



Jersey

**COLLECTIVE INVESTMENT FUNDS
(RECOGNIZED FUNDS)
(GENERAL PROVISIONS) (JERSEY)
ORDER 1988**

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Jersey

COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (GENERAL PROVISIONS) (JERSEY) ORDER 1988

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Jersey

COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (GENERAL PROVISIONS) (JERSEY) ORDER 1988

THE ECONOMIC DEVELOPMENT COMMITTEE, in pursuance of Articles 11, 14 and 20 of the Collective Investment Funds (Jersey) Law 1988,¹ orders as follows –

Commencement [[see endnotes](#)]

PART 1

INTRODUCTORY

1 Interpretation²

(1) In this Order, unless the context otherwise requires –

“accrued margin”, in relation to a margined contract, means the amount of margin which, in addition to the amount of initial margin deposited in connection with the contract, would be paid out of the property of the fund or received for its account on closing out the contract;

“accumulation unit” means a unit in a recognized fund described as such;

“advertisement” includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, or in any other manner; and references to the issue of an advertisement shall be construed accordingly;

“annual accounting period” has the meaning given to it in Article 129;

“annual income allocation date” means the date in the calendar year specified in relation to –

- (a) a recognized unit trust, in the trust deed, and
- (b) a recognized open-ended investment company, in the articles,

as the date on or before which allocations of income in respect of each accounting period are to be made;

“approved securities” means –

- (a) transferable securities admitted to official listing in a member State;
- (b) transferable securities which are traded on or under the name of an eligible securities market otherwise than by virtue of the specific permission of the market authority; and
- (c) recently issued transferable securities,

but does not include any investment falling within paragraph 1 or 2 of Part 1 of Schedule 1, which can be transferred only with the consent of the body corporate which issued the investment or with the consent of any members or debenture holders of that body corporate;³

“articles”, in relation to an open-ended investment company, means its articles of association as originally framed or as altered by resolution;

“associate”, in relation to a holder of a permit, means a connected company, or a controller or officer, of that holder;

“authorized institution” means any of the following –

- (a) a person registered under the Depositors and Investors (Prevention of Fraud) (Jersey) Law 1967;⁴
- (b) the Bank of England;
- (c) the Central Bank of another member State;
- (d) an authorized institution within the meaning of the Banking Act 1987 of the United Kingdom;
- (e) a bank which is a subsidiary or parent company of an authorized institution within sub-paragraph (d);
- (f) a building society within the meaning of the Building Societies Act 1986 of the United Kingdom which has adopted the power to provide money transaction services and has not assumed any restriction on the extent of that power;
- (g) a credit institution (as defined in EEC Directive number 77/780) established in a member State other than the United Kingdom and duly authorized by the relevant supervisory authority in that member State;
- (h) a registered person under the Protection of Depositors (Bailiwick of Guernsey) Ordinance 1971;

“authorized securities fund” means a recognized fund the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of transferable securities and which is not a feeder fund or a fund of funds;

“base currency” means the currency of a fund;

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

“business day”, in relation to anything done or to be done in Jersey, means any day other than a Saturday, a Sunday or a bank holiday and, in relation to anything done or to be done by reference to a market outside Jersey, means any day on which that market is normally open for business;

“cancellation”, in relation to units in an open-ended investment company, means the redemption of such units by that company, and “cancel” in relation to such units shall be construed accordingly;

“cancellation price” –

- (a) in relation to units in a unit trust, means the price for each unit payable by the trustee on the cancellation of units;
- (b) in relation to units in an open-ended investment company, means the price for each unit payable by the custodian on the cancellation of units;

“capital property” means –

- (a) in the case of a recognized unit trust, all the property for the time being held on the trusts of the trust deed; and
- (b) in the case of a recognized open-ended investment company, all the property for the time being of that company which is attributable to units, other than income property, and sums which have been allocated for distribution;

“cash” includes foreign currency;

“close out”, in relation to a transaction entered into for a recognized fund, means the entry –

- (a) in the case of a recognized unit trust, by the trustee; and
- (b) in the case of a recognized open-ended investment company, by that company,

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;

“close relative”, in relation to an individual, means that individual’s spouse, brother, sister, parent, step-parent, child or step-child;

“commencement date” means the date of coming into force of this Order;

“Companies Laws” means the Companies (Jersey) Law 1991;⁵

“competent authority”, in relation to a country or territory other than Jersey, means the authority or authorities in that country or territory responsible for the authorization and regulation of funds;

“connected company”, in relation to a relevant holder, means a company in whose case any of the following conditions is fulfilled –

- (a) the same person is the controller of each company;
- (b) if a group of 2 or more persons are controllers of each company and the group either consists of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by that member’s close relative or by a person with whom that member is in partnership or by a company of whom the member is an officer or a controller; or
- (c) both companies are members of the same group;

“constituent part”, in relation to an umbrella fund, means one of the separate parts into which the property of the umbrella fund is divided;

“contract for differences” means a contract rights under which constitute an investment falling within paragraph 9 of Part 1 of Schedule 1;

“controller”, in relation to a holder of a permit, means a person who is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the holder or of another body corporate of which it is a subsidiary, and “control” shall be construed accordingly;

“creation”, in relation to units in an open-ended investment company, means the issue of such units by that company, and “create” in relation to such units shall be construed accordingly;

“creation price” –

- (a) in relation to units in a unit trust, means the price for each unit payable by the manager to the trustee on the creation of units;
- (b) in relation to units in an open-ended investment company, means the price for each unit payable by the manager to the custodian on the creation of units;

“custodian” means the person who, in relation to an open-ended investment company, is entrusted by that company with the custody of the property of the fund;

“custodian agreement” means, in relation to an open-ended investment company, any agreement to which that company and the custodian are parties relating to the appointment and functions of the custodian;

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

“derivative” means an option, or a future or a contract for differences which is not a transferable security;⁶

“designated investment exchange” means an investment exchange which at the time in question is a designated investment exchange for the

purposes of rules made under section 48 of the Financial Services Act 1986 of the United Kingdom;

“directors” means the directors of an open-ended investment company;

“distribution account” means the account known by that name and opened and maintained in accordance with Article 132(2);

“documents constituting the fund” includes –

- (a) in the case of a recognized unit trust, the trust deed;
- (b) in the case of a recognized open-ended investment company, the memorandum and articles of association of that company, the fund rules (if any), the custodian agreement and the management agreement; and
- (c) any agreements entered into between the functionaries of the fund with each other and with the fund;⁷

“eligible derivatives market” shall be construed in accordance with Article 100;⁸

“eligible market” means an eligible derivatives market or an eligible securities market;⁹

“eligible securities market” shall be construed in accordance with Article 100;¹⁰

“existing arrangements” in relation to an existing fund, means the basis (including the Control of Borrowing (Jersey) Order 1958,¹¹ the consent given to the existing fund thereunder and the trust deed or the articles) on which that fund was lawfully operated immediately prior to the commencement date;

“existing fund” means a fund in respect of which prior to the commencement date consent had been granted and not withdrawn by the Committee for the issue of units under the Control of Borrowing (Jersey) Order 1958;

“extraordinary resolution” has the meaning given in Article 151;

“feeder fund” means a recognized fund the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in a single recognized fund or another fund acceptable to the Commission;¹²

“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 repurchase the units in question;

“fund” means a collective investment fund other than an investment trust, a limited partnership or a life assurance company;

“fund of funds” means a recognized fund the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in funds which are authorized unit trust schemes or recognized schemes under the

provisions of, Chapter VIII of Part I of the Financial Services Act 1986 of the United Kingdom or recognized funds other than a feeder fund;¹³

“fund rules” has the meaning given in Article 159(1);¹⁴

“future”, means a contract rights under which constitute an investment falling within paragraph 8 of Part 1 of Schedule 1;

“Government and other public securities” means investments falling within paragraph 3 of Part 1 of Schedule 1 to the extent that they are –

- (a) issued by or on behalf of the Government of the United Kingdom or of a member State other than the United Kingdom or by or on behalf of a local authority in the United Kingdom or any other member State;
- (b) issued by or on behalf of the Government of any country or territory specified in Part 2 of Schedule 1; or
- (c) issued by or on behalf of an international organisation the members of which include the United Kingdom or another member State,

and includes investments which would fall within paragraph 3 of that Part if that paragraph extended to investments guaranteed by a local authority in any member State or by the Government of the United Kingdom, the Government of any other member State or by the Government of any country or territory specified in Part 2 of that Schedule;

“Government and other public securities fund” means a recognized fund the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of either Government and other public securities or Government and other public securities and units in other funds which are, or, if they were recognized funds, would be Government and other public securities funds;

“group”, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

“half-yearly accounting period” has the meaning given to it in Article 129;

“hedging transaction” means a transaction of the kind described in Article 99(2);

“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 repurchase the units in question;

“holder”, means –

- (a) in relation to a unit in a recognized fund, the person who is entered in the register as the holder of that unit; or
- (b) in relation to a unit in a recognized unit trust where a bearer certificate represents that unit, the bearer of that bearer certificate;

“holding company” shall be construed in accordance with Article 2;

“income equalisation”, means an amount equal to the value determined on the basis referred to in Article 61(1) as the offer basis by reference to the most recent valuation point of that part of the income property of the recognized fund which is attributable to units of the type in question which have been created (or assumed, in accordance with Article 57(2)(a) to have been created);

“income property”, means all sums including income equalisation if applicable –

- (a) in the case of a unit trust, deemed by the manager, after consultation with the auditor to be in the nature of income received or receivable by the trustee; and
- (b) in the case of an open-ended investment company, deemed by the directors or the manager, after consultation with the auditor, to be in the nature of income received or receivable by that company,

but excluding any amount for the time being standing to the credit of the distribution account;

“income unit”, means a unit in a fund which is not an accumulation unit;

“initial margin” means cash or other property deposited in accordance with the rules of an eligible derivatives market on entering into a margined contract;¹⁵

“initial offer” means –

- (a) in the case of a recognized unit trust, an offer for sale of units in that fund otherwise than on a unitisation where all or part of the consideration paid to the trustee for the units is to be used to acquire the initial capital property (other than that consideration) to be held on the trusts of the fund; and
- (b) in the case of a recognized open-ended investment company, an offer for subscription or sale of units in that fund otherwise than on a unitisation where all or part of the consideration paid to that company for the units is to be used to acquire the initial capital property (other than that consideration) of the fund;

“initial price” means –

- (a) in the case of a recognized unit trust, the price stated in the trust deed, or, if no such amount is stated, such amount as may be agreed by the trustee and the manager, as being the maximum amount, inclusive of the manager’s preliminary charge, if any, which may be paid by a potential participant to the manager for units on an initial offer;
- (b) in the case of a recognized open-ended investment company, the price stated in the articles or, if no such amount is stated, such amount as may be agreed by the directors, the manager and the custodian, as being the maximum amount, inclusive of the manager’s preliminary charge, if any, which may be paid by a potential participant for units on an initial offer;

“interim accounting period”, has the meaning given in Article 133;

“interim income allocation date”, in relation to an interim accounting period, means the date in the calendar year specified –

- (a) in the case of a recognized unit trust, in the trust deed as the date on or before which allocations of income in respect of that interim accounting period are required or authorized to be made or, if the trust deed leaves the determination of that date to the discretion of the manager, the date determined for that purpose by the manager;
- (b) in the case of a recognized open-ended investment company, in the articles as the date on or before which allocations of income in respect of that interim accounting period are required or authorized to be made or, if the articles leave the determination of that date to the discretion of the directors or the manager, the date determined for that purpose by the directors or the manager, as the case may be;

“investment” means any asset, right or interest falling within any paragraph of Part 1 of Schedule 1;

“investment adviser”, in relation to a manager, means a person who is engaged by the manager under a commercial arrangement, not being a mere contract of employment, to exercise for the manager the latter’s discretionary powers or to supply the manager with advice as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities;

“large deal” means either –

- (a) an offer to acquire units where the total consideration payable would, if the price payable for each unit were the creation price last notified to the trustee or the custodian, under the provisions of Article 86, before the offer was made, exceed £15,000 or such greater sum as may be specified in the prospectus; or
- (b) a request that units be repurchased where the total consideration payable would, if the price payable for each unit were the cancellation price last notified to the trustee or the custodian, under the provisions of Article 86, before the offer was made, exceed £15,000 or such greater sum as may be specified in the prospectus,

and, for these purposes, a number of offers or a number of requests made by or on behalf of the same person as principal in one dealing period shall be treated as one offer or as one request, as the case may be;

“management agreement”, means, in relation to a recognized open-ended investment company, any agreement to which that company and the manager are parties relating to the appointment and functions of that manager;

“Law” means the Collective Investment Funds (Jersey) Law 1998.¹⁶

“manager”, means –

- (a) in relation to a recognized unit trust, the manager; and
- (b) in relation to a recognized open-ended investment company, a separate company appointed by that company to perform

management functions (including duties imposed upon, and powers exercisable by, the directors) on its behalf;

“margin” means cash or other property paid, transferred or deposited under the terms of a margined contract;

“margined contract” means a contract rights under which constitute an investment falling within paragraph 7, 8 or 9 of Part 1 of Schedule 1, being a contract the terms of which are such that property of the fund will or may be required to be paid, transferred or deposited as security for the performance of an obligation to deliver or receive property which will or may arise under the contract whether at the option of –

- (a) in the case of a recognized unit trust, the trustee; and
- (b) in the case of a recognized open-ended investment company, that company,

or of the other party to the contract or otherwise, and includes an option purchased for the fund under which the total amount of premium which may be payable for the option is not payable on purchase but may be demanded before the expiry of the option;

“market dealing bid price”, in relation to property of any description and a particular time, means the amount which would be received in consideration for the sale of the property on the assumption that –

- (a) it was sold on the best terms available at that time on an eligible market on which it is traded for transactions in property of that description in what, in the reasonable opinion of –
 - (i) in the case of a recognized unit trust, the manager, and
 - (ii) in the case of a recognized open-ended investment company, the directors or the manager,is a standard size; and

- (b) there had been deducted from the consideration an amount equal to an estimate amount of such fiscal charges, commission and other sale charges as would be payable by the seller in connection with such a sale, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with a transaction of the kind in question;¹⁷

“market dealing offer price”, in relation to property of any description and a particular time, means the amount which would be payable in order to buy the property on the assumption that –

- (a) it was bought on the best terms available at that time on the eligible market on which it is traded for transactions in property of that description in what, in the reasonable opinion of –
 - (i) in the case of a recognized unit trust, the manager, and
 - (ii) in the case of a recognized open-ended investment company, the directors or the manager,is a standard size; and

- (b) the amount payable included an amount equal to an estimated amount of such fiscal charges, commission and other purchase charges as would be payable by the buyer in connection with such a purchase calculated on the basis that the charges and commission payable were the least that could reasonably be expected to be paid in connection with a transaction of the kind in question;¹⁸

“marketing”, in relation to units in a fund and a particular country or territory, means –

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

and “to market” shall be construed accordingly;

“member State” means a member State of the European Economic Community;

“memorandum”, in relation to an open-ended investment company, means its memorandum of association as originally framed or as altered;

“mid-market value”, in relation to property of any description and a particular time, means the arithmetic average of the amount which would be received in consideration of the sale of the property at that time and the amount which would be payable in order to buy the property at that time on the assumption that the sale and purchase respectively were on the best terms available at that time on an eligible market on which the property is traded for transactions in property of that description in what, in the reasonable opinion of the manager (or, in the case of a recognized open-ended investment company, that company or the manager), is a standard size;¹⁹

“minimum holding of units”, in relation to any units (whether income or accumulation units), means –

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

as, in the case of a recognized unit trust, the manager with the approval of the trustee, and in the case of a recognized open-ended investment company, the company or the manager with the approval of the custodian may from time to time determine to be the minimum holding a person must have in order to qualify to be a holder of units of that type in the fund;²⁰

“minimum repurchase number of units” in relation to any units (whether income or accumulation units) means –

- (a) such number of units of that type; or

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

as, in the case of a recognized unit trust, the manager with the approval of the trustee, and in the case of a recognized open-ended investment company, the company or the manager with the approval of the custodian may from time to time determine to be the minimum for any one transaction of repurchase in units of that type;

“money market fund” means a recognized fund the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of any one or more of the following, or of any one or more of the following and transferable securities, that is to say –

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

“near cash” means money in a current account with an authorized institution or money in a deposit account with, or on short term loan to, such an institution which can be withdrawn immediately and without payment of a penalty exceeding more than 7 days’ interest calculated at ordinary commercial rates and also includes investments falling within paragraph 3 of Part 1 of Schedule 1 which are issued by or on behalf of the Government of the United Kingdom and equivalent investments issued or guaranteed by the Government of another member State or of a country or territory specified in Part 2 of that Schedule;

“open-ended investment company” means a fund which takes the form of an open-ended investment company;

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

“period of the initial offer”, has the meaning given in Article 18(1);

“Permit Conditions Order” means the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988;²¹

“pooling characteristics”, in relation to a fund, means characteristics whereby –

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property in question is managed as a whole by or on behalf of –
 - (i) in the case of a unit trust, the manager, and
 - (ii) in the case of an open-ended investment company, that company;

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

“property of the fund” means the capital property and the income property;

“prospectus” has the meaning given in Article 52;

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

“recently issued transferable securities” means transferable securities –

- (a) which were issued on terms that an application would be made to an exchange or market which, if accepted, would result in the securities becoming approved securities by virtue of subparagraph (a) or (b) of the definition of “approved securities”;
- (b) with respect to which no application of the kind described in subparagraph (a) of this definition has been refused; and
- (c) with respect to which not more than 12 months has passed since the date of their issue;²²

“recognized fund”, means a fund in respect of which there is a recognized fund certificate;

“recognized fund certificate”, means a certificate issued by the Commission under Article 5;²³

“recognized investment exchange” means an investment exchange which at the time in question is a recognized investment exchange for the purposes of the Financial Services Act 1986 of the United Kingdom;

“recognized open-ended investment company”, means an open-ended investment company in respect of which there is a recognized fund certificate;

“recognized unit trust”, means a unit trust in respect of which there is a recognized fund certificate;

“record date” has the meaning given to it in Article 132;

“register” –

- (a) in relation to a recognized unit trust, has the meaning given in Article 24(1); and
- (b) in relation to a recognized open-ended investment company, means the Register which the company is required to keep by Article 41 of the Companies (Jersey) Law 1991;²⁴

“registrar” –

- (a) in relation to a recognized unit trust, has the meaning given in Article 24(2); and
- (b) in relation to a recognized open-ended investment company, means such person (including the manager) as is appointed by the company and the custodian to establish and maintain that company’s register on its behalf;²⁵

“relevant change”, in relation to a recognized fund, means an alteration to the trust deed or the articles under which the fund is constituted –

- (a) which is required by this Order to be approved by an extraordinary resolution (in the case of a recognized unit trust) or by a special resolution (in the case of a recognized open-ended investment company) at a meeting of holders called for the purpose; and
- (b) which is not an alteration which concerns –
 - (i) the amount of the remuneration of the manager,
 - (ii) the amount of the remuneration or the expenses of the trustee or the custodian,
 - (iii) the amount of the remuneration or the expenses of the auditor of the fund or
 - (iv) the method of charging the remuneration or the expenses of the trustee or the custodian or the auditor,or any consequential changes to the other arrangements for remuneration; and
- (c) which is approved by an extraordinary resolution or a special resolution, as the case may be, at a meeting of holders the costs of convening which are paid by the manager from its own resources;

“relevant time”, in relation to the valuation of any property for any of the purposes of Parts 11 and 13, means the times as at which the property falls to be valued for that purpose;

“repurchase”, in relation to units, means the purchase of units by the manager as a principal and the verb “repurchase” and “repurchase price” shall be construed accordingly;

“sale”, in relation to units, means the sale of units by the manager as a principal and “sell” and “sale price” shall be construed accordingly;

“Schedule 4 Bank” has the meaning given in Article 43;

“securities fund” means a recognized fund the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of transferable securities and which is not a feeder fund nor a fund of funds;

“special resolution”, in relation to an open-ended investment company, means a special resolution within the meaning of the Companies Laws;

“sub-custodian”, has the meaning given in Article 43, in the case of a recognized unit trust, and in Article 44, in the case of a recognized open-ended investment company;

“subsidiary” in relation to a company shall be construed in accordance with Article 2;

“traded option” means an option which, under the terms of a permission relating to options on property of the same kind which has been in force for a period of at least 6 months, is traded or dealt in on an eligible derivatives market;²⁶

“transferable security” means any investment falling within paragraphs 1 to 6 of Part 1 of Schedule 1 other than an investment title to which either cannot be transferred, or can be transferred only with the consent of a third party other than, in the case of an investment falling within paragraph 1 or 2 of that Part, either the body corporate which issued the investment or any members or debenture holders of that body corporate;

“trust deed” has the meaning given in Article 15(1) and includes any supplemental deed;

“trustee” means the person who, in relation to a unit trust, holds the property of the fund on trust for the participants;

“umbrella fund” means a recognized fund which provides for pooling characteristics in relation to separate parts of the property and the participants in which are entitled to exchange rights in respect of one part for rights in respect of another;

“unitisation”, means arrangements under which –

- (a) the whole or part of the property of a company or of a fund is to be transferred so as to become the property of a recognized fund; and
- (b) the holders of shares in that company or of units in that fund become participants in that recognized fund;

“unit trust” means a fund which takes the form of a unit trust;

“valuation point” means the time by reference to which a valuation is carried out for the purposes of Article 59; and

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

- (2) In this Order, unless the context otherwise requires, a reference to a written notice or to written instructions shall be taken to be a reference to a notice or instructions given in any legible form of which a printed copy of the notice or instructions can be made.
- (3) A reference in this Order to the trustee or the custodian of a fund is a reference to the trustee in the case of a unit trust and the custodian in the case of an open-ended investment company, and a reference in this Order to the trust deed or the articles is a reference to the trust deed in the case of a unit trust and the articles in the case of an open-ended investment company.
- (4) In this Order, unless the context otherwise requires, a reference to an enactment, including an enactment of the United Kingdom, is a reference to that enactment as amended, extended or applied by or under any other enactment, and to any enactment which repeals and re-enacts the first-mentioned enactment with or without further amendment.

2 “Holding company” and “subsidiary”

- (1) For the purposes of this Order a company is, subject to paragraph (4), deemed to be a subsidiary of another if (but only if) –
 - (a) that other either –

-
- (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital; or
 - (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.
- (2) For the purposes of paragraph (1) the composition of a company's board of directors is deemed to be controlled by another company if (but only if) that other company by the exercise of some power exercisable by it without the consent or concurrence of another person can appoint or remove the holders of all or a majority of the directorships.
- (3) For the purposes of paragraph (2) the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied –
- (a) that a person cannot be appointed to it without the exercise in his or her favour by the other company of that power;
 - (b) that a person's appointment to the directorship follows necessarily from his or her appointment as director of the other company; or
 - (c) that the directorship is held by the other company itself or by a subsidiary of it.
- (4) In determining whether one company is a subsidiary of another –
- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;
 - (b) subject to sub-paragraph (c), any shares held or power exercisable –
 - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity), or
 - (ii) by, or by a nominee for, a subsidiary of the other (not being a subsidiary which is concerned only in a fiduciary capacity),are to be treated as held or exercisable by the other;
 - (c) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary are to be treated as not held or exercisable by the other if the shares are held or the power is exercisable as above mentioned by way of security only.
- (5) For the purposes of this Order a company is deemed to be another's holding company if (but only if) the other is its subsidiary.

3 Application

This Order shall apply to recognized funds and to applications for recognized fund certificates.

PART 2**RECOGNIZED FUND CERTIFICATES****4 Application for recognized fund certificate**

- (1) An application for a recognized fund certificate shall be made to the Commission –
 - (a) in the case of a unit trust, by the manager and trustee; and
 - (b) in the case of an open-ended investment company, by that company, the manager and the custodian.²⁷
- (2) Each such application shall –
 - (a) be in the form required from time to time by the Commission;
 - (b) contain or be accompanied by such other particulars as the Commission may require;
 - (c) be verified in such manner and to such extent as the Commission may require;
 - (d) be accompanied by –
 - (i) in the case of a unit trust, a copy of the trust deed,
 - (ii) in the case of an open-ended investment company, a copy of the memorandum and articles of association of that company, the fund rules (if any), the management agreement and the custodian agreement, and
 - (iii) a certificate signed by an advocate or solicitor of the Royal Court to the effect that each such document complies with such of the requirements of this Order as relate to its contents.²⁸

5 Grant of recognized fund certificate

- (1) The Commission may, on an application duly made in accordance with Article 4 and after being furnished with all such information as it may require under that Article, grant a certificate (a “recognized fund certificate”) in respect of a fund if it appears that –
 - (a) the fund, if it were a recognized fund, would be within one or more of the categories of funds specified in Schedule 2 and takes the form of either a unit trust or an open-ended investment company;
 - (b) in the case of a unit trust, the trustee and the manager are each the holder of a permit granted under Article 7 of the Law;
 - (c) in the case of an open-ended investment company, that company, the manager and the custodian are each the holder of a permit granted under Article 7 of the Law;
 - (d) in the case of a unit trust, it complies with such of the following requirements of this Order as relate to a unit trust of the particular category to which it belongs; and

- (e) in the case of an open-ended investment company, it complies with such of the following requirements of this Order as relate to an open-ended investment company of the particular category to which it belongs.
- (2) Each recognized fund certificate shall specify the category of fund to which it relates.²⁹

6 Cancellation of recognized fund certificate

- (1) The Commission may at any time cancel a recognized fund certificate if it appears to the Commission –
 - (a) that any of the requirements for the grant of the certificate or for inclusion of the fund in the category to which it belongs are no longer satisfied;
 - (b) that it is undesirable in the interests of the participants or potential participants that the fund should continue to be a recognized fund; or
 - (c) without prejudice to sub-paragraph (b), that –
 - (i) in the case of a recognized unit trust, the manager or the trustee, or
 - (ii) in the case of a recognized open-ended investment company, that company or the manager or the custodian,has contravened any provision of the Law or of any Regulations or Order (including this Order) made under it or of any permit granted under the Law or, in purported compliance with any such provision, has furnished the Commission (or, at any time before the establishment of the Commission, the Finance and Economics Committee) with false, inaccurate or misleading information or has contravened any prohibition, restriction, direction or requirement imposed under the Law.³⁰
- (2) For the purposes of paragraph (1)(b), the Commission may take into account any matter relating to –
 - (a) the fund;
 - (b) in the case of a recognized unit trust, the manager or the trustee;
 - (c) in the case of a recognized open-ended investment company, that company, the manager or the custodian;
 - (d) a director or controller of each of the persons stated in sub-paragraphs (b) and (c); or
 - (e) any person employed by or associated with each of the persons stated in sub-paragraphs (b) and (c).³¹
- (3) The Commission may cancel a recognized fund certificate at the request of –
 - (a) in the case of a recognized unit trust, the manager or the trustee; and

- (b) in the case of an open-ended investment company, that company or the custodian,

but the Commission may refuse to do so if it considers that any matter concerning the fund should be investigated as a preliminary to a decision on whether the recognized fund certificate should be cancelled or the cancellation would not be in the interests of the participants.³²
- (4) On cancellation of a recognized fund certificate under this Article, each of the persons mentioned in paragraph (3)(a) or (b), as the case may be, shall forthwith notify that fact to –
 - (a) each regulatory authority in every country or territory to which the certificate related prior to its cancellation; and
 - (b) each unit holder of the fund in question, other than, in the case of a recognized unit trust, the bearer of a bearer certificate.
- (5) The notice required of each of the persons respectively referred to in paragraph (4) may be given by them jointly.
- (6) On cancellation of a recognized fund certificate under this Article, each of the persons mentioned in paragraph (3)(a) or (b), as the case may be, shall forthwith procure the return of the certificate to the Commission.³³

7 Representations against refusal or cancellation of a recognized fund certificate

- (1) Where the Commission proposes –
 - (a) to refuse to grant a recognized fund certificate under Article 5; or
 - (b) to cancel a recognized fund certificate under Article 6 otherwise than in response to a request made under paragraph (3) of that Article,

it shall give to the applicants or, as the case may be, the persons to whom the certificate was granted written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by paragraph (2).
- (2) A person to whom a notice is given under paragraph (1) may, within 21 days of the date of the notice, make written representations to the Commission and, if desired, oral representations to the Commission.
- (3) The Commission shall have regard to any representations made in accordance with paragraph (2) in determining whether to refuse to grant a recognized fund certificate or to cancel the recognized fund certificate, as the case may be.³⁴

PART 3

GENERAL REQUIREMENTS

8 Functionaries independent

- (1) In the case of a recognized unit trust, the manager and trustee must be persons who are independent of each other.
- (2) In the case of a recognized open-ended investment company, the custodian must be a person who is independent of that company and the manager.
- (3) Without prejudice to the generality of paragraphs (1) and (2), in the case of a recognized unit trust of which the manager and trustee are both bodies corporate having the same ultimate holding company, which is incorporated and resident outside Jersey, the manager and trustee shall be deemed to be persons who are independent of each other if the Commission is satisfied that the following conditions have been complied with –
 - (a) that the manager and trustee are subsidiary companies of a corporate group with aggregate capital resources, comprising paid-up share capital and reserves, in excess of £1,000,000,000;
 - (b) that neither the manager nor the trustee is a subsidiary company of the other;
 - (c) that no person is a director or other officer or employee of both the manager and the trustee;
 - (d) that the trustee has undertaken to report to the Commission all contraventions by the manager of the requirements of the Law or of any Regulations or Order made thereunder (including this Order) applicable to a recognized unit trust and all breaches by the manager of the obligations imposed upon the manager by the trust deed;
 - (e) that guarantees or undertakings or both, satisfactory to the Commission, of any liabilities of the trustee and the proper performance by the trustee of its obligations in respect of the recognized unit trust have been given by a holding company of the trustee.
- (4) Paragraph (3) shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking references to the trust deed as references to the articles, references to the manager of a recognized unit trust as references to the manager of the company and references to the trustee as references to the custodian.³⁵

9 Status of functionaries

- (1) In the case of a recognized unit trust, the manager and trustee must –
 - (a) each be a company incorporated in Jersey;

- (b) each have its affairs administered in Jersey; and
 - (c) each have a place of business in Jersey.
- (2) In the case of a recognized open-ended investment company, the company, the manager and the custodian must –
 - (a) each be a company incorporated in Jersey; and
 - (b) each have a place of business in Jersey, andthe manager and the custodian must each have its affairs administered in Jersey.

10 Name and purpose of recognized fund

The name of a recognized fund must not be undesirable or misleading, and the purposes of the fund must be reasonably capable of being successfully carried into effect.

11 Repurchase of units

- (1) The participants in a recognized unit trust must be entitled to have their units repurchased or cancelled in accordance with the terms of the trust deed at a price related to the net value of the property to which the units relate and determined in accordance with those terms; but a recognized unit trust shall be treated as complying with this Article if the trust deed requires the manager to ensure that a participant is able to sell his or her units on an investment exchange at a price not significantly different from that mentioned in this Article.
- (2) The participants in a recognized open-ended investment company must be entitled to have their units repurchased or cancelled in accordance with the terms of the articles at a price related to the net value of the property to which the units relate and determined in accordance with those terms; but a recognized open-ended investment company shall be treated as complying with this Article if the articles require the directors, and the management agreement requires the manager, to ensure that a participant is able to sell his or her units on an investment exchange at a price not significantly different from that mentioned in this Article.

12 Alteration of funds, etc.

- (1) The manager of a recognized unit trust shall give written notice to the Commission of –
 - (a) any proposed alteration of the documents constituting the fund; and
 - (b) any proposal to replace the trustee,and any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by an advocate or solicitor of the Royal Court to the effect that the change will not affect the compliance of the deed with the requirements of this Order.³⁶

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- (2) The trustee of a recognized unit trust shall give written notice to the Commission of any proposal to replace the manager.³⁷
 - (3) The directors of a recognized open-ended investment company shall give written notice to the Commission of –
 - (a) any proposed alteration of the documents constituting the fund;
 - (b) any proposal to replace any of the directors of that company or to appoint any additional director; and
 - (c) any proposal by the company to replace the manager or the custodian,and any notice given in respect of a proposed alteration involving a change in the memorandum, the articles, the fund rules (if any), the management agreement or the custodian agreement shall be accompanied by a certificate signed by an advocate or solicitor of the Royal Court to the effect that the change will not affect the compliance of any such document with the requirements of this Order.³⁸
 - (4) The custodian of a recognized open-ended investment company shall give written notice to the Commission of any proposal by it to give to the manager notice of removal under Article 51.
 - (5) Effect shall not be given to any such proposal unless –
 - (a) the Commission has approved the proposal; or
 - (b) one month has elapsed since the date on which the notice was given without the Commission having notified the manager or trustee, in the case of a recognized unit trust, or the directors or the custodian, in the case of a recognized open-ended investment company, that the proposal is not approved.

13 Restriction on activities of manager

- (1) The manager of a recognized fund shall not engage in any activities other than those mentioned in paragraph (2).
- (2) Those activities are –
 - (a) acting as manager of –
 - (i) a unit trust,
 - (ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body, or
 - (iii) any other fund under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) activities for the purposes of or in connection with those mentioned in sub-paragraph (a).

14 Avoidance of exclusion clauses

- (1) In the case of a recognized unit trust, any provision contained in the trust deed shall be void insofar as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his or her functions in respect of the fund.
- (2) In the case of a recognized open-ended investment company, any provision, whether contained in the company's articles or in any contract with the company or otherwise, shall be void insofar as it would have the effect of exempting –
 - (a) any officer of the company;
 - (b) the manager; or
 - (c) the custodian,from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the fund.

PART 4**CONSTITUTION OF A RECOGNIZED FUND****15 The trust deed of a recognized unit trust**

- (1) A unit trust does not qualify for the grant of a recognized fund certificate under Article 5 unless the fund is constituted by a written instrument under seal made between the manager and the trustee (the "trust deed") which –
 - (a) contains the matters specified in Part 1 of Schedule 3, and otherwise complies with the requirements of Part 2 of that Schedule; and
 - (b) makes no provisions relating to the matters stated in Article 11(2) and (3) of the Law other than a provision which –
 - (i) is required by Part 1 of Schedule 3, or is authorized by Part 2 of that Schedule,
 - (ii) repeats or in all material respects has the same effect as a provision of this Order as relates to such matters, or
 - (iii) is not inconsistent with the requirements of any enactment (including this Order).³⁹
- (2) Where in the case of a recognized unit trust this Order confers on the manager, or the trustee or on both of them together a discretion to do or refrain from doing an act of any description or to make a decision of any description, neither of them may so act, so refrain from acting or make such a decision if expressly forbidden to do so by the trust deed.

16 The constitution of a recognized open-ended investment company

- (1) An open-ended investment company does not qualify for the grant of a recognized fund certificate under Article 5 unless –
 - (a) the name of the company is consistent with the objectives of the fund;
 - (b) the articles authorize and require the directors to appoint a manager and a custodian;
 - (c) a manager is appointed under a management agreement which authorises and requires the manager, subject to the supervision of the directors –
 - (i) to manage the property of the fund and to perform such other functions of a manager as are provided for in this Order, and
 - (ii) to perform those functions in accordance with, and otherwise comply with, the terms of this Order;
 - (d) a custodian is appointed under a custodian agreement which authorises and requires the custodian –
 - (i) to hold the property of the fund on trust for the company and to perform such other functions of custodian as are provided for in this Order, and
 - (ii) to perform those functions in accordance with, and otherwise comply with, the terms of this Order;
 - (e) the memorandum, articles or fund rules (if any) contain the matters specified in Part 3 of Schedule 3, and otherwise comply with the requirements of this Order; and
 - (f) the fund rules (if any) have been adopted by resolution of the directors and approved by the custodian.⁴⁰
- (2) The memorandum, articles and fund rules (if any) may contain matters other than those specified in Part 3 of Schedule 3, if they are not inconsistent with the requirements of any enactment (including this Order).⁴¹
- (3) The management agreement and the custodian agreement may –
 - (a) confer functions upon the manager and the custodian respectively other than functions provided for in this Order; and
 - (b) contain terms other than terms required by or as a consequence of this Order,if such functions and terms are not inconsistent with the requirements of any enactment (including this Order).
- (4) Where in the case of a recognized open-ended investment company this Order confers on that company or the directors or the manager or the custodian or on 2 or more of them together a discretion to do or refrain from doing an act of any description or to make a decision of any description, neither of them may so act, so refrain from acting or make such a decision if expressly forbidden to do so by the articles, the management agreement or the custodian agreement, as the case may be.

17 Income and accumulation units

- (1) Subject to paragraph (2), the interests of the holders in a recognized fund shall consist of units (including fractions of a unit) each unit representing or being attributable to one undivided share in the property of the fund.
- (2) Where both income and accumulation units are in existence –
 - (a) any accumulation units issued otherwise than in pursuance of the initial offer shall, when issued, each represent the same number (including fractions) of undivided shares in the capital property of the fund as each other accumulation unit then in existence; and
 - (b) with effect from –
 - (i) the record date next following the end of each annual accounting period, and
 - (ii) the record date next following the end of each interim accounting period in respect of which an amount is available for allocation of income in accordance with Article 129,

the number (including fractions) of undivided shares in the capital property of the fund represented by each accumulation unit then in existence shall be increased to such number (calculated to at least 5 significant figures) as will ensure that thereafter the creation price of an accumulation unit shall remain unchanged notwithstanding the transfer made to the distribution account.

18 Initial capital property

- (1) Where the initial capital property of a recognized unit trust is to be acquired by the making of an initial offer to the public, that offer shall, subject to paragraph (2), be at the initial price and that offer shall be kept open for such period (the “period of the initial offer”) not exceeding 42 days as is specified in the trust deed or, if no such period is stated in the trust deed, such period, not exceeding 42 days, as shall be agreed between the manager and the trustee.
- (2) Where the initial offer is made in a country or territory outside Jersey, there may be added to the initial price of units offered in that country or territory an amount sufficient to cover additional duty or taxation leviable in that country or territory on the remittance of money to Jersey.
- (3) The initial price of units shall be expressed in the base currency of the recognized fund but the manager may agree to issue units during the period of the initial offer in any other currency so long as the trustee is satisfied that the price in that other currency, compared with the initial price, is not at the time of the agreement such as to be likely to result in any material prejudice to the interests of holders or potential holders.
- (4) This Article shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking references to the trust deed as references to the articles, references to the manager of the recognized unit trust as references to the manager of the company and references to the trustee as references to the custodian.

19 Constituents of capital property, hedging transactions and borrowings

- (1) In the case of a recognized unit trust, if the trust deed imposes restrictions –
 - (a) on the descriptions of asset which may be comprised in the capital property of the fund;
 - (b) on the proportion of the capital property of the fund which may consist of an asset of any description;
 - (c) on the descriptions of hedging transaction which may be effected on behalf of the fund; or
 - (d) on borrowings which may be made on behalf of the fund,those restrictions shall be observed notwithstanding that they are not imposed by Part 13 in respect of recognized funds of the category to which the fund belongs.
- (2) If a statement is made in the prospectus that the manager will or may in relation to any matter within any of the sub-paragraphs of paragraph (1) adopt, in the management of the fund, a policy more restrictive than the restrictions imposed in relation to that matter by Part 13 or by the trust deed, no significant departure may be made in the management of the fund from that stated policy unless and until the departure has been approved by an extraordinary resolution at a meeting of holders called for the purpose and the prospectus amended accordingly has been published.
- (3) This Article shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking references to the trust deed as references to the articles or fund rules (if any), references to an extraordinary resolution as references to an extraordinary resolution of the company or, in the case of an umbrella fund, of the holders of units in the relevant constituent part and references to the manager of the recognized unit trust as a reference to the manager of the company.⁴²

20 Manager's periodic charge

- (1) In the case of a recognized unit trust, the only payment to be made to the manager out of the property of the fund by way of remuneration for the manager's services is to be a periodic charge calculated and accruing due in accordance with this Article.
- (2) No such charge is to be payable unless its payment is authorized by the trust deed and the trust deed specifies a maximum thereto in accordance with paragraph (4) and the intervals ("accrual intervals") at which it is to accrue due.
- (3) The amount of each payment shall be determined by the manager but shall not exceed the maximum determined in accordance with paragraph (4).
- (4) The said maximum is such annual percentage as is specified in the trust deed as the maximum to the manager's periodic charge, or such lower

annual percentage as is specified in the most recently published prospectus as the maximum to the manager's periodic charge, (divided by 365 and multiplied by the number of days, including fractions of a day, in the relevant accrual interval referred to in paragraph (2)) of the value of the property of the fund determined in accordance with paragraph (5).

- (5) The value of the property of the fund referred to in paragraph (4) is the value of that property –
- (a) as at the valuation point at which the relevant accrual interval referred to in paragraph (2) begins or, if the relevant accrual interval does not begin at a valuation point, at the valuation point next before the beginning of that interval; and
 - (b) determined by striking an arithmetic average of the bid basis of the valuation carried out in accordance with Articles 59 to 61 at that valuation point and the offer basis of that valuation.
- (6) This Article shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking references to the trust deed as references to both the articles and the management agreement.

21 Payments out of and into the property of the fund

- (1) The following expenses only may be paid out of the property of a recognized unit trust –
- (a) the costs of dealing in the property of the fund;
 - (b) interest on borrowings permitted under the fund and charges incurred in effecting or varying the terms of such borrowings;
 - (c) taxation and duties payable in respect of the property of the fund, the trust deed or the sale of units;
 - (d) any costs incurred in modifying the trust deed, including costs incurred in respect of meetings of holders convened for purposes which include the purpose of modifying the trust deed, where the modification is –
 - (i) necessary to implement any change in the law (including changes made by this Order),
 - (ii) necessary as a direct consequence of any change in the law (including changes in this Order),
 - (iii) expedient having regard to any change in the law made by or under any fiscal enactment and which the manager and the trustee agree is in the interests of holders, or
 - (iv) to remove from the deed obsolete provisions;
 - (e) any costs incurred in respect of meetings of holders convened on a requisition by holders not including the manager or an associate of the manager;
 - (f) any periodic charge payable to the manager;
 - (g) the fees of the trustee;

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- (h) any expenses or disbursements of the trustee which are of descriptions authorized by the trust deed to be paid out of the property of the fund;
 - (i) costs incurred in respect of the establishment and maintenance of the register;
 - (j) the audit fees and any expenses of the auditor;
 - (k) any fees of any regulatory authority in a country or territory outside Jersey in which units in the fund are or may be marketed but excluding any such fees payable in respect of the manager and the trustee;
 - (l) costs incurred in respect of the distribution of income to holders;
 - (m) costs incurred in respect of the printing and posting of certificates;
 - (n) costs reasonably incurred in respect of the publication of prices of units and in respect of the publication and distribution of the prospectus, annual and interim reports and accounts;
 - (o) legal and other professional fees and expenses reasonably incurred in ascertaining the rights of holders other than the manager or an associate of the manager;
 - (p) costs and expenses incurred in respect of –
 - (i) the formation of the fund, and
 - (ii) obtaining a listing for units in the fund on a stock exchange on the occasion of the initial offer,amortised over a period not exceeding 10 years, as stated in the prospectus;
 - (q) costs and expenses incurred in respect of obtaining a listing for units in the fund on a stock exchange on an occasion other than that of the initial offer, if agreed by holders;
 - (r) any charges reasonably incurred by the trustee in depositing any part of the property of the fund in safe keeping in a country or territory outside Jersey;
 - (s) the remuneration and expenses of any representative appointed in another jurisdiction in compliance with the laws or other requirements of that jurisdiction;
 - (t) any amount payable under any indemnity provisions contained in the trust deed, other than provisions indemnifying the other party against claims arising from its failure to exercise due care and diligence; and
 - (u) legal and other professional fees and expenses incurred in any proceedings instituted or defended in accordance with the written advice of an advocate of the Royal Court, or a solicitor, of not less than 7 years standing to enforce, protect, safeguard, defend or recover the rights or property of the fund.⁴³
- (2) The following expenses only may be paid out of the property of a recognized open-ended investment company–

- (a) such of the expenses stated in paragraph (1)(a), (b), (e), (f), (i), (j), and (l) to (q) as are incurred by such a company;
- (b) taxation and duties payable in respect of the property of the fund or the sale of units;
- (c) any costs incurred in modifying the articles of the company, the management agreement and the custodian agreement including costs incurred in respect of meetings of holders convened for purposes which include the purpose of modifying the articles, where the modification is –
 - (i) necessary to implement any change in the law (including changes made by this Order),
 - (ii) necessary as a direct consequence of any change in the law (including changes in this Order),
 - (iii) expedient having regard to any change in the law made by or under any fiscal enactment and which the directors and the custodian agree is in the interests of holders, or
 - (iv) to remove from the articles obsolete provisions;
- (d) the fees of the custodian;
- (e) the expenses or disbursements of the custodian in respect of which he or she is entitled under the custodian agreement to be indemnified out of the property of the fund;
- (f) costs incurred by the company in making its annual return and in complying with other statutory requirements imposed upon the company;
- (g) directors' fees and expenses in respect of which the directors are entitled under the general law to be indemnified out of the property of the fund;
- (h) the fees chargeable to the company under Article 7(12) of the Law and any fees of any regulatory authority in a country or territory outside Jersey in which units in the fund are or may be marketed but excluding any such fees payable in respect of the manager and the custodian;
- (i) any charges reasonably incurred by the custodian in depositing any part of the property of the fund in safe keeping in a country or territory outside Jersey;
- (j) the remuneration and expenses of any representative appointed in another jurisdiction in compliance with the laws or other requirements of that jurisdiction;
- (k) any amount payable under any indemnity provisions contained in the articles or any agreement with a functionary other than provisions indemnifying the functionary against claims arising from its failure to exercise due care and diligence; and
- (l) legal and other professional fees and expenses incurred in any proceedings instituted or defended in accordance with the written advice of an advocate of the Royal Court, or a solicitor, of not less

than 7 years standing to enforce, protect, safeguard, defend or recover the rights or property of the fund.⁴⁴

- (3) All payments (or repayments) of a capital nature properly payable out of (or into) the property of a recognized fund shall be paid out of (or into) the capital property of the fund and all payments of an income nature properly so payable to the extent that the income property of the fund is insufficient to meet them when they fall due for payment shall be paid out of the capital property of the fund.
- (4) All payments (or repayments) of an income nature properly payable out of (or into) the income property of a recognized fund shall, subject to paragraph (3), be paid out of (or into) the income property of the fund.
- (5) In the case of an umbrella fund, any expenses which may under this Article be paid out of the property of the fund and any sums received which are not attributable to a constituent fund shall be allocated amongst the constituent funds in such a way as –
 - (a) in the case of a recognized unit trust, the manager, after consulting the trustee; and
 - (b) in the case of a recognized open-ended investment company, the directors or the manager after consulting the custodian,consider to be fair to the participants in the various constituent funds.

22 Subdivision and consolidation of units

- (1) In the case of a recognized unit trust, the manager may at any time or times when no bearer certificates are in issue with the approval of the trustee determine that each unit shall be subdivided into 2 or more units (whereupon each unit shall stand subdivided accordingly) or that one or more units shall be consolidated (whereupon those units shall stand consolidated).
- (2) In the case of a recognized open-ended investment company, the company may, in accordance with its articles and subject to Article 2 of the Companies (Supplementary Provisions) (Jersey) Law 1968, determine that each unit shall be subdivided into 2 or more units (whereupon each unit shall stand subdivided accordingly) or that one or more units shall be consolidated (whereupon those units shall stand consolidated).

PART 5

TITLE TO UNITS AND TRANSFER THEREOF

23 Certificates

- (1) In the case of a recognized unit trust, subject to paragraphs (8) and (9), the manager and the trustee shall, within the period specified in paragraph (4), provide any person to whom units in the fund have been

sold with a certificate representing those units in such form as may from time to time be agreed between the manager and the trustee and, subject to paragraph (3) below, each such certificate shall –

- (a) be dated;
 - (b) bear the name of the fund;
 - (c) bear the names and addresses of the manager and the trustee;
 - (d) bear a distinctive number;
 - (e) specify the number of units represented thereby and, where more than one type of unit in the fund is available, the type of unit represented thereby;
 - (f) state the name of the holder; and
 - (g) be signed on behalf of the trustee in such manner as is specified in the trust deed.
- (2) If the trust deed authorises the issue of bearer certificates, a certificate issued under paragraph (1) shall, if the holder to whom it is issued so requests, instead of stating his or her name, state that the bearer of the certificate is entitled to the units represented by the certificate.
- (3) In the case of a recognized open-ended investment company, subject to paragraphs (10) and (11), the manager and the custodian shall, within the period specified in paragraph (4), provide any person to whom units in the fund have been sold with a certificate representing those units in such form as may from time to time be agreed between the company and the custodian and each such certificate shall –
- (a) be dated;
 - (b) bear the name of the company;
 - (c) bear a distinctive number;
 - (d) specify the number of units represented thereby and, where more than one type of unit in the fund is available, the type of unit represented thereby;
 - (e) state the name of the holder; and
 - (f) be sealed with the company's seal.
- (4) The period referred to in paragraphs (1) and (3) is the period of 21 days after the time when –
- (a) the purchaser has supplied the manager with such information about the proposed registered holder as will enable the trustee or the custodian to complete the certificate and the address to which the certificate is to be sent;
 - (b) the manager has received the purchase price or other consideration for the sale of the units; and
 - (c) the expiry of the period of any initial offer.
- (5) In the case of a recognized unit trust, certificates duly signed by or on behalf of the trustee shall be valid and binding notwithstanding that before the delivery thereof the trustee or any person whose signature

appears thereon as a duly authorized signatory may have ceased to be the trustee or, as the case may be, an authorized signatory.

- (6) Upon a subdivision of units in accordance with Article 22, the trustee or the custodian shall –
 - (a) either provide each holder of a certificate representing units with a new certificate representing the number of additional units to which the holder has become entitled by reason of the subdivision or endorse or arrange for the endorsement of his or her existing certificate to indicate that it represents the original and that additional number of units; and
 - (b) forthwith give notice of the subdivision to each holder (or to the first named of joint holders) whose name is entered in the register accompanied, except where the manager and the trustee or the custodian are not under an obligation to issue certificates representing units, by an additional certificate or an invitation to submit his or her certificate for endorsement.
- (7) Upon a consolidation of units in accordance with Article 22, the trustee or the custodian shall –
 - (a) endorse or arrange for the endorsement of each existing certificate to indicate that it represents the consolidated number of units; and
 - (b) forthwith give notice of the consolidation to each holder (or to the first named of joint holders) whose name is entered in the register accompanied, except where the manager and the trustee or the custodian are not under an obligation to issue certificates representing units, by an invitation to submit his or her certificate for endorsement.
- (8) In the case of a recognized unit trust, this Article shall not apply if the trust deed contains a provision relieving the manager and the trustee from any duty to issue certificates and if the trust deed does contain such a provision neither the manager nor the trustee shall issue certificates representing units.
- (9) In the case of a recognized unit trust, if the trust deed relieves the manager and the trustee from any obligation to issue certificates representing units other than bearer certificates, the manager and the trustee shall be obliged to deliver bearer certificates representing such of a holder's units as the holder has requested be represented by bearer certificates but shall not issue any certificates representing units other than bearer certificates.
- (10) In the case of a recognized open-ended investment company, this Article shall not apply if the company's articles permit units to be held without a certificate being issued.⁴⁵
- (11) This Article does not require the manager and the trustee or the custodian 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.

24 Recognized unit trust: the register

- (1) The trustee of a recognized unit trust shall establish and maintain a register of the holders (the “register”) in accordance with this Article.
- (2) The trustee may appoint some other person (including the manager) (the “registrar”) to establish and maintain the register on the trustee’s behalf and, if the trustee does so –
 - (a) the trustee remains responsible for the discharge of all the trustee’s duties in relation to the register under this Order; and
 - (b) anything required or authorized under this Order to be done in relation to the register by, to or before the trustee may be done by, to or before the registrar.
- (3) The register shall be maintained in a legible form or in a manner capable of being reproduced in a legible form.
- (4) There shall be entered in the register –
 - (a) the name and address of each holder 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 type held by each such holder other than units the title to which is for the time being represented by bearer certificates;
 - (c) the date on which the holder was registered in the register in respect of the units standing in his or her name; and
 - (d) the number of units (including fractions of a unit) of each type for the time being in issue and represented by bearer certificates and the serial numbers of those certificates,

but the trustee is not bound to register more than 4 persons as the joint holders of any units.

25 Recognized open-ended investment company: the register

- (1) In the case of a recognized open-ended investment company, subject to paragraph (2), the custodian shall maintain the register on the company’s behalf.
- (2) The company and the custodian may appoint some other person (including the manager) (the “registrar”) to establish and maintain the register on the company’s behalf and, if the company and the custodian do so –
 - (a) the custodian remains responsible for the discharge of all the custodian’s duties in relation to the register under this Order; and
 - (b) anything required or authorized under this Order to be done in relation to the register by, to or before the custodian may be done by, to or before the registrar.⁴⁶
- (3) The register shall be maintained in a legible form or in a manner capable of being reproduced in a legible form.

26 The register as evidence of title

- (1) Subject to Article 28, the register shall be conclusive evidence as to the persons respectively 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 –
 - (a) in the case of a recognized unit trust, on the manager or the trustee; or
 - (b) in the case of a recognized open-ended investment company, on that company, the manager or the custodian.

27 The manager as holder

- (1) The manager of a recognized fund may become a holder.
- (2) The manager shall be deemed to hold each unit (other than, in the case of a recognized unit trust, 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.

28 Default by holder

If –

- (a) in the case of a recognized unit trust –
 - (i) such evidence is furnished to the trustee as the trustee shall require to show that default has been made by a holder in making any payment in money or transfer of property due to the manager or the trustee under the provisions of this Order or the trust deed in respect of the creation and sale or resale of units to that holder, and
 - (ii) any certificate in respect of those units which has been signed on behalf of the trustee is received by the trustee;
- (b) in the case of a recognized open-ended investment company –
 - (i) such evidence is furnished to the custodian as the custodian shall require to show that default has been made by a holder in making any payment in money or transfer of property due to the manager or the custodian under the provisions of this Order or the articles in respect of the creation and sale or resale of units to that holder, and
 - (ii) any certificate in respect of those units which has been sealed with the company's seal is received by the custodian,

the trustee or the custodian or the registrar 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 resold by the manager and the name of the purchaser entered in the register.

29 Recognized unit trust: conversion of registered into bearer certificates and vice versa

- (1) This Article applies where the trust deed of a recognized unit trust authorises the issue of bearer certificates.
- (2) Where this Article applies, a holder whose units are for the time being evidenced by an entry in the register may apply to the trustee for his or her name to be struck out of the register in respect of some or all of those units and –
 - (a) if he or she does so; and
 - (b) where certificates evidencing title to those units have been issued, upon surrender to the trustee of those certificates,his or her name shall be so struck out and he or she shall be issued with a bearer certificate or bearer certificates 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 for his or her name to be entered in the register in respect of some or all of those units and, upon surrender to the trustee of the bearer certificates representing title to those units, the registrar shall enter the name of that holder in the register in respect of those units and, unless the trust deed relieves the manager and the trustee from any obligation to issue certificates representing units, issue to him or her certificates evidencing his or her title to those units.

30 Exchange and replacement of certificates

- (1) Every holder whose units are represented by certificates shall be entitled to exchange any or all of his or her certificates for one or more certificates of such denominations as he or she may require representing the same aggregate number of units of the same type but, before any such exchange is carried out, the holder shall surrender to the manager the certificate or certificates to be exchanged.
- (2) If a certificate has become mutilated or defaced, the trustee or the custodian in its discretion may issue to the person entitled in exchange for and upon surrender of the mutilated or defaced certificate a new certificate representing the same aggregate number of units of the same type.
- (3) If a certificate shall be lost, stolen or destroyed, the trustee may in its discretion issue to the person entitled a new certificate in lieu thereof but no such new certificate shall be issued unless the applicant has –
 - (a) furnished to the trustee or the custodian evidence satisfactory to the trustee or the custodian of the loss, theft or destruction of the original certificate;
 - (b) paid all expenses incurred in connection with the investigation of the facts thereof; and

- (c) if required by the trustee or the custodian so to do, furnished to the trustee or the custodian such indemnity as the trustee or the custodian may require.

31 Recognized unit trust: transfer of units by act of parties

- (1) In the case of a recognized unit trust, subject to paragraph (2), every holder shall be entitled to transfer units held by him or her in respect of which he or she is entered in the register by an instrument of transfer in any usual or common form or in such other form as the trustee may from time to time approve.
- (2) The trustee is not under any duty to accept a transfer –
 - (a) if the transfer is of some only of the units of any type held by a holder if such transfer would result in the holder, or the transferee, being a holder of such number of the units of the type in question as would be less than the minimum holding of units; or
 - (b) if the trust deed contains a limitation upon the categories of persons who may be holders and the transferee is not within one of those categories.
- (3) Every instrument of transfer of units in a recognized unit trust shall be signed by or on behalf of the holder transferring the units (or, in the case of a company, sealed by that body or signed by one of its officers) 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 of units in a recognized unit trust must be left with the trustee for registration accompanied by any necessary declarations or other documents that may be required in consequence of any legislation now or hereafter from time to time in force and, subject to paragraph (5), by the certificate or certificates relating to the units to be transferred and such other evidence as the trustee may require to prove the title of the transferor or the transferor's right to transfer the units or in the case of a company the authority of the signatory on its behalf.
- (5) The trustee may dispense with the production of any certificate which shall have become lost, stolen or destroyed, upon compliance by the transferor with the like requirements to those arising in the case of an application by him or her for the replacement thereof.
- (6) All instruments of transfer of units in a recognized unit trust which shall be registered shall be retained by the trustee and a reference shall be made on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.
- (7) If some only of the units in a recognized unit trust represented by a certificate are transferred the transferor shall be entitled free of charge to a new certificate in respect of the balance.

32 Recognized unit trust: registration of a transfer in favour of the manager

- (1) Upon the registration of a transfer of units in a recognized unit trust 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 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.

33 Recognized unit trust: transfer of units by operation of law

- (1) In the case of a recognized unit trust, on the death of any one of joint holders the survivor or survivors shall be the only persons recognized by the trustee and the manager as having any title to or any interest in the units held by such joint holders.
- (2) The executors or administrators of a deceased holder of units in a recognized unit trust (not being one of 2 or more joint holders) shall be the only persons recognized by the trustee and the manager as having title to the units held by him or her.
- (3)
 - (a) Any person becoming entitled to a unit in a recognized unit trust in consequence of the death or bankruptcy of any sole holder or of the survivor of joint holders may, subject as hereafter provided, upon producing such evidence as to his or her title as the trustee may properly require either be registered himself or herself as holder of such unit upon giving to the trustee notice in writing of such desire or transfer such unit to some other person;
 - (b) all the provisions of this Order relating to transfer of units shall be applicable to any such notice or transfer as if the death or bankruptcy had not occurred and as if such notice or transfer were a transfer by such holder;
 - (c) subject to sub-paragraph (d), a person becoming entitled to a unit in consequence of death or bankruptcy as aforesaid may give a discharge for all monies payable in respect of the unit but shall not be entitled to receive notices of or attend or vote at any meeting of holders until he or she shall have been registered as a holder in respect of such unit;
 - (d) the trustee may at his or her discretion retain any monies payable in respect of any unit of which any person is entitled to be registered as the holder or which any person is entitled to transfer under the provisions of this Article until such person shall be registered as the holder of such unit or shall duly transfer the same.

34 Recognized unit trust: change of name and address of holder

In the case of a recognized unit trust, the trustee shall –

- (a) upon receipt of notice in writing of a change of name or 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 it 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.

35 Payment of fees on issue of certificates

- (1) In the case of a recognized unit trust, if authorized by the trust deed to do so, the trustee or the registrar on the trustee's behalf may make –
 - (a) the issue of a certificate under this Part of this Order, but not under Article 21; and
 - (b) the registration of any grant of probate, letters of administration or any other document relating to or affecting the title to any unit,conditional on the payment to it of such reasonable fee therefor as the manager and the trustee may agree.
- (2) In the case of a recognized open-ended investment company, if authorized by the articles to do so, the custodian or the registrar on the company's behalf may make –
 - (a) the issue of a certificate under this Part of this Order, but not under Article 21; and
 - (b) the registration of any grant of probate, letters of administration or any other document relating to or affecting the title to any unit,conditional on the payment to it of such reasonable fee therefor as the company and the custodian may agree.

36 Trustee or custodian to supply certificates

The trustee or the custodian shall deliver to or to the order of the manager certificates evidencing title to units in such denominations and, unless in the case of a recognized unit trust 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 sold units and it shall do so forthwith on the request of the manager –

- (a) in the case of units to be sold upon their creation, on payment to the trustee or the custodian of the consideration payable in connection with their sale; or

- (b) in the case of units which are sold otherwise than on their creation, on the surrender to the trustee or the custodian of certificates representing that number of units of the relevant type which are to be resold.

37 Recognized unit trust: inspection of register and copies of entries

- (1) In the case of a recognized unit trust, the trustee shall make the register available for inspection by or on behalf of the holders or the manager in Jersey free of charge at all times during ordinary office hours except that the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the trustee may from time to time determine.
- (2) The trustee shall supply the manager with a copy of the register or any part of it on payment of a reasonable fee.
- (3) The trustee shall supply a holder or his or her authorized representative free of charge with a copy in print of the entries on the register relating to that holder.

PART 6

POWERS AND DUTIES OF FUNCTIONARIES

38 Management of recognized fund

- (1) In the case of a recognized unit trust, it is the duty of the manager to manage the property of the fund and it is its right and duty to make decisions as to the constituents of that property from time to time in accordance with –
 - (a) the trust deed;
 - (b) this Order; and
 - (c) the most recently published prospectus.
- (2) It shall be the duty of the trustee to take reasonable care to ensure that the fund is properly administered by the manager in accordance with paragraph (1).
- (3) The manager shall on the request of the trustee forthwith supply the trustee with such information concerning the management and administration of the fund as it may reasonably require.
- (4) This Article shall have effect in relation to a recognized open-ended investment company as it has in relation to a recognized unit trust, taking the reference to the trust deed as a reference to the articles, the fund rules (if any) and the management agreement and taking references to the trustee as references to the custodian.⁴⁷

39 Recognized unit trust: audit⁴⁸

- (1) This Article applies to the audit of a recognized unit trust.

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- (2) The manager shall, at the outset and upon any vacancy, with the approval of the trustee appoint as auditor for the fund a person –
 - (a) qualified under Article 113 of the Companies (Jersey) Law 1991⁴⁹ for appointment as auditor of a company under Article 109 of that Law; and
 - (b) not disqualified from being an auditor of the manager or the trustee under Article 115 of the Permit Conditions Order.⁵⁰
 - (3) The Commission may appoint an auditor or auditors if at any time the manager should fail to do so.
 - (4) The audit fees of the auditor shall be determined by the manager with the approval of the trustee except in the case of auditors appointed by the Commission; in that case their remuneration may be fixed by the Commission.
 - (5) The manager shall have the accounts required to be included in the annual report prepared in accordance with Article 137 audited by the auditors appointed by it and that report shall be accompanied by a report of the auditors 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 fund as at the end of the annual accounting period.
 - (6) The manager may with the approval of the trustee at any time remove an auditor and this is so notwithstanding anything in any agreement between the persons concerned.
 - (7) Where an auditor is removed by the manager, the manager and the trustee shall forthwith give notice of that fact to the Commission.
 - (8) The auditor shall have –
 - (a) a right of access at all times to the accounting and other records of the fund and all other documents relating to its business; and
 - (b) a right to require from the manager and the trustee such information and explanation as the auditor thinks necessary for the performance of his or her duties as auditor.

40 Recognized open-ended investment company: audit⁵¹

- (1) This Article applies to the audit of a recognized open-ended investment company.
- (2) No person shall be appointed as auditor of a company to which this Article applies who is disqualified from being an auditor of the manager or the custodian under Article 115 of the Permit Order or who would be disqualified under the same Article if the company were a relevant holder within the meaning of that term as used in that Article.⁵²
- (3) The Commission may appoint an auditor or auditors if at any time the directors or the company in general meeting should fail to do so.

- (4) The remuneration of the auditor or auditors shall be fixed by the company in general meeting, or in such manner as the company in general meeting may determine, except in the case of an auditor appointed by the Commission; in that case his or her remuneration may be fixed by the Commission.
- (5) The company and the manager shall have the accounts required to be included in the annual report prepared in accordance with Article 137 audited by the company's 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 his or her opinion they give a true and fair view of the financial position of the company as at the end of the annual accounting period.
- (6) Where an auditor is removed by the company, it shall forthwith give notice of that fact to the Commission.
- (7) The auditor shall have –
 - (a) a right of access at all times to the accounting and other records of the company and all other documents relating to its business; and
 - (b) a right to require from the company, the manager and the custodian such information and explanation as the auditor thinks necessary for the performance of the duties as auditor.

41 Inspection and obtaining copies of documents

- (1) In the case of a recognized unit trust, the manager and the trustee shall each make a copy of the trust deed, of any supplemental deed and of the most recently published prospectus available in English for inspection by the public free of charge at all times during ordinary office hours at that place of business in Jersey which is the principal place of business in Jersey at which it carries on the business of managing or acting as the trustee of a recognized unit trust and the manager shall also make them so available in English for inspection at a place designated by it in the United Kingdom.
- (2) The manager and the trustee shall allow any person to obtain a copy of the trust deed and any supplemental deed and of the prospectus on payment of a reasonable fee.
- (3) This Article shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking –
 - (a) references to the manager and to the trustee as references to that company and the manager respectively; and
 - (b) references to the trust deed and supplemental deed as references to the memorandum and articles, the management agreement, and the custodian agreement, save that in the case of the memorandum and articles the fee charged for obtaining a copy thereof shall not exceed that stated in Article 10 of the Loi (1861) sur les Sociétés à Responsabilité Limitée.

42 Record of units held by manager

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

43 Recognized unit trust: general powers and duties of the trustee

- (1) In the case of a recognized unit trust, subject to paragraph (7), it is the duty of the trustee to carry out the instructions of the manager as to the investments which are from time to time to comprise the property of the fund.
- (2) The trustee shall take into his or her custody or under his or her control all the property of the fund and hold it in trust for the holders in accordance with the provisions of the trust deed and this Order.
- (3) Subject to paragraph (5), the manager may, with the agreement of the trustee and if the trust deed permits it, arrange for the property of the fund to be loaned through the agency of any person specified in Part 1 of Schedule 4 and any income received on account of the loan shall form part of the property of the fund.
- (4) Subject to paragraph (5), the trustee may at its discretion entrust the documents of title or the documents evidencing title to all or part of the property of the fund for safe keeping to some other person (not being the manager or an associate of the manager who is not a bank listed in Part 2 of Schedule 4 (hereinafter referred to as a “Schedule 4 bank”) or a subsidiary of such a bank) and may arrange for such other person to become the registered holder of property of the fund the title to which is in registered form; but, if that other person is a Schedule 4 bank or a subsidiary of such a bank which is an associate of the manager, the trustee remains responsible for the acts and omissions of that other person as though they were the acts and omissions of the trustee itself.
- (5) The trustee may take advantage of paragraph (3) or (4) only if –
 - (a) it is satisfied at the outset after making reasonable enquiries, and continues thereafter after repeating those enquiries at reasonable intervals to be satisfied, that the person referred to (the “sub-custodian”) is a fit and proper person to be a sub-custodian; and
 - (b) arrangements have been and continue to be made with the sub-custodian to protect the rights of the trustee in priority to other creditors of the sub-custodian which the trustee is satisfied are the best available under the law of the country or territory where the documents or property will be kept.

- (6) The trustee shall take reasonable care to ensure that the methods used by the manager in calculating prices at which units are sold and repurchased are adequate to ensure that those prices are within any limits prescribed by this Order and shall from time to time and, if requested at any time by a holder or former holder to do so within one year after the completion of the transaction, carry out checks which are adequate to show whether the manager has determined prices within those limits.
- (7) The trustee shall be entitled to give notice to the manager that it is not prepared to accept the transfer of any property which in the opinion of the trustee infringes the terms of this Order or of the trust deed and the trustee shall be entitled to require the manager to secure the transfer in place of any such property of other property acceptable to the trustee.
- (8) If services are provided under paragraph (4) by a Schedule 4 bank or a subsidiary of such a bank which is an associate of the manager, neither the trustee, the manager nor the person providing the custodial services shall be liable to account either to the other or others of them or to the holders or any of them for any profits or benefits made by or derived from payments made by way of remuneration for the custodial services.

44 Recognized open-ended investment company: general powers and duties of the custodian

- (1) In the case of a recognized open-ended investment company, subject to paragraph (7), it is the duty of the custodian to carry out the instructions of the manager as to the investments which are from time to time to comprise the property of the fund.
- (2) The custodian shall take into his or her custody or under his or her control all the property of the fund and hold it in trust for that company in accordance with the provisions of the articles and the custodian agreement and this Order.
- (3) Subject to paragraph (5), the manager may, with the agreement of the custodian and if the articles permit it, arrange for the property of the fund to be loaned through the agency of any person specified in Part 1 of Schedule 4 and any income received on account of the loan shall form part of the property of the fund.
- (4) Subject to paragraph (5), the custodian may at its discretion entrust the documents of title or the documents evidencing title to all or part of the property of the fund for safe keeping to some other person (not being the open-ended investment company or the manager or an associate of either who is not a Schedule 4 bank or a subsidiary of such a bank) and may arrange for such other person to become the registered holder of property of the fund the title to which is in registered form; but, if that other person is a Schedule 4 bank or a subsidiary of such a bank which is an associate of the recognized open-ended investment company or of the manager, the custodian remains responsible for the acts and omissions of that other person as though they were the acts and omissions of the custodian itself.
- (5) The custodian may take advantage of paragraph (3) or (4) only if –

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- (a) it is satisfied at the outset after making reasonable enquiries, and continues thereafter after repeating those enquiries at reasonable intervals to be satisfied that the other person referred to (the “sub-custodian”) is a fit and proper person to be such a sub-custodian; and
 - (b) arrangements have been and continue to be made with the sub-custodian to protect the rights of the custodian in priority to other creditors of the sub-custodian which the custodian is satisfied are the best available under the law of the country or territory where the documents or property will be kept.
- (6) The custodian shall take reasonable care to ensure that the methods used by the manager in calculating prices at which units are created, cancelled, sold and repurchased are adequate to ensure that those prices are within any limits prescribed by this Order and shall from time to time and at any time when it is requested by a holder or former holder to do so carry out checks which are adequate to show whether the manager has determined prices within those limits.
 - (7) The custodian shall be entitled to give notice to the manager that it is not prepared to accept the transfer of any property which in the opinion of the custodian infringes the terms of this Order or of the articles and the custodian shall be entitled to require the manager to secure the transfer in place of any such property of other property acceptable to the custodian.
 - (8) If services are provided under paragraph (4) by a Schedule 4 bank or a subsidiary of such a bank which is an associate of the manager, neither the custodian, the manager nor the person providing the custodial services shall be liable to account either to the other or others of them or to the holders or any of them for any profits or benefits made by or derived from payments made by way of remuneration for the custodial services.

45 Manager, trustee, custodian and associates not to deal as principals regarding the property of the fund

- (1) Subject to paragraphs (3) and (4) and to Article 95, it is the duty of the manager, and of the trustee, of a recognized fund to take all reasonable steps to ensure that neither of them nor any investment adviser engaged by the manager nor any associate of either of them or of any such investment adviser as principal –
 - (a) sells, or deals in the sale of, property to the trustee for the account of the fund, or vests property in the trustee against the sale of units in the fund (otherwise than pursuant to a unitisation); or
 - (b) purchases property from the trustee acting for the account of the fund.
- (2) The steps referred to in paragraph (1) include the making of reasonable enquiries as to who are associates of the manager, of the trustee or of any investment adviser of the manager.
- (3) A transaction in any property is not prohibited by this Article –

- (a) if the value of the property is certified in writing for the purpose of that transaction by a person selected or approved by the trustee or the custodian as qualified to value property of the description to which that property belongs and the trustee is of opinion that the terms of that transaction are not such as are likely to result in any prejudice to holders; or
 - (b) where that property is an investment which is dealt in on a recognized or designated investment exchange, the transaction is effected with or through a member of that exchange under arrangements recorded in writing and made between the manager, the trustee and that member which the trustee and the manager are satisfied impose on that member a duty to take reasonable steps to ensure that every transaction effected by that member for the account of the fund is effected on the best terms available at the time the transaction is effected, on the market generally for transactions with reliable counterparties of the same size and nature as the transaction in question.
- (4) Neither the trustee, the manager, any investment adviser engaged by the manager nor any associate of any of them shall be liable to account either to the other or others of them or to the holders or any of them for any profits or benefits made by or derived from or in connection with any transaction permitted by paragraph (3).
- (5) This Article has effect in relation to a recognized open-ended investment company as it has in relation to a recognized unit trust, taking references to the trustee as references to the custodian.

46 Duties under the general law

- (1) In the case of a recognized unit trust, the duties of the manager and the trustee imposed on them by this Order and by the trust deed are in addition to and not in derogation from the duties which are otherwise imposed on them by law and the manager and the trustee are required to fulfil those other duties by this Order as well as by the general law.
- (2) In the case of a recognized open-ended investment company, such duties of the directors, the manager and the custodian as are imposed by this Order and by the articles and by any other agreement are in addition to and not in derogation from the duties which are otherwise imposed on them by law and the directors, the manager and the custodian are required to fulfil those other duties by this Order as well as by the general law.

47 Voting rights in respect of the property of the fund

- (1) This Article applies in relation only to recognized funds which are not feeder funds or funds of funds.
- (2) All rights of voting conferred by any of the property of the fund shall be exercised or not exercised in such manner as the manager may in writing direct.

- (3) The trustee or the custodian shall upon the written request of the manager from time to time execute and deliver or cause to be executed or delivered to the manager or its nominees such powers of attorney or proxies as the manager may reasonably require, in such name or names as the manager may request, authorising such attorneys and proxies to vote consent or otherwise act in respect of all or any part of the property of the fund.
- (4) The trustee or the custodian shall without undue delay forward to the manager all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it as registered holder of an investment.
- (5) In this Article “vote” includes any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the property of the fund 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.

48 Retirement of the trustee

- (1) In the case of a recognized unit trust, the trustee shall not be entitled to retire voluntarily except upon the appointment of a new trustee.
- (2) In the event of the trustee desiring to retire or ceasing to be the holder of a permit, the manager may by deed supplemental to the trust deed under the seal of the manager appoint another person acceptable to the Commission in the place of the retiring trustee.⁵³

49 Retirement of the custodian

- (1) In the case of a recognized open-ended investment company, the custodian shall not be entitled to retire voluntarily except upon the appointment of a new custodian.
- (2) In the event of the custodian desiring to retire or ceasing to be the holder of a permit, the directors may appoint another person acceptable to the Commission in the place of the retiring custodian.⁵⁴

50 Recognized unit trust: replacement and retirement of manager

- (1) In the case of a recognized unit trust, subject to Article 12, 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) the manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved in writing by the trustee);
 - (b) the manager is bankrupt;

- (c) for good and sufficient reason the trustee is of 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
 - (e) the holders of three-quarters majority in value of the units (excluding units held or deemed to be held by the manager) in respect of which certificates are for the time being outstanding make a request in writing to the trustee that the manager be removed.
- (2) The manager for the time being shall on receipt of such notice by the trustee cease to be the manager and the trustee shall by writing under its seal appoint some other person acceptable to the Commission to be the manager of the fund upon and subject to that other person's entering into such deed or deeds as the trustee may be advised is necessary or desirable to be entered into by such person in order to secure the due performance of its duties as manager.
- (3) If the name of the fund 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 fund.
- (4) The manager shall have the right to retire in favour of some other person acceptable to the Commission and approved in writing by the trustee on and subject to fulfilment of the following conditions –
 - (a) the retiring manager appointing such person by writing under the seal of the retiring manager as manager of the fund in its stead and assigning to such appointee all its rights and duties as such a manager; and
 - (b) such new manager entering into such deed or deeds as the trustee may be advised is necessary or desirable to be entered into by such person in order to secure the due performance of its duties as manager.
- (5) Upon such retirement –
 - (a) the retiring manager shall be absolved and be released from all further obligations under this Order and under the trust deed but without prejudice to the rights of the trustee or of any holder or any other person in respect of any act of omission on the part of the retiring manager prior to such retirement; and
 - (b) the new manager may and shall thereafter exercise all the powers and enjoy all the rights and it shall be subject to all the duties and obligations of the manager under this Order and under the trust deed as fully as though such new manager had been originally a party to the trust deed.
- (6) Upon the removal or retirement of the manager, the removed or retiring manager shall remain entitled to all units held or deemed to be held by it and shall be entitled to require the trustee to issue to it a certificate or certificates thereof (if not previously issued) and to be registered in the register in respect thereof and thereafter to have and exercise all rights of a holder of such units.⁵⁵

51 Recognized open-ended investment company: replacement and retirement of manager

- (1) In the case of a recognized open-ended investment company, subject to Article 12, the manager for the time being shall be subject to removal by notice in writing given by the directors or the custodian to the manager in any of the of the following events –
 - (a) the manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by such directors);
 - (b) the manager is bankrupt;
 - (c) for good and sufficient reason such directors or the custodian are of opinion and so state in writing that a change of manager is desirable in the interest of the holders;
 - (d) a special resolution is passed by the company removing the manager; or
 - (e) the holders of two-thirds majority in value of the units (excluding units held or deemed to be held by the manager) in respect of which certificates are for the time being outstanding make a request in writing to the directors that the manager be removed.
- (2) The manager for the time being shall on receipt of such notice by the directors or the custodian cease to be the manager and the directors and the custodian may in writing appoint some other person acceptable to the Commission to be the manager on and subject to that other person's entering into such agreement or agreements as the directors and the custodian may be advised is necessary or desirable to be entered into by such person in order to secure the due performance of its duties as manager.
- (3) This Article is without prejudice to other grounds for removal of the manager, which may be contained in the management agreement.
- (4) Upon the removal or retirement of the manager, the removed or retiring manager shall remain entitled to all units held or deemed to be held by it and shall be entitled to require the company to issue to it a certificate or certificates thereof (if not previously issued) and to be registered in the register in respect thereof and thereafter to have and exercise all rights of a holder of such units.⁵⁶

PART 7

PROSPECTUSES

52 Preparation of a prospectus

- (1) A document (a "prospectus") stating prominently at the head of the first page or on the cover page that the document is a prospectus prepared in

accordance with this Order, and complying with the requirements of Schedule 5 shall be prepared by –

- (a) in the case of a recognized unit trust, the manager; and
 - (b) in the case of a recognized open-ended investment company, the directors and the manager.
- (2) A prospectus shall be revised at least once in every 12 months but, if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the prospectus is due for such an annual revision it shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.
- (3) A revision of a prospectus may take the form of a complete substitution for the previous prospectus or of a supplement to that prospectus.
- (4) References in this Order to a prospectus prepared in accordance with this Order are references to a prospectus revised (where revision is required) in accordance with this Order.

53 Publication of a prospectus

The manager of a recognized fund –

- (a) shall not market units in the fund unless –
 - (i) a prospectus has been prepared in accordance with Article 52 in English,
 - (ii) arrangements have been made for a printed document containing that prospectus to be available in what the manager reasonably considers to be sufficient numbers to enable it to satisfy those who accept the offer referred to in sub-paragraph (b), and
 - (iii) a copy of that document has been sent to the Commission and to the trustee or the custodian; and
- (b) shall not effect any sale of units in the fund to any person until it has offered that person free of charge a copy of the prospectus in English.⁵⁷

54 Inspection of a prospectus

The manager of a recognized fund shall make a copy of the prospectus in English available for inspection by any member of the public free of charge at all times during ordinary office hours at the principal place of business in Jersey of the manager and, in the case of a recognized open ended investment company, of that company.

55 Compensation for false or misleading prospectus

- (1) The following persons are to be treated as being responsible for a prospectus –

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- (a) in the case of a recognized unit trust the manager; and
 - (b) in the case of a recognized open-ended investment company, the directors and the manager.
 - (2) A person who is under paragraph (1) responsible for any prospectus shall, subject to Article 56, be liable to pay compensation to any person who has purchased or agreed to purchase units in the fund and suffered loss as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required by this Order to be included therein.
 - (3) Where this Order requires a prospectus to include information as to any particular matter on the basis that the prospectus must include a statement either as to that matter or, if such be the case, that there is no such matter, the omission from the prospectus of the information shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.

56 Exemption from liability to pay compensation

- (1) A person shall not incur any liability under Article 55 for any loss in respect of units in a recognized fund caused by any such statement or omission as is there mentioned if he or she satisfies the court that, at the time when the prospectus was prepared, or ought to have been revised in accordance with Article 52(2), he or she reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter the omission of which caused the loss was properly omitted and that –
 - (a) he or she continued in that belief until the time when the units were acquired;
 - (b) the units were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire units in the fund;
 - (c) before the units were acquired he or she had taken all such steps as it was reasonable for him or her to have taken to secure that a correction was brought to the attention of persons likely to acquire units in the fund; or
 - (d) the person who acquired the units was not influenced, or not influenced to any material extent, by that statement or would not have been influenced, or influenced to any material extent, by the inclusion of the matter omitted in making his or her decision to acquire the units.
- (2) Without prejudice to paragraph (1), a person shall not incur any liability under Article 55 for any loss in respect of any units in a recognized fund caused by any such statement or omission as is there mentioned if he or she satisfies the court –
 - (a) that before the units were acquired a correction had been published in a manner calculated to bring it to the attention of persons likely to participate in the fund; or

- (b) that he or she took all such steps as it was reasonable for him or her to take to secure such publication and reasonably believed that it had taken place before the units were acquired.
- (3) A person shall not incur any liability under Article 55 if he or she satisfies the court that the person suffering the loss acquired the units in question with knowledge that the statement was false or misleading or of the omitted matter, as the case may be.
- (4) A person shall not incur any liability under Article 55 as a result of a failure to prepare a revised prospectus in accordance with Article 52(2) if he or she satisfies the court that he or she reasonably believed that the change or new matter in question was not such as to call for a revision of the prospectus under that paragraph.

PART 8

VALUATION OF PROPERTY

57 Property included and assumptions to be made in valuing fund for the purpose of Parts 12 and 13

- (1) This Article and Article 58 apply with respect to the determination of the value of the property of a recognized fund for any purpose of Parts 12 and 13.
- (2) For the purpose of determining the value of the property of a fund –
 - (a) it shall be assumed that any units which at the relevant time the trustee (in the case of a recognized unit trust) or the company (in the case of a recognized open-ended investment company) is under an obligation to create or cancel have been created or cancelled, as the case may be, that the trustee or the custodian has paid or, as the case may be, has received the consideration for those units and that all other things required to be done in consequence thereof were done;
 - (b) where at the relevant time the trustee or the custodian has not done something in consequence of a creation or cancellation of units which it is required to do, it shall be assumed that that thing was done;
 - (c) subject to paragraph (3), where at the relevant time agreements are in existence for the unconditional sale or purchase of property on behalf of the fund which have not been completed it shall be assumed that they were completed at that time and that everything required to be done in accordance with their terms was done;
 - (d) there shall be deducted from the property of the fund –
 - (i) a reasonable estimate by the manager of the total amount of any liabilities for taxation levied on income accrued before the relevant time,
 - (ii) the amount of the manager's periodic charge, if any,

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- (iii) a reasonable estimate by the manager of the total amount of any other liabilities payable out of the property of the fund with any tax thereon and any accrued interest on borrowings, and
 - (iv) the value, calculated in accordance with Article 58(3), of all options written for the fund;
 - (e) there shall be added to the property of the fund –
 - (i) a reasonable estimate by the manager of the total amount of any claims for repayment of any taxation on income accrued before the relevant time, and
 - (ii) a sum representing any interest or dividends accrued but not received (unless such sum has already been included in the value of the investment in question); and
 - (f) in determining the value in the base currency of any property which would otherwise be valued in a currency other than the base currency, the value shall, unless the manager and the trustee (in the case of a recognized unit trust) or the manager and the custodian (in the case of a recognized open-ended investment company) shall agree that it is in the interests of participants and potential participants that a different rate should be used, in which case the value shall be converted at the rate agreed between them, be converted at a rate of exchange which represents the average of the highest and the lowest rates of exchange quoted, at the relevant time, for conversion of that currency into the base currency on the market on which the manager would normally deal if it wished to make such a conversion.
- (3) For the purposes of paragraph (2)(c), an agreement shall not be regarded as one for the unconditional sale or purchase of property if either –
- (a) it is a future or a contract for differences which is not yet due to be performed or which is due to be performed but which has been closed out;
 - (b) it is an option written for the fund which has not expired but which has not yet been exercised by the purchaser or which has been exercised but which has been closed out; or
 - (c) it is an option purchased for the fund which has not expired but which has not yet been exercised.

58 Valuation of property for the purpose of Parts 12 and 13

- (1) For any purpose of Parts 12 and 13 the value of the property of a recognized fund shall be calculated in accordance with the provisions of this Article.
- (2) Cash and amounts held on a current or deposit account shall be taken at their nominal value.

- (3) The value of an option which is written for the fund on property of any description shall be the total of the amount of premium which would be paid if an option of that kind on property of that description were purchased at the relevant time on the best terms then available on an eligible derivatives market on which such options are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable by the purchaser of such an option, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with the transaction.⁵⁸
- (4) The value of a margined contract, which is not a written option, shall be whichever is applicable of the following –
- (a) in a case in which margin would be received for the account of the fund if the contract were to be closed out at the relevant time, the amount of margin which would be receivable if the contract were closed out at that time on the best terms then available on an eligible derivatives market on which contracts of that kind are traded, less an amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract; and
 - (b) in a case in which margin would be payable out of the property of the fund if the contract were to be closed out at the relevant time, a negative amount equal to the total of the amount of margin which would be payable if the contract were closed out at that time on the best terms then available on an eligible derivatives market on which contracts of that kind are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract.⁵⁹
- (5) All other property shall be valued –
- (a) in the case of property which is an investment of any description other than a unit in a fund, at the market dealing bid price of that investment at the relevant time;
 - (b) in the case of property which is units in a fund at the amount which would be received if units of the kind in question were offered for repurchase at the relevant time in what, in the reasonable opinion of –
 - (i) in the case of a unit trust, the manager, and
 - (ii) in the case of an open-ended investment company, the directors or the manager,is a standard size; and
 - (c) if there is no price of the property in question under subparagraph (a) or (b), at the amount which would be received by a seller by way of consideration for an immediate transfer or assignment from the seller at arm's length less any fiscal charges,

commission and other sales charges which would be payable by the seller.

59 Periodic valuations

- (1) For the purposes of determining in accordance with Parts 9, 10 and 11 the prices at which units in a recognized fund may be created, cancelled, sold or repurchased the manager shall regularly carry out a valuation of the property of the fund in the base currency with such frequency (not being less frequent than twice in every calendar month and provided that, if a valuation is conducted only twice in a calendar month, there is at least 2 weeks between each valuation) as is specified for this purpose in the prospectus.
- (2) The manager may carry out additional valuations of the property of the fund for the purposes described in paragraph (1) if it considers it desirable to do so.
- (3) The property of a fund may not be valued for the purposes of this Order at a time at which any market on which property representing 40% or more in value of the property of the fund is traded normally opens for business or which is within the period of 2 hours preceding that time.⁶⁰
- (4) In valuing the property of a fund for the purposes of this Article the prices taken shall be the most recent prices that can reasonably be obtained after the valuation point with a view to giving an accurate valuation of the property of the fund as at that point.

60 Property to be included and assumptions to be made in a periodic valuation

In calculating the value of the property of a recognized fund in accordance with Article 59, Article 57(2) and (3) shall apply but taking –

- (a) references in paragraph (2)(a) and (b) to the relevant time as references to immediately before the valuation point;
- (b) references elsewhere to the relevant time as references to the valuation point; and
- (c) the reference in paragraph (2)(d)(iv) to Article 58(3) as a reference to Article 61(3).

61 Bases of valuation

- (1) A valuation carried out in accordance with Article 59 shall be in 2 parts, one on an offer basis and the other on a bid basis.
- (2) For each basis of valuation, cash and amounts held on a current or deposit account shall be taken at their nominal value.
- (3) For the purposes of Article 57(2)(d)(iv), the value of an option written for the fund on property of any description shall –

- (a) for that part of the valuation which is on an offer basis, be the amount of premium which would be received if an option of that kind on property of that description were written on the best terms then available on an eligible derivatives market on which such options are traded, less an estimated amount of such fiscal charges, commission and other charges as would be payable by the writer of such an option, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with the transaction;
 - (b) for that part of the valuation which is on a bid basis, be the total of the amount of premium which would be paid if an option of that kind on property of that description were purchased on the best terms then available on an eligible derivatives market on which such options are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable by the purchaser of such an option, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with the transaction.⁶¹
- (4) The value of a margined contract, which is not a written option, shall –
 - (a) for that part of the valuation which is on an offer basis, be an amount, which may be a negative amount, equal to the total of the following –
 - (i) the amount of initial margin which would have to be deposited in order to enter into a contract of that kind on property of that description on the best terms then available on an eligible derivatives market on which contracts of that kind are traded,
 - (ii) the amount of accrued margin which would be receivable or payable on closing out the contract and which shall be a negative amount if accrued margin would be receivable and which shall be a positive amount if accrued margin would be payable, and
 - (iii) an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then entered into, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to enter into the contract; and
 - (b) for that part of the valuation which is on a bid basis, be whichever is applicable of the following –
 - (i) in a case in which margin would be receivable for the account of the fund if the contract were to be closed out on the best terms then available on an eligible derivatives market on which contracts of that kind are traded, less an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the

commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract, and

- (ii) in a case in which margin would be payable out of the property of the fund if the contract were to be closed out, a negative amount equal to the total of the amount of margin which would be payable if the contract were closed out on the best terms then available on an eligible derivatives market on which contracts of that kind are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract.⁶²

- (5) All other property, for that part of the valuation which is on an offer basis, shall be valued –

- (a) in the case of property which is an investment of any description other than a unit in a fund, at the market dealing offer price of that investment;
- (b) in the case of property which is units in a fund, at the price at which units of the kind in question were or would have been created following the most recent valuation of the relevant fund, or, if –
 - (i) there is no such creation price for the units in question,
 - (ii) the relevant creation price is higher than the sale price then being offered for deals of the relevant size, or
 - (iii) the manager after making reasonable enquiries, has been unable to ascertain the relevant creation price,at the sale price then being offered for deals of the relevant size; and
- (c) if there is no price of the property in question under subparagraph (a) or (b), at a reasonable estimate of the amount which would be paid by a buyer, by way of consideration for an immediate transfer or assignment to the buyer at arm's length less any fiscal charges, commission and other purchase charges which would be payable by him or her.

- (6) All other property, for that part of the valuation which is on a bid basis, shall be valued –

- (a) in the case of property which is an investment of any description other than a unit in a fund, at the market dealing bid price of that investment;
- (b) in the case of property which is units in a fund, at the amount which would be received if units of the kind in question were offered for repurchase in what, in the reasonable opinion of the manager is a standard size; and

- (c) if there is no price of the property in question under sub-paragraph (a) or (b), at a reasonable estimate of the amount which would be received by a seller by way of consideration for an immediate transfer or assignment from him or her at arm's length less any fiscal charges, commission and other sales charges which would be payable by him or her.

PART 9

CREATION AND CANCELLATION OF UNITS IN A RECOGNIZED UNIT TRUST

62 Creation of units by trustee

- (1) The trustee of a recognized unit trust may create units only upon the receipt of written instructions given by the manager.
- (2) Subject to Article 64, the trustee of a recognized unit trust shall create units upon the receipt by it of written instructions given by the manager in accordance with the provisions of Article 65, 67 or 68 stating, in relation to each type of unit to be created, how many units are to be created expressed as a number of units or as an amount in value (or partly the one and partly the other).
- (3) For the purposes of a unitisation, the trustee of a recognized unit trust shall create units in favour only of the holders of shares, or, as the case may be, of units, in the body corporate or fund which is being wound-up or property of which is being transferred.
- (4) Upon the creation of units, the manager of a recognized unit trust which is neither a Government and other public securities fund nor a money market fund shall either –
 - (a) pay the trustee in cash or in cleared funds, before the close of business on the fourth business day next after the instructions referred to in paragraph (2) were given, the creation price of those units; or
 - (b) in any case within paragraph (5) other than a unitisation, ensure that the beneficial interest in the relevant assets is transferred to the trustee forthwith and that legal title to those assets is transferred within the period mentioned in sub-paragraph (a).
- (5) The trustee of a recognized unit trust may, whether for the purposes of a unitisation or otherwise, create units in exchange for assets other than money but only if it is satisfied that acquisition of the assets in exchange for the number of units to be created is not likely to result in any material prejudice to the interests of participants or potential participants.
- (6) Paragraph (4) shall apply in the case of the manager of a recognized unit trust which is either a Government and other public securities fund or a money market fund as if the period specified in paragraph (4)(a) were the period ending with the close of business on the second business day next after the giving of the instructions referred to in paragraph (2).⁶³

63 Cancellation of units by trustee

- (1) Subject to Article 64, the trustee of a recognized unit trust shall cancel units upon –
 - (a) the receipt of written instructions given to it by the manager stating, in relation to each type of unit to be cancelled, how many units or what value of units (or partly the one and partly the other) are to be cancelled and whether the units are ones which the manager owns as principal or whether they are units belonging to a participant (or partly the one and partly the other); and
 - (b) the delivery to it of such evidence of the title to those units of the person seeking to cancel them as the trustee may reasonably require.
- (2) The trustee of a recognized unit trust which is neither a Government and other public securities fund nor a money market fund shall, except where cancellation is to take place under Article 93 and provided that the manager has ensured that the property of the fund includes or will include sufficient cash in the appropriate currency, pay the cancellation price of those units out of the property of the fund before the close of business on the fourth business day next after cancellation of the units to the person who was the participant in respect of those units.
- (3) In a case in which the manager of a recognized unit trust has not ensured that the property of the fund includes or will include sufficient cash in the appropriate currency within the period referred to in paragraph (2), the trustee shall pay the cancellation price forthwith upon the manager so ensuring.
- (4) Paragraphs (2) and (3) shall apply in the case of the trustee of a fund which is either a Government and other public securities fund or a money market fund as if the period referred to in paragraph (2) were the period ending with the close of business on the second business day next after the cancellation of the units in question.⁶⁴

64 Refusal to create or cancel units: trustee's powers and duties

- (1) Subject to paragraphs (2) and (3), the trustee of a recognized unit trust may, on receipt of written instructions directing it to create or cancel units forthwith give written notice to the manager stating that the trustee refuses to create or cancel, as the case may be, all or such number of the units requested to be created or cancelled as is specified in the notice, and the consequence of the giving of that notice shall be that that number of units shall not be created or cancelled.
- (2) The trustee may not give such a notice in relation to the creation of units for the purposes of a unitisation and, in any other case, may give it only if it is of the opinion that it is not in the interests of participants for the units the subject of the notice to be created or cancelled, as the case may be.
- (3) The trustee shall not create or cancel units during any period in which repurchase of units is suspended.

65 Creation of units: initial offer or unitisation

- (1) Paragraphs (2) and (3) shall apply instead of Articles 67 and 68 for the purpose of determining when, during an initial offer, the manager of a recognized unit trust may, and when it is required to, instruct the trustee to create units, and paragraph (5) shall apply instead of those Articles with respect to the creation of units for the purposes of a unitisation.
- (2) The manager may give written instructions to the trustee to create units in the fund at the beginning of the first business day during the period of the initial offer.
- (3) Subject to paragraph (4), the manager shall, at the beginning of each business day other than the first during the period of the initial offer and at the beginning of the first business day after that period, instruct the trustee to create units in the fund in such numbers at least as will enable the manager immediately to fulfil all obligations to sell units which it assumed during the preceding business day.
- (4) Paragraph (3) shall not apply if, at the beginning of each business day other than the first during the period of the initial offer and at the beginning of the first business day after that period, the manager pays to the trustee either the total amount received during the previous business day in respect of orders for units to be sold or such amount less the total of his or her preliminary charge, if any, in respect of those units.
- (5) The manager shall have no power to instruct the trustee to create units for the purposes of a unitisation and the trustee shall have sole power to determine what units are to be created having regard to the terms of any arrangements relating to the unitisation to which it is a party.

66 Compulsory termination of initial offer

- (1) The manager of a recognized unit trust shall cease to agree to sell units at the initial price and shall not instruct the trustee to create units, other than units which it has already agreed to sell at the price specified in Article 69(1), forthwith on becoming aware or having reason to believe that, if the property of the fund were valued in accordance with Part 8, the sale price excluding any preliminary charge would differ from the initial price excluding any such charge by 2% or more.
- (2) On the occurrence of circumstances of the kind described in paragraph (1) the manager shall forthwith carry out a valuation of the property of the fund for the purposes of determining new prices at which units in the fund are to be created, cancelled, sold and repurchased.

67 Creation and cancellation of units where the fund is valued at intervals of more than 2 hours

- (1) This Article applies in the case of every recognized unit trust the property of which is normally valued for the purposes of Article 59 at intervals of more than 2 hours, and it applies so as to determine when the manager of such a fund may, and when it is required to, instruct the trustee to create

units in the fund and when it may instruct the trustee to cancel units in the fund.

- (2) Subject to the provisions of paragraph (4), the manager may within the period of 2 hours immediately after each valuation point, give written instructions to the trustee to create units but it shall so instruct the trustee within that period to create units in the fund at least in such number or of such value (or partly the one and partly the other) as will enable it to fulfil all outstanding obligations to sell units which it had assumed before that valuation point.
- (3) Subject to the provisions of paragraph (4), the manager may instruct the trustee to cancel units only within the period of 2 hours immediately following a valuation point.
- (4) Notwithstanding the provisions of paragraphs (2) and (3), the manager may instruct the trustee to create or cancel units otherwise than within the period of 2 hours following each valuation point provided that it does so by reference to the prices to be calculated at the next valuation point and the units are to be created or cancelled after that next valuation point.

68 Creation and cancellation of units where the fund is valued at intervals of not more than 2 hours

- (1) This Article applies to every recognized unit trust the property of which is normally valued, for the purposes of Article 59, at intervals of not more than 2 hours and it applies so as to determine when the manager of such a fund may, and when it is required to, instruct the trustee to create units in the fund and when it may instruct the trustee to cancel units in the fund.
- (2) The manager may, at any time between one valuation point and the next, give written instructions to the trustee to create units but it shall so instruct the trustee within that period to create units in the fund at least in such number or of such value (or partly the one and partly the other) as will enable it to fulfil all outstanding obligations to sell units which it had assumed before the former valuation point.
- (3) The manager may give written instructions to the trustee to cancel units at any time between one valuation point and the next.

69 Creation price

- (1) The price for each unit payable by the manager of a recognized unit trust to the trustee on the creation of a unit during an initial offer shall be the initial price of that unit less the amount of any preliminary charge made in respect of that unit.
- (2) Subject to paragraphs (5), (6) and (7), the price for each unit payable to the trustee on the creation of units, otherwise than for creation during an initial offer or for the purpose of a unitisation, shall be the sum of the amounts calculated in accordance with paragraph (4).

- (3) For the purposes of paragraphs (1) and (2), units shall be treated as created during an initial offer if they were created after the close of the offer but were units which the manager had agreed to sell before the offer closed.
- (4) The amounts calculated in accordance with this paragraph are –
 - (a) an amount in the base currency equal to the value determined on the offer basis by reference to the most recent valuation point of that part of the capital property of the fund which is attributable to units of the type in question in existence (or assumed, in accordance with Article 57(2)(a), as applied by Article 60, to be in existence) at that valuation point divided by the number of those units; and
 - (b) an amount in the base currency of income equalisation divided by the number of those units.
- (5) Any price calculated in accordance with this Article shall be accurate to at least 4 significant figures.
- (6) The creation price may be a price in a currency other than the base currency provided that the price is calculated at such rate of exchange between that other currency and the base currency as the trustee is satisfied is not likely to result in any material prejudice to the interests of participants or potential participants.
- (7) Where the trustee creates units in circumstances in which the total price payable in any particular currency for all units created on that occasion would include a fraction of the smallest unit of that currency it shall round up or down the total price payable to the nearest such unit.

70 Cancellation price

- (1) Subject to paragraphs (3), (4) and (5) and to Article 93, the price for each unit in a recognized unit trust payable by the trustee on the cancellation of units shall be the sum of the amounts calculated in accordance within paragraph (2).
- (2) The amounts referred to in paragraph (1) are –
 - (a) an amount in the base currency equal to the value determined on the bid basis by reference to the most recent valuation point of that part of the capital property of the fund which is attributable to units of the type in question in existence (or assumed, in accordance with Article 57(2)(a), as applied by Article 60, to be in existence) at that valuation point divided by the number of those units; and
 - (b) an amount in the base currency equal to the value determined on the bid basis by reference to the most recent valuation point of that part of the income property of the fund which is attributable to units of the type in question in existence (or assumed, in accordance with Article 57(2)(a), as applied by Article 60, to be in existence) at that valuation point divided by the number of those units.

- (3) Any price calculated in accordance with paragraph (1) shall be accurate to at least 4 significant figures.
- (4) The cancellation price may be a price in a currency other than the base currency provided that the price is calculated at such rate of exchange between that other currency and the base currency as the trustee is satisfied is not likely to result in any material prejudice to the interests of participants.
- (5) Where the trustee cancels units in circumstances in which the total price payable in any particular currency for all units cancelled on that occasion would include a fraction of the smallest unit of that currency it shall round up or down the total price payable to the nearest such unit.

71 Manager as agent

- (1) Where the manager of a recognized unit trust acts as agent for the trustee in connection with the sale or purchase by the trustee of units otherwise than in the course of an initial offer or otherwise than in the circumstances described in Article 93, the price at which it sells units shall be a price which is not greater than the total of the creation price next calculated in accordance with Article 69(2) and the amount, if any, specified in the prospectus as the maximum to its preliminary charge, and the price at which it buys units shall be the cancellation price next calculated in accordance with Article 70(1).
- (2) The manager shall not agree to sell units as agent for the trustee during an initial offer at a price which is greater than the initial price.
- (3) The manager shall not make any charge in connection with its sale or purchase of units as agent for the trustee except the preliminary charge referred to in paragraph (1).

PART 10

CREATION AND CANCELLATION OF UNITS IN A RECOGNIZED OPEN-ENDED INVESTMENT COMPANY

72 Creation of units by a recognized open-ended investment company

- (1) Subject to Article 75(5), a recognized open-ended investment company may create units only upon the receipt by both it and the custodian of an application (a "creation application") from the manager in such form as the company and the custodian may from time to time determine.
- (2) Subject to Articles 74 and 75(5), a recognized open-ended investment company shall create units upon the receipt by it and the custodian of a creation application given in accordance with the provisions of Article 75, 77 or 78 stating, in relation to each type of unit to be created how many units are to be created expressed as a number of units or as an amount in value (or partly the one and partly the other).

- (3) For the purposes of a unitisation, a recognized open-ended investment company shall create units in favour only of the holders of shares, or, as the case may be, of units, in the company or fund which is being wound-up or property of which is being transferred.
- (4) Upon the creation of units in a recognized open-ended investment company which is neither a Government and other public securities fund nor a money market fund, the manager shall either –
 - (a) pay the custodian in cash or in cleared funds, before the close of business on the fourth business day next after the creation application referred to in paragraph (2) was made, the creation price of those units; or
 - (b) in any case within paragraph (5) other than a unitisation, ensure that the beneficial interest in the relevant assets is transferred to the custodian forthwith and that legal title to those assets is transferred within the period mentioned in sub-paragraph (a).
- (5) A recognized open-ended investment company may, whether for the purposes of a unitisation or otherwise, create units in exchange for assets other than money but only if the custodian is satisfied that acquisition of the assets in exchange for the number of units to be created is not likely to result in any material prejudice to the interests of participants or potential participants.
- (6) Paragraph (4) shall apply in the case of the manager of a recognized open-ended investment company which is either a Government and other public securities fund or a money market fund as if the period specified in paragraph (4)(a) were the period ending with the close of business on the second business day next after the making of the application referred to in paragraph (2).⁶⁵

73 Cancellation of units by a recognized open-ended investment company

- (1) Subject to paragraph (5) and Article 74, a recognized open-ended investment company shall cancel units only –
 - (a) upon the receipt by both it and the custodian of an application (“a cancellation application”) from the manager stating, in relation to each type of unit to be cancelled, how many units or what value of units (or partly the one and partly the other) are to be cancelled and whether the units are ones which the manager owns as principal or whether they are units belonging to a participant (or partly the one and partly the other); and
 - (b) the delivery to the company and the custodian of such evidence of the title to those units of the person seeking to cancel them as the company and the custodian may reasonably require.⁶⁶
- (2) The custodian of a recognized open-ended investment company which is neither a Government and other public securities fund nor a money market fund shall, except where cancellation is to take place under Article 93 and provided that the manager has ensured that the property of the fund includes or will include sufficient cash in the appropriate currency, pay the cancellation price of those units out of the property of

the fund before the close of business on the fourth business day next after cancellation of the units to the person who was the participant in respect of those units.

- (3) In a case in which the manager has not ensured that the property of the fund includes or will include sufficient cash in the appropriate currency within the period referred to in paragraph (2), the custodian shall pay the cancellation price forthwith upon the manager so ensuring.
- (4) Paragraphs (2) and (3) shall apply in the case of a custodian of a recognized open-ended investment company which is either a Government and other public securities fund or a money market fund as if the period referred to in paragraph (2) were the period ending with the close of business on the second business day next after the cancellation of the units in question.⁶⁷
- (5) Nothing in this Article shall prevent or restrict the right of a recognized open-ended investment company to redeem all the units in issue in such company or, in the case of any such company which is an umbrella fund, in any constituent part thereof on a date, or on the occurrence of any event, specified in its articles or the fund rules, as the case may be, and in accordance with any provisions so specified.⁶⁸

74 Refusal to create or cancel units

- (1) Subject to paragraphs (2) and (3) –
 - (a) on receipt by a recognized open-ended investment company of a creation application or a cancellation application, the company may forthwith give written notice to the manager stating that the company refuses to create or cancel, as the case may be, all or such number of the units requested to be created or cancelled as is specified in the notice; and
 - (b) on receipt by the custodian of a creation application or a cancellation application, it may forthwith give written notice to the manager stating that it refuses to consent to the creation or cancellation, as the case may be, by the company of all or such number of the units requested to be created or cancelled as is specified in the notice,and the consequence of the giving of either such notice shall be that that number of units shall not be created or cancelled.
- (2) Neither a recognized open-ended investment company nor the custodian may give such notice in relation to the creation of units for the purposes of a unitisation and, in any other case, may give it only if –
 - (a) in a case where the company proposes to give such notice, the directors are of the opinion, or
 - (b) in a case where the custodian proposes to give such a notice, it is of the opinion, that it is not in the interests of participants for the units the subject of the notice to be created or cancelled as the case may be.

- (3) A recognized open-ended investment company shall not create or cancel units and the custodian shall not consent to their creation or cancellation during any period in which repurchase of units is suspended.

75 Creation of units: initial offer or unitisation

- (1) Paragraphs (2) and (3) shall apply instead of Articles 77 and 78 for the purpose of determining when, during an initial offer, the manager of a recognized open-ended investment company may, and when it is required to, make a creation application, and paragraph (5) shall apply instead of those Articles with respect to the creation of units for the purposes of a unitisation.
- (2) The manager may make a creation application at the beginning of the first business day during the period of the initial offer.
- (3) Subject to paragraph (4), the manager shall, at the beginning of each business day other than the first during the period of the initial offer and at the beginning of the first business day after that period, make a creation application to the company and the custodian requesting the creation of units in such numbers at least as will enable fulfilment of all obligations assumed during the preceding business day –
- (a) by or on behalf of the company to create units; and
 - (b) by the manager to sell units.
- (4) Paragraph (3) shall not apply if, at the beginning of each business day other than the first during the period of the initial offer and at the beginning of the first business day after that period, the manager pays to the custodian either the total amount received during the previous business day in respect of orders for units to be sold or such amount less the total of its preliminary charge, if any, in respect of those units.
- (5) The custodian with the consent of the recognized open-ended investment company shall have sole power to determine what units are to be created for the purposes of a unitisation having regard to the terms of any arrangements relating to the unitisation to which the company is a party.

76 Compulsory termination of initial offer

- (1) Forthwith upon the manager of a recognized open-ended investment company becoming aware or having reason to believe that, if the property of the fund were valued in accordance with Part 8, the creation price or sale price excluding any preliminary charge would differ from the initial price excluding any such charge by 2% or more, the manager shall cease to agree to the creation or sale of units at the initial price and shall not make applications to the company to create units, other than units which the manager has already agreed to the creation or sale of at the price specified in Article 79(1).
- (2) On the occurrence of circumstances of the kind described in paragraph (1) the manager shall forthwith carry out a valuation of the

property of the fund for the purposes of determining new prices at which units in the fund are to be created, cancelled, sold and repurchased.

77 Creation and cancellation of units where the fund is valued at intervals of more than 2 hours

- (1) This Article applies in the case of every recognized open-ended investment company the property of which is normally valued for the purposes of Article 59 at intervals of more than 2 hours, and it applies so as to determine when the manager of such a fund may, and when it is required to, make creation applications and when it may make cancellation applications.
- (2) Subject to the provisions of paragraph (4), the manager may within the period of 2 hours immediately after each valuation point, make a creation application but it shall make a creation application to the company and the custodian within that period requesting the creation of units at least in such number or of such value (or partly the one and partly the other) as will enable fulfilment of all outstanding obligations assumed before that valuation point—
 - (a) by or on behalf of the company to create units; and
 - (b) by the manager to sell units.
- (3) Subject to the provisions of paragraph (4), the manager may make a cancellation application only within the period of 2 hours immediately following a valuation point.
- (4) Notwithstanding the provisions of paragraphs (2) and (3), the manager may make a creation application or cancellation application otherwise than within the period of 2 hours following each valuation point provided that it does so by reference to the prices to be calculated at the next valuation point and the units are to be created or cancelled after that next valuation point.

78 Creation and cancellation of units where the fund is valued at intervals of not more than 2 hours

- (1) This Article applies to every recognized open-ended investment company the property of which is normally valued, for the purposes of Article 59, at intervals of not more than 2 hours and it applies so as to determine when the manager of such a fund may, and when it is required to, make creation applications and when it may make cancellation applications.
- (2) The manager may, at any time between one valuation point and the next, make a creation application but it shall make a creation application to the company and the custodian within that period requesting the creation of units at least in such number or of such value (or partly the one and partly the other) as will enable fulfilment of all outstanding obligations assumed before the former valuation point –
 - (a) by or on behalf of the company to create units; and

- (b) by the manager to sell units.
- (3) The manager may make a cancellation application at any time between one valuation point and the next.

79 Creation price

- (1) The creation price for each unit in a recognized open-ended investment company payable to the custodian on the creation of a unit during an initial offer shall be the initial price of that unit less the amount of any preliminary charge made in respect of that unit.
- (2) Subject to paragraphs (5), (6) and (7), the creation price for each unit in a recognized open-ended investment company payable to the custodian on the creation of units, otherwise than for creation during an initial offer or for the purpose of a unitisation, shall be the sum of the amounts calculated in accordance with paragraph (4).
- (3) For the purposes of paragraphs (1) and (2), units shall be treated as created during an initial offer if they were created after the close of the offer but were units which the manager had agreed to create or sell before the offer closed.
- (4) The amounts calculated in accordance with this paragraph are –
 - (a) an amount in the base currency equal to the value determined on the offer basis by reference to the most recent valuation point of that part of the capital property of the fund which is attributable to units of the type in question in existence (or assumed, in accordance with Article 57(2)(a), as applied by Article 60, to be in existence) at that valuation point divided by the number of those units; and
 - (b) an amount in the base currency of income equalisation divided by the number of those units.
- (5) Any price calculated in accordance with this Article shall be accurate to at least 4 significant figures.
- (6) The creation price may be a price in a currency other than the base currency provided that the price is calculated at such rate of exchange between that other currency and the base currency as the custodian is satisfied is not likely to result in any material prejudice to the interests of participants or potential participants.
- (7) Where the company creates units in circumstances in which the total price payable in any particular currency for all units created on that occasion would include a fraction of the smallest unit of that currency, the total price payable shall be rounded up or down to the nearest such unit.

80 Cancellation price

- (1) Subject to paragraphs (3), (4) and (5) and to Article 93, the cancellation price for each unit in a recognized open-ended investment company

payable by the custodian on the cancellation of units shall be the sum of the amounts calculated in accordance within paragraph (2).

- (2) The amounts referred to in paragraph (1) are –
 - (a) an amount in the base currency equal to the value determined on the bid basis by reference to the most recent valuation point of that part of the capital property of the fund which is attributable to units of the type in question which have been created (or assumed, in accordance with Article 57(2)(a), as applied by Article 60, to have been created) at that valuation point divided by the number of those units; and
 - (b) an amount in the base currency equal to the value determined on the bid basis by reference to the most recent valuation point of that part of the income property of the fund which is attributable to units of the type in question which have been created (or assumed, in accordance with Article 57(2)(a), as applied by Article 60, to have been created) at that valuation point divided by the number of those units.
- (3) Any price calculated in accordance with paragraph (1) shall be accurate to at least 4 significant figures.
- (4) The cancellation price may be a price in a currency other than the base currency provided that the price is calculated at such rate of exchange between that other currency and the base currency as the custodian is satisfied is not likely to result in any material prejudice to the interests of participants.
- (5) Where the company cancels units in circumstances in which the total price payable in any particular currency for all units cancelled on that occasion would include a fraction of the smallest unit of that currency, the total price payable shall be rounded up or down to the nearest such unit.

81 Manager as agent

- (1) Where the manager of a recognized open-ended investment company acts as agent for the company in connection with the creation or cancellation by the company of units in favour of participants or potential participants otherwise than in the course of an initial offer or otherwise than in the circumstances described in Article 93, the price agreed with them by the manager shall be –
 - (a) in the case of a creation of units, a price which is not greater than the total of the creation price next calculated in accordance with Article 79(2) and the amount, if any, specified in the prospectus as the maximum to its preliminary charge; and
 - (b) in the case of a cancellation of units, the cancellation price next calculated in accordance with Article 80(1).
- (2) Where the manager of a recognized open-ended investment company acts as agent for the company in connection with the creation by the company

of units in favour of participants or potential participants during an initial offer, the price agreed with them by the manager shall not be a price which is greater than the initial price.

- (3) Where the manager of a recognized open-ended investment company acts as agent for the company in connection with the creation or cancellation by the company of units in favour of participants or potential participants, the manager shall not make any charge in connection with such creation or cancellation except the preliminary charge referred to in paragraph (1).

PART 11

SALE AND REPURCHASE OF UNITS

82 Prices at which units may be sold and repurchased

- (1) The manager of a recognized fund shall not agree to sell units during an initial offer at a price which is greater than the initial price.
- (2) Except in the case of a large deal, the manager of a recognized fund shall either –
- (a) agree to sell and repurchase all units at forward prices; or
 - (b) unless it has elected as mentioned in paragraph (3), and except in relation to units which it is prohibited by Article 84 from selling or repurchasing at historic prices, agree to sell and repurchase all units at historic prices.
- (3) The manager of a recognized fund may, at any time, elect to cease agreeing to sell and repurchase units at historic prices and begin agreeing to sell and repurchase them at forward prices.
- (4) Except in the case of a large deal, the manager of a recognized fund shall not sell or repurchase units at a price which is either –
- (a) greater than the relevant maximum price notified under Article 86(1)(b) to the trustee or the custodian; or
 - (b) less than the relevant minimum price so notified.
- (5) The sale price of units may include a preliminary charge, expressed either as a fixed amount or calculated as a percentage of the sale price, but, in either case, the amount of that charge shall not be greater than such percentage of the creation price as may be stated in the prospectus as the maximum for that charge.
- (6) The manager of a recognized fund shall not make any charge in connection with the sale or repurchase of units except the preliminary charge referred to in paragraph (5).
- (7) The manager of a recognized fund may sell or repurchase units in a currency other than the base currency provided that the price at which it sells such units is calculated at a rate of exchange between the base currency and that other currency determined by the manager after

consulting the trustee or the custodian as being a rate which is fair to the relevant potential participant or relevant participant, as the case may be.

- (8) Where the manager of a recognized fund receives an offer to acquire units, or a request that units be repurchased, in circumstances in which the total price payable for all units for which the request is made would include a fraction of a unit of currency, it shall round up or down the total payable to the nearest such unit.

83 Manager's discretion in case of large deal

- (1) Subject to Articles 84 and 85, in the case of a large deal the manager of a recognized fund may sell or repurchase the units in question at either a forward or an historic price provided that the price is neither greater than the total of the relevant sale price notified to the trustee or the custodian under Article 86(1)(a) and such percentage, if any, of the creation price as may be stated in the prospectus as the maximum to its preliminary charge nor less than the relevant cancellation price so notified.
- (2) In paragraph (1), the relevant creation price and the relevant cancellation price for units sold or repurchased at a forward price are the prices notified upon the completion of the valuation next following the manager's agreeing to sell or repurchase the units and the relevant prices for units sold or repurchased at an historic price are the prices notified upon completion of the last valuation preceding that agreement.

84 Cases in which manager may not deal at an historic price

- (1) Except in the case of an initial offer, the manager of a recognized fund shall sell or, as the case may be, repurchase units at a forward price if the applicant has requested that units be sold or repurchased at a forward price.
- (2) Except in the case of an initial offer, the manager of a recognized fund shall, subject to paragraph (3), sell or, as the case may be, repurchase units at a forward price if the applicant has applied for units to be sold or repurchased and the manager has agreed to sell or to repurchase the units without the applicant knowing the price at which the units would be sold or repurchased.
- (3) Notwithstanding the provisions of paragraph (2), but subject to the provisions of paragraph (1), if an application for units to be sold or repurchased is received during the period between a valuation point and whichever is the earlier of the end of the 2 hour period specified in Articles 67 and 68 and Articles 77 and 78 and the completion of the valuation carried out by reference to that valuation point, the manager of a recognized fund may sell or repurchase the units at an historic price.
- (4) For the purposes of paragraph (3), a valuation is deemed to be completed as soon as the manager first knows of the creation and cancellation prices in question.

- (5) The manager of a recognized fund shall not sell or repurchase units at an historic price if it knows, or it has reason to believe, that, if the property of the fund were valued in accordance with the provisions of Part 8, its value would have increased or, as the case may be, decreased by 2% or more from the value calculated at the last valuation point.
- (6) The manager of a recognized fund shall not sell or repurchase units at an historic price which is calculated by reference to a valuation point which occurred before the preceding business day.

85 Manager's duty where it knows, or has reason to believe, that value of property has materially changed

- (1) If, before the occurrence of circumstances of the kind described in Article 84(5), the manager of a recognized fund was selling or repurchasing units at an historic price, it shall, forthwith upon the occurrence of those circumstances, cease to do so and shall either –
 - (a) sell and repurchase units at a forward price until the next valuation point;
 - (b) carry out a valuation of the property of the fund for the purposes of determining new prices at which units in the fund are to be created, cancelled, sold and repurchased.
- (2) The manager of a recognized fund need not, in order to comply with the provisions of paragraph (1)(b), carry out a valuation in accordance with Part 8 if it reasonably believes, and the trustee or the custodian agrees, that an adequate valuation may be obtained by reference to fluctuations in an index of property the composition of which reflects the composition of the property of the fund.

86 Manager's duty to notify creation and cancellation prices and of dealing spread

- (1) Forthwith upon a valuation being completed, whether in accordance with Part 8 or Article 85(2), the manager of a recognized fund shall notify the trustee or the custodian of the following –
 - (a) the creation and cancellation prices;
 - (b) if the manager is acting as principal, the maximum sale price and the minimum repurchase price for deals which the manager agreed before the valuation point should be done at the forward price and which are to be used for deals, other than large deals, which are to be done at an historic price before the next valuation point; and
 - (c) the number of units held by the manager as principal at the valuation point.
- (2) The price notified to the trustee or the custodian as the maximum sale price shall not exceed the total of the creation price notified under paragraph (1)(a), and the maximum amount of any preliminary charge specified in the prospectus.

- (3) The price notified to the trustee or the custodian as the minimum repurchase price shall not be less than the cancellation price notified under paragraph (1)(a).

87 Manager's duty to give notice of additional valuation and change in pricing basis

The manager of a recognized fund shall inform the trustee or the custodian forthwith of –

- (a) any decision to carry out a new valuation other than a regular valuation of the kind described in Article 59; and
- (b) any decision to cease dealing at historic prices.

88 Income equalisation

- (1) On the sale of a unit in a recognized fund which the manager has repurchased and not cancelled, the manager shall pay to the trustee or the custodian, not later than the next day on which sums are distributed to participants, such part of the creation price by reference to which the price of that unit was determined as represented income equalisation.
- (2) All payments by the manager under this Article shall, to the extent that they relate to any units income on which is accumulated within the property of the fund, be treated as part of the capital property and, to the extent that they relate to other units, be allocated for distribution.
- (3) Where the trust deed of a recognized unit trust or the articles of a recognized open-ended investment company provide that there should be no income equalisation in relation to the fund, this Article shall not apply.

89 Publication of sale and repurchase prices

- (1) The manager of a recognized fund shall –
 - (a) on each day on which it holds itself out as willing to sell or repurchase units in that fund, publish cancellation, sale and repurchase prices of those units in at least one national daily newspaper circulating in the United Kingdom; and
 - (b) at least once in every week publish, in like manner, such percentage, if any, as is stated in the prospectus as the maximum to its preliminary charge.
- (2) Paragraph (1) shall apply in a case in which the manager is acting as agent for the trustee (in the case of a recognized unit trust) or for the company (in the case of a recognized open-ended investment company) as if the references to sale and repurchase prices were references to the sum of the relevant creation price and the maximum amount of any preliminary charge made in respect of units sold by reference to that creation price.

- (3) The cancellation, sale and repurchase prices published in the United Kingdom shall be the prices last notified to the trustee or the custodian under the provisions of Article 86 before the newspaper in which they were published ceased to accept material for publication in the relevant edition, shown in the base currency or in sterling, and shall be accurate to at least 4 significant figures and the creation price referred to in paragraph (2) shall be the creation price last so notified.

90 Contract notes

Each contract note which is issued in respect of a transaction in units in a recognized fund with a participant or potential participant shall state –

- (a) the price in the relevant currency at which the units in question were sold or repurchased or, in a case within Article 71, sold or purchased by the manager acting as agent for the trustee or, in a case within Article 81, created or cancelled by the open-ended investment company; and
- (b) either the amount of any preliminary charge (in the relevant currency) if it is of a fixed amount or the percentage, if any, stated in the prospectus as the maximum to the preliminary charge.⁶⁹

91 Conversion of units

- (1) Subject to paragraph (2), where there are units of more than one type in a recognized fund –
- (a) in the case of a recognized unit trust, the trustee shall at the request in writing of the manager convert; and
- (b) in the case of a recognized open-ended investment company, the manager with the consent of the custodian shall convert,
- units of any one type into the appropriate number of units of any other type, subject to both types of units being in existence and being offered for sale at the time that the conversion is requested.
- (2) If it is requested to do so by a participant, the manager –
- (a) in the case of a recognized unit trust, shall request the trustee to make a conversion; and
- (b) in the case of a recognized open-ended investment company, shall if the custodian gives its consent under paragraph (1) make the conversion,

but the manager shall be under no duty to do so, the trustee shall be under no duty to give effect to any such request and the custodian shall be under no duty to give its consent, if it would result in the participant being a participant in respect of units of either type less than any minimum number or value of units stated in the prospectus as the minimum number or value of units which any participant may hold.

- (3) The appropriate number of units for the purposes of this Article shall be determined by the manager, after consulting the trustee or the custodian, on terms that are fair to the participant seeking the conversion of units

and to other participants and in accordance with the trust deed or the articles.

- (4) None of the provisions of Articles 62 to 90 shall apply when units are converted in accordance with this Article.

92 Manager's obligation to sell and repurchase units

- (1) Subject to paragraphs (2) and (7) and to Article 93, the manager of a recognized fund shall, except during an initial offer or a unitisation, at the request in writing of any participant agree to repurchase units owned by that participant at a price in the base currency or in any other currency in which it has sold units on any previous occasion.
- (2) If the manager of a recognized fund has kept records which are sufficient to establish that units which have been sold to a particular participant have been sold to him or her in certain currencies only, the manager may refuse to agree to repurchase units at the request of that participant at a price in a currency which is neither the base currency nor one of those currencies.
- (3) Except as provided in paragraph (4), when the manager of a recognized fund which is not a Government and other public securities fund or a money market fund has agreed to repurchase any units, it shall pay the participant the repurchase price (less, if the consideration is to be remitted abroad, the cost of remitting it) not later than the close of business on the fourth day following the later of the following times –
 - (a) the next valuation point occurring after the receipt by the manager of the request to repurchase the units; and
 - (b) the time when the manager is possessed of all duly executed instruments and authorisations as will vest, or enable the manager to arrange for the vesting of, title to the units in itself.
- (4) Paragraph (3) does not apply where units are purchased by the manager of a recognized fund on an eligible securities market.⁷⁰
- (5) Paragraph (3) shall apply when the manager of a Government and other public securities fund or a money market fund agrees to repurchase units as if the period specified in paragraph (3) were the period ending with the close of business on the day next following whichever is the later of the times specified in paragraph (3)(a) or (b).
- (6) Subject to paragraph (7), the manager of a recognized fund must, at any time at which it holds itself out as willing to repurchase units, also be willing to sell units and, unless it has reasonable grounds for refusing to do so, at the request in writing of any person agree to sell units to that person at a price in the base currency or if that person requests that units be sold in another currency, and the manager agrees, at a price in that other currency.
- (7)

- (a) The manager of a recognized fund is not under any duty to repurchase such number or value of units –
 - (i) as is below any minimum number or value stated in the prospectus as the minimum number or value of units which may be the subject of one act of repurchase (unless the manager is asked to repurchase all of a participant's units), or
 - (ii) as would result in the participant holding fewer than any minimum number or value stated in the prospectus as the minimum number or value of units which any participant may hold.
- (b) The manager is not under any duty to repurchase units if it ensures that the participant is able to sell his or her units on an investment exchange at a price not significantly different from the price at which they would have been repurchased.
- (c) The manager is not under any duty to sell units in a number or to a value which is less than any minimum number or value stated in the prospectus as the minimum number or value which may be the subject of any one transaction of purchase or which any participant may hold.
- (d) The manager shall not sell or repurchase units during a unitisation.
- (e) The manager shall not sell units if repurchase is suspended.
- (8) This Article shall apply, in a case in which the manager of a recognized unit trust is acting as agent for the trustee, as if –
 - (a) references to the manager selling and repurchasing units were references to its selling and purchasing units as agent for the trustee;
 - (b) references to the sale price and the repurchase price of units were references to the price at which units are to be sold and purchased by the manager as agent for the trustee; and
 - (c) the reference in paragraph (3)(b) to title to units being vested in the manager were a reference to units being cancelled by the trustee.
- (9) This Article other than paragraph (4) shall apply, in a case in which the manager of a recognized open-ended investment company is acting as agent for that company, as if –
 - (a) references to the manager selling and repurchasing units were references to the company creating or cancelling units through the agency of the manager;
 - (b) references to the sale price and the repurchase price of units were references to the price at which units are to be created and cancelled by the company in favour of a participant through the agency of the manager; and
 - (c) the reference in paragraph (3)(b) to title to units being vested in the manager were a reference to units being cancelled by the company.

93 Transfer or sale of property in lieu of payment of repurchase price

- (1) Subject to the provisions of paragraph (7), where a participant in a recognized fund requests repurchase of a number of units representing not less than 5% of all the undivided shares in the property of the fund represented by all the units of the fund which have been created, the manager may, by serving a notice in writing on the participant not later than the close of business on the second business day following the day on which that request is received, elect that the participant shall not be paid the repurchase price of his or her units but instead shall accept a transfer of property of the fund and, if such a notice is so served, unless the participant serves on the manager a notice in accordance with paragraph (2), repurchase of those units shall be in accordance with paragraph (4) in the case of a recognized unit trust and paragraph (5) in the case of a recognized open-ended investment company.
- (2) Where a notice is served on a participant in accordance with paragraph (1), the participant may serve a further notice on the manager not later than the close of business on the fourth business day following receipt by the participant of the first mentioned notice requiring the manager, instead of arranging for a transfer of property, to arrange for a sale of that property and the payment to the participant of the net proceeds of that sale and, if such a notice is so served, repurchase of those units shall take place forthwith in accordance with paragraph (6).
- (3) Subject to paragraph (7), where a participant in a recognized fund requests a repurchase of a number of units representing not less than 5% of all the undivided shares in the property of the fund represented by all the units of the fund in existence, he or she may, if he or she is permitted so to do by the terms of the trust deed or the articles, at the same time request the manager, instead of paying the participant the repurchase price of those units, to arrange for the transfer to him or her of property of the fund and if such a request is made, repurchase of the units in question shall take place forthwith in accordance with paragraph (4) in the case of a recognized unit trust and paragraph (5) in the case of a recognized open-ended investment company.
- (4) A repurchase of units in a recognized unit trust in accordance with this paragraph shall be effected by –
 - (a) the manager forthwith giving written notice to the trustee that repurchase of the units in question is to be effected by a transfer of property of the fund; and
 - (b) the trustee thereupon cancelling the units in question and transferring to the participant the relevant proportion, or as near as is in trustee's opinion practicable to the relevant proportion having regard to the need to be fair both to the participant and to continuing participants, of each description of asset in the property of the fund.
- (5) A repurchase of units in a recognized open-ended investment company in accordance with this paragraph shall be effected by –

- (a) the manager forthwith giving written notice to the company and the custodian that repurchase of the units in question is to be effected by a transfer of property of the fund; and
 - (b) the company thereupon cancelling the units in question and transferring to the participant the relevant proportion, or as near as is in the opinion of the custodian practicable to the relevant proportion having regard to the need to be fair both to the participant and to continuing participants, of each description of asset in the property of the fund.
- (6) A repurchase of units in a recognized unit trust in accordance with this paragraph shall be effected in the same way as a repurchase under paragraph (4) or paragraph (5) except that the manager shall arrange for a sale of such of the assets in question as are not cash in the base or other currency of repurchase and a payment by the trustee or the custodian to the participant of the net proceeds of that sale and the relevant proportion of cash.
- (7) The provisions of this Article shall not have effect to enable units to be repurchased at a time when repurchase is suspended.
- (8) This Article shall apply in a case in which the manager of a recognized unit trust acts as an agent for the trustee and in a case in which the manager of a recognized open-ended investment company acts as agent for that company as if the references to repurchase were references to cancellation.

94 Suspension and resumption of repurchase of units

- (1) In the case of a recognized unit trust, the manager may with the prior agreement of the trustee, or shall if the trustee so requires, at any time for a period not exceeding one month suspend repurchase of units if it, or the trustee in the case of any requirement by it, is of the opinion that there is good and sufficient reason to do so having regard to the interests of participants.
- (2) In the case of a recognized open-ended investment company, the manager may with the prior agreement of the custodian, or shall if the custodian or the directors with the prior agreement of the custodian so requires or require, at any time for a period not exceeding one month suspend repurchase of units if –
 - (a) the manager is of the opinion that there is good and sufficient reason to do so having regard to the interests of participants; or
 - (b) the custodian or the directors is or are of that opinion in the case of any requirement by it or them.
- (3) At the time of suspension of repurchase of units under paragraph (1) or (2) –
 - (a) in the case of a recognized unit trust, the manager, or the trustee if it has required the manager to suspend repurchase;

- (b) in the case of a recognized open-ended investment company, the manager, or the custodian or directors if either of them has required the manager to suspend repurchase,
- shall inform the Commission of the suspension, stating the reasons for its or their action, and forthwith confirm the suspension by giving notice in writing to the Commission, stating the reasons for that action.⁷¹
- (4) Before the resumption of repurchase of units, the manager shall inform the Commission of the proposed resumption and forthwith after the resumption confirm the resumption by giving notice in writing to the Commission.⁷²
- (5) If repurchase of units is suspended, the manager shall forthwith cease selling units.
- (6) Nothing in this Article shall prevent the manager from agreeing, during the period in which sale and repurchase of units is suspended, to sell or to repurchase units at a price calculated by reference to the first valuation point after resumption of sale and repurchase.
- (7) This Article shall apply in a case in which the manager of a recognized unit trust acts as a agent for the trustee, as if references to sale and repurchase of units were references to the sale and purchase of units by the manager as agent.
- (8) This Article shall apply in a case in which the manager of a recognized open-ended investment company acts as an agent for that company, as if references to sale and repurchase of units by the manager were references to the creation and cancellation of units by the company in favour of participants through the agency of the manager.

95 Manager may deal in units without accounting for profits

Notwithstanding the fiduciary nature of the manager's duties, the manager may, if there is express provision prominently displayed in the prospectus stating that the manager is under no obligation to account to the trustee (in the case of a recognized unit trust) or the company (in the case of a recognized open-ended investment company) or to the participants for any profit the manager makes on the sale of units or on the resale or cancellation of units which the manager has repurchased, not account for any such profit made since the date on which the relevant prospectus was published.

PART 12**BREACH OF INVESTMENT LIMITS****96 Duties of manager, trustee and custodian to avoid breach of investment limits**

- (1) The manager of a recognized fund shall take all reasonable steps and exercise all due diligence to avoid the property of the fund being used or invested in contravention of whichever is applicable of Articles 99 to 108, 113, 114 or 116 to 122.
- (2) Subject to the provisions of paragraph (4), the manager shall take all reasonable steps and exercise all due diligence to avoid the property of the fund being invested in contravention of whichever is applicable of Article 109, 110, 112 or 115.
- (3) Subject to the provisions of paragraph (4), the trustee or the custodian shall take all reasonable steps and exercise all due diligence to exercise such degree of supervision over the manager's operation of the fund as is appropriate with a view to ensuring that the manager fulfils the duties on him or her by paragraphs (1) and (2).
- (4) The manager shall not be subject to the duty imposed by paragraph (2) and the trustee or the custodian shall not be subject to the duty imposed by paragraph (3) insofar as it relates to the manager's duty under paragraph (2) during whichever is the shorter of the period of 6 months beginning with the first date after the fund is granted a recognized fund certificate on which persons are invited to become participants in the fund and the period beginning with that date and ending on the first date on which the value of the property of the fund exceeds £1 million, but the trustee or the custodian and the manager shall each take all reasonable steps and exercise all due diligence during whichever is shorter of those periods to ensure that the property of the fund is invested with the aim of spreading risk and in a manner which is consistent with the manner in which the property must be invested at the end of the relevant period.

97 Duties of manager, trustee and custodian in the event of inadvertent breach of investment limits

- (1) If the property of a recognized fund is, for reasons beyond the control of the manager or the trustee or the custodian, at any time invested in contravention of this Order, or, if the property of a securities fund is, by virtue of circumstances of the kind described in Article 108(2) or Article 111, invested otherwise than in accordance with Article 108(1) or, as the case may be, Article 109 or 110, the manager shall take such steps as are necessary to ensure that sufficient of the property of the fund is sold so that the property is invested in a manner which complies with this Order, or, as the case may be, with that Article, as soon as is reasonably practicable having regard to the interests of participants in the fund and, in any event, within the period of 6 months beginning with the date upon which the manager becomes aware that the property was invested in

contravention of this Order or, as the case may be, otherwise than in accordance with Article 108(1), 109 or 110.

- (2) Forthwith upon the trustee or the custodian becoming aware that circumstances of a kind described in paragraph (1) have arisen, it shall take such steps as are necessary to ensure that the manager fulfils the duty imposed on it by that paragraph.

98 Duties of manager, trustee and the custodian in the event of other breaches of investment limits

- (1) If, at any time, the property of a recognized fund is invested in contravention of this Order otherwise than in a case to which Article 96(4) applies or by virtue of circumstances of the kind described in Article 97, the manager shall, forthwith upon becoming aware of the contravention, take such steps as are necessary to ensure that the property of the fund is invested in a manner which complies with this Order.
- (2) Forthwith upon the trustee or the custodian becoming aware that circumstances of the kind described in paragraph (1) have arisen, it shall take such steps as are necessary to ensure that the manager fulfils the duty imposed on it by that paragraph.

PART 13

INVESTMENT AND BORROWING POWERS

99 Hedging

- (1) Subject to the provisions of paragraphs (2) to (10) and notwithstanding any other provision of this Order, the property of a recognized fund may be used in hedging transactions.
- (2) No transaction shall be regarded as a hedging transaction for the purposes of this Article unless –
 - (a) the transaction is one which may reasonably be regarded as economically appropriate to the reduction or elimination of risk arising in the management of the fund by virtue of fluctuations in the price of investments comprised in the property of the fund or by reason of fluctuations in interest or exchange rates;
 - (b) any instrument used in the transaction is one which by virtue of the relationship between fluctuations in price and fluctuations in the price of the property or any part of the property of the fund or fluctuations in interest or exchange rates, may reasonably be regarded as an instrument which may approximately be used in order to reduce or eliminate risk arising with respect to the property or the relevant part of it from such fluctuations; and
 - (c) the purposes of the transaction is the reduction or elimination of risk and not speculation, and, for these purposes, a transaction shall

not be regarded as one for the reduction or elimination of risk if, having regard to other hedging transactions which have been entered into in relation to the property or any part of it, it is unreasonable to consider that risk continues to arise of a kind for which the instrument may appropriately be used.

- (3) No hedging transaction shall be entered into at any time at which the total value, calculated in accordance with this Order, of all cash and other property paid, transferred or deposited by way of premium or initial margin which may reasonably be regarded as attributable to any obligation or right then arising under a hedging transaction which is not closed out would, if added to the amount of any premium, or initial margin payable in respect of the proposed transaction, exceed 10% in value of the property of the fund.
- (4) Except in the case of an instrument which is utilised to hedge against fluctuations in exchange rates, no instrument shall be utilised by virtue of this Article unless it is either a traded option or an instrument other than a traded option being an instrument which is traded on or under the rules of an eligible derivatives market and which is an instrument relating to property with respect to which, or to an index or other factor by reference to which, instruments of that kind have been so traded for a period of at least 6 months.⁷³
- (5) Subject to paragraph (7), no hedging transaction under which an obligation to receive or deliver property does arise or may arise at the option of some person other than the trustee or the custodian acting in its capacity as such shall be entered into unless the transaction is covered as stated in paragraph (6).
- (6) For the purposes of paragraph (5), a transaction shall be regarded as covered only if –
 - (a) in the case of a transaction under which an obligation to deliver property does or may arise, the property of the fund includes either –
 - (i) property sufficient to enable that obligation together with any other similar obligation incurred in relation to the fund with respect to property of the same kind to be discharged, or
 - (ii) rights to acquire property sufficient to enable that obligation and any other similar obligation incurred in relation to the fund with respect to property of the same kind to be discharged; and
 - (b) in the case of a transaction under which an obligation to receive property does or may arise, the property of the fund includes either –
 - (i) cash or near cash, which is not otherwise taken into account for the purposes of paragraph (8) or for the purposes of Article 107 or 124(1)(c), sufficient to enable that obligation and all similar obligations incurred in relation to the fund to be discharged, or

- (ii) rights to dispose of the property should the obligation to acquire it arise.
- (7) For the purposes of paragraph (6), the property of a fund shall be regarded as including property sufficient to enable the discharge of an obligation arising under a hedging transaction which is a contract for differences if the property includes property or rights to acquire property, which, by virtue of the correlation between that property and the property, index or other factor by reference to which any amount payable under the hedging transaction is to be calculated, may reasonably be considered to be sufficient to enable the obligation to be discharged.
- (8) No option shall be purchased unless the property of the fund includes cash or near cash which is not taken into account for the purpose of paragraph (6)(b)(i) or for the purposes of Article 107 or 124(1)(c) and which is sufficient to enable the payment of that premium and all other premia then payable including, in the case of an option which is a margined contract purchased for the fund, the amount of any premium which will become payable unless the option is sold.
- (9) No hedging transaction under which an obligation to receive property does or may arise shall be entered into unless the obligation could be discharged at the time the transaction is effected without contravening any provision of this Order.
- (10) No instrument relating to currency shall be utilised in order to hedge against fluctuations in exchange rates unless the instrument relates to the base currency or to a currency in which the property or any part of its is then denominated.
- (11) None of the provisions of paragraphs (2) to (10) shall prevent an instrument being utilised in order to close out a hedging transaction.
- (12) If, at any time after a hedging transaction has been entered into, circumstances arise which have the effect that, having disregarded all obligations and rights arising under hedging transactions which have been closed out, the transaction could not then be entered into except in contravention of any provision of this Article, the manager shall forthwith upon becoming aware of that fact take such steps as are necessary to ensure that the provisions of this Article are complied with either by closing out the transaction or by providing cover for it or otherwise and the trustee or the custodian shall, forthwith Upon becoming aware of the contravention, take such steps as are necessary to ensure that the manager fulfils that duty.
- (13) In the application of this Article to a money market fund, paragraph (2)(a) shall have effect as if the reference in that paragraph to investments included reference to such cash, deposits, loan or bills of exchange as are comprised in the property of the fund.

100 Eligible markets⁷⁴

- (1) A securities market is eligible for the purposes of this Order if it is 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 this Order if –
 - (a) the manager, after consultation with –
 - (i) in the case of a recognized unit trust, the trustee, or
 - (ii) in the case of a recognized open-ended investment company, the custodian,has decided, in accordance with paragraphs (3) and (4), to choose that market as one which is appropriate for the purpose of the investment of or dealing in the property of the recognized fund beyond, where appropriate, any limit which, under this Order, would otherwise apply;
 - (b) that decision is notified in writing to the trustee or custodian, as the case may be, and has not been revoked; and
 - (c) the market is included in a list in the prospectus.
- (3) For the purposes of paragraph (2), a market may be considered to be appropriate if it is –
 - (a) regulated;
 - (b) operates regularly;
 - (c) is recognized; and
 - (d) is open to the public.
- (4) In exercising the choice in paragraph (2), regard shall be had to –
 - (a) the need for adequate liquidity in the market;
 - (b) the arrangements relevant to the market for unimpeded transmission of income and capital to or to the order of investors; and
 - (c) any relevant Guidance published by the Commission.⁷⁵

101 Restriction of investment powers exercisable in relation to recognized funds

- (1) Subject to the provisions of this Order, the property of a recognized fund which is not a money market fund shall consist of transferable securities.
- (2) Units in a fund which has the characteristics required of a recognized fund in Article 11, or which is treated as having those characteristics by virtue of that provision, may not be acquired for a recognized fund which is neither a Government and other public securities fund nor a money market fund, unless the manager is under a duty to pay into the property of the fund –
 - (a) before the close of business on the fourth business day next after the agreement to buy the units, the maximum amount of any

preliminary charge which may be made by the seller of the units or, if the manager knows the price at which units in the relevant fund would have been created at the relevant time, the difference between that price and the price it paid for the units if that price is greater than the creation price; and

- (b) before the close of business on the fourth business day next after the agreement to sell the units, the amount of any charge which is made by the seller on repurchase of units.
- (3) The property of a recognized fund which is not a feeder fund, other than cash or near cash or property held for the purpose of hedging transactions, shall not consist only of units in a single recognized fund.
- (4) Paragraph (2) shall apply in the case of the manager of a recognized fund which is either a Government and other public securities fund or a money market fund as if the periods specified in paragraph (2)(a) and (b) were periods ending with the close of business on the business day next after the agreement to buy or, as the case may be, to sell the units in question.

102 Restriction of securities funds to investment in approved securities

Subject to Article 99, and except as provided in Article 103 or 104, the property of a securities fund shall consist of approved securities.

103 Exceptions from Articles 101 and 102

Notwithstanding the provisions of Articles 101 and 102 –

- (a) up to 10% in value of the property of a securities fund may consist of transferable securities which are not approved securities; and
- (b) the property of a securities fund may include cash and items of near cash which are not transferable securities provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be repurchased or for the efficient management of the fund in accordance with its object or for other purposes which may reasonably be regarded as ancillary to the object of the fund.

104 Ability of securities fund to invest in open-ended investment companies

The property of a securities fund shall not include units in a fund which has the characteristics required of a recognized fund in Article 11 or is treated as having those characteristics by virtue of that provision unless the fund is either –

- (a) another securities fund; or
- (b) an authorized securities scheme within the meaning of regulations made under the Financial Services Act 1986 of the United Kingdom; or
- (c) a fund units in which are approved securities, and –
 - (i) the sole object of which is to invest funds raised from the public in transferable securities,

- (ii) which operates on the principle of risk-spreading, and
- (iii) the terms of which restrict investment in units in other funds to investment in units in funds of a kind described in this Article and prohibit more than 5% in value of the property of the fund consisting of such units.

105 Limitation on amount which may be invested under Article 104

Subject to Article 104, not more than 5% in value of the property of a securities fund shall consist of units in funds of the kind described in Article 104.

106 Limitation on investment in funds managed by manager or associated company

None of the property of a securities fund shall consist of units in another fund which is managed or operated by the manager of the former fund or by another company in the same group as the manager or which is managed by any person who is a controller of the manager or of whom the manager is a controller unless –

- (a) the deed or articles or other instrument constituting the latter fund states that its object is investment in a particular geographic area or economic sector or of a particular nature; and
- (b) the deed or articles constituting the former fund and its prospectus clearly state that property of the fund may be invested in such units.

107 Limitation on investment in instruments conferring rights to subscribe and investment in nil paid or partly paid securities

- (1) The property of a securities fund shall not include any investments falling within paragraph 4 of Part 1 of Schedule 1 unless –
 - (a) if the value of all such instruments as are included in the property of the fund exceeds 5% of the value of that property, the cost of acquiring the investments to which all such instruments relate could be met in full out of cash or near cash comprised in the property of the fund which is not taken into account for the purpose of paragraph (2) or for the purposes of paragraph (6)(b)(i) or Article 99(8), or Article 124(1)(c) or out of sums which could be borrowed without contravening Article 123(2)(b); and
 - (b) the right to subscribe conferred by the instrument could be exercised without contravening any provision of this Order.
- (2) The property of a securities fund shall not include any transferable security if, to the knowledge of the manager, a call is to be made within 3 months for any sum unpaid on that security unless that call and any other calls for sums unpaid on transferable securities comprised in the property which, to the knowledge of the manager, are to be made within 3 months, could be met in full out of cash or near cash which is not taken into account for the purposes of paragraph (1) or for the purposes of

paragraph (6)(b)(i) or Article 99(8), or Article 124(1)(c) or out of sums which could be borrowed without contravening Article 123(2)(b).

108 Limitation on acquisition of influential stake

- (1) Subject to the provisions of paragraph (2), the property of a securities fund shall not include –
 - (a) shares in a body corporate which carry more than 10% of the rights to vote in all circumstances at general meetings of the body corporate; or
 - (b) more than 10% of –
 - (i) any other shares in a body corporate other than an open-ended investment company,
 - (ii) any investment, other than a Government and other public security, which falls within paragraph 2 of Part 1 of Schedule 1, and is issued by the same issuer., or
 - (iii) the units in any fund.
- (2) The provisions of sub-paragraph (a) and paragraph (1)(b)(ii) and (iii) shall not have effect in any case in which it was not possible, at the time the transferable securities were acquired, to ascertain whether the acquisition would contravene those provisions.

109 Securities funds other than Government and other public securities funds: spread of investments

Except as provided in Article 110 and subject to the provisions of Article 111, not more than 5% in value of the property of a securities fund which is not a Government and other public securities fund shall consist of transferable securities issued by the same issuer.

110 Exceptions from Article 109

Notwithstanding the provisions of Article 109 –

- (a) up to 10% in value of the property of a securities fund which is not a Government and other public securities fund may consist of transferable securities other than Government and other public securities issued by the same issuer provided that the total value of such transferable securities included in the property of the fund does not exceed 40% in value of the property of the fund; and
- (b) up to 35% in value of the property of a securities fund which is not a Government and other public securities fund may be invested in Government and other public securities issued by the same issuer.

111 Acquisitions as a result of exercise of rights

The provisions of Articles 109 and 110 shall not apply in any case in which any of the limits prescribed by those Articles is exceeded as a result of the exercise of rights arising in respect of investments comprised in the property of the fund.

112 Government and other public securities funds: spread of investments

- (1) The property of a Government and other public securities fund shall comprise Government and other public securities of at least 6 different issues.
- (2) Not more than 30% in value of the property of a Government and other public securities fund shall consist of Government and other public securities of the same issue.
- (3) For the purposes of this Article and for those of Article 115, Government and other public securities shall be regarded as being of a different issue if, notwithstanding that they are issued by the same person, they are issued on different terms whether as to repayment dates, interest rates, the identity of the guarantor, if any, or otherwise.

113 Money market fund: limitation of ability to invest in transferable securities

Not more than 80% in value of the property of a money market fund shall consist of transferable securities.

114 Money market funds: general investment powers

Subject to the provisions of Article 99, none of the property of a money market fund shall include anything other than the following –

- (a) cash or deposits with or loans to an authorized institution or a local authority, but only such deposits or loans which are repayable within a period of 6 months or which are made on terms on which the trustee or the custodian or the manager may demand repayment within that period unconditionally and without payment of a penalty exceeding more than 7 days' interest calculated at normal commercial rates;
- (b) Government and other public securities which are redeemable at the option of the holder within a period of 2 years or which will be redeemed by the issuer within that period;
- (c) bills of exchange issued by an authorized institution which are repayable within a period of 12 months;
- (d) investments falling within paragraph 2 of Part 1 of Schedule 1, which are issued by an authorized institution otherwise than by way of creating or acknowledging indebtedness arising on the making of a deposit or loan of the kind described in sub-paragraph (a), are not subordinated and are repayable within the period of 12 months; and
- (e) other investments falling within paragraph 2 of Part 1 of Schedule 1 which are not subordinated, are traded on or dealt in under the rules of an

eligible market otherwise than by virtue of the specific permission of the market authority and which are repayable within the period of 12 months.⁷⁶

115 Money market funds: spread of investments

- (1) Subject to the provisions of paragraph (2) –
 - (a) not more than 5% in value of the property of that fund shall consist of instruments which are not Government and other public securities and are issued by the same issuer;
 - (b) not more than 10% in value of that fund shall be kept on deposit with or be on loan to the same person, and, for the purposes of this sub-paragraph, the trustee or the custodian, any controller of the trustee or the custodian and any person of whom the trustee or the custodian is a controller shall all be treated as one person as shall the manager, each person in the same group as the manager, any of its controllers and any person of whom it is a controller;
 - (c) up to 80% in value of the property of that fund may consist of Government and other public securities provided that, if more than 35% in value of the property of the fund consists of such securities, the property must include Government and other public securities of at least 5 different issues; and
 - (d) not more than 30% in value of that fund shall consist of Government and other public securities of the same issue.
- (2) Notwithstanding the provisions of paragraph (1)(b), up to 20% in value of the property of a money market fund, or U.S.\$500,000 (or the equivalent amount in another currency) whichever is greater may be kept on deposit with or on loan to any one authorized institution, being an institution which has, or in the case of an authorized institution within the terms of sub-paragraph (a) or (e) of the definition of “authorized institution” in Article 1(1) having a subsidiary or parent which is an authorized institution which has, capital which is shareholders’ funds of an amount, as most recently quoted in “The Banker” magazine published by Financial Times Information Limited, of U.S.\$300,000,000 or more, provided that the authorized institution is not in the same group as the manager or the trustee or the custodian and is not a controller of any of them or a person of whom any of them is a controller and provided also that the amount so deposited or lent does not exceed 10% of the relevant institution’s issued capital and reserves as shown in its last published accounts.⁷⁷

116 Money market funds: limitation of ability to invest in long dated instruments

At least 35% in value of the property of a money market fund shall consist of instruments, deposits or loans which are redeemable or repayable within 2

weeks or which are capable of being transferred without the consent of a third party.⁷⁸

117 Application of Articles 107 and 108 to money market funds

Articles 107 and 108(1)(b)(ii) and (2), insofar as it relates to the said clause (ii), shall apply in relation to a money market fund in the same way as they apply in relation to a securities fund.

118 Feeder funds: limitation to investment in units of single fund

Subject to Articles 99 and 122, the property of a feeder fund shall consist of units in a single recognized fund or another fund acceptable to the Commission.⁷⁹

119 Funds of funds: limitation to investment in units of other funds

Subject to Articles 99 and 122, the property of a fund of funds shall consist of units in funds which are authorized unit trust schemes or recognized schemes under the provisions of Part I, Chapter VIII of the Financial Services Act 1986 of the United Kingdom or recognized funds other than a feeder fund.⁸⁰

120 Prohibition on fund of funds investing in another fund of funds

- (1) None of the property of a fund of funds shall include units in another fund of funds or units in a fund which would, if it were an authorized unit trust scheme or a recognized scheme under the provisions of Chapter VIII of Part I of the Financial Services Act 1986 of the United Kingdom, or a recognized fund other than a feeder fund, be a fund of funds.⁸¹
- (2) None of the property of a fund of funds shall include units in any separate part of the property of an umbrella fund if that separate part of the property would, if it were an authorized unit trust scheme or a recognized scheme under the provisions of Chapter VIII of Part I of the Financial Services Act 1986 of the United Kingdom, or a recognized fund other than a feeder fund, be a fund of funds.⁸²

121 Funds of funds: spread of investments

Not more than 20% in value of the property of a fund of funds shall comprise units in a single fund which is an authorized unit trust scheme or a recognized scheme under the provisions of Part I, Chapter VIII of the Financial Services Act 1986 of the United Kingdom or a recognized fund other than a feeder fund, unless the second fund is an umbrella fund in which case not more than 20% in value of the first fund shall comprise units representing or attributable to one constituent part of the property of the umbrella fund.⁸³

122 Feeder funds and funds of funds: ability to hold cash and near cash

Notwithstanding the provisions of Articles 118 and 119, the property of a feeder fund and of a fund of funds may include cash and money in a current or deposit account which is 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 repurchased or for the efficient management of the fund in accordance with its object or for other purposes which may reasonably be regarded as ancillary to the object of the fund.

123 Borrowing

- (1) The manager shall take all reasonable steps and exercise all due diligence to ensure that the trustee or the custodian does not borrow sums of money repayable out of the property of a recognized fund except in accordance with the provisions of this Article.
- (2) No sum shall be borrowed if, on the date it is proposed to borrow the sum, that sum together with all other sums borrowed and not repaid at that date would –
 - (a) amount in aggregate to a sum greater than the total of all sums which are to become part of the property of the fund within one calendar month of that date; and
 - (b) if they were immediately repayable, require more than 10% in value of the property of the fund to be utilised for the purposes of repayment.
- (3) If, at any time, the total of sums borrowed which are repayable out of the property of the fund is such that either of the conditions described in paragraph (2)(a) and (b) is fulfilled the manager shall, as soon as is reasonably practicable having regard to the interests of participants, take such steps as are necessary to ensure that the total of the sums borrowed is reduced so that it does not give rise to circumstances of the kind described in this paragraph.
- (4) The foregoing provisions of this Article do not apply to any arrangement which may be made without contravening Article 99, being an arrangement under which currency other than the base currency is borrowed and an amount of base currency at least equal to the amount of currency borrowed is placed, and continues to be kept, on deposit by the borrower with the lender, his or her agent or any other person designated by the lender for that purpose provided that if the amount of base currency kept on deposit ceases to be at least equal to the amount of currency borrowed the manager shall, as soon as is reasonable practicable in the interests of participants, take such steps as are necessary to ensure that sufficient base currency is placed on deposit as will secure that the total amount deposited is at least equal to the amount of currency borrowed.
- (5) The trustee or the custodian shall take all reasonable steps and exercise all due diligence to exercise such degree of supervision over the

manager's operation of the fund as is appropriate with a view to ensuring that the manager fulfils the duties imposed on it by paragraphs (3) and (4).

- (6) Nothing in this Article shall be construed as preventing the trustee or the custodian from borrowing monies in accordance with this Article, on the best commercial terms available, for the account of the fund either from itself, acting otherwise than in its capacity as the trustee or the custodian, or from any person in the same group as itself or from any of its controllers or from any person of whom it is a controller.
- (7) The trustee or custodian may create or cause to be created a security interest, hypothec or mortgage over, or pledge or cause to be pledged, the property of the fund or any part thereof by way of security for any monies borrowed in accordance with this Article.⁸⁴

124 Underwriting and placings

- (1) In the case of a recognized unit trust, the manager shall not, in its capacity as manager, enter into agreements or understandings of a kind to which this Article applies unless –
 - (a) in the case of an underwriting or sub-underwriting agreement, the trustee could discharge any obligation it may be called upon to perform in pursuance of the agreement without there being a contravention of whichever is applicable of Articles 99 to 121;
 - (b) in the case of any other agreement or understanding, the transferable securities could be acquired without there being any such contravention; and
 - (c) in any case other than a case in which the cost of acquiring any transferable securities that the trustee may or will be called upon to acquire in pursuance of any such agreement or understanding is to be met by the sale of units in the fund, that costs could be met in full out of cash or near cash comprised in the property of the fund and which is not taken into account for the purposes of Article 99(6)(b)(i) or (8), Article 107 or out of sums which could be borrowed without contravening Article 123(2)(b).
- (2) This Article applies to any underwriting or sub-underwriting agreement and to any agreement or understanding that transferable securities will be issued to or acquired by the trustee acting in its capacity as such.
- (3) The manager shall take all reasonable steps and exercise all due diligence to ensure that the conditions specified in paragraph (1)(a) to (c) continue to be fulfilled at all times during which the trustee may or will be called upon to acquire transferable securities in pursuance of any agreement or understanding to which this Article applies.
- (4) The trustee shall take all reasonable steps and exercise all due diligence to exercise such degree of supervision over the manager's operation of the fund as is appropriate with a view to ensuring that the manager fulfils the duty imposed on it by paragraph (3).

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- (5) This Article shall have effect in relation to a recognized open ended investment company as it has effect in relation to a recognized unit trust, taking –
- (a) references to the trustee in paragraphs (1) to (3) as references to that company or the custodian; and
 - (b) the reference to the trustee in paragraph (4) as a reference to the custodian.

125 Lending, guarantees and indemnities

- (1) Subject to the provisions of paragraph (2), none of the property of a recognized fund may be lent or used to discharge any obligation arising under a guarantee or indemnity given by the trustee or the custodian or the manager with respect to the obligations of any third party.
- (2) For the purpose of paragraph (1), neither the consideration payable for any instrument creating or evidencing indebtedness which, by virtue of any provision of this Order, may properly be included within the property of a fund, nor the placing of money on deposit or in a current account, nor the transfer of title to any property of the fund on terms that involve title being transferred back at some future date shall be regarded as lending.

126 Uncovered sales of property

In the case of a recognized unit trust neither the trustee nor the manager, and in the case of an open-ended investment company, neither the custodian nor the manager, acting in their capacities as such shall enter into any agreement to dispose of property which is not a hedging transaction unless the property of the fund includes either –

- (a) property sufficient to enable that obligation together with any other similar obligation incurred in relation to the fund to be discharged; or
- (b) rights to acquire property sufficient to enable that obligation together with any similar obligation incurred in relation to the fund to be discharged.

127 Application of Articles to umbrella funds

- (1) In the application to an umbrella fund of Articles 99 to 107, 109, to 116, 118 to 126 and Article 117 insofar as it relates to the application of Article 107 to an umbrella fund, references to the property of the fund shall be construed as references to each separate part of the property and those Articles shall apply to such funds as if each separate part of the property were the property of a single recognized fund.
- (2) Article 108 shall apply to an umbrella fund, which is so constituted that any separate part of the property would be a securities fund or a money market fund if that part of the property were the property of a single

recognized fund, as if all such separate parts of the property constituted one securities fund.

128 Prohibition on a fund of a particular category becoming a fund of another category

The object of a fund which is a securities fund, feeder fund, fund of funds or money market fund shall not be altered so as to have the effect that the fund ceases to be a fund of that particular category.

PART 14

DISTRIBUTIONS OF INCOME

129 Accounting periods

- (1) This Article determines what are the annual and half-yearly accounting periods of a recognized unit trust but this is subject to the right of the manager to choose that any particular annual or half-yearly accounting period shall end on a day which is not more than 7 days after and not more than 7 days before the day on which that accounting period would otherwise end.
- (2) Subject to paragraphs (3), (4) and (5), annual accounting periods are successive periods of 12 months and the first 6 months of an annual accounting period is a half-yearly accounting period.
- (3) The first annual accounting period of a recognized unit trust shall begin –
 - (a) where the fund is the subject of an initial offer, on the day next following the end of the period of the initial offer; or
 - (b) in any other case, when a recognized fund certificate is granted in respect of the fund.
- (4) The first annual accounting period shall end –
 - (a) on the next day in the calendar year which is the day specified in the trust deed as the day on which the annual accounting period ends; or
 - (b) if that next day is less than 6 months after the beginning of the first accounting period and the manager after consulting the auditor so determines, on the first anniversary of that next day.
- (5) The first annual accounting period after the making of a change in the dates of the annual accounting period shall begin on the day next following the end of the annual accounting period immediately preceding the making of that change and shall end –
 - (a) on the next day in the calendar year which is the new day on which the annual accounting period ends, or
 - (b) if that next day is less than 6 months after the beginning of the first accounting period to be completed after the making of the change

and the manager after consulting the auditor so determines, on the first anniversary of that next day.

- (6) This Article shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking –
- (a) references to a recognized unit trust as a reference to that company;
 - (b) references to the trust deed as references to the articles; and
 - (c) references to the manager of the recognized unit trust as references to the directors and manager of that company.

130 Amount available for income allocation

On or before each annual income allocation date the manager of a recognized fund shall determine the amount available for income allocation in respect of the immediately preceding annual accounting period, which amount shall be the aggregate of the income property received or receivable by the trustee or the custodian in respect of that period and a sum representing the manager's best estimate of any relief from tax (if any) on expenses properly payable out of the income less –

- (a) the aggregate of all expenses paid or payable during that period which are payable out of the property of the fund in accordance with Article 21 and which the manager after consulting the auditor deems to be properly payable out of income;
- (b) such provision for taxation as the manager after consulting the auditor shall think appropriate; and
- (c) the aggregate of those parts of the cancellation prices of units cancelled during that period as was payable out of income property in accordance with this Order.

131 Treatment of amount available for allocation of income in relation to accumulation units

- (1) In the case of a recognized fund in which both accumulation units and income units have been created, the amount available for allocation of income in accordance with Article 130 shall, subject to Article 132, on the record date be allocated between accumulation units and income units according to the respective shares in the property of the fund represented by the accumulation units and income units created or deemed to have been created at the end of the relevant annual accounting period.
- (2) The amount allocated to the holders of accumulation units in accordance with paragraph (1) or, in the case of a fund where all the units in existence are accumulation units, the whole amount available for allocation of income under Article 130, shall, with effect from the record date, become part of the capital property and the interests of the holders in that amount shall be satisfied in accordance with Article 17(2) by an increase, with effect from the record date in the number (including

fractions) of undivided shares in the property of the fund represented by the accumulation units.

132 Annual distribution to holders of income units

- (1) Except in the case of a fund whose units are exclusively accumulation units, on or before each annual income allocation date the trustee or the custodian shall distribute among the holders and the manager in respect of all income units rateably in accordance with the number of such units held or deemed to be held by them respectively on a date not later than the annual income allocation date selected by the manager in the case of a recognized unit trust, and the manager and directors in the case of a recognized open-ended investment company (the “record date”) –
 - (a) if there are no accumulation units, the whole amount available in accordance with Article 130 for allocation of income in respect of that annual accounting period; or
 - (b) if there are accumulation units, that part of that amount which has been allocated to income units in accordance with Article 131,in either case after –
 - (i) deducting all amounts previously allocated by way of interim allocations of income in respect of that annual accounting period, and
 - (ii) deducting and carrying forward as income property such amount as the manager and directors may from time to time determine.
- (2) As soon as may be after the end of each annual accounting period but not later than the record date the amount of cash required to effect a distribution in accordance with this Article shall be transferred to an account to be known as the “distribution account”.

133 Interim allocations of income

In the case of a recognized unit trust, if the trust deed requires or authorises the trustee and in the case of a recognized open-ended investment company, if the articles require or authorize the directors to make any interim allocation of income before the annual distribution date in any year in respect of a period (“an interim accounting period”) within the annual accounting period, Articles 130, 131 and 132 shall apply to the making of that interim allocation as if –

- (a) references therein to the annual accounting period were references to the interim allocation period in question and all previous interim allocation periods in the same annual accounting period taken together;
- (b) references therein to the annual income allocation date were references to the interim income allocation date; and
- (c) in Article 130 for the reference to the amount available for allocation of income in respect of the annual accounting period there were substituted a reference to such amount as may be determined by the manager to be

allocated by way of interim allocation of income not exceeding such sum as in the opinion of the manager represents the amount which would be available for allocation of income under Article 130 if the interim accounting period and all previous interim accounting distribution periods in the same annual accounting period taken together were an annual accounting period.

134 Income equalisation

- (1) An allocation of income to be made in respect of each unit in a recognized fund sold or resold during the accounting period in respect of which that income allocation is made shall include a capital sum ("income equalisation") representing the manager's best estimate of the amount of income included in the creation price by reference to which the sale price of that unit was determined.
- (2) The amount of income equalisation may be the actual amount of income in question or, if the trust deed or the articles permits or permit it, it may be an amount arrived at by taking the aggregate of the amounts of income included in the creation price in respect of units of the type in question sold or resold in the accounting period in question (or such lesser period as is specified for this purpose in the trust deed or the articles) and dividing that aggregate by the number of those units and applying the resultant average to each of the units in question.
- (3) Income equalisation in the case of a unit resold by the manager in the accounting period in question is financed out of the payment made by the manager to the trustee or the custodian in accordance with Article 88 in respect of that unit and accordingly the manager shall be paid by the trustee or the custodian out of the distribution account (in the case of income units) and out of the capital property (in the case of accumulation units) a sum equal to the income equalisation applicable to that unit when allocations of income are made for that accounting period in accordance with Article 132, or in accordance with Article 132 as applied by Article 133, as the case may be.
- (4) Where the trust deed or the articles provides or provide that there should be no income equalisation in relation to the fund, this article shall not apply.

135 How distributions may be made

- (1) In the case of a recognized unit trust, 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 trust deed, has identified himself or herself to the trustee as the person entitled to that distribution and may be sent by post to such address as that person shall have disclosed to the trustee for that purpose.

- (2) Any monies payable by the trustee to the manager or to a registered holder in respect of any unit may be paid by crossed cheque or warrant made payable to the order of and sent through the post to the usual business address of the manager or the registered address of such holder, as the case may be, or, in the case of joint holders, made payable to and sent to the registered address of that one of the joint holders who is first named on the register.
- (3) The payment of any cheque or warrant to the first named of joint holders shall be as effective a discharge to the trustee and the manager as if such first named joint holder had been 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 trustee and the manager.
- (5) When an authority in writing in that behalf shall have 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 shall consider sufficient the trustee shall pay the amount payable to the manager or the holder or joint holders, as the case may be, to his or her or their banker or other agent with the same effect as hereinbefore provided as though such banker or other agent were the sole holder.
- (6) Any distribution payment which shall remain unclaimed after a period of 10 years from the date of payment of the same shall then be transferred to and become part of the capital property and thenceforth neither the payee nor the holder nor any successor in title of his or hers shall have any right thereto or therein except as part of the capital property.
- (7) Paragraphs (2) to (6) above shall have effect in relation to a recognized open-ended investment company as they have effect in relation to a recognized unit trust, taking references to the trust deed as references to the articles and references to the trustee as references to the custodian.

136 Distribution statements and tax certificates

- (1) On or before each interim allocation date and on or before each annual income allocation date the trustee or the custodian shall send or arrange to be sent to each holder (or to the first named of joint holders) entered in the register as at the record date and shall on request give to every 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 he or she is entitled, whether or not the income is distributed to him or her or allocated to accumulation units and, where applicable, a statement of how much of the amount to which he or she is entitled represents income equalisation; and
 - (b) where applicable, a tax certificate to be prepared by the manager in a form to be approved by the trustee or the custodian in respect of the income available for allocation in respect of the preceding accounting period and attributable to such holder.

- (2) In the case of any distribution on liquidation of the recognized fund, each tax certificate shall show what proportion of the distribution represents capital and what proportion represents income.

PART 15

REPORTS TO HOLDERS

137 Annual and half-yearly reports

- (1) In the case of a recognized unit trust, the manager and, in the case of a recognized open-ended investment company, the directors of that company, shall, in relation to each annual and half-yearly accounting period, prepare a report stating the matters set out in Section A of Part 1 of Schedule 6 and otherwise complying with the following requirements of this Article; but 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 portfolio statement relating to that period stating the matters set out in Section B of Part 1 of Schedule 6;
 - (b) a comparative table relating to that period stating the matters set out in Section C of that Part;
 - (c) a copy of a report of the auditor to the holders on the accounts contained in the report stating the matters set out in Section D of that Part;
 - (d) in the case of a recognized unit trust, a copy of a report of the trustee to the holders stating the matters set out in Section E of that Part and supplied to the manager by the trustee in accordance with Article 140; and
 - (e) in the case of a recognized open-ended investment company, a copy of a report of the custodian to the holders stating the matters set out in Section F of that Part and supplied to the company by the custodian in accordance with Article 141.
- (3) A report which relates to any accounting period shall contain the accounts of the recognized fund for the period to which the report relates which shall consist of –
- (a) a statement of assets and liabilities stating the matters set out in Section A of Part 2 of Schedule 6;
 - (b) if a distribution or allocation of income is to be made for that period, an income and distribution account stating the matters set out in Section B of that Part; and
 - (c) if that period is an annual accounting period –
 - (i) a capital account stating the matters set out in Section C of that Part, and

- (ii) notes to the accounts stating the matters set out in Section D of that Part, and shall be prepared in accordance with generally accepted accounting principles and shall give a true and fair view of the financial position of the fund as at the end of the period to which the accounts relate.
- (4) A report which relates to any accounting period shall be signed by 2 directors of each of the following—
 - (a) in the case of a recognized unit trust, the manager; and
 - (b) in the case of a recognized open-ended investment company, that company,but if any such person has only one director, in that person's case each report shall be signed by that director.

138 Publication of reports

- (1) In the case of a recognized unit trust, the manager shall on or before the annual income allocation date and within 2 months after the end of the half-yearly accounting period, publish the annual and half-yearly report respectively required under Article 137 in accordance with paragraphs (2), (3) and (4).
- (2) The manager shall send a copy of the report to each holder (or to the first named of joint holders) entered in the register on the record date (or, if the report relates to a half-yearly accounting period for which no interim allocation of income is made, as at the last day of that period).
- (3) The manager shall give a copy of the report to each holder of bearer units on request by the holder.
- (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 prospectus during ordinary office hours.
- (5) The manager shall send a copy of the report to the Commission when it is published.⁸⁵
- (6) This Article, except for paragraph (3), shall have effect in relation to a recognized open-ended investment company as it has effect in relation to a recognized unit trust, taking—
 - (a) references to the manager as references to that company; and
 - (b) the reference to the trustee in paragraph (4) as a references to the custodian.

139 Reports to be offered to purchasers of units

The manager shall not effect any sale of units in a recognized fund to any person until it has offered that person free of charge a copy of the most recent annual report and the most recent half-yearly report (unless it has been superseded by an annual report) required under Article 137.

140 Annual report by the trustee

- (1) In the case of a recognized unit trust, it shall be the duty of the trustee to enquire into the conduct of the manager in the management of the fund in each annual accounting period and to report thereon to the holders.
- (2) The trustee's report shall contain the matters set out in Section E of Part 1 of Schedule 6, and shall be delivered to the manager in good time to enable it to include a copy of the report to the holders made on or before the annual distribution date.

141 Annual report by the custodian

- (1) In the case of a recognized open-ended investment company, it shall be the duty of the custodian to enquire into the conduct of the directors and the manager in the management of the fund in each annual accounting period and to report thereon to the holders.
- (2) The custodian's report shall contain the matters set out in Section F of Part 1 of Schedule 6 and shall be delivered to the directors and the manager in good time to enable them to include a copy of the report to the holders made on or before the annual distribution date.

PART 16

MEETINGS OF HOLDERS

142 Convening of meetings and attendance and voting thereat

- (1) Paragraphs (1) to (6) apply to a recognized unit trust only.
- (2) The trustee or the manager may at any time convene a meeting of holders at such time and place as may be thought fit.
- (3) The manager shall, on the request in writing of holders registered as holding not less than one-tenth (or any proportion lesser than one-tenth specified for this purpose in the trust deed) in value of the units in issue, convene a meeting of holders at such time and place as may be thought fit.
- (4) The manager shall be entitled to receive notice of and attend at any such meeting but shall not be entitled to vote or be counted in the quorum therefor and accordingly for the purposes of this part of this Order the units held or deemed to be held by the manager shall not be regarded as being in issue.
- (5) Any associate of the manager shall not be entitled to vote at any such meeting except in respect of units which he or she holds as a bare trustee or nominee on behalf of a person from whom he or she has received voting instructions.
- (6) The trustee and its lawyers shall be entitled to attend every such meeting.

- (7) In the case of a recognized open-ended investment company, the custodian and its lawyers shall be entitled to attend every general meeting of holders of that company convened under the Companies Laws.

143 Recognized unit trust: powers of a meeting of holders

- (1) In the case of a recognized unit trust, subject to paragraph (2), a meeting of holders duly convened and held in accordance with this Part shall be competent by extraordinary resolution—
- (a) to sanction any modification or alteration of or addition to the provisions of the trust deed which shall be agreed by the trustee and the manager;
 - (b) to approve a departure by the manager from a policy a statement of which has been included in the prospectus;
 - (c) to remove the manager as provided in Article 50(1)(e); and
 - (d) to approve an arrangement for the amalgamation of the fund with another body or fund whether or not that other fund is a recognized fund,
- but shall not have any further or other powers.
- (2) A meeting of holders of units in a recognized unit trust shall not be competent to sanction an increase in the maximum to the manager's periodic charge except by an extraordinary resolution which provides that the increase shall become effective at a specified date not earlier than 90 days after the date on which the resolution is passed.

144 Recognized unit trust: notices of meetings of holders

- (1) This Article applies to a recognized unit trust only.
- (2) Fourteen days' notice (or any longer period of notice specified for the purpose in the trust deed), inclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given, of every meeting shall be given to the holders in the manner provided for in Article 155.
- (3) The notice shall specify the place day and hour of meeting and the terms of the resolutions to be proposed.
- (4) A copy of the notice shall be sent by post to the trustee unless the meeting shall be convened by the trustee.
- (5) 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.

145 Recognized unit trust: quorum

- (1) This Article applies to a recognized unit trust only.
- (2) The quorum at a meeting of holders shall be the holders present in person or by proxy of one-tenth (or any proportion more than one-tenth specified

for this purpose in the trust deed) of all the units for the time being in issue.

- (3) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (4) If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall –
 - (a) if it has been convened on the request of holders in accordance with Article 142(3), be abandoned; or
 - (b) stand adjourned to such day and time not being less than 14 days thereafter and to such place as may be appointed by the chairman and at such adjourned meeting the holders present in person or by proxy shall be a quorum.
- (5) Notice of any adjourned meeting of holders shall be given in the same manner as for an original meeting and such notice shall state that the holders present at the adjourned meeting whatever their number and the number of units held by them will form a quorum.

146 Recognized unit trust: the chairman

In the case of a recognized unit trust, some person, who need not be a holder, nominated in writing by the trustee shall preside at every meeting of holders and, if no such person is nominated or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting, the holders present shall choose one of their number to be chairman.

147 Recognized unit trust: adjournment

In the case of a recognized unit trust, 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.

148 Recognized unit trust: votes at meetings

- (1) This Article applies to a recognized unit trust only.
- (2) At any meeting of holders an extraordinary resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, by the trustee or by one or more holders present in person or by proxy and holding or representing one-twentieth (or any proportion less than one-twentieth specified for this purpose in the trust deed) of the number of units for the time being in issue.
- (3) 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.

- (4) 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 of the meeting at which the poll was demanded.
- (5) 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 time and place as the chairman directs.
- (6) 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.
- (7) On a show of hands every holder who (being an individual) is present in person or by proxy or (or being a corporation) is present by one of its representatives as its proxy shall have one vote.
- (8) On a poll every holder who is present in person or by proxy shall have one vote for every complete undivided share in the property of the fund and a further part of one vote proportionate to any fraction of such an undivided share of which he or she is the holder and a holder entitled to more than one vote need not, if he or she votes, use all his or her votes or cast all the votes he or she uses in the same way.
- (9) A corporation being a holder may authorize such person as it thinks fit to act as its representative at any meeting of holders and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as the corporation could exercise if it were a individual holder.
- (10) In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the register of holders.
- (11) On a poll votes may be given either personally or by proxy.

149 Recognized unit trust: proxies

- (1) This Article applies to a recognized unit trust only.
- (2) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorized in writing or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorized.
- (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 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) A person appointed to act as a proxy need not be a holder.
- (6) An instrument of proxy may be in the usual common form or in any other form which the trustee shall approve.
- (7) 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 shall be 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.

150 Recognized unit trust: minutes

In the case of a recognized unit trust, 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 at the expense of the manager and any such minute if purporting to be signed by the chairman of the 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.

151 Recognized unit trust and recognized open-ended investment company: meaning of “extraordinary resolution”⁸⁶

- (1) In this Order in relation to a recognized unit trust, “extraordinary resolution” means a resolution proposed and passed at a meeting of holders duly convened and held in accordance with this Part and carried, whether on a show of hands or on a poll, by a majority consisting of 75% (or any larger proportion specified for this purpose in the trust deed) of the total number of votes cast for and against such resolution.
- (2) In this Order in relation to a recognized open-ended investment company “extraordinary resolution” means a resolution passed by a majority of not less than two-thirds of holders who (being entitled to do so) vote in person or by proxy at a meeting of holders of units in the company or a constituent part thereof, as the case may be, duly convened and held in accordance with the articles, of which in either case not less than 21 days notice, specifying the intention to propose the resolution as an extraordinary resolution has been given.⁸⁷

152 Recognized unit trust: class meetings

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

PART 17**TERMINATION OF THE FUND****153 When the fund is to be wound up**

- (1) In the case of a recognized unit trust, unless the Commission shall otherwise determine, forthwith upon the happening of any of the events specified in paragraph (3) the trustee shall cease the creation and cancellation of units in the fund, the manager shall cease the sale and repurchase of units in the fund and the trustee shall proceed to wind up the fund in accordance with Article 154.
- (2) In the case of a recognized open-ended investment company, unless the Commission shall otherwise determine, forthwith upon the happening of any of the events specified in paragraph (3) the company shall cease the creation and cancellation of units in the fund, the manager shall cease the sale and repurchase of units in the fund and the directors shall convene a special meeting of that company on a date not later than one month of the happening of any such event to consider a special resolution to wind up the company.
- (3) The events referred to in paragraph (1) are –
 - (a) the cancellation of the recognized fund certificate of the fund;
 - (b) a determination by the Commission, under Article 6(3) to cancel the recognized fund certificate of the fund at the request of –
 - (i) in the case of a recognized unit trust, the manager or the trustee, and
 - (ii) in the case of a recognized open-ended investment company, the company or the custodian; and

- (c) the expiration of any period specified in the trust deed in the case of a recognized unit trust and the memorandum or articles in the case of a recognized open-ended investment company, as the period at the end of which the fund is to terminate.⁸⁸

154 Recognized unit trust: manner of winding up

- (1) In the case of a recognized unit trust, upon the passing of an extraordinary resolution under Article 143(1)(d) approving the amalgamation of the fund with another body or fund, the trustee shall wind up the fund in accordance with that resolution or the terms of the approved amalgamation.
- (2) In any other case, the trustee shall as soon as practicable after the fund falls to be wound up under this Article, realise the property of the fund and, after paying thereout all liabilities properly so payable and retaining provision for the costs of the winding up, distribute the proceeds of that realisation to the holders and the manager (upon production by them of evidence as to their entitlement thereto) proportionately to their respective interests in the fund.
- (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 paid by the trustee into court for distribution as the court may direct, subject to the trustee having a right to retain thereout any expenses incurred by it in making that payment into court.

PART 18

RECOGNIZED UNIT TRUST: SERVICE OF NOTICES AND DOCUMENTS

155 Recognized unit trust: service of notices and documents

- (1) This Article applies to a recognized unit trust only.
- (2) In the case of a recognized unit trust, any notice required to be served upon a holder shall be deemed to have been duly given –
 - (a) in the case of units for the time being represented by bearer certificates, if it is given in the manner provided for in the most recently published prospectus; or
 - (b) in the case of units held by a registered holder, if it is sent by post to or left at his or her address as appearing in the register.
- (3) Any notice served by post shall be deemed to have been served on the second day following that on which the letter containing the same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

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

PART 19

UMBRELLA FUNDS

156 Qualification to be authorized as an umbrella fund

A fund does not qualify for the grant of a recognized fund certificate under Article 5 as an umbrella fund unless each constituent part would, if it were subject of a separate application for the grant of a recognized fund certificate under Article 5, qualify for the grant of a separate recognized fund certificate and would not be a feeder fund.

157 Modification of this Order in its application to umbrella funds

- (1) The following provisions of this Order shall apply in the case of an umbrella fund as if each reference therein to a recognized fund were a reference to each constituent part of the umbrella fund subject to any modifications set out –
- (a) Article 17;
 - (b) Article 18 but on the footing that it applies at the outset to the umbrella fund as a whole, and applies thereafter, on the occasion of the addition of any new constituent part, to that part;
 - (c) Article 19 but subject to the modification that for each reference to the prospectus and for each reference to the trust deed, articles or fund rules there shall be substituted respectively a reference to that part of the prospectus and to that part of the trust deed, articles or fund rules which relates to the constituent part in question;
 - (d) Article 20(5), including that paragraph as applied by paragraph (6) of that Article;
 - (e) Article 21 but subject to the modification that any expenses which may under that Article be paid out of the property of the fund and any sums received which are not attributable to one constituent part only shall be allocated amongst the constituent parts in such a way as the manager, after consulting the trustee or the custodian, considers to be fair to the participants in the various constituent parts;
 - (f) Article 22;
 - (g) Part 5 but –
 - (i) subject to the modification that for Article 23(1)(b) there shall be substituted the following –
 - “(b) bear the collective name of the fund and the name of the constituent part, and”, and

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- (ii) as if the exchange of units in one constituent part for units in another were a repurchase of units in the one constituent part and the sale or resale to the holder of units in the other;
 - (h) Articles 38 and 42;
 - (i) Articles 43 and 44 but paragraph (6) of each such Article as if the exchange of units in one constituent part for units in another constituent part were either a cancellation of units in the one part and the creation of units in the other part or a repurchase of units in the one part and the sale or re-sale of units in the other part, as the case may be;
 - (j) Articles 129, 132 and 133 but allowing the manager to exercise any discretion given to it under those Articles differently in the case of different constituent parts;
 - (k) Articles 130 and 131;
 - (l) Article 134 but as if the exchange of units in one constituent part for units in another were a repurchase of units in the one constituent part and the sale or resale to the holder of units in the other;
 - (m) Part 15 but with the following additional obligations –
 - (i) to include in each report the following information in relation to each of the other constituent parts in the umbrella fund –
 - (A) the name of the part,
 - (B) a description of the investment objectives, and
 - (C) such statements about the changes over the period to which the report relates in the capital value of units in the constituent part and the income therefrom as the manager considers appropriate to enable a holder to judge the relative merits of investment in that constituent part as compared with investment in any other constituent part,
 - (ii) to supply to any person to whom a report relating to a constituent part has been sent the corresponding report relating to any of the other constituent parts if that person requests that that report be sent to him or her, and
 - (iii) to state in each report relating to a constituent part the fact that the corresponding report for any other constituent part will be sent to any holder who requests it.⁸⁹
- (2) Subject to paragraph (3), Part 16 shall apply in the case of an umbrella fund to each constituent part as well as to the umbrella fund as a whole and shall so apply as if the reference to the holders were a reference to the holders of units in that constituent part.
 - (3) A meeting of holders of units in one constituent part only of an umbrella fund may, in pursuance of Article 143(1) –

- (a) sanction a modification or alteration of or addition to a provision of the trust deed only if the provision relates only to that constituent part; or
 - (b) sanction a departure by the manager from a policy statement included in the prospectus only if that statement relates only to that constituent part.
- (4) In addition to the matters required by Part 1 of Schedule 3 to be stated in the trust deed, in the case of an umbrella fund the trust deed shall contain a statement to the effect that the holders are entitled to exchange units in one part of the fund for units in another.⁹⁰
- (5) The matters required by paragraphs 1 and 2 of Schedule 3 to be stated in the trust deed shall be stated both in relation to the umbrella fund as a whole and in relation to each constituent part and the matters required by paragraphs 6 and 7 of that Schedule to be so stated shall be stated in relation to each constituent part, but different statements may be made about those matters in relation to different constituent parts.⁹¹
- (6) The declaration required by paragraph 9 of Schedule 3 to be contained in a trust deed shall be so framed that it will apply to each constituent part separately.
- (7) Subject to paragraphs (2) and (5), the provisions required by Part 1 of Schedule 3, (other than paragraphs 6 and 7 thereof) to be contained in the trust deed shall not make different provisions in relation to different constituent parts.⁹²
- (8) The provision required to be in the trust deed by paragraph 14(2) of Schedule 3, in relation to a modification of the trust deed of the description mentioned in clause (b) of that sub-paragraph and the provision required to be in the trust deed by sub-paragraph (3) of that paragraph shall be so framed as to apply separately in the case of each constituent part.
- (9) Part 2 of Schedule 3 shall have effect in relation to an umbrella fund subject to the following modifications –
 - (a) paragraph 26 shall apply separately in relation to each constituent part and shall so apply as though for the words “In the case of a fund which is a Government and other public securities fund” there were substituted the following words –

“In the case of a constituent part the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of either Government and other public securities or Government and other public securities and units in other collective investment schemes which are or, if authorized, would be, Government and other public securities funds”;
 - (b) if any of the matters referred to in any of paragraphs 29, 30, 31, 32, 33, 35 and 36 are contained in a trust deed, the same provision concerning that matter must apply in the case of each constituent part but those paragraphs shall apply as if the references in them to a fund and to units in a fund were references respectively to each

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- constituent part taken separately and to units in each constituent part taken separately; and
- (c) if any of the matters referred to in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28 and 34 are contained in the trust deed, different provisions about them may be made for different constituent parts.⁹³
- (10) Part 3 of Schedule 3, shall have effect in relation to an umbrella fund subject to the following modifications–
- (a)
- (i) paragraph 55 shall apply separately in relation to each constituent part and shall so apply as though for the words ‘In the case of a fund which is a Government and other public securities fund’ there were substituted the following words –
- “In the case of a constituent part the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of either Government and other public securities or Government and other public securities and units in other collective investment schemes which are or, if authorized, would be Government and other public securities funds.”,
- (ii) the statement required to be made by paragraph 55 may be made in the articles or in the relevant fund rules;
- (b) the provisions which shall be contained in the articles in respect of the matters referred to in paragraphs 42, 43, 58, 59, 60, 61 and 63 shall be the same for and apply to each constituent part but those paragraphs shall apply as if the references in them to a fund and to units in a fund were references respectively to each constituent part taken separately and to units in each constituent part taken separately;
- (c) the matters referred to in paragraphs 37, 39, 40, 41, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57 and 62 of Schedule 3, shall in respect of each constituent part be stated in the articles or in the relevant fund rules and different statements may be made about those matters in relation to different constituent parts;
- (d) the provision required by paragraph 44 of Schedule 3, to be contained in the memorandum or articles shall be so framed as to apply separately in the case of each constituent part.⁹⁴
- (11) In addition to the matters required by Part 3 of Schedule 3, to be stated in the articles, in the case of an umbrella fund the articles shall contain a statement to the effect that the holders are entitled to exchange units in one part of the fund for units in another.⁹⁵

158 Further modification of this Order in its application to umbrella funds

- (1) In Parts 9 to 12, and in Part 8 in its application to Parts 9 to 12, in the case of an umbrella fund, a reference to a fund includes a reference to the constituent parts of a fund.⁹⁶
- (2) Subject to the provisions of this Article, Parts 9 to 11, and Part 8 in its application to Parts 9 to 11, shall apply to an exchange of units carried out under paragraph (3).⁹⁷
- (3) The exchange of units in one constituent part of an umbrella fund for the appropriate number of units in another constituent part of that fund shall, subject to units in the other constituent part being available when the exchange is requested, be carried out as requested by a holder –
 - (a) in the case of a recognized unit trust –
 - (i) by the cancellation by the trustee of units in the one constituent part and the creation by the trustee of units in the other constituent part, or
 - (ii) by the repurchase by the manager of units in the one constituent part and the sale by the manager of units in the other constituent part; and
 - (b) in the case of a recognized open-ended investment company –
 - (i) by the cancellation by the company of units in the one constituent part and the creation by the company of units in the other constituent part, or
 - (ii) by the repurchase by the manager of units in the one constituent part and the sale by the manager of units in the other constituent part.⁹⁸
- (4) An exchange of units by way of the cancellation and creation of units in the relevant constituent parts under paragraph (3) shall be effected by the manager giving written instructions to that effect to the trustee, in the case of a recognized unit trust, or, in the case of a recognized open-ended investment company, making an application to that effect to that company and to the custodian; and it shall not be necessary for separate instructions to be given or separate applications to be made with respect to cancellation and creation, if all information which would have been required by Parts 9 to 11 to be included in any such instructions or applications is included in the written instructions or applications to effect the exchange.⁹⁹
- (5) In relation to an exchange of units in one constituent part of an umbrella fund for units in another constituent part of that fund where the units are denominated in different currencies, the rate of exchange to be applied on the exchange of the units shall be determined by the manager of the umbrella fund after consulting the trustee or custodian as appropriate on a basis which is fair to the relevant participant and to the other participants in the constituent parts concerned.¹⁰⁰
- (6) The creation and cancellation prices by reference to which an exchange of units in one constituent part of an umbrella fund for units in another

constituent part of the fund is carried out shall both be either forward prices or historic prices.¹⁰¹

- (7) For the purposes of Articles 62(4) and (6) and 72(4) and (6), Articles 63(2), (3) and (4) and 73(2), (3) and (4) and Article 92(3) and (5), on an exchange of units under paragraph (3) of this Article the obligations of the manager of an umbrella fund on a sale and repurchase of units and those of the trustee or the custodian of an umbrella fund on a creation or cancellation of units shall be deemed to be satisfied –
- (a) in the case of an exchange of units under paragraph (3)(a)(i) or (b)(i), by the transfer of the relevant monies or assets from one constituent part concerned to the other constituent part concerned; and
 - (b) in the case of an exchange of units under paragraph (3)(a)(ii) or (b)(ii), by the repurchase of units in the constituent part concerned from, and the sale of units in the other constituent part concerned to, the participant who requested the exchange,

in each case within the time limits specified in the appropriate paragraphs of those Articles.¹⁰²

- (8) On receipt by –
- (a) a trustee of a recognized unit trust of written instructions to exchange units under paragraph (3), it may in connection with such instructions forthwith give written notice to the manager in accordance with Article 64;
 - (b) a recognized open-ended investment company of written instructions to exchange units under paragraph (3), it may in connection with such instructions forthwith give written notice to the manager in accordance with Article 74; or
 - (c) the custodian of written instructions to exchange units under paragraph (3), it may in connection with such instructions forthwith give written notice to the manager in accordance with Article 74,

and the consequence of the giving of any such notice shall be that all or such number of the units as is specified in the notice shall not be exchanged.¹⁰³

- (9) If the repurchase of units is suspended under Article 94, exchanges of units under paragraph (3) shall be suspended accordingly and a holder may withdraw any written instructions to the manager to effect such an exchange prior to the resumption of repurchase of units; and the units in respect of which any such instructions are not withdrawn prior to that time will be exchanged following the resumption of repurchase of units.¹⁰⁴
- (10) Article 81(3) shall apply as if for the words from “any charge” to the end of the paragraph there were substituted the following words –

“any charge –

- (a) in connection with such creation or cancellation except the preliminary charge referred to in paragraph (1);
 - (b) (whether by way of preliminary charge or otherwise) in connection with an exchange of units, except –
 - (i) if no preliminary charge was made on the sale or creation of units in one constituent part (the “first part”) of an umbrella fund for units in another constituent part (the “second part”) of the same fund, or if the preliminary charge so made (which for these purposes shall be deemed to include the sum of any preliminary charges previously made in respect of exchanges of units as a result of which units in the first part were acquired) was at a lesser rate than would have been the case on a sale or creation of units in the second part at that time, and if authorized by the trust deed or articles, a charge of an amount which when aggregated with the preliminary charge (if any) made on the sale or creation of units in the first part does not exceed the preliminary charge that would have been made on a sale or creation of units in the second part at the time of the exchange, or
 - (ii) in the case of any exchange other than the first in any accounting period, and save as provided in clause (i), such charge as is authorized by the trust deed or articles and which is not greater in amount than the maximum for such charge so authorized and stated in the most recently published prospectus of the company.”¹⁰⁵
- (11) Article 82(6) shall apply as if for the words “any charge” to the end of the paragraph there were substituted the following words –
- “any charge –
- (a) in connection with the sale or repurchase of units except the preliminary charge referred to in paragraph (5);
 - (b) (whether by way of preliminary charge or otherwise) in connection with an exchange of units, except –
 - (i) if no preliminary charge was made on the sale or creation of units in one constituent part (the “first part”) of an umbrella fund for units in another constituent part (the “second part”) of the same fund, or if the preliminary charge so made (which for these purposes shall be deemed to include the sum of any preliminary charges previously made in respect of exchanges of units as a result of which units in the first part were acquired) was at a lesser rate than would have been the case on a sale or creation of units in the second part at that time, and if authorized by the trust deed or articles, a charge of an amount which when aggregated with the preliminary charge (if any) made on the sale or creation of units in the first part does not exceed the preliminary charge that would have been made on a sale or creation of units in the second part at the time of the exchange, or

- (ii) in the case of any exchange other than the first in any accounting period, and save as provided in clause (i), such charge as is authorized by the trust deed or articles and which is not greater in amount than the maximum for such charge so authorized and stated in the most recently published prospectus of the company.¹⁰⁶
- (12) Article 86(2) shall have effect in relation to an exchange of units in one constituent part of an umbrella fund for units in another constituent part of the same fund so as to require that a price is notified to the trustee or the custodian as the maximum price upon the exchange, which price shall not exceed the creation price notified under paragraph (1) (a) of that Article.
- (13) Articles 89 and 91 shall not be construed so as to apply in the case of the exchange of units in one constituent part for units in another constituent part of the same umbrella fund.

159 Fund rules¹⁰⁷

- (1) If the articles of an open-ended investment company which is an umbrella fund so permit, the directors may by resolution adopt fund rules (referred to in this Order as “fund rules”) containing provisions on any of the matters specified in Part 3 of Schedule 3, (other than the matters specified in paragraphs 42 to 44, 47, 58 to 61 and 63) and other matters not so specified if they are not inconsistent with the requirements of any enactment (including this Order) and which may consist of one or more documents relating to one or more constituent parts and which are certified as approved by the custodian.
- (2) Fund rules once adopted may not be altered, modified or rescinded nor substituted by new fund rules adopted by the directors except where –
 - (a) the custodian certifies that any such alterations, modifications or amendments are required solely –
 - (i) to implement any change in the law, including an amendment of this Order or of any other Order made under Article 11 of the Law,
 - (ii) as a direct consequence of any such change in the law,
 - (iii) to change the name of the fund,
 - (iv) if the fund rules provide for interim accounting periods to change the date on which any such period begins or ends or to change the interim allocation date which relates to any such period,
 - (v) to make an amendment which the manager and the custodian agree is either for the benefit of holders and potential holders of units of the relevant constituent part of parts or does not involve them in any material prejudice, or
 - (vi) to remove from the fund rules obsolete provisions;

- (b) there are no holders of units of the relevant constituent part or parts; or
- (c) unless approved by an extraordinary resolution at a meeting of holders of units of the relevant constituent part or parts called for the purpose.

PART 20

MISCELLANEOUS

160 Transitional provisions

- (1) On or after the commencement date, this Order shall have effect in relation to –
 - (a) an application for a recognized fund certificate in respect of an existing fund; or
 - (b) an existing fund in respect of which there is a recognized fund certificate,subject to the modifications set out in Schedule 7.
- (2) On and after 1st December 1995 this Order shall have effect in relation to a recognized fund in existence on that day subject to the transitional arrangements in Schedule 8.¹⁰⁸

161 Citation

This Order may be cited as the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988.

SCHEDULE 1

(Article 1)

INVESTMENTS

PART 1

INVESTMENTS

1 Shares, etc.

Shares and stock in the share capital of a company.

Note. In this paragraph “company” includes any body corporate and also any unincorporated body constituted under the law of a country or territory outside Jersey but does not include an open-ended investment company or any body incorporated under the law of, or of any part of, the United Kingdom relating to building societies, industrial and provident societies or credit unions.

2 Debentures

Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3.

Note. This paragraph shall not be construed as applying –

- (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) to a cheque or other bill of exchange, a banker’s draft or a letter of credit; or
- (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

3 Government and public securities

Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

Notes.

- (1) In this paragraph “government, local authority or public authority” means –
 - (a) the government of Jersey, the United Kingdom or of any other country or territory outside Jersey;
 - (b) a local authority in the United Kingdom or elsewhere;
 - (c) any international organisation the members of which include the United Kingdom or another member State.
- (2) The Note to paragraph 2 above shall, so far as applicable, apply also to this paragraph.

4 Instruments entitling to shares or securities

Warrants or other instruments entitling the holder thereof to subscribe for investments falling within paragraph 1, 2 or 3.

Notes.

- (1) It is immaterial whether the investments are for the time being in existence or identifiable.
- (2) An investment falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9.

5 Certificates representing securities

Certificates or other instruments which confer –

- (a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 4;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder thereof would be entitled if he or she held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

Note. This paragraph does not apply to any instrument which confers rights in respect of 2 or more investments issued by different persons or in respect of 2 or more different investments falling within paragraph 3 and issued by the same person.

6 Units in a fund

Units in a fund.

7 Options

Options to acquire or dispose of –

- (a) an investment falling within any other paragraph of this Part;

- (b) currency of the United Kingdom or of any other country or territory;
- (c) gold or silver; or
- (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of sub-paragraph (a), (b) or (c).

8 Futures

Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

Notes.

- (1) This paragraph does not apply if the contract is made for commercial and not investment purposes.
- (2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognized investment exchange or made otherwise than on a recognized investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (3) A contract not falling within paragraph (2) of these Notes shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 7 days.
- (4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes –
 - (a) either or each of the parties is a producer of the commodity or other property or uses it in his or her business;
 - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.
- (6) The following are also indications that a contract is made for investment purposes –
 - (a) it is expressed to be as traded on a market or on an exchange;
 - (b) performance of the contract is ensured by an investment exchange or a clearing house;
 - (c) there are arrangements for the payment or provision of margin.
- (7) A price shall be taken to have been agreed upon when a contract is made –

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, that provision is made for a variation in quantity or quality on delivery.

9 Contracts for differences etc.

Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.¹⁰⁹

Note. This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

10 Long term insurance contracts

Rights under a contract the effecting and carrying out of which constitutes long term business within the meaning of the Insurance Companies Act 1982 of the United Kingdom.

Notes.

- (1) This paragraph does not apply to rights under a contract of insurance if –
 - (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within 10 years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding 70 years;
 - (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with sub-paragraph (a), (b) and (c) of this Note.
- (2) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract –
 - (a) constitutes both long-term business within the meaning of the Insurance Companies Act 1982 of the United Kingdom and general business within the meaning of that Act; or
 - (b) by virtue of section 1(3) of that Act constitutes long term business notwithstanding the inclusion of subsidiary general

business provisions, references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long term business.

- (3) This paragraph does not apply to rights under a re-insurance contract.
- (4) Rights falling within this paragraph shall not be regarded as falling within paragraph 9.

11 Rights and interests in investments

Rights to and interests in anything which is an investment falling within any other paragraph of this Part.

Notes.

- (1) This paragraph does not apply to interests under the trusts of an occupational pension scheme.
- (2) This paragraph does not apply to rights or interests which are investments by virtue of any other paragraph of this Part.

PART 2

COUNTRIES AND TERRITORIES

Australia
Austria
Canada
Finland
Japan
New Zealand
Norway
Sweden
Switzerland
United States of America.

SCHEDULE 2

(Article 5)

CATEGORIES OF FUNDS

- (1) Feeder fund;
- (2) Fund of funds;
- (3) Government and other public securities fund;
- (4) Money market fund;
- (5) Securities fund;
- (6) Umbrella fund.

SCHEDULE 3

(Articles 15 and 16)

**CONTENTS OF TRUST DEED AND MEMORANDUM ARTICLES OR FUND
RULES (IF ANY)¹¹⁰**

PART 1

MATTERS WHICH MUST BE CONTAINED IN THE TRUST DEED

1 Name of the fund

A statement of the name of the fund being a name consistent with the objectives of the fund stated in accordance with paragraph 2.

2 Investment objectives

If an objective of the fund is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the fund is investment in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors) and, if an objective of the fund is investment of a particular nature, a statement of that fact (specifying the particular nature).

3 Eligible markets

Except in the case of a feeder fund, a statement that, subject to any restrictions in this Order or the trust deed, the fund has the power to invest in or deal on any market –

- (a) which is an eligible market for that fund by virtue of this Order; or
- (b) to the extent that power to do so is conferred by this Order irrespective of any issue of eligibility.¹¹¹

4 Governing law

A statement that the deed is made under and governed by the law of Jersey.

5 Trust deed to be binding and authoritative

A statement that the deed is binding on each holder as if the holder had been a party to it and so to be bound by its provisions and authorises and requires the

trustee and the manager to do the things required of them by the terms of the deed.

6 Recognized status

If the fund has been established with a view to its being a recognized fund, a statement of which of the categories of recognized fund the fund is intended to belong to and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent fund.

7 Feeder funds

If the fund is a feeder fund, a statement of the name and recognized status, if any, of the fund into which it is to feed.¹¹²

8 Base currency

A statement of what currency is the base currency of the fund.

9 Declaration of trust

A declaration that, subject to the provisions of the deed and to this Order and to all Orders made under Article 11 of the Law and for the time being in force –

- (a) the property of the fund (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the holders of the units *pari passu*, according to the number of units held by each holder or, in a case where income units and accumulation units are both in issue, according to the number of undivided shares in the property of the fund 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 those Orders.

10 Annual accounting period

The dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella fund, be the same for all the constituent funds.

11 Annual income allocation date

The date in the calendar year (not being later than 2 months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date which must, in the case of an umbrella fund, be the same for all the constituent funds.

12 Certificates

Unless provision is contained in the trust deed dispensing with the requirements of Article 23, provision as to the form and content of and the manner of authenticating certificates evidencing title to a holding of units.

13 Holder's liability to pay

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

14 Supplemental deeds

- (1) A provision that no modification may be made to the trust deed except by a deed, expressed to be supplemental to the trust deed, entered into by the manager and the trustee and, unless there are no holders, approved by an extraordinary resolution at a meeting of holders called for the purpose.

But the deed may contain a provision that no such approval is required of any modification which is required solely –

- (a) to implement any change in the law, including an amendment of this Order or of any other Order made under Article 11 of the Law;
 - (b) as a direct consequence of any such change in the law;
 - (c) to change the name of the fund;
 - (d) to change the dates on which the annual accounting period begins and ends or to change the annual income allocation date;
 - (e) if the trust deed provides for interim accounting periods, to change the dates on which any such period begins or ends or to change the interim allocation date which relates to any such period;
 - (f) to make an amendment which the manager and the trustee agree is either for the benefit of holders and potential holders or does not involve any of them in any material prejudice;
 - (g) to remove from the trust deed obsolete provisions;
 - (h) to replace the manager or the trustee when it has been removed, wishes to retire or has retired; or
 - (i) to make provision for any of the matters referred to in Parts 1 and 2 of the Schedule in respect of any fund to be established subsequent to the execution of, and not included in, the trust deed or any prior deeds supplemental thereto.¹¹³
- (2) A provision that, where such a supplemental deed as is referred to in subparagraph (1) contains a relevant modification (as defined below) to the trust deed, that supplemental deed shall not be taken to have been approved by an extraordinary resolution at a meeting of the holders unless each such modification has been the subject of a separate motion for its approval which has been separately approved by an extraordinary

resolution at that meeting and for this purpose each of the following is a relevant modification –

- (a) an increase in the maximum of any periodic charge payable to the manager;
 - (b) a modification to a matter specified in any of the sub-paragraphs of Article 19(1) which is the subject of a provision in the trust deed or in the prospectus.
- (3) In the case of a securities fund, feeder fund or fund of funds or a money market fund, a provision that no modification may be made to the trust deed which would result in the fund being no longer a fund of the relevant category.¹¹⁴

PART 2

MATTERS WHICH MAY BE CONTAINED IN THE TRUST DEED

15 Duration of the fund

If the fund is to terminate after the expiration of a particular period, a statement to that effect.

16 Manager's periodic charge

- (1) A statement authorising the manager to make a periodic charge payable out of the property of the fund and specifying how it shall accrue and be paid with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the fund.
- (2) A statement authorising the manager to make a periodic charge payable out of the property of the fund expressed as a specified annual percentage of the value of the property of the fund lower than the maximum referred to in sub-paragraph (1) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of 3 months from the date on which the manager gives notice in writing to each holder entered on the register of its intention to do so.

17 Umbrella funds: manager's charge on an exchange of units

A statement authorising the manager of an umbrella fund to make a charge of a fixed amount on the exchange of units in one constituent part (other than the first such exchange by a holder in any one annual accounting period) and specifying what the maximum of that amount may be, and a statement authorising any other charge permitted under paragraph (3)(b)(i) or, as the case may be, of Article 158(11) of the principal Order.¹¹⁵

18 Trustee's remuneration

A statement authorising the manager to make payments to the trustee by way of remuneration for its services, relieving the trustee from any obligation to account for those payments to the holders or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

19 Trustee's remuneration chargeable to the property of the fund

A statement authorising any payments to the trustee by way of remuneration for its services to be paid (in whole or in part) out of the property of the fund.

20 Trustee's disbursements

The descriptions of expenses or disbursements of the trustee, including the fees of the registrar (if any) or any expenses or disbursements incurred by the trustee in itself performing the functions of registrar, which are payable out of the property of the fund.

21 Manager's preliminary charge

A statement of the maximum percentage of the creation price of a unit in the fund which may be included in the sale price of that unit calculated by reference that creation price as a preliminary charge receivable by the manager.

22 Initial price

A statement of the initial price of units.

23 Period of the initial offer

A statement of the length of the period of the initial offer.

24 Investment in funds managed by the manager or its associate

A statement that the property of the fund may include units in another fund which is managed by the manager or by another company in the same group as the manager or which is managed by any person who is a controller of the manager or of which the manager is the controller.

25 Constituents of property, hedging transactions and borrowing powers

If the descriptions of asset of which the capital property of the fund may consist or the proportion of the capital property of the fund which may consist of an asset of any description or the descriptions of hedging transaction which may be effected on behalf of the fund or the borrowing powers exercisable in relation to the fund are narrower than those permitted for the categories of fund to which

the fund belongs under this Order, a statement of those narrower descriptions of asset, hedging transaction or borrowing powers.

26 Government and other public securities fund

In the case of a fund which is a Government and other public securities fund, a statement that the manager has discretion to invest more than 35% in value of the property of the fund in Government and other public securities issued by the same issuer.

27 Accumulation units

Whether under the fund units may be accumulation units only or accumulation units as well as income units.

28 Interim income allocation date

A provision authorising or requiring interim allocations of income and either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the manager.

29 Cash deposits with trustee or associates

A provision that cash forming part of the property of the fund or standing to the credit of the distribution account may be placed by the trustee in any current, deposit or loan account with itself (if a banker) or with any associate (being a banker) of the trustee or of the manager so long as that banker pays interest thereon at no lower rate than is, in accordance with normal banking practice, the commercial rate for deposits of the size of deposit in question negotiated at arms length.

30 Borrowing from trustee or associates

A provision that money which may be borrowed for the account of the fund may be borrowed from the trustee (if a banker) or from any associate (being a banker) of the trustee or of the manager so long as that banker charges interest at no greater rate, and any fee for arranging or terminating the loan is of no greater amount, than is, in accordance with normal banking practice, the commercial rate for a loan of the size in question negotiated at arms length.

31 Dealings by manager, trustee and associates

A provision authorising a person who is the manager, the trustee, any associate of either of them, any investment adviser of the manager or a person of any other specified description –

- (a) to become the owner of units in the fund and to hold dispose or otherwise deal with those units as if, but subject to Article 142, that person were not such a person;
- (b) to deal in property of any description on that persons' individual account notwithstanding the fact that property of that description is included in the property of the fund; or
- (c) to act as agent in the sale or purchase of property to or from the trustee for the account of the fund,

without that person's having to account to any other such person, to the holders or any of them for any profits or benefits made by or derived from or in connection with any such transaction.

32 Certificates

- (a) A provision relieving the manager and the trustee from any duty to issue certificates or from any duty to issue certificates other than bearer certificates.
- (b) A provision authorising the issue of bearer certificates.
- (c) A provision authorising the trustee to charge fees under Article 35.

33 Holders of bearer certificates

A statement of how the holders of bearer certificates are to identify themselves.

34 Grouping periods

A provision authorising grouping for equalisation under Article 134(2) and, if grouping is to be permitted for periods within an accounting period, what those periods are to be.

35 Meetings

- (a) If the holders competent to requisition the calling of a meeting are to be those holding a proportion less than one-tenth in value of the units in issue, what that lesser proportion is to be.
- (b) If the period of notice for the calling of a meeting of holders is to be longer than the period of 14 days referred to in Article 144(2), what that longer period is to be.
- (c) If the number of holders present in person or by proxy at a meeting which is to constitute a quorum is to be more than one-tenth of the holders of all the units for the time being in issue, what that greater proportion is to be.
- (d) If the number of holders competent to demand a poll at a meeting of holders is to be less than those holding one-twentieth of the number of units for the time being in issue, what that lesser proportion is to be.

- (e) If the majority necessary for the passing of an extraordinary resolution is to be greater than 75% of the total number of votes cast for and against that resolution, what that greater percentage is to be.

36 Investment adviser

A provision authorising the manager to appoint an investment adviser.

PART 3

**MATTERS WHICH MUST BE CONTAINED IN THE MEMORANDUM,
ARTICLES OR FUND RULES OF AN OPEN-ENDED INVESTMENT
COMPANY¹¹⁶**

37 Investment objectives

If an objective of the fund is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the fund is investment in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors) and, if an objective of the fund is investment of a particular nature, a statement of that fact (specifying the particular nature).

38 Eligible markets¹¹⁷

Except in the case of a feeder fund, a statement that, subject to any restrictions in this Order or the memorandum, articles or fund rules, the fund has the power to invest in or deal on any market –

- (a) which is an eligible market for that fund by virtue of this Order; or
- (b) to the extent that power to do so is conferred by this Order irrespective of any issue of eligibility.

39 Recognized status

If the fund has been established with a view to its being a recognized fund, a statement of which of the categories of recognized fund the fund is intended to belong to and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent fund.

40 Feeder funds

If the fund is a feeder fund, a statement of the name of the fund into which it is to feed and its recognized status, if any.

41 Base currency

A statement of what currency is the base currency of the fund.

42 Annual income allocation date

The date in the calendar year (not being later than 2 months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date which must, in the case of an umbrella fund, be the same for all the constituent funds.

43 No partly paid shares

A provision that no partly paid units may be issued.

44 Category of fund¹¹⁸

In the case of a securities fund, a feeder fund, a fund of funds or a money market fund, a provision that no modification may be made to the memorandum, articles or fund rules which would result in the fund being no longer a fund of the relevant category.

45 Duration of the fund

If the fund is to terminate after the expiration of a particular period, a statement to that effect.

46 Manager's periodic charge

Either –

- (a) a statement authorising the manager to make a periodic charge payable out of the property of the fund and specifying how it shall accrue and be paid with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the fund; or
- (b) a statement authorising the manager to make a periodic charge payable out of the property of the fund expressed as a specified annual percentage of the value of the property of the fund lower than the maximum referred to in sub-paragraph (a) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of 3 months from the date on which the manager gives notice in writing to each holder entered on the register of its intention to do so.

47 Umbrella funds: manager's charge on an exchange of units

If the manager of an umbrella fund is to make a charge of a fixed amount on the exchange of units in one constituent part (other than the first such exchange by a holder in any one annual accounting period), a statement authorising it to do so and specifying what the maximum of that amount may be, and a statement authorizing any other charge permitted under Article 158(10)(b)(i), or as the case may be, Article 158(11) of the principal Order.¹¹⁹

48 Custodian's remuneration

If the manager is to make payments to the custodian by way of remuneration for its services, a statement authorising it to do so and relieving the custodian from any obligation to account for those payments to the holders or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

49 Custodian's remuneration chargeable to the property of the fund

A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the property of the fund.

50 Custodian's disbursements

The descriptions of any expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the fund.

51 Manager's preliminary charge

A statement of the maximum percentage of the creation price of a unit in the fund which may be included in the sale price of that unit calculated by reference to that creation price as a preliminary charge receivable by the manager.

52 Initial price

A statement of the initial price of units.

53 Investment in funds managed by the manager or its associate

If the property of the fund may include units in another fund which is managed by the manager or by another company in the same group as the manager or which is managed by any person who is a controller of the manager or of which the manager is the controller, a statement to that effect.

54 Constituents of property, hedging transactions and borrowing powers

If the descriptions of asset of which the capital property of the fund may consist or the proportion of the capital property of the fund which may consist of an asset of any description or the descriptions of hedging transaction which may be effected on behalf of the fund or the borrowing powers exercisable in relation to the fund are narrower than those permitted for the categories of fund to which the fund belongs under this Order, a statement of those narrower descriptions of asset, hedging transaction or borrowing powers.

55 Government and other public securities fund

In the case of a fund which is a Government and other public securities fund, if the manager has discretion to invest more than 35% in value of the property of the fund in Government and other public securities issued by the same issuer, a statement to that effect.

56 Accumulation units

Whether under the fund units may be accumulation units only or accumulation units as well as income units.

57 Interim income allocation date

If interim allocations of income are to be authorized or required, a provision so stating and also either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the manager and directors.

58 Cash deposits with custodian or associates

If cash forming part of the property of the fund or standing to the credit of the distribution account may be placed by the custodian in any current, deposit or loan account with itself (if a banker) or with any associate (being a banker) of the custodian or of the manager, a provision that such cash may be so placed only so long as that banker pays interest thereon at no lower rate than is, in accordance with normal banking practice, the commercial rate for deposits of the size of deposit in question negotiated at arms length.

59 Borrowing from custodian or associates

If money which may be borrowed for the account of the fund may be borrowed from the custodian (if a banker) or from any associate (being a banker) of the custodian or of the manager, a provision that such money may be borrowed only so long as that banker charges interest at no greater rate, and any fee for arranging or terminating the loan is of no greater amount, than is, in accordance with normal banking practice, the commercial rate for a loan of the size in question negotiated at arms length.

60 Dealings by manager, custodian and associates

If a person who is the manager, the custodian, any associate of either of them, any investment adviser of the manager or a person of any other specified description wishes –

- (a) to become the owner of units in the fund and to hold dispose or otherwise deal with those units as if that person were not such a person;
- (b) to deal in property of any description on that persons' individual account notwithstanding the fact that property of that description is included in the property of the fund; or
- (c) to act as agent in the sale or purchase of property to or from the custodian for the account of the fund,

without that person's having to account to any other such person, to the holders or any of them for any profits or benefits made by or derived from or in connection with any such transaction, a statement authorising it to do so.¹²⁰

61 Certificates

- (a) If the company and the custodian are to be relieved from any duty to issue certificates, a statement to that effect.
- (b) If the custodian is to charge fees under Article 35, a statement authorising it to do so.

62 Grouping periods

If there is, or there is to be, grouping for equalisation under Article 134(2), a provision authorising such grouping and, if grouping is to be permitted for periods within an accounting period, a statement of what those periods are to be.

63 Investment adviser

If the manager may appoint an investment adviser, a statement authorising it to do so.

SCHEDULE 4

(Articles 43 and 44)

**PERSONS SPECIFIED FOR LOAN OF PROPERTY AND FOR DEPOSIT OF
DOCUMENTS OF TITLE**

PART 1

PERSONS SPECIFIED FOR LOAN OF PROPERTY

The following Stock Exchange money brokers –

Cazenove Money Brokers

Hoare Govett (Moneybroking) Limited

James Capel Moneybroking Limited

King & Shaxson Money Brokers Limited

Lazard Money Broking Limited

LM (Moneybrokers) Limited

P-B Securities Money Brokers Limited

Rowe & Pitman Money Broking Limited

Sheppards Moneybrokers Limited.

PART 2

BANKS SPECIFIED FOR DEPOSIT OF DOCUMENTS OF TITLE

Bank of Scotland

Barclays Bank Plc

Lloyds Bank Plc

Midland Bank Plc

National Westminster Bank Plc

The Royal Bank of Scotland Plc

Standard Chartered Plc

TSB Group Plc.

SCHEDULE 5

(Article 52)

INFORMATION TO BE CONTAINED IN A PROSPECTUS**1 The manager and, in the case of a recognized open-ended investment company, the manager and the company**

The following particulars of, in the case of a recognized unit trust, the manager and, in the case of a recognized open-ended investment company, both that company and the manager, shall be stated –

- (a) its name;
- (b) the nature of its corporate form;
- (c) that it is incorporated in Jersey;
- (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 following addresses –
 - (i) the address of its registered office,
 - (ii) the address of its head office if that is different from the address of its registered office;
- (f) the date of its incorporation;
- (g) if the duration of its corporate status is limited, when that status will or may cease;
- (h) except in the case of a recognized open-ended investment company, the amount of its issued share capital and how much of it is paid up;
- (i) the names of the directors and, in each case, any significant activities of the director not connected with the business of the manager or, in the case of a recognized open-ended investment company, the manager and the company;
- (j) that the manager and, in the case of a recognized open-ended investment company, that the manager and company, are each the holder of a permit;
- (k) if the manager is the manager of another recognized fund, the name of that fund,

and if any director of the manager or the recognized open-ended investment company is a body corporate there shall also be stated in relation to that director the matters referred to in sub-paragraphs (a) to (d) and (f) to (i) above.

2 The trustee or the custodian

The following particulars of the trustee (in the case of a recognized unit trust) and the custodian (in the case of a recognized open-ended investment company) shall be stated –

- (a) its name;
- (b) the nature of its corporate form;
- (c) that it is incorporated in Jersey;
- (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) that it is the holder of a permit.

3 The investment adviser

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

- (a) the name of the investment adviser;
- (b) whether or not it is the holder of a permit;
- (c) if the investment adviser is a body corporate, the address of its registered office, or, if otherwise, the address of the investment adviser's principal place of business;
- (d) if the investment adviser is a body corporate in a group of which the manager is a member, that fact;
- (e) if the principal activity of the investment adviser is other than providing services as an investment adviser, what its principal activity is;
- (f) the main terms of the agreement or arrangement between the manager and the investment adviser (other than those relating to the investment adviser's remuneration) and, if the investment adviser has the authority of the manager to make decisions on behalf of the manager, that fact and a description of the matters in relation to which the investment adviser has that authority.

4 The registrar

If, in the case of a recognized unit trust, the manager or the trustee or, in the case of a recognized open-ended investment company, that company or the custodian employs the services of a registrar, that is to say, a person who maintains the register of participants in the fund, that person's name and address shall be stated.

5 The auditor

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

6 Legal adviser

The name and address of the legal adviser to the fund shall be stated.

7 The register of participants

The address in Jersey where the register of participants can be inspected.

8 The constitution and objectives of the fund

The following shall be stated –

- (a) the name of the fund;
- (b) the date on which the fund was established and, if the duration of the fund is not unlimited, when it will or may terminate;
- (c) that the fund is a recognized fund under the Law, and a statement (which in the case of an umbrella fund is to be made separately in relation to each constituent fund) of whether it is a securities fund, feeder fund, fund of funds, Government and other public securities fund, money market fund or umbrella fund;
- (d) if the fund is a feeder fund, a statement of the name of the fund into which it is to feed and whether that second fund is a recognized fund or another fund acceptable to the Commission;
- (e) if the fund is a recognized open-ended investment company, particulars of its capital structure;
- (f) in relation to the investment policy to be adopted by the manager –
 - (i) whether the objective of that policy is to be capital growth, income growth or some other stated policy,
 - (ii) any economic sectors or geographical areas or any particular nature of investment to which investment will be confined or which are likely to be preferred in the making of decisions as to how the funds of the fund are to be invested,
 - (iii) any other limitations on the descriptions of investment which may be included in the property of the fund,
 - (iv) if investment in other investment funds is provided for in the instrument constituting the fund, that fact,

- (v) in the case of a securities fund, the maximum extent to which the property of the fund may be invested in—
 - (A) Government and other public securities issued by the same issuer, and
 - (B) securities not officially listed on a recognized investment exchange or on a designated investment exchange, and
 - (C) secondary market securities, that is to say, securities dealt in on the London Alternative Investment Market, the French Second Marche and the Tokyo Over-The-Counter Market, and
 - (D) other securities;
- (vi) whether the manager or, in the case of a recognized open-ended investment company, that company may enter into hedging transactions within the meaning of Article 99 and, if so, what types of transaction are likely to be entered into, the circumstances in which such transactions may be entered into and what are the limits to the amounts payable by way of premium or margin in connection with such transactions;
- (vii) a statement of what borrowings powers are exercisable in relation to the fund;
- (g) in the case of a securities fund, the extent to which the property of the fund may be invested in the units of funds which are managed by the manager or by an associate of the manager;
- (h) the circumstances in which the winding-up of a fund can be decided on, a description of the procedure to be followed in a winding-up and what the rights of participants will be in a winding-up;
- (i) the accounting dates.¹²¹

9 List of eligible markets

- (1) There shall be listed any individual eligible markets through which the fund may invest or deal by virtue of Article 100(2).
- (2) There may be included in any list prepared pursuant to paragraph (1), or referred to in general terms, any market in a member state which is eligible by virtue of Article 100(1).¹²²

10 The characteristics of units in the fund

The following shall be stated –

- (a) in relation to each available type of unit in the fund, the entitlement of the holder of that unit to participate in the property of the fund and the income thereof, a statement of the nominal value (if any) of each type of unit and, where there is more than one type of unit, the

names given to each type and the characteristics of each type which distinguishes 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 recognized unit trust 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 a recognized open-ended investment company, the fact that the nature of the right represented by units is that of a redeemable second preference share in that company;
- (e) what voting rights are exercisable at meetings of unit holders by the holders of units and, if different rights attach to different classes of units, what those different rights are and, in the case of a recognized open-ended investment company, whether persons other than unit holders can vote at meetings of unit holders and who those persons are.

11 Valuation of property, charges and distributions

The following shall be stated –

- (a) how frequently and at what time of day the property of the fund will be valued for the purpose of determining prices at which units in the fund may be sold or repurchased by the manager and a description of any circumstances in which the fund may be specially valued;
- (b) in relation to each purpose for which the property of the fund will be required to be valued, whether it will be valued on an offer basis, a bid basis, a mid-market basis or on any other specified basis;
- (c) if the price at which units may be purchased from the manager may include a preliminary charge by the manager, a statement of the amount of that charge expressed as a percentage of the creation price of those units which is the maximum permitted by the trust deed or the articles and, if different, the amount currently charged;
- (d) how the following remuneration and expenses will be determined where they are payable out of the property of the fund –
 - (i) the remuneration of the manager,
 - (ii) the remuneration of the trustee or the custodian, and
 - (iii) where the fund is a recognized open-ended investment company, the remuneration and expenses of the directors;
- (e) if initial charges are levied when distributions are re-invested, that fact;
- (f) the nature of any other expenses payable out of the property of the fund and how their amounts will be determined;

- (g) the dates in each calendar year on which allocations of income are to be made to participants and, in the case of participants who are the holders of bearer certificates, how they are to identify themselves for the purposes of receiving distributions of income;
- (h) if grouping for equalisation is permitted by the trust deed or articles, that fact with an explanation of its meaning and a statement of what the grouping periods are;
- (i) if there is to be no income equalisation in relation to the fund, that fact with an explanation of its meaning.

12 The sale and repurchase of units in the fund

The following shall be stated –

- (a) the days and times therein on which the manager will be available to receive requests for the sale and repurchase of units;
- (b) the procedures for effecting the sale and repurchase of units and the settlement of transactions and how a holder to whom no certificate has been issued may produce evidence of title to his or her units;
- (c) the amounts of the following minima (if they apply) for each type of unit in the fund –
 - (i) the minimum number of units which any one person may hold,
 - (ii) the minimum value of units which any one person may hold,
 - (iii) the minimum number of units which may be the subject of one transaction of sale,
 - (iv) the minimum value of units which may be the subject of any one transaction of sale,
 - (v) the minimum number of units which may be the subject of one act of repurchase,
 - (vi) the minimum value of units which may be the subject of one act of repurchase;
- (d) the circumstances in which the repurchase of units may be suspended;
- (e) the days and times therein on which the re-calculation of creation and cancellation prices will commence;
- (f) where and when the most recent sale and repurchase prices will be published;
- (g) the investment exchanges (if any) on which units in the fund are listed or dealt with;
- (h) that the total price payable under the deal in units in the fund which is to be a large deal is an amount exceeding a specified sum, that specified sum being not less than £15,000.

13 General information

The following shall be stated –

- (a) brief particulars of the trust deed or the articles and the fund rules (if any) including the rights and protections available for the benefit of unit holders (by classes if relevant) and the means available to a holder to assert his or her rights, any indemnities which the fund is permitted to grant and in the case of a recognized open-ended investment company, the role and rights of the directors of that company;
- (b) when annual and half-yearly reports will be published;
- (c) the address at which copies of the documents constituting the fund, any amending document and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (d) how the manager of a recognized unit trust will publish, for the benefit of unit holders whose units are evidenced by bearer certificates, notice –
 - (i) of the fact that annual and half-yearly reports are available for inspection,
 - (ii) that a distribution of income has been declared,
 - (iii) of the calling of a meeting of participants,
 - (iv) of the termination of the fund or the cancellation or alteration of its recognized fund certificate,
 - (v) that amendments have been made to the trust deed,
 - (vi) that the prospectus has been revised,
- (e) the extent to which and the circumstances in which–
 - (i) the fund is liable to pay or suffer tax on any appreciation in the value of the property of the fund or on the income of the property of the fund, and
 - (ii) deductions by way of withholding tax may be made from distributions of income to participants and payments made to participants on the repurchase of units;
- (f) if there is a serious possibility that the fund may encounter difficulty in repatriating income or capital, that fact;
- (g) details of information to be included with any application if a printed form is not used.¹²³

14 Additional information in all cases

Any other material information which –

- (a) investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus for the purpose of making an informed judgment about the merits of participating in the fund and the extent of the risks accepted by so participating; and

- (b) which is within the knowledge of the manager or, in the case of a recognized open-ended investment company, the directors and the manager or which the manager or such directors would have obtained by the making of reasonable enquiries.

15 Umbrella funds

In the case of a fund which is an umbrella fund –

- (a) the prospectus shall contain –
 - (i) a statement to the effect that an exchange of units in one part of the fund for units in another part of the fund may in some jurisdictions be a realisation for the purposes of capital gains taxation,
 - (ii) a statement to the effect that, except as may be specified in the statement, a holder who exchanges units in one part of the fund for units in another part of the fund will not be given a right by law to withdraw from or cancel the transaction and
 - (iii) a statement describing the arrangements made by the trust deed or the articles for charges in the case of an exchange of units in one constituent part for units in another, including the amount of the charge and the minimum number of exchanges that will be permitted free of charge; and
- (b) if any information required by this Schedule to be included in a prospectus is different for different parts of the fund, that information shall be given in relation to each part of the fund.¹²⁴

16 Statements to be included

The following statements shall be included –

- (a) “If you are in any doubt about the contents of this prospectus, you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser.”;
- (b) “It should be remembered that the price of units and income from them can go down as well as up.”;
- (c)
 - (i) in the case of a recognized unit trust –
“The directors of the manager have taken all reasonable care to ensure that the facts stated herein are true and accurate in all material respects and that there are no other material facts, the omission of which would make misleading any statement herein whether of fact or opinion. All the directors accept responsibility accordingly.”;
 - (ii) in the case of a recognized open-ended investment company –
“The directors of the company and the manager have taken all reasonable care to ensure that the facts stated herein are true and

accurate in all material respects and that there are no other material facts, the omission of which would make misleading any statement herein whether of fact or opinion. All the directors accept responsibility accordingly.”.

17 Date of publication

The date of publication of the prospectus.

SCHEDULE 6

(Article 137)

REPORTS TO HOLDERS

PART 1

(Article 137(1) and (2))

ANNUAL AND HALF-YEARLY REPORTS

A Report of the manager of a recognized unit trust and the directors of a recognized open-ended investment company

- 1 The names and addresses of the following –
 - (a) in the case of a recognized open-ended investment company, the directors of that company;
 - (b) the manager;
 - (c) in the case of a recognized unit trust, the trustee and in the case of a recognized open-ended investment company, the custodian;
 - (d) any investment adviser;
 - (e) any registrar;
 - (f) the auditor.
- 2 The objectives of the fund.
- 3 The policy of –
 - (a) in the case of a recognized unit trust, the manager; and
 - (b) in the case of a recognized open-ended investment company, the directors and the manager; for achieving the objectives of the fund.
- 4 A statement that the fund is a recognized fund within the meaning of this Order.
- 5 A statement of which of the categories of recognized fund the fund is intended to belong to and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent fund.
- 6 A review of the investment activities of –
 - (a) in the case of a recognized unit trust, the manager; and
 - (b) in the case of a recognized open-ended investment company, the directors and the manager,

during the period to which the report relates.

- 7 Particulars of any significant change in the prospectus made since the making of the last report.
- 8 A statement of the amount (if any) to be distributed to holders or accumulated in respect of the period in question.
- 9 A statement of the total number of the units of each type 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 property of the fund at the beginning of the period to which the report relates and at the end of that period.
- 11 A statement of any subdivision or consolidation of units which has been effected during the period to which the report relates.
- 12 Any other significant information which would enable holders to make an informed judgment on the development of the activities of the fund during this period and the results of those activities as at the end of that period.

B Portfolio statement

- 1 The changes in the investments in the property of the fund since the end of the preceding accounting period showing whether they are new holdings or changes in existing holdings and giving a description of each holding and its number or nominal value and showing the net change in the number of units in or the nominal value of that holding since the end of the preceding accounting period.
- 2 The total cost of purchases of investments since the last portfolio statement.
- 3 The total proceeds of sales of investments since the last portfolio statement.

C Comparative table

- 1 A performance record over the last 10 calendar years, or if the fund has not been in existence during the whole of that period, over the whole of period in which it has been in existence, showing the highest sale price and the lowest repurchase price of the units during each of those years, the net income per unit distributed or, in the case of accumulation units, allocated during each of those years taking account of any sub-division or consolidation of units that occurred during that period and the net income which would have been distributed or allocated to accumulation units over each of those years per £1,000 invested at the beginning of the 10 year period.
- 2 Over the last 3 annual accounting periods, or if the fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, the total net asset value of the property of the

fund at the end of each of those years and 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 years.

D Report of the auditor

- 1 In the case of a recognized fund, the report of the auditor to the holders for any annual accounting period shall state –
 - (a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with this Order and the trust deed;
 - (b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the fund as at the end of that period;
 - (c) 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;
 - (d) if the auditor has not been given all the information and explanations which, to the best of his or her knowledge and belief, are necessary for the purposes of his or her audit, that fact; and
 - (e) if the auditor is of opinion that the information given in the report referred to in Section A for the period is inconsistent with the accounts, that fact.
- 2 This Section shall have effect in relation to a recognized open ended investment company as it has effect in relation to a recognized unit trust, taking references to the trust deed as references to the articles, and references to the manager of a recognized unit trust as references to that company.

E Report of the trustee

In the case of a recognized unit trust, 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 fund in that period –

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the manager and the trustee by the trust deed, by the prospectus and by all Orders for the time being in force under Article 11 of the Law; and
- (b) otherwise in accordance with the provisions of the trust deed and those Orders,

and if it has not done so, the respects in which he or she has not done so and the steps which the trustee has taken in respect thereof.

F Report of the custodian

In the case of a recognized open-ended investment company, the report of the custodian to the holders for any annual accounting period shall state whether in the custodian's opinion the directors and the manager have managed the fund in that period –

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the company and the custodian by the memorandum and articles, by prospectuses and by all Orders for the time being in force under Article 11 of the Law; and
- (b) otherwise in accordance with the provisions of the articles and the management agreement and those Orders,

and if they have not done so, the respects in which they have not done so and the steps which the custodian has taken in respect thereof.

PART 2

(Article 137(3))

ACCOUNTS**A Statement of assets and liabilities**

The statement of assets and liabilities 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 descriptions of asset in which the property of the fund is invested grouped according to classifications appropriate to the stated investment objectives and showing –

- (a) the number or quantity, description and value of each asset, showing separately in respect of each asset or group of assets in relation to which a hedging transaction has been effected any right or obligation under that hedging transaction not matched by a corresponding obligation or right;
- (b) the percentage of the value of the property of the fund that each holding represents;
- (c) instruments creating or acknowledging indebtedness;
- (d) bank balances;
- (e) other assets of the fund;
- (f) the total value of all assets of the fund;
- (g) a description and the amount of the actual and contingent liabilities not provided for;
- (h) the total net value of all assets of the fund less the net value of the liabilities of the fund.

B Income and distribution account

The following matters shall be set out in the income and distribution account included in the accounts –

- (a) the total income from assets of the fund, specifying the descriptions;
- (b) the total other income, specifying the descriptions;
- (c) any periodic charge payable to the manager and authorized to be paid out of the property of the fund;
- (d) where any fees or expenses of the trustee or the custodian have been paid by the manager out of the manager's own resources and not out of the property of the fund, the amount of those fees and expenses if not separately shown in the capital account;
- (e) the total amount deducted for taxation before distribution to the holders;
- (f) the balance brought forward from the last account and the balance carried forward to the next account;
- (g) the amount of income available for allocation to the holders in respect of the period;
- (h) the fees and disbursements of the trustee or the custodian payable out of the property of the fund distinguishing fees for custody of documents or assets from other fees;
- (i) the auditor's fees payable out of the property of the fund;
- (j) any other payments out of the property of the fund;
- (k) the amount of any interim allocation of income;
- (l) the amount of the final allocation of income, showing by way of a note to the account how the amount is made up, taking account of any tax and any income equalisation adjustment referred to in Article 133;
- (m) if there is a deficit on income account charged to capital account, the amount of that deficit;
- (n) if there is a deficit on capital account charged to income account, the amount of that deficit.

C Capital account

The following matters shall be set out in the capital account included in the accounts –

- (a) the value of the property of the fund at the beginning of the period;
- (b) the amount of cash or the value of assets received on the creation of new units;
- (c) the amount of cash or the value of assets paid out on the cancellation of units;

- (d) the net increase or decrease in the aggregate value of the property of the fund over the period;
- (e) any charges and expenses charged to capital;
- (f) the value of the property of the fund at the end of the period;
- (g)
 - (i) information about the dealing commissions, including mark-up or mark-down, incurred in dealing with the property of the fund, including the average rate of commission paid for those transactions where any commission is paid,
 - (ii) the proportion of the aggregate value of the transactions in the property of the fund done with or through each of the associates, if any, of in the case of a recognized unit trust, the manager or the trustee, and in the case of a recognized open-ended investment company, the manager or custodian, with which transactions have been carried out in the property of the fund excluding foreign exchange transactions and the total amount of such commissions,
 - (iii) the names of all persons, other than the trustee or custodian acting as such, dealing in more than 10% of the aggregate value of the transactions in the property of the fund;
- (h) a statement of the net realised profits or losses during the period.

D 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 property of the fund;
- (c) the exclusion from the statement of assets and liabilities of any assets and liabilities relating to the income of the fund or the amount of the current distribution;
- (d) if applicable, a statement of the basis for converting amounts in currencies other than the base currency of the fund into amounts in the base currency of the fund;
- (e) a statement of any tax charge or refund appearing in the income and distribution account;
- (f) if applicable, an explanation of the basis for valuing unlisted or suspended securities.

2 Other income

An analysis of the other income shown in the income and distribution account and, where material, showing separately the following items –

- (a) interest on loan and debenture stocks;

- (b) interest on deposits and loans in currencies other than the base currency of the fund;
 - (c) interest on bank and short term deposits;
 - (d) dividends on non-United Kingdom stocks.
- 3 Equalisation
A definition and explanation of equalisation.
- 4 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.
- 5 Net liquid assets
An analysis of net liquid assets as at the end of the period to which the account relates (unless shown in the statement of assets and liabilities) including the following items where applicable –
 - (a) amounts receivable from brokers for sales of securities;
 - (b) amounts payable to brokers for purchases of securities.
- 6 Back-to-back loans
Details of any back-to-back loans including the terms and interest rate margins.
- 7 Partly paid shares
A statement showing the uncalled liability in respect of any partly paid shares.
- 8 Forward exchange transactions
A statement of open forward exchange positions.

SCHEDULE 7¹²⁵

(Article 160(1))

**TRANSITIONAL MODIFICATION OF CONSTITUTION AND
MANAGEMENT OF RECOGNIZED FUNDS**

- 1 For the purposes of Article 5, an existing fund shall be treated as complying with the requirements referred to in Article 5(1)(d) and (e).
- 2 Article 4(2)(d)(iii) shall have effect as if the following words were inserted at the end “or stating the respects in which each such document does not comply with the requirements of this Order as relate to its contents”.
- 3 The trust deed or the articles under which an existing fund is constituted shall, until 29th April 1990 or, if earlier, the first occasion on which a relevant change to that deed or articles is made, have effect as if –
 - (a) in a case where the deed or articles provides or provide for the units in the fund to be denominated in a currency other than sterling, it contained a statement that that currency was the base currency of the fund and, in any other case, it contained a statement that sterling was the base currency of the fund;
 - (b) in the case of a recognized unit trust, it contained the provisions required by paragraph 14 of Schedule 3, to be contained in the trust deed of a recognized unit trust and contained no other provisions relating to the modification of the trust deed; and
 - (c) where the deed or the articles contains or contain a provision which is not permitted by this Order to be included in the trust deed or the articles constituting a recognized fund, the deed or the articles did not contain that provision.
- 4 Until 29th April 1990 or, if earlier, the first occasion of a relevant change to the trust deed or the articles, Article 20 shall not apply to the fund and the provision in the trust deed or the articles under which the existing fund is constituted concerning the manager’s periodic charge shall apply as though it were authorized to be included in the trust deed or the articles by Schedule 3.
- 5 Article 15(1) shall have effect as if the following words were inserted –
 - (a) after the words “A unit trust” –
“other than an existing fund”; and
 - (b) after the words “under Article 5” –
“nor does a unit trust which is an existing fund qualify to continue to be treated as complying with the requirements referred to in Article 5(1)(d) after 29th April 1990 or, if earlier, the first occasion on which a relevant change is made to the trust deed under which the fund is constituted on or after the commencement date”.

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- 6 Article 16(1) shall have effect as if the following words were inserted –
- (a) after the words “An open-ended investment company” –
“other than an existing fund”; and
 - (b) after the words “under Article 5” –
“nor does an open-ended investment company which is an existing fund qualify to continue to be treated as complying with the requirements referred to in Article 5(1)(e) after 29th April 1990 or, if earlier, the first occasion on which a relevant change is made to the articles under which the fund is constituted on or after the commencement date”.
- 7 Part 14 shall apply in the case of an existing fund as if the financial year of the fund current on the commencement date were the first annual accounting period of the fund and as if that Part had applied to the fund in relation to that accounting period from the beginning of that period and, in relation to that period and, where the accounting period next after that period begins not more than 6 months after that date, in relation to that accounting period –
- (a) Part 15 shall not apply but the manager of a recognized unit trust and the directors of a recognized open-ended investment company shall continue to be obliged to make such reports and deliver such accounts to the holders as it was or they were obliged to do under the terms of the trust deed or the articles under which the fund was constituted as such terms had effect immediately before the commencement date; and
 - (b) Article 134(2) shall have effect as if it permitted grouping for equalisation for such periods as were provided by the terms of the trust deed or the articles under which the fund was constituted as such terms had effect immediately before the commencement date.
- 8 Until 29th 1990 or, if earlier, the first occasion on which a relevant change is made to the trust deed, Schedule 3, Part 1 shall have effect as if paragraphs 6 and 7 were deleted.
- 9 Until 29th April 1990 or, if earlier, the first occasion on which a relevant change is made to the articles, Part 3 of Schedule 3 shall have effect as if paragraphs 39 and 40 were deleted.
- 10 In its application to umbrella funds, this Schedule shall have effect as though –
- (a) for each reference to 29th October 1990 there were substituted a reference to 31st March 1991;
 - (b) all references to the first occasion of a relevant change, or the first occasion on which a relevant change is made, were deleted;
 - (c) funds, which on 10th December 1990 were recognized funds, were existing funds.¹²⁶
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SCHEDULE 8¹²⁷

(Article 160(2))

TRANSITIONAL ARRANGEMENTS RELATING TO ELIGIBLE MARKETS

- 1 Until 1st December 1996 or until the first occasion after 1st December 1995 on which the prospectus of any recognized fund is revised, this Order shall apply to that recognized fund as if the regime in force before 1st December 1995 relating to approved markets and approved options and futures markets continued in force in place of the regime relating to eligible markets.
- 2 From the date on which the prospectus in respect of a recognized unit trust is first revised to comply with paragraph 9 of Schedule 5 to the date on which the trust deed is next modified the trust deed shall have effect as if it contained the statement required by paragraph 3 of Schedule 3,.
- 3 From the date on which the prospectus in respect of a recognized open ended investment company is first revised to comply with paragraph 9 of Schedule 5 to the date on which the memorandum, articles or fund rules (if any) are next modified, the memorandum, articles or fund rules (if any) shall have effect as if they contained the statement required by paragraph 38 of Schedule 3 .
- 4 A modification to the trust deed of a recognized unit trust to include the statement required by paragraph 3 of Schedule 3 does not require the approval of an extraordinary resolution at a meeting of holders.
- 5 A modification to the memorandum, articles or fund rules (if any) of a recognized open ended investment company required by paragraph 38 of Schedule 3, does not require the approval of a special resolution at a meeting of holders.

ENDNOTES

Table of Legislation History

Legislation	Year and Number	Commencement
Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988	R&O.7815	31 October 1988
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment) (Jersey) Order 1988	R&O.7844	12 December 1988
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 2) (Jersey) Order 1989	R&O.7875	23 January 1989
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 3) (Jersey) Order 1989	R&O.7948	7 August 1989
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 4) (Jersey) Order 1990	R&O.8048	17 April 1990
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 5) (Jersey) Order 1990	R&O.8124	23 October 1990
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 6) (Jersey) Order 1990	R&O.8148	10 December 1990
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 7) (Jersey) Order 1992	R&O.8414	20 July 1992
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 8) (Jersey) Order 1995	R&O.8890	1 December 1995
Collective Investment Funds (Recognized Funds) (General Provisions) (Amendment No. 9) (Jersey) Order 1998	R&O.9258	1 July 1998
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	R&O.101/2003	14 October 2003

Table of Renumbered Provisions

Original	Current
PART I	PART 1
1(1) definition “approved securities” paragraph (aa) paragraph (b)	1(1) definition “approved securities” paragraph (b) paragraph (c)
1(4), (5)	spent, omitted from this revised edition
PART II	PART 2
PART III	PART 3
PART IV	PART 4
21(1)(j)	21(1)(i)
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(l)	(k)
(m)	(l)
(n)	(m)
(o)	(n)
(p)	(o)
(q)	(p)
(r)	(q)
(s)	(r)
(t)	(s)
(u)	(t)
(w)	(u)
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(l)	(k)
(m)	(l)
PART V	PART 5
23(11)	repealed by R&O.8148
23(12)	23(11)
PART VI	PART 6
40(3)	repealed by R&O.8414
(4)	repealed by R&O.8414
(5)	repealed by R&O.8414
(6)	40(3)
(7)	(4)
(8)	(5)
(9)	repealed by R&O.8414

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(11)	repealed by R&O.8414
(12)	(11)
(13)	repealed by R&O.8414
(14)	repealed by R&O.8414
(15)	repealed by R&O.8414
(16)	repealed by R&O.8414
(17)	repealed by R&O.8414
(18)	repealed by R&O.8414
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(2C)	(5)
(2D)	(6)
(2E)	(7)
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(k)	(j)
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(l)	(k)
(m)	(l)
(n)	(m)
(o)	(n)
C(j)	C(i)
SEVENTH SCHEDULE	SCHEDULE 7
EIGHTH SCHEDULE	SCHEDULE 8

Table of Endnote References

- ¹ chapter 13.100
- ² Article 1(1) definition “approved market”, “approved options and futures market” deleted by R&O.8890
- ³ Article 1(1) definition “approved securities” amended by R&O.8890
- ⁴ chapter 13.450
- ⁵ chapter 13.125
- ⁶ Article 1(1) definition “derivative” inserted by R&O.8890
- Article 1(1) definition “documents constituting the fund” amended by R&O.8148
- ⁸ Article 1(1) definition “eligible derivatives market” inserted by R&O.8890
- ⁹ Article 1(1) definition “eligible market” inserted by R&O.8890
- ¹⁰ Article 1(1) definition “eligible securities market” inserted by R&O.8890
- ¹¹ chapter 24.150.50
- ¹² Article 1(1) definition “feeder fund” amended by R&O.9258
- ¹³ Article 1(1) definition “fund of funds” amended by R&O.7844
- ¹⁴ Article 1(1) definition “fund rules” inserted by R&O.8148
- ¹⁵ Article 1(1) definition “initial margin” amended by R&O.8890
- ¹⁶ chapter 13.100
- ¹⁷ Article 1(1) definition “market dealing bid price” amended by R&O.8890
- ¹⁸ Article 1(1) definition “market dealing offer price” amended by R&O.8890
- ¹⁹ Article 1(1) definition “mid-market value” amended by R&O.8890

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- ²⁰ Article 1(1) definition “minimum holding of units” amended by R&O.8148
²¹ chapter 13.100.70
²² Article 1(1) definition “recently issued transferable securities” amended by R&O.8890
²³ Article 1(1) definition “recognized fund certificate” amended by R&O.9258
²⁴ chapter 13.125
²⁵ Article 1(1) definition “registrar” amended by R&O.8148
²⁶ Article 1(1) definition “traded option” amended by R&O.8890
²⁷ Article 4(1) amended by R&O.9258
²⁸ Article 4(2) amended by R&O.8148, R&O.9258
²⁹ Article 5 amended by R&O.9258
³⁰ Article 6(1) amended by R&O.9258, R&O.101/2003
³¹ Article 6(2) amended by R&O.9258
³² Article 6(3) amended by R&O.9258
³³ Article 6(6) amended by R&O.9258
³⁴ Article 7 amended by R&O.9258
³⁵ Article 8 amended by R&O.9258
³⁶ Article 12(1) amended by R&O.9258
³⁷ Article 12(2) amended by R&O.9258
³⁸ Article 12(3) amended by R&O.8148, R&O.9258
³⁹ Article 15(1) amended by R&O.8148
⁴⁰ Article 16(1) amended by R&O.8148
⁴¹ Article 16(2) amended by R&O.8148
⁴² Article 19(3) amended by R&O.8148
⁴³ Article 21(1) amended by R&O.8148
⁴⁴ Article 21(2) amended by R&O.8148, R&O.9258
⁴⁵ Article 23(10) substituted by R&O.8148
⁴⁶ Article 25(2) amended by R&O.7875
⁴⁷ Article 38(4) amended by R&O.8148
⁴⁸ Article 39 amended by R&O.9258
⁴⁹ chapter 13.125
⁵⁰ Article 39(2) substituted by R&O.8414
⁵¹ Article 40 amended by R&O.9258
⁵² Article 40(2) substituted by R&O.8414
⁵³ Article 48 amended by R&O.9258
⁵⁴ Article 49 amended by R&O.9258
⁵⁵ Article 50 amended by R&O.9258
⁵⁶ Article 51 amended by R&O.9258
⁵⁷ Article 53 amended by R&O.9258
⁵⁸ Article 58(3) amended by R&O.8890
⁵⁹ Article 58(4) amended by R&O.8890
⁶⁰ Article 59(3) amended by R&O.8890
⁶¹ Article 61(3) amended by R&O.8890
⁶² Article 61(4) amended by R&O.8890
⁶³ Article 62(6) amended by R&O.8890
⁶⁴ Article 63(4) amended by R&O.8890
⁶⁵ Article 72(6) amended by R&O.8890
⁶⁶ Article 73(1) amended by R&O.8148
⁶⁷ Article 73(4) amended by R&O.8890
⁶⁸ Article 73(5) inserted by R&O.8148
⁶⁹ Article 90 amended by R&O.8890
⁷⁰ Article 92(4) amended by R&O.8890
⁷¹ Article 94(3) amended by R&O.9258
⁷² Article 94(4) amended by R&O.9258
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- ⁷³ Article 99(4) amended by R&O.8890
⁷⁴ Article 100 inserted by R&O.8890
⁷⁵ Article 100(4) amended by R&O.9258
⁷⁶ Article 114 amended by R&O.8890
⁷⁷ Article 115(2) amended by R&O.7844, R&O.8148
⁷⁸ Article 116 amended by R&O.8148
⁷⁹ Article 118 amended by R&O.9258
⁸⁰ Article 119 amended by R&O.7844
⁸¹ Article 120(1) amended by R&O.7844
⁸² Article 120(2) amended by R&O.7844
⁸³ Article 121 amended by R&O.7844
⁸⁴ Article 123(7) inserted by R&O.8148
⁸⁵ Article 138(5) amended by R&O.9258
⁸⁶ Article 151 heading amended by R&O.8148
⁸⁷ Article 151(2) inserted by R&O.8148
⁸⁸ Article 153 amended by R&O.9258
⁸⁹ Article 157(1) amended by R&O.8148
⁹⁰ Article 157(4) amended by R&O.8148
⁹¹ Article 157(5) amended by R&O.8148
⁹² Article 157(7) amended by R&O.8148
⁹³ Article 157 (9) substituted by R&O.8148
⁹⁴ Article 157(10) substituted by R&O.8148
⁹⁵ Article 157(11) amended by R&O.8148
⁹⁶ Article 158(1) substituted by R&O.8148; former paragraph amended by R&O.7875
⁹⁷ Article 158(2) substituted by R&O.8148
⁹⁸ Article 158(3) inserted by R&O.8148
⁹⁹ Article 158(4) inserted by R&O.8148
¹⁰⁰ Article 158(5) inserted by R&O.8148
¹⁰¹ Article 158(6) inserted by R&O.8148
¹⁰² Article 158(7) inserted by R&O.8148
¹⁰³ Article 158(8) inserted by R&O.8148
¹⁰⁴ Article 158(9) inserted by R&O.8148
¹⁰⁵ Article 158(10) substituted by R&O.8148
¹⁰⁶ Article 158(11) inserted by R&O.8148
¹⁰⁷ Article 159 inserted by R&O.8148
¹⁰⁸ Article 160(2) inserted by R&O.8890
¹⁰⁹ Schedule 1 paragraph 9 amended by R&O.8890
¹¹⁰ Schedule 3 heading amended by R&O.8148
¹¹¹ Schedule 3 paragraph 3 inserted by R&O.8890
¹¹² Schedule 3 paragraph 7 amended by R&O.8148
¹¹³ Schedule 3 paragraph 14(1) amended by R&O.8148
¹¹⁴ Schedule 3 paragraph 14(3) substituted by &O.8148
¹¹⁵ Schedule 3 paragraph 17 amended by R&O.8148
¹¹⁶ Schedule 3 Part 3 heading amended by R&O.8148
¹¹⁷ Schedule 3 paragraph 38 inserted by R&O.8890
¹¹⁸ Schedule 3 paragraph 44 substituted by R&O.8148
¹¹⁹ Schedule 3 paragraph 47 amended by R&O.8148
¹²⁰ Schedule 3 paragraph 60 amended by R&O.8148
¹²¹ Schedule 5 paragraph 8 amended by R&O.8890, R&O.9258
¹²² Schedule 5 paragraph 9 inserted by R&O.8890
¹²³ Schedule 5 paragraph 13 amended by R&O.8148
¹²⁴ Schedule 5 paragraph 15 amended by R&O.8148
¹²⁵ Schedule 7 heading amended by R&O.8890
¹²⁶ Schedule 7 paragraph 10 inserted by R&O.8048, amended by R&O.8124, R&O.8148
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¹²⁷ *Schedule 8* *inserted by R&O.8890*