount in the base currency) per income unit or such lesser fraction as the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) may from time to time determine,and the available amount of income for the annual distribution shall be a sum determined by the trustee in the case of a unit trust scheme (or in the case of a company scheme, the directors) which may be less than, but does not exceed, the amount so calculated.
- 3 Nothing in this Part of these rules requires the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) or the trustee to distribute income allocated to any units in any case where the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) or the trustee considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to applicable law or any other obligation.

#### **9.06 Interim allocations of income**

- 1 This rule applies if at any time the most recently published scheme particulars:
  - (a) state that an allocation of income will be made before the annual income allocation date in any year in respect of a period (an “interim accounting period”) within the annual accounting period; and
  - (b) specifies a date as the interim income allocation date in relation to that interim accounting period.
- 2 In such a case, rules 9.03 to 9.05 shall apply so as to secure the making of an interim allocation of income as if:
  - (a) the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;
  - (b) the interim income allocation date were the annual income allocation date; and

- (c) the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) were to treat as the available amount of income for the interim allocation a sum which may be less than, but does not exceed the amount which, in the opinion of the manager (or the directors, as appropriate), would be available for allocation of income if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

#### **9.07 Income equalisation**

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

#### **9.08 Distribution statements**

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

#### **9.09 How distributions may be made**

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

electronic transmission of funds) as though such approved bank or other agent were the sole holder.

- 6 Any distribution payment which remains unclaimed shall be dealt with in accordance with the provisions of the principal documents or, if there are no such provisions, after a period of six years from the date of payment shall then be transferred to and become part of the capital property; and from that time neither the payee nor the holder nor any successor in title of his shall have any right in respect of such distribution payment except as part of the capital property.
- 7 The trustee shall be entitled to appoint a paying agent, with the approval of the manager (and in the case of a company scheme, the directors) and, if the trustee does so:
  - (a) the trustee remains responsible for the discharge of all of the trustee's duties under this rule; and
  - (b) anything required or authorised under this rule to be done by the trustee may be done by the paying agent.

## Part 10 - Reports and Accounts

**Explanation.** *These rules contain a number of requirements relating to reports and accounts in respect of an authorised scheme. In particular:*

*(i) the manager must prepare annual and half-yearly reports, although a half-yearly report need not be prepared where an authorised scheme's first annual accounting period is less than 12 months;*

*(ii) every annual report is to contain accounts of the authorised scheme and a report by the auditor to the holders on the accounts.*

*This Part 10 builds upon the requirements in Part 9 of these rules (which provides how the annual and half-yearly accounting periods shall be determined). It covers the content of reports, including the annual report of the trustee.*

### 10.01 Annual and half-yearly reports

- 1 The manager shall, in relation to each annual and half-yearly accounting period, prepare a report stating the matters set out in Part I of Schedule 3 and otherwise complying with the following requirements of this rule. However, a half-yearly report need not be prepared in relation to the first half-yearly accounting period if the first annual accounting period is a period of less than one year.
- 2 A report which relates to an annual accounting period shall contain:
  - (a) a comparative table relating to that period stating the matters set out in Part II of Schedule 3;
  - (b) a copy of a report of the auditor to the holders on the accounts contained in the report stating the matters set out in Part III of Schedule 3; and
  - (c) a copy of a report of the trustee to the holders stating the matters set out in Part IV of Schedule 3 and supplied to the manager by the trustee in accordance with rule 10.04.
- 3 A report which relates to any accounting period shall contain the accounts of the authorised scheme for the period to which the report relates, which shall, in addition to any matters required by applicable law, consist of:
  - (a) a balance sheet stating the matters set out in Part I of Schedule 4;
  - (b) a statement of total return stating the matters set out in Part II of Schedule 4;
  - (c) a portfolio statement stating the matters set out in Part III of Schedule 4; and
  - (d) if that period is an annual accounting period:
    - (i) a statement of movement in holders' funds stating the matters set out in Part IV of Schedule 4; and
    - (ii) notes to the accounts stating the matters set out in Part V of Schedule 4,

and shall be prepared in accordance with generally accepted accounting practice and shall give a true and fair view of the financial position of the authorised scheme as at the end of the period to which the accounts relate. The foregoing information may be set out separately or may be incorporated into any accounts required by applicable law.

- 4 A report of an umbrella fund shall contain:
- (a) reports relating to each of its sub-funds which shall each, so far as practicable, contain the accounts and the information that would be required by paragraphs 1, 2(a) and 3, if the sub-fund were a separate authorised scheme; and
  - (b) except insofar as contained in a report relating to the sub-fund in accordance with that paragraph:
    - (i) the information referred to in paragraphs 1 and 2(a); and
    - (ii) the copy reports relating to the umbrella fund referred to in paragraphs 2(b) and 2(c).
- 5 A report relating to a sub-fund which is not contained in a report under paragraph 4 shall contain:
- (a) so far as practicable, the accounts and the information that would be required by paragraphs 1, 2(a) and 3 if the sub-fund were a separate authorised scheme;
  - (b) the statements required by paragraph 15 of Part I of Schedule 3; and
  - (c) the copy reports referred to in paragraphs 2(b) and 2(c).
- 6 A report which relates to any accounting period shall be signed by two directors of the manager or, if the manager has only one director, by that director and in the case of a company scheme in accordance with applicable law.
- 7 Subject to applicable law, the manager may elect to prepare short form accounts as set out in Part VI of Schedule 4 for an authorised scheme in respect of any accounting period, and if the manager does so elect it may decide that the accounts to be included in a report sent to or given to holders in accordance with rule 10.02.2 shall be short form accounts except to the extent that, in respect of any particular accounting period, a holder (or the first named of joint holders) has requested that a report containing the full accounts referred to in rule 10.01.3 be sent or given to him.

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

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

#### **10.03 Reports to be offered to purchasers of units**

- 1 Subject to paragraph 2, an authorised scheme shall not effect any sale of its units to any person other than a person who is already a holder of units in the authorised scheme until it has offered

that person free of charge a copy in English of the most recent annual report of the manager and the most recent half-yearly report of the manager (unless it has been superseded by an annual report).

- 2 Paragraph 1 does not apply where the sale is effected otherwise than in the course of a conversation conducted face to face or by telephone, but the manager must send free of charge a copy of the documents mentioned in paragraph 1 to the purchaser if he asks for them.

#### **10.04 Annual report by the trustee**

- 1 It is the duty of the trustee to enquire into the conduct of the manager in the management of the authorised scheme in each annual accounting period and to report thereon to the holders.
- 2 The trustee's report shall contain the matters set out in Part IV of Schedule 3 and shall be delivered to the manager in good time to enable it to include a copy of the report in its report to the holders.

## Part 11 - Meetings and Modifications

**Explanation.** *This Part contains requirements relating to meetings of the holders of units in the authorised scheme. Detailed procedures are left to be covered by the principal documents.*

*This Part also includes provisions relating to the amendment of the principal documents. It should be noted that rule 3.05 covers certain changes to the scheme particulars that require the approval of the holders.*

### Section A Meetings

#### 11.01 Convening of meetings, attendance and voting

- 1 The trustee or the manager in the case of a unit trust scheme (or in the case of a company scheme, the company) may at any time subject to applicable law convene a meeting of holders on such day, and at such time and place, as may be thought fit.
- 2 The manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) shall, on a request in writing which complies with paragraph 6, in accordance with applicable law convene a meeting of holders on such day, and at such time and place, as may be thought fit.
- 3 The manager, or (being a holder) any associate of the manager, shall be entitled to receive notice of and attend at any such meeting and may be counted in the quorum therefor, but, subject to paragraph 4, shall not be entitled to vote 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 at any such meeting in respect of units which it holds as a bare trustee or nominee on behalf of a person entitled to vote and from whom it has received voting instructions.
- 5 The manager, the trustee and their respective legal advisers shall be entitled to attend and be heard at every such meeting.
- 6 The request in writing referred to in paragraph 2 must state the objects of the meeting, be dated, be signed by such number of holders as may be specified in the principal documents and be deposited at the registered office of the manager in the case of a unit trust scheme (or in the case of a company scheme, the company). It may consist of several documents deposited at the same time, each being in like form and signed by one or more holders.
- 7 Any such meeting shall be held in Guernsey or at such place as the manager and the trustee (or in the case of a company scheme, the company) may determine or approve, subject to applicable law.
- 8 For the purposes of this Part “holders” shall mean only:
  - (a) the persons who were holders on the date seven days before the notice of the relevant meeting was deemed to have been served in accordance with rule 11.13, but excluding any persons who are known not to be holders at the time of the meeting; or
  - (b) in the case of bearer units, holders of bearer units which were in issue on the date seven days before the notice of the relevant meeting was deemed to have been served in accordance with rule 11.13.

### **11.02 Powers of a meeting of holders**

- 1 A meeting of holders duly convened and held in accordance with this Part of these rules shall, subject to applicable law, be competent by extraordinary resolution to require, authorise or approve any act, matter or document in respect of which any such resolution is required or expressly contemplated by these rules, but shall not have any other powers, except such as are permitted by applicable law and not inconsistent with these rules, or required by applicable law.
- 2 If a meeting of holders is convened by the manager or the trustee (or in the case of a company scheme, the company) to consider a resolution for the removal of the trustee or the manager, the person convening the meeting shall ensure that the notice is accompanied by a statement of the reasons for proposing the resolution.

### **11.03 Notices of meetings of holders**

- 1 Fourteen days' written 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 in rule 11.13.
- 2 The notice shall specify the place, day and hour of the meeting and the terms of the resolutions to be proposed.
- 3 A copy of the notice shall be sent by post by the manager to the trustee or by the trustee to the manager, as the case may be (and in the case of a company scheme, by the company to both the manager and the trustee).
- 4 Subject to applicable law, the accidental omission to give notice to or the non-receipt of notice by any of the holders shall not invalidate the proceedings at any meeting.

### **11.04 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 or, in the case of a corporation, by a duly authorised representative as is specified in the principal documents.
- 2 Subject to paragraph 3, no business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3 If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall stand adjourned in accordance with applicable law to such day and time (not being less than seven days thereafter) 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 or by duly authorised representative shall be a quorum.
- 4 Ten days' notice of any adjourned meeting of holders shall be given in the same manner as for an original meeting where such meeting is adjourned for 14 days or more and such notice shall state (if permitted under applicable law) that the holders present at the adjourned meeting whatever their number and the value of units held by them will form a quorum. Save as aforesaid, it shall not be necessary to give separate notice of an adjournment or of the business to be transacted at an adjourned meeting provided such notice is given in the original notice of meeting.

### **11.05 The chairman**

Some person who, if applicable law so permits, need not be a holder, either nominated in writing by the trustee or if applicable law does not so permit, elected in accordance with applicable law, shall preside at every meeting of holders; and, if no such person is nominated or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the holders present shall elect one of their number to be chairman.

### **11.06 Adjournment**

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

### **11.07 Votes at meetings**

- 1** At any meeting of holders a resolution put to the vote of the meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands) a poll is demanded by the chairman or by one or more holders present in person or, if permitted under applicable law, by proxy and holding or representing such number or value of units as may be specified for this purpose in the principal documents in accordance with applicable law.
- 2** Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against such resolution.
- 3** If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of a poll shall be deemed to be the resolution in respect of which the poll was demanded.
- 4** A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such day, time and place as specified under applicable law or as the chairman may direct. A demand for a poll may be withdrawn at any time.
- 5** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 6** On a show of hands every holder who (being an individual) is present in person or, if permitted under applicable law, by proxy or (being a corporation) is present by one of its officers as its proxy shall have one vote.
- 7** On a poll every holder who is present in person or by proxy, if permitted under applicable law, shall have one vote for every complete unit and a further part of one vote proportionate to any fraction of a unit of which he is the holder. A person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.
- 8** A body corporate being a holder may authorise such person as it thinks fit to act as its representative at any meeting and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual holder.
- 9** In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, if permitted under applicable law, shall be accepted to the exclusion of the votes of the other joint holders (unless agreed otherwise by the joint holders); and for this purpose seniority shall be determined by the order in which the names stand in the register of holders.
- 10** On a poll, subject to applicable law, votes may be given either personally or by proxy.
- 11** Except where an extraordinary resolution is specifically required or permitted by these rules and subject to applicable law, any resolution required under these rules shall be passed by a simple majority of the votes validly cast for and against the resolution at a meeting of holders.
- 12** In the case of an equality of votes cast (whether on a show of hands or on a poll) in respect of a resolution put to a meeting, any chairman appointed pursuant to the principal documents shall be entitled, subject to applicable law, to a casting vote in addition to any other vote he may have.

### **11.08 Proxies**

- 1 A holder entitled to attend and vote at a meeting of holders is, subject to applicable law, entitled to appoint another person (a “proxy”) to attend and vote in his place (whether a holder or not).
- 2 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney being authorised in writing or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorised.
- 3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at such place as the trustee or the manager with the approval of the trustee may in the notice convening the meeting direct, or if no such place is appointed then at the registered office of the manager in the case of a unit trust scheme (or in the case of a company scheme, the company), not less than 48 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote; and in default the instrument of proxy shall not be treated as valid.
- 4 No instrument for appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.
- 5 An instrument of proxy may be in the usual common form or in a form prescribed in the principal documents or any other form which the trustee approves.
- 6 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the units in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer has been received at the place appointed for the deposit of proxies (or if no such place is appointed at the registered office of the manager) before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **11.09 Minutes**

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

### **11.10 Class meetings**

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

### **11.11 Variation of class rights**

The rights attached to a class of units shall not be varied except with the sanction of a resolution passed at a class meeting of the holders of that class; and the principal documents may require such a resolution to be passed by more than a simple majority of the votes validly cast for and against it.

### **11.12 Umbrella funds**

This Part of these rules shall apply in the case of an umbrella fund to each sub-fund as well as to the umbrella fund as a whole and shall so apply as if the reference to the holders were a reference to the holders of units in that sub-fund. However, a meeting of holders of units in one sub-fund only may, in pursuance of rule 11.02.1:

- (a) sanction a modification, alteration or addition to a provision of the principal documents only if the provision relates only to that sub-fund;
- (b) sanction a departure by the manager from a policy statement included in scheme particulars as long as that statement relates only to that sub-fund; or
- (c) sanction a reconstruction or unitisation or winding-up of that sub-fund.

### **11.13 Service of notices and other documents**

- 1** Any notice or document required to be served upon a holder shall be deemed to have been duly served:
  - (a) 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
  - (b) in the case of units for the time being represented by bearer certificates, if it is given in the manner provided for in the most recently published scheme particulars.
- 2** Any notice required to be served or information to be supplied or given to any other person, including the Commission, shall be in writing or in such other form as enables the recipient to know or to record the time of receipt and to preserve a legible copy of the notice.
- 3** Any notice or document served by post shall, unless the contrary is shown, be deemed to have been served, in the case of a notice or document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day following that on which the same is posted and, in the case of a notice or document sent elsewhere by airmail, on the seventh day following that on which the same is posted (excluding in each case any day which is not a business day) and in proving such service it shall be sufficient to prove the date of posting, the address and the fact of prepayment; and any notice or document left at a registered address or delivered other than by post shall be deemed to have been served on the day it was so left or delivered.
- 4** Service of a notice or document on any one of the joint holders shall be deemed effective service on the other joint holders.

## **Section B Amendment to Principal Documents**

### **11.14 Amendment to principal documents**

- 1** The principal documents may, subject to applicable law, be amended by an extraordinary resolution.
- 2** Notwithstanding paragraph 1 an amendment to the principal documents that relates to a particular class of units or particular classes and does not prejudice the holders of any other class may be made, subject to applicable law, by an extraordinary resolution passed at a class meeting or class meetings.
- 3** Notwithstanding paragraph 1 an amendment may be made to the principal documents without a meeting, subject to applicable law, if:
  - (a) the amendment is required solely:
    - (i) to implement any change in the law, including a change brought about by an amendment of these rules;
    - (ii) as a direct consequence of any such change;

- (iii) to change the name of the authorised scheme;
  - (iv) to remove from the principal documents obsolete provisions;
  - (v) to replace the manager or the trustee when it has been removed or wishes to retire or has retired;
  - (vi) to include a provision to enable the manager to deduct a charge on redemption;
  - (vii) to remove references to a sub-fund of an umbrella fund, following the approval of the Commission to a proposal to alter the authorised scheme by removing that sub-fund;
  - (viii) to make any other change to the principal documents which the manager and the trustee in the case of a unit trust scheme (or in the case of a company scheme, the directors) have agreed in writing does not involve any holder or potential holder in any material prejudice, excluding a change to the category of the authorised scheme; or
  - (ix) by virtue of rule 15.02.3, rule 15.05.3 or rule 15.08 (transitionals); and
- (b) it is made solely to reflect the introduction of a new sub-fund.

## **Part 12 - Special Provisions for Certain Categories of Scheme**

### **12.01 Efficient portfolio management: off-exchange options**

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

## Section A Futures and Options Funds

### **12.02 Off-exchange derivatives: discrepancy in valuation**

If at any time it appears to the manager that the latest valuation provided to it under rule 5.10.3(a) and the latest valuation under rule 5.10.4 are not reasonably similar in amount then the manager must:

- (a) take, after consulting the trustee (and in the case of a company scheme, the directors), whatever action relating to the transaction which appears to be in the best interests of the holders; and
- (b) consider with the trustee (and in the case of a company scheme, the directors) whether the discrepancy requires them to consider the validity of the pricing model relevant to further off-exchange transactions under rule 5.10.1.

### **12.03 Special rule for issues and redemptions**

- 1 This rule modifies Part 4 for futures and options funds.
- 2 Rules 4.12.1 and 4.13.1 do not apply in the 15 minutes immediately before a regular valuation point, or, if the regular valuation points are less than one hour apart, in the last quarter of the interval between them, if the manager has stated in the scheme particulars that it is not obliged to issue or redeem in the 15 minutes (or lesser period) immediately preceding a regular valuation point.
- 3 Where the manager has so stated in the scheme particulars, then it may not, during the period, agree or decide to sell or redeem units for itself as principal, or arrange for the creation or cancellation of units, when not acting as principal.

## Section B Geared Futures and Options Funds

### **12.04 Special rules for pricing**

- 1 This rule modifies Part 4 for geared futures and options funds.
- 2 Prices for issue and redemption are to be on a forward basis only, and rule 4.24 does not apply.
- 3 Valuation of the scheme property is to be carried out at least once on every business day.

### **12.05 Special rule for issues and redemptions**

- 1 This rule modifies Part 4 for geared futures and options funds.
- 2 Rules 12.03.2 and 12.03.3 shall apply to such funds.

## Section C Property Funds

### **12.06 Standing independent valuer**

- 1 The manager shall, at the outset and upon any vacancy, with the approval of the trustee appoint as the standing independent valuer for the scheme a person who is qualified under paragraph 2.

- 2 A person is qualified to be the standing independent valuer if he is:
  - (a) a fellow or professional associate of the Royal Institution of Chartered Surveyors;
  - (b) a fellow or associate of the Incorporated Society of Valuers and Auctioneers;
  - (c) a fellow or associate of the Institute of Revenues, Rating and Valuation; or
  - (d) a member of a professional body approved by the Commission for these purposes.
- 3 A person is eligible to be appointed, or to retain appointment, as the standing independent valuer only if he is independent of the manager and trustee, in that:
  - (a) neither he nor any partner (if any) or fellow director (if any) of his:
    - (i) is an officer, servant or controller of; or
    - (ii) has a financial interest which it is reasonable to regard as significant in,
 

the trustee or manager or any body corporate in the same group as the trustee or manager; and
  - (b) neither the trustee nor the manager nor any body corporate in the same group as the trustee or manager has a financial interest which it is reasonable to regard as significant in any partnership of which the person is a member or in any body corporate of which he is a director or controller.
- 4 The standing independent valuer may be removed from office by notice in writing given by the manager or by the trustee (or in the case of a company scheme, by the company); the manager may not give any such notice without the agreement of the trustee, and the trustee must inform the manager of any notice given by it.
- 5 Any partner of the person appointed to be the standing independent valuer who would himself be eligible for appointment may act on his behalf and, if the standing independent valuer considers it expedient that another person who is an appropriate valuer should act on his behalf, he may appoint that other as his delegate for the purpose of any specific valuation.
- 6 Details of the standing independent valuer shall be given in the scheme particulars.

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

- 1 The standing independent valuer shall value all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year.
- 2 The standing independent valuer shall also value the immovables, on the basis of a review of the last full valuation, at least once a month.
- 3 The trustee may at any time require the manager to procure an additional valuation under paragraph 1 or under paragraph 2 as the trustee may specify.
- 4 Where, since the last valuation under paragraph 1, any new immovable has been purchased for the authorised scheme, and any appropriate valuer under rule 5.32.10 was not the standing independent valuer, the standing independent valuer shall:
  - (a) if the report of the appropriate valuer was on the basis of full valuation with internal inspection, review that valuation as part of any valuation under paragraph 2 until the next full valuation under paragraph 1; and
  - (b) if the report of the appropriate valuer was not on the basis in (a), value the immovable on that basis as part of his next valuation under paragraph 2.

- 5 The manager and trustee (or in the case of a company scheme, the company) shall inform the standing independent valuer forthwith upon its becoming aware of any matter appearing likely to:
- (a) affect the outcome of a valuation of an immovable;
  - (b) cause the valuer to decide to value under paragraph 1 instead of under paragraph 2; or
  - (c) cause the valuer to recommend to the trustee that it should make a requirement under paragraph 3.
- 6 The manager and trustee shall each use its best endeavours to ensure that any affected person reports to the valuer forthwith upon that person becoming aware of any matter within paragraph 5.
- 7 Any valuation by the standing independent valuer (except one under paragraph 4(a)) shall be on the basis prescribed as an ‘open market value’ in the current Statements of Asset Valuation Practice and guidance notes on the valuation of assets published by the Assets Valuation Standards Committee of the Royal Institution of Chartered Surveyors of the United Kingdom.

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

- 1 This rule modifies Part 4 for property funds.
- 2 Any valuation under rule 12.07 shall have effect, until the next valuation under that rule, for the purposes of ascertaining the value of immovables under Part 4.
- 3 Prices for the issue and redemption are to be on a forward basis only, and rule 4.24 does not apply.
- 4 An agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the scheme property unless it appears to be legally enforceable.
- 5 Dealing costs are to be those estimated by the standing independent valuer, and his estimate must have regard to any special reduction which he believes should be available to the manager in the amount or rate of charges or commission payable.
- 6 Rule 4.04 (compulsory termination of initial offer) does not apply to property funds.

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

- 1 Where, immediately upon the expiry of the period of the initial offer, it appears to the manager (or in the case of a company scheme, the company) that the aggregate of monies paid or agreed to be paid for units to be created or sold is less than £5m (or the equivalent in the base currency):
- (a) the manager may not deduct any preliminary or periodic charge in respect of any units to be created on or after that expiry;
  - (b) the manager must credit back to the account of the holder any preliminary or periodic charge deducted on creating units during the initial period; and
  - (c) the manager and the trustee (or in the case of a company scheme, the company) must apply to the Commission for revocation of the declaration of authorisation.
- 2 Paragraph 1 applies, where there is no initial offer, as if:
- (a) the period of the process of unitisation; or
  - (b) the period of 21 days after the date on which persons are first invited to become holders, were the period of the initial offer.

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

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

- (a) a breach of any provision of Part 5; or
- (b) a circumstance within the meaning of rule 7.14.4 or 7.14.5,

the manager must forthwith notify that breach (or circumstance) together with the manager's proposals for rectification (or restoration of compliance) to:

- (i) the trustee (and in the case of a company scheme, the company); and
- (ii) the Commission.

#### **12.11 Suspension of dealings**

- 1** This rule applies, without prejudice to rule 13.01, if at any time it appears to the trustee that there is insufficient property in the authorised scheme by way of:
  - (a) cash or near cash;
  - (b) property related assets; or
  - (c) other assets capable of early liquidation,to enable the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) to cancel units as necessary to enable the manager to meet the demand or likely demand for redemption of units.
- 2** In such a case, the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company):
  - (a) shall require the manager to suspend dealings in units (whether by way of issue, redemption, purchase or sale);
  - (b) shall not, while the suspension remains in force, create or cancel units;
  - (c) shall forthwith inform the Commission of the suspension, stating the reasons for its action; and
  - (d) shall thereupon confirm the suspension by giving notice in writing:
    - (i) to the manager;
    - (ii) to the Commission; and
    - (iii) to the authorities in any jurisdiction in which the authorised scheme is registered for public sale.
- 3** The manager shall comply with a requirement under paragraph 2(a) and shall notify the suspensions to the authorities in any jurisdiction in which the authorised scheme is registered for public sale.
- 4** Following the suspension, the manager shall report to the Commission with such frequency as the Commission shall require (and in writing if so required) giving particulars of the action being taken to enable dealings in units to be resumed.
- 5** The suspension shall expire on the close of business on the 28th day after the date of the suspension, unless extended under paragraph 6.
- 6** If it appears to the manager, or to the trustee (or to the company, as appropriate) that it is desirable in the interests of the holders that the suspension should be extended (or further extended) it may, not less than five business days before the date of expiry of the suspension, apply to the Commission requesting such extension.
- 7** Rules 4.12 and 4.13 (obligation to sell and redeem) are subject to this rule.

### **Section D Warrant Funds**

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

- 1** This rule modifies Part 4 for warrant funds.

- 2 Prices for issue and redemption are to be on a forward basis only, and rule 4.24 does not apply.
- 3 Valuation of the property of the scheme is to be carried out at least once on every business day.

## Section E Feeder Funds and Funds of Funds

### 12.13 Pricing and valuation of feeder funds

- 1 The manager of a feeder fund shall deal on the same basis (forward or historic) as the scheme into which the feeder fund feeds.
- 2 The normal valuation point for a feeder fund must be within two hours after each normal valuation point for the scheme into which the feeder fund feeds.

### 12.14 Valuation of funds of funds

- 1 A fund of funds shall be valued no less frequently than would be required if the fund of funds were itself an authorised scheme within the relevant Section (out of Sections B, C, D, E, F or G) which is appropriate for the choice of investment by the authorised scheme under rule 5.44.1, and the manager of a fund of funds shall deal on the basis of forward prices if this would be applicable if it were a scheme within that relevant Section.
- 2 Where a fund of funds invests in money market funds (within Section C), Section C is appropriate within paragraph 1 only if the authorised scheme does not invest in any other category of scheme.

## Section F Umbrella Funds

**Explanation.** *An umbrella fund provides a number of sub-funds in which contributions from holders are pooled separately and enables investors to switch all or part of their investment from one sub-fund to any other.*

*In general except as stated in these rules and, in particular, below, these rules apply to an umbrella fund as they apply to other authorised schemes.*

### 12.15 Qualification to be authorised as an umbrella fund

A proposed umbrella fund does not qualify for a declaration of authorisation unless, if each of its sub-funds were a separate scheme, each would qualify for a separate declaration of authorisation.

### 12.16 Base currency

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

### 12.17 Allocation of scheme property

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

### 12.18 Investment and borrowing powers

Except in the case of rule 5.17 (significant influence), the rules contained in Part 5 shall be applied as if each sub-fund were a separate authorised scheme.

### 12.19 Income

Except in the case of rules 9.01 and 9.02, the rules contained in Part 9 shall be applied as if each sub-fund were a separate authorised scheme.



## Part 13 - Suspension and Termination

### Section A Suspension and Resumption of Dealings in Units

**Explanation.** *This Section sets out the circumstances in which a manager must or may suspend dealing in units in the authorised scheme and the manner in which a suspension is to be carried into effect.*

#### 13.01 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, suspend the creation, 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:
  - (a) inform the Commission of the suspension, stating the reason for its action; and
  - (b) forthwith give written confirmation of the suspension and the reasons for it to:
    - (i) the Commission; and
    - (ii) 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 in Part 4 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 paragraph 1 and in any event within 28 days of the commencement of the suspension of dealings in units.
- 5 Before the suspension of dealings in units ceases, the manager shall inform the Commission of the proposed resumption and forthwith after the resumption shall confirm the resumption by giving notice in writing to the authorities specified in paragraph 2(b).
- 6 Nothing in this rule shall prevent the manager from agreeing, during the period of the suspension, to sell or to redeem units or to arrange for the trustee in the case of a unit trust scheme (or in the case of a company scheme, the company) to create or cancel them at a price calculated by reference to the first valuation point after resumption of dealings in units.
- 7 This rule may be applied to one or more classes of unit without being applied to other classes of unit in an authorised scheme and shall apply to a sub-fund (of an umbrella fund) as it applies to an authorised scheme, but by reference to the trustee of the class or classes related to the sub-fund and to the scheme property attributable to the sub-fund; however, for the purpose of paragraph 1, the manager or the trustee (as the case may be) shall have regard to the interests of all of the holders in the authorised scheme (or umbrella fund).

### Section B Termination

**Explanation.** *This Section contains provisions relating to the winding-up of an authorised scheme, including the circumstances in which a scheme falls to be wound up.*

### **13.02 When a unit trust scheme is to be wound up**

Forthwith upon the happening of any of the events specified in rule 13.06 the trustee shall cease the creation and cancellation of units in the authorised scheme, the manager shall cease the sale and redemption of units in the authorised scheme and the trustee shall proceed to wind up the authorised scheme in accordance with rule 13.03.

### **13.03 Manner of winding-up a unit trust scheme**

- 1** Upon the passing of an extraordinary resolution approving the reconstruction of the authorised scheme with another body or scheme the trustee shall wind up the authorised scheme 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 13.02 realise the scheme property and, after paying or providing for all liabilities properly payable and retaining provision for the costs of the winding-up, distribute the proceeds of that realisation to the holders and the manager as they may direct (upon production by them of evidence as to their entitlement thereto) proportionately to their respective interests in the authorised scheme. Provided that if the manager so directs or the principal documents so require, the trustee shall rather than realising any of the scheme property distribute it *in specie* amongst the holders in satisfaction of their proportionate entitlements.
- 3** Any unclaimed net proceeds or other cash held by the trustee after the expiration of 12 months from the date on which the same became payable shall be distributed by the trustee in accordance with applicable law subject to the trustee having a right, if applicable law so permits, to retain thereout any expenses incurred by it in making that distribution.

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

Forthwith upon the happening of any of the events specified in rule 13.06 the company shall cease the creation and cancellation of units in the authorised scheme, the manager shall cease the sale and repurchase of units in the authorised scheme and:

- (a) where rule 13.06(a) applies, the directors of the company 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; or
- (b) where either rule 13.06(b), (c), (d) or (e) applies, the authorised scheme shall be wound up in accordance with the terms of the principal documents and applicable law.

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

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

### **13.06 Winding-up events**

The events referred to in rule 13.02, 13.04 and 13.07 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 an extraordinary resolution passed by the holders determines that the authorised scheme shall be wound up;

- (c) where the principal documents so provide, when the date for the termination of the authorised scheme is reached without an extraordinary resolution passed by the holders postponing the termination;
- (d) when any agreement by the Commission to a request by the manager in the case of a unit trust scheme (or in the case of a company scheme, the directors) for the revocation of the declaration of authorisation in respect of the authorised scheme (or, in the case of the sub-fund of an umbrella fund, for the revocation of the declaration of authorisation in respect of that sub-fund, where there is a separate declaration of authorisation in respect of that sub-fund, or for the amendment of the declaration of authorisation in respect of the umbrella fund to refer only to the other sub-funds, where there is not a separate declaration of authorisation in respect of that sub-fund) becomes effective, albeit that such agreement is subject to there being no material change in any relevant factor prior to the date of revocation; or
- (e) where the principal documents so provide, when the value of the scheme property calculated in accordance with Part 5 falls below the value prescribed in the principal documents and scheme particulars for the requisite period (if any) and the manager, in the case of a unit trust scheme (or in the case of a company scheme, the directors), elect to wind up the authorised scheme.

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

- 1 For the purposes of this rule, rules 13.02, 13.03 and 13.06 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) “extraordinary resolution” were references to an extraordinary resolution passed at a meeting of holders as defined in (a);
  - (d) “scheme property” were references to the scheme property allocated or attributable to the sub-fund to be terminated;
  - (e) “liabilities” were references to liabilities of the umbrella fund allocated or attributable to the sub-fund to be terminated; and
  - (f) “trustee” were references to the trustee in the case of a unit trust scheme, or to the company in the case of a company scheme.
- 2 A sub-fund of an umbrella fund shall be wound-up in accordance with rules 13.02 and 13.03, in the case of a unit trust scheme, and rules 13.04 and 13.05, in the case of a company scheme.

### **13.08 Additional provisions applicable to certain umbrella funds**

- 1 In the case of a company scheme and subject to applicable law, liabilities of an umbrella fund attributable, or allocated in accordance with rule 12.17, to a particular sub-fund shall be met first out of the scheme property attributable or allocated to such sub-fund.
- 2 In the case of a company scheme and subject to applicable law, if the liabilities to be met out of a particular sub-fund of an umbrella fund are greater than the proceeds of the realisation of the scheme property attributable or allocated to that sub-fund, the deficit shall be met out of the scheme property attributable or allocated to sub-funds (the “solvent sub-funds”) of the umbrella fund in respect of which the proceeds of realisation exceed liabilities and divided between those sub-funds in a manner that is fair to the holders in the solvent sub-funds.
- 3 In the case of a company scheme and subject to applicable law, paragraph 2 shall apply in respect of any deficit arising as a result of additional liabilities accruing to a sub-fund through the operation of paragraph 2.

## Section C Reconstruction and Unitisation

### **13.09 Reconstruction and unitisation**

- 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 scheme, the proposal shall not be implemented without the sanction of an extraordinary resolution of the holders of the authorised scheme or (as the case may be) of the class(es) of units related to the sub-fund and the prior written approval of the Commission.
- 2** Where it is proposed that an authorised scheme or sub-fund of an umbrella fund should receive property as a result of a unitisation, then (without prejudice to rule 4.06) the proposal shall not be implemented without the sanction of an extraordinary resolution of the holders of the authorised scheme or (as the case may be) of the class(es) of units related to the sub-fund and the prior written approval of the Commission unless paragraph 3 applies.
- 3** This paragraph applies if the trustee in the case of a unit trust scheme (or in the case of a company scheme, the directors) is (or are) reasonably satisfied that the inclusion of the property concerned:
  - (a) is not likely to result in any material prejudice to the interests of the holders in the authorised scheme;
  - (b) is consistent with the objectives of the authorised scheme or the sub-fund; and
  - (c) could be effected without any breach of Part 5.

## **Part 14 - Authorisation**

### **14.01 Application**

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

- (a) the appropriate application form;
- (b) a certificate from an approved law firm stating that the principal documents comply with all of these rules relating to their contents;
- (c) signed or certified copies of the principal documents, the scheme particulars, and other agreements material to the scheme;
- (d) the application fee as prescribed from time to time by Rules made under section 22 of the Law; and
- (e) such other information as the Commission may require.

### **14.02 Declaration**

- 1 Each declaration of authorisation shall state that the authorised scheme is a Class A Scheme, and which category of authorised scheme the Class A Scheme falls into.
- 2 Where a Class A Scheme seeks to make an alteration to its principal documents, the submission of a certificate from an approved law firm under rule 7.17.2 which does not give an unqualified confirmation that the principal documents will continue to comply with such of these rules as relate to the contents of the principal documents, shall be treated as an application for a Class B Scheme declaration.

### **14.03 Undertakings**

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

### **14.04 Continuing compliance obligation**

- 1 In the case of a Class A Scheme which is not incorporated or established under the law of Guernsey (a “non-Guernsey Scheme”) the manager must notify the Commission immediately if applicable law is changed or if the principal documents are amended to comply with applicable law, with the result that the principal documents no longer comply with such of these rules as relate to the contents of the principal documents.
- 2 Notice pursuant to paragraph 1 must identify which of these rules the principal documents, in complying with requirements of applicable law, no longer comply with, and must include a statement to the effect that the manager, after taking proper advice, considers that the scheme overall affords to investors protection at least equivalent to these rules.
- 3 On receipt of notice pursuant to paragraph 1 the Commission may, at its discretion confirm, in writing, the declaration of authorisation of the non-Guernsey Scheme as a Class A Scheme, or may revoke the declaration of authorisation, or may make such other declaration as it may deem appropriate, including that the non-Guernsey Scheme should continue as a Class B Scheme if the manager specifically so requests.

## Part 15 - Transitionals

### 15.01 Transitional: general

In this Part:

- (a) “the effective date” is the date on which the previous rules will be revoked by the Commission;
- (b) “the previous rules” means the Collective Investment Schemes Rules 1988;
- (c) “the Schedule” means Schedule 1 to the Collective Investment Schemes Rules 1988; and
- (d) “Schedule 4” means Schedule 4 to the Collective Investment Schemes Rules 1988.

### 15.02 Transitional: deeds etc.

**1** In relation to any scheme in existence (or treated for transitional purposes as in existence) on the day before the effective date:

- (a) the principal documents shall have effect as if the information, statements and provisions required or enabled by the following paragraphs of the Schedule were deleted from such principal documents on the effective date:

In Part I: **Matters which must be contained in the principal documents:**

- 8 Annual accounting period;
- 9 Half-yearly accounting period;
- 10 Annual income allocation date;
- 13 Variation of principal documents;

In Part II: **Matters which may be contained in the principal documents:**

- 4 Initial price;
- 5 Period of the initial offer;
- 9 Interim income allocation date;
- 10 Cash deposits with trustee, manager or associates;
- 18 Dealings by manager, trustee and other persons;
- 24 Borrowing from trustee or associates;
- 26 Investment adviser;

- (b) the principal documents shall have effect on and after the effective date and until the first date thereafter on which a change is made to the principal documents as if the provision required by paragraph 7 of Schedule 4 (Scheme Particulars - the constitution and objectives of the scheme) were regarded as a restriction imposed by the principal documents under rule 2.02.2;
- (c) the principal documents shall have effect:
  - (i) on and after the effective date and until the first occasion on or after that date when the scheme particulars relating to the scheme are revised under rule 3.04 (as to which see rule 15.03 below) as if no change had been made by these rules in respect of the information enabled by paragraph 1 of Part II (Remuneration and disbursements of the manager and the trustee) of the Schedule; and

- (ii) on and after the revision mentioned in sub-paragraph (i), until the first date thereafter on which a change is made to the principal documents, as if the information enabled by that paragraph of the Schedule were deleted from the principal documents;
  - (d) if the scheme is described in the principal documents as a securities fund, the principal documents may be treated on and after the effective date as if it included a provision describing it as a securities fund;
  - (e) where on the effective date a fund of funds has the power to invest in securities funds (including for this purpose a predecessor of such a fund) or in money market funds, or in one or more of both those types of scheme, the principal documents shall be deemed to incorporate a statement identifying that type or as the case may be those types of scheme as the category or categories of scheme in which the fund of funds may invest; and
  - (f) references to the previous rules or anything in them may be treated as references to these rules or to the equivalent provision in these rules.
- 2 The manager (and, in the case of a company scheme, the directors) and the trustee shall ensure that, on the first occasion on or after the effective date on which a change is made to the principal documents, the principal documents are amended so as to ensure that the principal documents have the content which they would have had, had the scheme not been governed by this Part.
- 3 No amendment to the principal documents relating only to matters which are attributable to the replacement of the previous rules by these rules shall require any resolution of the holders, unless the scheme is a fund of funds which is proposed to invest in any category of fund not currently open to it.
- 4 For the purposes of paragraph 3:
- (a) the provisions of Section K in Part 5 (efficient portfolio management) may be regarded as replacing the provisions in the previous rules relating to hedging; and
  - (b) that paragraph shall apply to any replacement by way of amendment of these rules as it applies to replacement of the previous rules.

#### **15.03 Transitional: scheme particulars**

- 1 In relation to any scheme in existence on the day before the effective date, there shall be no obligation to revise the scheme particulars as a result of these rules until the first occasion when the scheme particulars would otherwise be required to be revised under rule 3.04, and no revision required solely as a result of these rules shall require any resolution of the holders.
- 2 Paragraph 22(d) in Schedule 2 shall apply to any scheme particulars issued or revised after the effective date.
- 3 A revision to the scheme particulars solely to comply with paragraph 22(d) in Schedule 2 is not a revision for the purposes of rule 15.05 below.

#### **15.04 Transitional: investment and borrowing powers**

- 1 Where any scheme which was lawfully invested before the effective date becomes, by virtue of any provision of Part 5, unlawfully invested on the effective date, rules 7.14.6 and 7 shall apply as if the change in the rules were a circumstance envisaged by 7.14.4. or 5.
- 2 In relation to any scheme in existence on the effective date, the commencement of Part 5 shall not, of itself, enlarge the powers of investment or of borrowing, until the scheme particulars have been revised as a result of these rules; and that revision will entail an extraordinary resolution under rule 11.14 if, but only if, the scheme particulars in force immediately before the effective date represent a restriction:

- (a) as a result of which the scheme does not have fully available to it the investment and borrowing powers which otherwise would have been available to it under the previous rules; and
  - (b) which would be reduced or abolished in its effect if the revision were made.
- 3 A restriction is not reduced or abolished for the purposes of paragraph 2 by virtue only of a replacement of a reference, however phrased, to hedging by a reference, however phrased, to efficient portfolio management.

**15.05 Transitional: trustee and manager’s remuneration, charges and expenses**

Until the first occasion on which the scheme particulars of any scheme are revised, the provisions relating to trustee and manager’s remuneration, charges and expenses shall be governed by the regime in force until the previous rules

**15.06 Transitional: efficient portfolio management**

- 1 Until the first occasion on which the scheme particulars of any scheme are revised, these rules may be taken to apply to that scheme as if the regime in force under the previous rules relating to hedging continual in force in place of the regime relating to efficient portfolio management contained in Section K in Part 5 above.

**15.07 Transitional: off-exchange futures**

No amendment to the principal documents or to the scheme particulars relating only to the introduction into Part 5 of off-exchange futures shall require any resolution of the holders.

**15.08 Transitional: investment in units of authorised schemes**

- 1 Subject to paragraph 2 until the effective date or any earlier date on which the principal documents are modified a fund of funds may invest in a securities fund, a warrant fund and an umbrella fund to the extent that a statement in its principal documents as at the effective date permits it to invest in an authorised scheme of equivalent category and such statement shall, insofar as necessary, be deemed to be amended accordingly.
- 2 Paragraph 1 shall only apply after:
- (a) the manager (and, in the case of a company scheme, the directors) has given to the holders the requisite period of notice in writing of the categories of authorised scheme deemed to be included in the statement in the principal documents; and
  - (b) the scheme particulars have been revised to take account of the references to the equivalent categories of authorised scheme deemed to be included in the statement in the principal documents.
- 3 The requisite period referred to in paragraph 2 shall be twenty-one days except to the extent that it is impracticable for the manager (and, in the case of a company scheme, the directors) to give twenty-one days’ notice because the manager (and in the case of a company scheme, the directors) could not reasonably have been expected to have known sufficiently early of a change proposed to be made to an existing investment of the fund of funds in which case the requisite period shall be as long a period of notice as is reasonably practicable.
- 4 Subject to paragraph 5, until the effective date or any earlier date on which the principal documents are modified a scheme which is not a fund of funds may invest in a securities company, a warrant company and an umbrella company to the extent that a statement in its principal documents as at the effective date permits it to invest in an authorised scheme of equivalent category and such statement shall, insofar as necessary, be deemed to be amended accordingly.
- 5 Paragraph 4 shall only apply after the manager (and, in the case of a company scheme, the directors) has given the trustee notice in writing of the categories of authorised company deemed to be included in the statement in the principal documents.

**15.09 Transitional: annual or half-yearly accounting periods**

In respect of any annual or half-yearly accounting period commencing before the effective date, the manager (and, in the case of a company scheme, the directors) may choose between the rules contained in Schedule 3 and Schedule 4 in these rules or the equivalent rules contained in Schedule 2 and Schedule 3 under the previous rules.

## Schedule 1

### Contents of Principal Documents

#### Part I - Matters which must be Contained in the Principal Documents

The following matters must be contained in the principal documents of an authorised scheme, and where there is more than one of such documents it shall be sufficient for these purposes if the relevant matter is included in at least one of those documents.

**1 Name of authorised scheme**

A statement of the name of the authorised scheme being a name not inconsistent with the objectives of the authorised scheme.

**2 Governing law**

A statement of the applicable law under which the principal documents are made and governed.

**3 Principal documents to be binding and authoritative**

A statement that the principal documents are binding on each holder, as if he had been a party to them, and authorise and require the trustee and the manager (and in the case of a company scheme, the directors) to do the things required of them under the terms of the principal documents.

**4 Status of authorised scheme**

A statement of which of the categories of authorised scheme specified by the Commission the authorised scheme belongs to or is intended to belong to: and, in the case of an umbrella fund, this statement is to be made separately in relation to each sub-fund.

**5 Feeder funds**

If the authorised scheme (or in the case of an umbrella fund any sub-fund) is a feeder fund, a statement of the name of the scheme into which it is to feed.

**6 Funds of funds**

If the authorised scheme is a fund of funds, a statement of the category or categories of scheme in which the fund of funds may invest.

**7 Base currency**

A statement of what currency is the base currency of the authorised scheme, and, in the case of an umbrella fund, this statement is to be made separately in relation to each sub-fund.

**8 Investment powers in eligible markets**

Except in the case of a feeder fund or a fund of funds, a statement that, subject to any restriction in these rules or the principal documents, the authorised scheme has the power to invest in any securities market or deal on any derivatives market:

- (a) which is an eligible securities or derivatives market for that authorised scheme by virtue of these rules; or
- (b) to the extent that power to do so is conferred by these rules irrespective of any issue of eligibility.

## **9 Declaration of trust**

A declaration that, subject to the provisions of the principal documents and to all applicable rules for the time being in force under the Law:

- (a) the scheme property (other than sums standing to the credit of the distribution account) is held by the trustee in the case of a unit trust scheme on trust for the holders of the units (and in the case of a company scheme, for the company,) and pari passu according to the number of units held by each holder or, in the case where income units and accumulation units are both in issue, according to the number of undivided shares in the scheme property represented by the units held by each holder; and
- (b) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with these rules; and in the case of an umbrella fund the declaration shall be so framed that it will apply to each sub-fund separately.

## **10 Certificates**

- (a) Unless provision is contained in the principal documents dispensing with all or any of the requirements of rule 6.04, provision as to the form and content of, and the manner of authenticating and sealing, certificates evidencing title to a holding of units.
- (b) A requirement that any change of the name and address on the part of any holders shall forthwith be notified to the trustee by the holder or the manager as the case may be.

## **11 Holder's liability to pay**

Subject to paragraph 12, a provision that a holder is not liable to make any further payment after he has paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

## **12 Partly paid units**

In the case of an authorised scheme which issues partly paid units, a provision specifying the rights and obligations of the holder in respect of such partly paid units.

## **13 Meetings**

- (a) A statement of the number of holders competent to requisition a meeting of holders under rule 11.01.
- (b) A statement of the number of holders required to constitute a quorum under rule 11.04.
- (c) A statement of the number of holders competent to demand a poll under rule 11.07.

## **14 Umbrella funds**

In the case of an umbrella fund:

- (a) a description of the different sub-funds and how units related to each such sub-fund are to be distinguished from units related to the other sub-funds; and
- (b) a statement that holders may exchange rights in one sub-fund for rights in another.

## **15 Bearer units**

If the authorised scheme is to be able to issue bearer units, a statement to that effect together with details of any limitations on the classes of units which are to include bearer units.

**16 CREST**

If the authorised scheme is to be a participating issuer for the purposes of CREST, a statement to that effect together with an indication of any class of unit which is a class of participating securities.

**17 Frequency of valuation points**

A statement of the frequency of regular valuation points.

**18 Types of Unit**

A statement of the type or types of unit of which the authorised scheme will consist.

**Part II - Matters which may be Contained in the Principal Documents**

The following matters may be contained in the principal documents of an authorised scheme.

**1 Duration of the authorised scheme**

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

**2 Constituents of property, permitted transactions and borrowing powers**

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

**3 Restricted economic or geographic objectives**

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

**4 Classes of units**

If the authorised scheme is to have more than one class of units, a statement of the differing rights applicable to the classes; and, in the case of an umbrella fund, this statement is to be made separately in relation to each sub-fund.

**5 Limited categories of holder**

A provision that holders of units in the authorised scheme apart from the manager shall be confined to such persons as are described in the principal documents and a provision dealing with the compulsory redemption or sale by the trustee or manager of units held by persons falling outside such descriptions.

**6 Company scheme structure**

- (a) In the case of a company scheme, a provision creating one or more classes of nominal securities and providing for their conversion into units.
- (b) In the case of a company scheme, a provision setting out the basis upon which holders of units are entitled to have their units redeemed or repurchased by, or out of the funds provided by, the authorised scheme or out of funds represented by nominal securities.

**7 Compulsory redemption, cancellation or transfer**

A provision that if any units are owned or held by any person in circumstances which the manager (or in the case of a company scheme, the company) considers might result in the authorised scheme or any holder incurring any liability to taxation or infringing any law or rule or suffering

any regulatory, pecuniary or administrative disadvantage which the authorised scheme or holder might not otherwise have incurred or suffered, the units shall be redeemed, cancelled or transferred and, if the principal documents contain such a provision, they shall also provide the procedure for that redemption, cancellation or transfer.

**8 Exemption from liability**

A provision exempting any person carrying on a restricted activity in relation to an authorised scheme, and, in the case of a company scheme, the directors, from liability for failure in discharging their functions in respect of the authorised scheme to the extent that due care and diligence has been exercised.

**9 Enabling and restricting provisions**

Any provision:

- (a) dealing with a matter not referred to earlier in this Schedule the inclusion of which serves to enable the authorised scheme, the manager or the trustee (or in the case of a company scheme, the company) to obtain any privilege or power conferred by these rules;
- (b) which is expressly contemplated in these rules; or
- (c) which in all material respects has the same effect as a provision contained, at the time when the provision is made, in these rules.

**10 Commission's discretion**

Any provision which does not conflict with applicable law and these rules and which the Commission approves in writing and which the manager certifies is not unfairly prejudicial to the interests of holders generally or to the holders of any class of units.

## Schedule 2

### Scheme Particulars

#### 1 Prominent statement

The scheme particulars must include a prominent statement that these are the scheme particulars valid as at (and date them).

#### 2 The manager

The following particulars of the manager shall be stated:

- (a) its name;
- (b) the nature of its corporate form (including any limit on the duration of its limited status, if applicable);
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country of territory in which that holding company is incorporated;
- (e) the address of its registered office;
- (f) the address of its head office if that is different from the address of its registered office;
- (g) the date of its incorporation;
- (h) the amount of its authorised and issued share capital and how much of it is paid up;
- (i) the names of its directors and any significant activities of any directors which are not connected with the business of the manager;
- (j) where the manager is the manager of any other authorised scheme and the Commission so requires, the names of each of those schemes, the investment objectives of those schemes and the fact that the manager is the manager of each of them;
- (k) a summary of the material provisions of any contract entered into by the manager in connection with the authorised scheme which may be relevant to holders, including provisions (if any) relating to termination, compensation on termination and indemnity; and
- (l) if it is licensed to carry on controlled investment business in the Bailiwick of Guernsey, that fact.

#### 3 The trustee

The following particulars of the trustee shall be stated:

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of its registered office;
- (f) the address of its head office if that is different from the address of its registered office;
- (g) the date of its incorporation;

- (h) the amount of its issued share capital and how much of it is paid up;
- (i) a description of its principal business activity;
- (j) a summary of the material provisions of any contract entered into by the trustee in connection with the authorised scheme which may be relevant to holders, including provisions (if any) relating to termination, compensation on termination, and indemnity; and
- (k) if it is licensed to carry on controlled investment business in the Bailiwick of Guernsey, that fact.

#### **4 The directors**

In the case of a company scheme, the following particulars of the directors shall be stated:

- (a) their names and positions in the company;
- (b) the main business activities of each of them (other than those connected with the business of the company) where these are significant to the company's business;
- (c) the manner, amount and calculation of their remuneration;
- (d) in summary form, the main terms of each contract of service between the company and a director; and
- (e) if the director is a body corporate in a group of which any other corporate director of the company is a member, a statement of that fact.

#### **5 The investment adviser**

If an investment adviser is retained in connection with the authorised scheme, the following shall be stated:

- (a) its name;
- (b) if it is a body corporate, the address of its registered office, or, if otherwise, the address of its principal place of business;
- (c) if it is a body corporate in a group of which the manager or trustee is a member, that fact;
- (d) if its principal activity is other than providing services as an investment adviser, what that principal activity is; and
- (e) the main terms of the agreement or arrangement under which it is retained (other than those relating to its remuneration except where such remuneration is paid directly out of the scheme property) and, if it has any discretionary authority, that fact and a description of the matters in relation to which it has that authority.

#### **6 The registrar**

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

**7 The auditor**

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

**8 The UK representative**

The name and address, if any, of the UK representative of the authorised scheme for the purposes of section 270 of the FSMA shall be stated.

**9 The register of holders**

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

**10 The constitution of the authorised scheme**

The following shall be stated:

- (a) the name of the authorised scheme;
- (b) the date on which the authorised scheme was established and, if the duration of the authorised scheme is not unlimited, when it will or may terminate;
- (c) that the authorised scheme is an authorised scheme and a statement of which of the classes of authorised scheme declared by the Commission the authorised scheme belongs to;
- (d) the date of effect of the declaration of authorisation in respect of the authorised scheme;
- (e) if the authorised scheme is a feeder fund, a statement of the name and status of the scheme into which it is to feed;
- (f) if the authorised scheme is a company scheme, particulars of:
  - (i) its capital structure;
  - (ii) the names of its directors;
  - (iii) any significant activities of any directors which are not connected with the business of the authorised scheme; and
  - (iv) the manner, amount and calculation of the remuneration of directors, and the main terms of any service contracts between the company scheme and its directors;
- (g) the circumstances in which the winding-up of the authorised scheme can be decided on, a description of the procedure to be followed in a winding-up and what the rights of holders will be in a winding-up;
- (h) the accounting dates;
- (i) whether the authorised scheme has adopted a single pricing regime or a dual pricing regime and, if notice has been given to holders of a change in the pricing regime adopted by the fund, particulars of that change and when it will take place; and
- (j) the base currency of the authorised scheme.

**11 Investment objectives and policy**

Sufficient information shall be stated to enable a holder to ascertain:

- (a) (i) the investment objectives (e.g. capital growth or income) of the authorised scheme or of each sub-fund of an umbrella fund;
- (ii) the authorised scheme's investment policy for achieving those investment objectives, including the general nature of the portfolio and any intended specialisation (e.g. economic sector, geographical area or type of investment); and
- (iii) the extent (if any) to which that policy does not envisage remaining fully invested at all times;

- (b) where, in accordance with rule 8.12.4 all or part of the remuneration of the manager is to be treated as a capital charge, it must be made clear that the investment objectives of the authorised scheme are to treat the generation of income as a higher priority than capital growth or (as the case may be) to place equal emphasis on the generation of income and growth;
- (c) any restrictions in the range of transferable securities in which investment may be made, including restrictions in the extent to which the authorised scheme may invest in any category of investment, indicating (where appropriate) where the restrictions are tighter than those imposed by the rules;
- (d) any individual eligible securities and derivatives markets through which the authorised scheme may invest or deal by virtue of rule 5.06.2 (any securities market in a member State which is eligible by virtue of rule 5.06.1 may be included in the list or referred to in general terms);
- (e) whether it is intended that the authorised scheme will have an interest in any immovable property (e.g. its office) or tangible movable property (e.g. office equipment);
- (f) the names of the member States, local authorities and/or public international bodies in whose securities the authorised scheme may invest more than 35% of its assets and whether or not it has done so;
- (g) the policy in relation to the exercise of borrowing powers by the authorised scheme and to enter into transactions for the purpose of efficient portfolio management; and
- (h) in the case of an authorised scheme which may invest in other schemes, the extent to which the property of the authorised scheme may be invested in the units of schemes which are managed by the manager or by an associate of the manager.

## **12 The characteristics of units in the authorised scheme**

The following shall be stated:

- (a) in relation to each available class of unit in the authorised scheme, the entitlement of the holder of that unit to participate in the scheme property and the income thereof, a statement of the nominal value (if any) of each class of unit and, where there is more than one class of unit, the names given to each class and the characteristics of each class which distinguish it from the others;
- (b) if the title to the units or to some of the units will be evidenced by the issue of bearer certificates, that fact;
- (c) if the title to the units or to some of the units is to be evidenced by entries on a register of unit holders, whether or not certificates evidencing title to those units will be issued;
- (d) in the case of a unit trust scheme, the fact that the nature of the right represented by units is that of a beneficial interest under a trust and, in the case of any other type of authorised scheme, the nature of the right represented by the units in the scheme;
- (e)
  - (i) what voting rights are exercisable by holders at meetings of holders and, if different rights attach to different classes of units, what those different rights are; and
  - (ii) whether persons other than holders can vote at meetings of holders and who those persons are; and
- (f) in what circumstances, if any, a mandatory redemption, cancellation or conversion of units from one class to another may be required.

### **13 Valuation of property**

The following shall be stated:

- (a) how frequently and at what time of day the scheme property will be regularly valued for the purpose of determining prices at which units in the authorised scheme may be purchased from or redeemed by the manager or the authorised scheme and a description of any circumstances in which the authorised scheme may be specially valued;
- (b) the basis on which the scheme property will be valued; and
- (c) how the price(s) of units of each class will be determined.

### **14 Charges and expenses**

The following shall be stated:

- (a) if the price at which units may be issued by the manager or created by the authorised scheme includes a preliminary charge a statement of the maximum and current amount of that charge expressed as a percentage of the price of those units (being the creation price in the case of an authorised scheme which has adopted a dual pricing regime);
- (b) the payments that may be made to the manager (whether as such or in any other capacity) out of the scheme property whether by way of remuneration for its services, or reimbursement of expenses. For each category of remuneration, the following shall be stated:
  - (i) the maximum and current rates or amounts of such remuneration;
  - (ii) how it will be calculated and accrue and when it will be paid;
  - (iii) if notice has been given to holders of the manager's intention to introduce a new category of remuneration for its services or to increase any rate or amount currently charged, particulars of that introduction or increase and when it will take place;
  - (iv) if, in accordance with rule 8.12.4 all or part of the remuneration is to be treated as a capital charge:
    - (a) that fact; and
    - (b) the actual or maximum amount of the charge which may be so treated; and
  - (v) if notice has been given to holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders, particulars of that proposal;
- (c) where the authorised scheme is a company scheme, the remuneration and expenses of the directors or other members of the company's governing body payable out of the scheme property; and
- (d) details of:
  - (i) any liability of the authorised scheme to reimburse costs incurred by its trustee or any third party or, in the case of a company scheme, any of its directors or other members of the company's governing body;
  - (ii) any remuneration payable out of the scheme property to any third party or the trustee;
  - (iii) any remuneration, to which paragraph (ii) does not apply, payable out of the scheme property for services provided by an affected person; and

- (iv) the types of any other charges and expenses that may be taken out of the scheme property.

## **15 Distributions**

If applicable, the following shall be stated:

- (a) the date on which the authorised scheme's annual accounting period is to end in each year;
- (b) if there are interim accounting periods, what they are and the policy in relation to interim distributions (e.g. whether interim distributions will be made and, if so, the policy on smoothing of income distributions within an annual accounting period);
- (c) the date or dates in each year on or before which payment or accumulation of income is to be made or take place and, if there are holders of bearer units, how they are to identify themselves for the purposes of receiving payment of income;
- (d) if applicable, the policy on payment of income equalisation;
- (e) how distributable income is determined; and
- (f) if applicable, that unclaimed distributions may be forfeited and summarise the relevant provisions of the principal documents.

## **16 Movable and immovable property**

Give an estimate of any expenses likely to be incurred by the authorised scheme in respect of movable and immovable property in which the authorised scheme has an interest.

## **17 Amortisation**

State the amount of any costs remaining to be amortised under rule 8.10 as at the date of the scheme particulars and the method of amortisation.

## **18 The sale and redemption of units in the scheme**

The following shall be stated:

- (a) the days and times on which the manager will be available to receive requests for the issue and redemption of units and the procedures for the transaction and settlement of the issue and redemption of units;
- (b) whether certificates will be issued in respect of registered units;
- (c) the steps required to be taken by a holder in redeeming units before he can receive the proceeds;
- (d) the steps required to be taken by a holder in redeeming units before he can receive the proceeds of redemption
- (e) the amounts of the following minima and/or maxima (if they apply) for each class of unit in the authorised scheme:
  - (i) the minimum and/or maximum number of units which any one person may hold;
  - (ii) the minimum and/or maximum value of units which any one person may hold;
  - (iii) the minimum and/or maximum number of units which may be the subject of one transaction of purchase;
  - (iv) the minimum and/or maximum value of units which may be the subject of one transaction of purchase;
  - (v) the minimum and/or maximum number of units which may be the subject of one act of redemption; and

- (vi) the minimum and/or maximum value of units which may be the subject of one act of redemption;
- (f) the circumstances in which the redemption of units may be suspended;
- (g) following a suspension, the days and times on which the recalculation of creation and cancellation prices will commence;
- (h) the investment exchanges (if any) on which units in the authorised scheme are listed or dealt;
- (i) the circumstances in which the manager may arrange for, and the procedure for, a cancellation of units *in specie*;
- (j) in the case of a large deal, what greater sum (if any) is applicable;
- (k) to what number of significant figures a price may be calculated if approved by the Commission; and
- (l) the name of any national newspaper in which prices will be published and the frequency thereof.

## **19 Redemption charge**

If the manager may make a redemption charge state:

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

## **20 Dilution levy**

In the case of an authorised scheme which has adopted a single pricing regime, state:

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

## **21 Forward and historic pricing**

State the manager's normal basis of dealing (whether at a forward price, or at an historic price, or on the basis of a switch from the latter to the former in every dealing period).

## **General information**

The following shall be stated:

- (a) when annual and half-yearly reports will be published;
- (b) if the manager has elected to produce short form accounts, a statement that a report containing the full accounts is available on request;
- (c) the address at which copies of the principal documents (including any amending documents) and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (d) that the cancellation price last notified to the trustee is available on request;

- (e) how the manager or the authorised scheme, as the case may be, will publish, for the benefit of holders holding bearer certificates, notice:
  - (i) that annual and half-yearly reports are available for inspection;
  - (ii) that a distribution has been declared;
  - (iii) of the calling of a meeting of holders;
  - (iv) of the winding-up or termination of the authorised scheme or the revocation or suspension of its authorisation;
  - (v) that amendments have been made to the principal documents;
  - (vi) that a significant alteration has been made to the scheme particulars; and
  - (vii) of any sub-division or consolidation of units; and
- (f) the extent to which and the circumstances in which:
  - (i) there is any liability to tax on any appreciation in the value of the authorised scheme property or on the income of the scheme property; and
  - (ii) deductions by way of withholding tax may be made in respect of distributions of income to or from the authorised scheme and in respect of other payments made to the authorised scheme or by the authorised scheme to holders on the redemption of units.

### **23 Additional information**

Any other material information:

- (a) which investors and their professional advisers would reasonably require, and reasonably expect to find in the scheme particulars, for the purpose of making an informed judgement about the merits of investing in the authorised scheme and the extent of the risks accepted by so investing;
- (b) including a statement of any risks investment in the authorised scheme may reasonably be regarded as presenting for reasonably prudent investors of moderate means; and
- (c) which is within the knowledge of the manager (or in the case of a company scheme, the directors) or which such person would have obtained by the making of reasonable enquiries.

### **24 Umbrella funds**

- (a) State, in the case of an umbrella fund:
  - (i) that a holder is entitled to exchange units in one sub-fund for units in any other sub-fund;
  - (ii) that an exchange of units in one sub-fund for units in any other sub-fund is treated as a redemption and sale;
  - (iii) that in no circumstances will a holder who exchanges units in one sub-fund for units in any other sub-fund be given a right to withdraw from or cancel the transaction;
  - (iv) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund;
  - (v) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of the scheme property which are not attributable to any particular sub-fund;

- (vi) how the method of amortisation of any costs to be amortised under rule 8.10 may be affected by the introduction or termination of a sub-fund; and
  - (vii) in respect of each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the umbrella fund.
- (b) In the application of this Schedule to an umbrella fund, information required:
- (i) shall be stated in relation to each sub-fund where the information for any sub-fund differs from that for any other;
  - (ii) shall be stated for the umbrella fund as a whole, but only where the information is relevant to the umbrella fund as a whole; and
  - (iii) shall contain in the case of a company scheme and subject to applicable law, a statement as to whether the sub-funds of an umbrella fund are “ring fenced” and whether, in the event of an umbrella fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may have to be met out of the assets attributable to the other sub-funds.

## 25 Property Funds

State in the case of a property fund:

- (a) the maximum extent to which scheme property may be invested in:
  - (i) immovables; and
  - (ii) property related assets;
- (b) where the manager expects that the property will be invested (during the period when that version of the scheme particulars may be in circulation) in Government and other public securities:
  - (i) the fact that the property may be so invested; and
  - (ii) the maximum limit permitted for such investment (whether by virtue of these rules or a decision by the manager to adopt a lower maximum); and
- (c) the following particulars of the standing independent valuer:
  - (i) his name;
  - (ii) particulars of his professional qualification;
  - (iii) if he is a member of a professional regulatory organisation, its name, and the status of his membership if relevant; and
  - (iv) the main terms of the agreement or arrangement between him and the manager (or in the case of a company scheme, the company) (other than those relating to his remuneration).

## Schedule 3

### Annual and Half-Yearly Reports

#### Part I - Report of the Manager

The following matters shall be set out in every annual and half-yearly report of the manager:

- 1** The names and addresses of the following:
  - (a) the manager;
  - (b) the trustee;
  - (c) any investment adviser;
  - (d) any registrar;
  - (e) the auditor;
  - (f) in the case of a company scheme, the directors; and
  - (g) in the case of a property fund, the standing independent valuer.
- 2** The objectives of the authorised scheme.
- 3** The manager's policy for achieving the objectives of the authorised scheme.
- 4** A statement that the authorised scheme is an authorised scheme within the meaning of the Law.
- 5** A statement of which of the classes of authorised scheme the authorised scheme belongs to; and in the case of an umbrella fund this statement is to be made separately in relation to each sub-fund.
- 6** A review of the manager's or investment adviser's investment activities during the period to which the report relates.
- 7** Where the manager has elected to produce a report including short form accounts, a statement that a report containing the full accounts is available on request.
- 8** Particulars of any significant changes in the scheme particulars made since the making of the last report by the manager.
- 9** A statement of the total number of the units of each class in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.
- 10** A statement of the mid-market value per unit of the scheme property at the beginning and end of the period to which the report relates.
- 11** A statement of any subdivision, consolidation or bonus or rights issue of units which has been effected during the period to which the report relates.
- 12** The items prepared in accordance with Part II.
- 13** Any other significant information which would enable holders to make an informed judgement on the development of the activities of the authorised scheme during this period and the results of those activities as at the end of this period.
- 14** In the case of an umbrella fund, statements to the effect that:
  - (a) there are and/or (as the case may be), in the future there may be, other sub-funds of that umbrella fund; and
  - (b) if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, whether the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the umbrella fund.

- 15 In the case of a report relating to a sub-fund which is not contained in a report relating to the umbrella fund of which the sub-fund is part:
- (a) statements equivalent to those required by paragraph 14 and, in the case of the statement under paragraph 14(b), stating whether the shortfall, or part of it, might have to be met out of the sub-fund to which the report relates; and
  - (b) a statement of whether the auditor's report on the annual accounts of the authorised scheme for the period in question was unqualified or qualified and, if it was qualified, contain a copy of that report in full together with any further material needed to understand the qualification.

### **Part II - Comparative Table**

The comparative table set out in the report of the manager must include:

- 1 A performance record over the last three annual accounting periods, or if the authorised scheme has not been in existence during the whole of that time, a performance record over the whole period in which it has been in existence, showing:
- (a) the total net asset value of the scheme property at the end of each of those periods;
  - (b) the net asset value per unit and the number of units in existence or deemed to be in existence at the end of each of those periods;
  - (c) the highest issue and lowest redemption prices of the units during each of those periods; and
  - (d) if applicable, the net income per unit distributed or, in the case of accumulation units, allocated during each of those periods,

taking account of any sub-division or consolidation or bonus issue or rights issue of units that occurred during that time.

- 2 If, in the period covered by the table:
- (a) the authorised scheme has been the subject of any event (such as a reconstruction or unitisation but excluding any issue or cancellation of units for cash), having a material effect on the size of the authorised scheme; or
  - (b) there have been changes in the investment objectives of the authorised scheme,
- an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.
- 3 In the case of an umbrella fund paragraphs 1 and 2 shall not apply and the information required under each of paragraphs 1 and 2 shall instead be given in respect of each sub-fund of the umbrella fund.

### **Part III - Report of the Auditor**

The report of the auditor to the holders for any annual accounting period shall state:

- 1 Whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with these rules and the principal documents.
- 2 Without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period.
- 3 If the auditor is of opinion that proper accounting records have not been kept by the manager or that the accounts are not in agreement with the manager's accounting records, that fact.
- 4 If the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact.

- 5 If the auditor is of opinion that the information given in the report of the manager for that period is inconsistent with the accounts, that fact.

#### **Part IV - Report of the Trustee**

The report of the trustee to the holders for any annual accounting period shall state whether in the trustee's opinion the manager has managed the authorised scheme in that period:

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the authorised scheme by the principal documents, by the scheme particulars and by applicable law; and
  - (b) in accordance with the provisions of the principal documents and these rules,
- and if it has not done so, the respects in which the manager has not done so and the steps which the trustee has taken in respect thereof.

#### **Part V - Short Form Accounts**

- 1 A report of the manager which contains short form accounts for any annual accounting period shall:
- (a) state whether the report of the auditor on the full accounts was unqualified or qualified and, if it was qualified, set out the audit report in full; and
  - (b) state whether the report of the auditor on the full accounts contained a statement under paragraphs 3 or 4 of Part III of this Schedule and, if so, set out the statement(s) in full.
- 2 Short form accounts shall include the information set out in Part VI of Schedule 4.

#### **Part VI - Report of the Auditor relating to Short Form Accounts**

- 1 In relation to short form accounts for any annual accounting period, the auditor shall prepare a report stating whether, in the auditor's opinion, the short form accounts are consistent with the full accounts and with these rules, so far as they relate to short form accounts.
- 2 The auditor's report referred to in paragraph 1 shall be included in a report of the manager which contains short form accounts for any annual accounting period.

## Schedule 4

### Accounts

#### Part I - Balance Sheet

The balance sheet included in the accounts shall set out a statement of assets and liabilities as at the end of the period to which the report relates including a portfolio statement representing the different description of assets in which the scheme property is invested, grouped according to a classification appropriate to the stated investment objectives and showing:

- 1 The total value of all assets of the authorised scheme at the end of the period.
- 2 The total value of all the assets of the authorised scheme at the end of the period less the value of the liabilities of the authorised scheme.
- 3 The total value of holders' funds.
- 4 The percentage of the value of the scheme property that each holding represents. The percentage should also be shown for each category of holding in the property of the authorised scheme, together with comparative percentages for each of the categories.
- 5 The percentage of the value of the scheme property represented by holdings which are listed on an eligible securities market and holdings which are not listed on an eligible securities market.
- 6 Instruments creating or acknowledging indebtedness.
- 7 Bank balances.
- 8 Any other assets or liabilities of the authorised scheme which are necessary to ensure proper disclosure.

#### Part II - Statement of Total Return

The following matters shall be set out in the statement of total return included in the accounts:

- 1 Net gains/losses on the investments of the authorised scheme during the period.
- 2 Other gains/losses of the authorised scheme during the period.
- 3 Net income/expenses of the authorised scheme during the period, showing separately gross income and total expenses.
- 4 Total return for the period.
- 5 Distributions paid or to be paid.
- 6 Net increase/decrease in holders' funds from investment activities during the period.

The above main components will require more detailed analysis in the notes to the accounts as follows:

- (a) investment gains/losses should be analysed to show realised gains/losses, together with the change in unrealised gains/losses during the period;
- (b) other gains/losses should be described;
- (c) details of individual components of gross income, total expenses and any taxation charges should be included in relation to the statement of net income/expenses;
- (d) details of the distributions paid or to be paid, including a reconciliation, if applicable, of the amount of income available for allocation to holders should be included; and

- (e) where any fees or expenses of the trustee have been paid by the manager out of the manager's own resources and not out of the scheme property, the amount should be disclosed.

### **Part III - Portfolio Statement**

A portfolio statement shall be included in the accounts and shall specify the investments comprised in the scheme property at the end of the relevant accounting period and give a full description of the significant changes in the portfolio during that period. In determining whether there have been any significant changes in the portfolio, the manager shall have regard to any guidance note issued by the Commission containing guidance as to what constitutes a significant change for these purposes.

### **Part IV - Statement of Movements in Holders' Funds**

The following matters shall also be included in the accounts:

- 1 The value of the holders' funds at the beginning of the period.
- 2 The amount of cash or the value of assets received on the creation of new units.
- 3 The amount of cash or the value of assets paid out on the cancellation of units.
- 4 The net increase/decrease in the aggregate value of holders' funds from investment activities.
- 5 The value of the holders' funds at the end of the period.
- 6 Details of distributions during the period.
- 7 Any other information required by the Commission.

### **Part V - Notes to the Accounts**

The following matters shall be set out in the notes to the accounts:

#### **1 Accounting policies**

- (a) The policy regarding dividends and other income received and receivable.
- (b) The basis of valuation of the scheme property.
- (c) If applicable, a statement of the basis for converting amounts in currencies other than the base currency into amounts in the base currency.
- (d) An explanation of any tax charge or refund appearing in the income and distribution account.
- (e) If applicable, an explanation of the basis for valuing unlisted or suspended securities.
- (f) Any other items which are material to the accounts.

#### **2 Holders' Funds**

In the case of a corporate scheme the following analysis should be shown in a note to the accounts:

- (a) share capital;
- (b) share premium; and
- (c) reserves, including analysis where appropriate.

#### **3 Properties**

The name and qualifications of the person valuing the properties (if any) and the basis of valuation.

**4 Income equalisation**

A definition and explanation of income equalisation if it is to apply.

**5 Units in issue**

The number of units in existence or deemed to be in existence at the end of the period to which the account relates.

**6 Net liquid assets**

An analysis of net liquid assets as at the end of the period to which the accounts relate (unless they are shown in the balance sheet) including the following items where applicable:

- (a) amounts receivable from brokers for sales of securities;
- (b) amounts payable to brokers for purchases of securities; and
- (c) amounts receivable/payable on creations/cancellations.

**7 Back to back loans**

Details of any back to back loans including the terms and interest rate margins.

**8 Contingent liabilities**

A statement showing the contingent liabilities in respect of any underwriting commitments, placing arrangements, nil paid rights, or partly paid units, and other material items.

**9 Forward exchange transactions**

A statement of open forward exchange positions and the unrealised profit or loss thereon.

**10 Financial instruments**

The objectives, policies and strategies for holding or issuing derivatives and other financial instruments should be disclosed, together with appropriate numerical disclosures in respect of those held or issued. Some of this information may be included in the investment adviser's or manager's report.

**11 Stock lending activities/repurchase agreements**

Details of the aggregate value of securities on loan to third parties, and the value of collateral held for the account of the authorised scheme in respect of those securities, and similar details in respect of repurchase agreements.

**12 Post accounting reference date events**

An indication of any material post accounting reference date events which have a bearing on the understanding of the financial statements.

**13 Dealing commission**

The average rate of dealing commission incurred in dealing in the scheme property.

**14 Related party disclosures**

Details of amounts paid or owing to the trustee, manager or investment adviser, or their associates.

**Part VI - Short Form Accounts**

The following matters shall be included in short form accounts for any annual accounting period:

- 1 The statement of total return required by Part II of this Schedule.
- 2 The portfolio statement required by Part III of this Schedule.
- 3 The statement of movements in holders' funds required by Part IV of this Schedule.

- 4 Details of the distributions paid or to be paid.

**THE COLLECTIVE INVESTMENT SCHEMES (CLASS A) RULES 2002 (AMENDMENT)  
RULES 2003**

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

**1.01 Citation and Commencement**

These rules (including the Schedule hereto) may be cited as the Collective Investment Schemes (Class A) Rules 2002 (Amendment) Rules 2003, are made on 15 April 2003 and come into operation on 30 April 2003.

**1.02 Interpretation**

In these rules "the principal rules" means the Collective Investment Schemes (Class A) Rules 2002 and a reference in the Schedule hereto to a rule or other provision a reference to that rule or provision in the principal rules.

**1.03 Miscellaneous amendments**

The amendments to the principal rules in the Schedule hereto shall have effect.

## **Schedule**

- 1 In rule 2.04, replace "in one special circumstance as set out in rule 2.05.4" with "in the special circumstances set out in rules 2.05.2 and 2.05.4".
- 2 In rule 15.05, replace "until" with "under"
- 3 After rule 15.09, insert  

"15.10 Any scheme in existence on the day before the effective date and declared by the Commission to be a Class A1 Scheme or a Class A2 Scheme under the previous rules shall be deemed to be a Class A Scheme under these rules on and from the effective date and this Part 15 shall apply to such scheme accordingly."