



Jersey

**COLLECTIVE INVESTMENT FUNDS
(RECOGNIZED FUNDS)
(PERMIT CONDITIONS FOR
FUNCTIONARIES) (JERSEY)
ORDER 1988**

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Jersey

COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (PERMIT CONDITIONS FOR FUNCTIONARIES) (JERSEY) ORDER 1988

Arrangement

Article

PART 1	11
INTRODUCTORY	11
1 Interpretation.....	11
2 “Holding company” and “subsidiary”	17
3 Acts and omissions of employees, etc. attributed to the relevant holder	18
4 Application.....	18
PART 2	18
NOTIFICATION	18
5 Timing and form of notification	18
6 Notification of name and address and events	18
7 Controllers.....	19
8 Subsidiaries, holding company and major shareholdings.....	20
9 Directors, employee managers and other officers.....	20
10 Individuals.....	20
11 Annual reporting requirements	21
12 Number of staff and value of recognized funds.....	21
PART 3	22
GENERAL	22
13 Description of business	22
14 Ban on “volume overrides”, “benefits in kind” and reciprocal arrangements	22
15 Product bias.....	23
16 Excessive charging and “churning”	23
17 Disclosure	23
18 Complaints	23

Arrangement	Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988
19	Supervision 24
20	Force majeure 24
21	Operators of recognized funds: significant influence over company management..... 24
22	Operators of recognized funds to observe the terms of prospectus 25
23	Trustee of recognized unit trust to report manager's running a "negative box" or delaying settlement..... 26
24	Recognized open-ended investment company and its custodian to report manager's running a "negative box" or delaying settlement 26
25	Operator of a recognized fund to execute customer's instructions with dispatch 26
26	Prohibition of portfolio management services for customers other than funds 27
PART 4	27
KNOW YOUR CUSTOMER	27
27	Personal and financial situation 27
28	Understanding of risk 27
PART 5	28
CUSTOMER RELATIONS	28
29	Suitability of units and transactions in them..... 28
30	Best execution..... 28
31	Units: illustrations of future benefits 29
32	Units: statements and forecasts of future income 29
33	Units: disclosure of product particulars 29
34	Disclosure by operators of recognized funds..... 29
35	Series of transactions treated as one 30
36	Allocation of bargains between funds 30
37	Insider dealing 31
PART 6	32
ADVERTISEMENTS	32
38	Interpretation..... 32
39	Contents of advertisements..... 32
40	Prominence of required statements..... 33
41	Approval 33
42	Advertisements to be clear and not misleading 33
43	Advertisements to be distinguished from other matter..... 34
44	Advertisements to identify the investments or services to which they relate 34
45	Promotions to be genuine 34
46	Disclosure of advertiser's capacity..... 34
47	Advertisement not to imply approval of the States, the Minister or the Commission 34
48	Synopses to be fair..... 35
49	Commendation..... 35
50	Comparison with other investments 35

51	Taxation	36
52	Cancellation rights	36
53	Past performance.....	36
54	Indications of the scale of business activities	37
55	Risk warnings.....	37
56	General duty of disclosure in “off-the-page” and “off-the-screen” advertisements.....	38
57	“Off-the-page” advertisements for units.....	38

PART 7 **39**

CONTRACT NOTES 39

58	Contract notes: general	39
59	Contents of contract notes relating to transactions in recognized funds.....	40

PART 8 **42**

DEALINGS BY OFFICERS AND EMPLOYEES OF OPERATORS OF RECOGNIZED FUNDS 42

60	Interpretation.....	42
61	Duties of an operator.....	42
62	Requirements to be made of officers and employees	42

PART 9 **43**

COMPLIANCE PROCEDURES AND COMPLIANCE REVIEW 43

63	Application.....	43
64	Compliance procedures and compliance review.....	44

PART 10 **44**

MAINTENANCE OF RECORDS 44

65	Records to be reproducible in printed form	44
66	Transactions	45
67	Operators of recognized funds	46
68	Creation and cancellation of units in a recognized unit trust.....	47
69	Creation and cancellation of units in a recognized open-ended investment company	47
70	Know your customer and suitability	47
71	Advertisements	48
72	Register of associates	48
73	Register of connected customers	48
74	Register of officers and employees.....	49
75	Dealings by officers and employees	49
76	Disciplinary action	49
77	Compliance procedures.....	49
78	Complaints	49
79	Inspection of records.....	50

PART 11	50
FINANCIAL RECORDS	50
80 Accounting records	50
81 Reconciliation of client money	51
82 Reconciliation of customers' investments held by the relevant holder	52
83 Records to be up to date	52
84 Audit trail	52
85 Nature of records	53
86 Retention of records	53
87 Inspection of records	53
PART 12	54
FINANCIAL RESOURCES	54
88 Interpretation	54
89 Financial resources: trustees and custodians	54
90 Financial resources: managers	54
91 Relevant annual expenditure and fund management fees for first financial year	55
PART 13	55
FINANCIAL STATEMENTS	55
92 Application	55
93 Annual financial statements	55
94 Quarterly financial statements	57
95 Monthly financial statements	57
96 Date which may be substituted for the accounting reference date	58
97 First annual balance sheet	58
98 Change of accounting reference date	59
99 Form and content of financial statements	59
100 Contents of auditor's report	60
101 Qualified reports	61
102 Availability of financial statements for inspection	61
PART 14	61
FINANCIAL NOTIFICATION	61
103 Form and timing of notification	61
104 Breach of financial resources requirements	61
105 Deficiency in subsidiary	62
106 Change in notified information	62
107 Substantial borrowings	62
108 Failure to comply with obligations, etc.	62
109 Misleading financial statements	63
110 Other audited financial statements	63
111 Auditor's report to management	63
112 Reconciliation of client money	64

PART 15 **64**

APPOINTMENT OF AUDITORS 64

113	Application.....	64
114	Appointment of auditors	64
115	Qualifications for appointment as auditor.....	64
116	Engagement letters.....	65
117	Powers and duties	65
118	Notification	65
119	Resignation or removal of auditors.....	65

PART 16 **66**

CLIENTS' MONEY 66

120	Interpretation.....	66
121	Client money	67
122	Client money to be held on trust.....	67
123	Client bank accounts.....	68
124	Payment into a client bank account	68
125	Withdrawal from a client bank account	69
126	Accounting records and auditors' reports.....	70

PART 17 **70**

FINAL PROVISIONS 70

127	Citation.....	70
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SCHEDULE 1 **71**

FINANCIAL RESOURCES: GROSS CAPITAL 71

1	Fixed intangible assets	71
2	Subordinated loans.....	71
3	Commission on indemnity terms	71
4	Taxation	71
5	Deficiencies in subsidiaries.....	71
6	Uncovered foreign currency exposures	72
7	Adjustment of investments to market value.....	72

SCHEDULE 2 **73**

FINANCIAL RESOURCES: LIQUID CAPITAL 73

1	Bank undertakings	73
2	Land and buildings.....	73
3	Other fixed assets	74
4	Loan accounts	74
5	Debtors arising from transactions in units	74
6	Group investments	74
7	Prepaid expenses.....	74

Arrangement	Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988
8	Cash and deposits 75
9	Physical stocks..... 75
10	Commissions, investment management fees, and other debtors 75
11	Accrued income 76
12	Other assets 76
SCHEDULE 3	77
FINANCIAL RESOURCES: DEFINITION OF “RELEVANT ANNUAL EXPENDITURE”	77
SCHEDULE 4	78
FINANCIAL RESOURCES: INVESTMENT POSITION RISK REQUIREMENT: INVESTMENTS AND ASSETS OTHER THAN UNITS IN RECOGNIZED FUNDS	78
SCHEDULE 5	81
FINANCIAL RESOURCES: INVESTMENT POSITION RISK REQUIREMENT: UNITS IN RECOGNIZED FUNDS	81
SCHEDULE 6	83
FORM AND CONTENTS OF FINANCIAL STATEMENTS	83
PART I – GENERAL RULES	83
PART 2 – ACCOUNTING PRINCIPLES AND RULES	84
APPENDIX A	85
APPENDIX B	89
APPENDIX C	91
SCHEDULE 7	98
FORM OF CLIENT MONEY TRUST DECLARATION FOR OPERATORS OF RECOGNIZED FUNDS	98
PART A	98
PART B	99

Supporting Documents

ENDNOTES	100
Table of Legislation History.....	100
Table of Renumbered Provisions	100
Table of Endnote References	103



Jersey

COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (PERMIT CONDITIONS FOR FUNCTIONARIES) (JERSEY) ORDER 1988¹

THE ECONOMIC DEVELOPMENT COMMITTEE, in pursuance of Articles 7(4) and 20 of the Collective Investment Funds (Jersey) Law 1988,² orders as follows –

Commencement [[see endnotes](#)]

PART 1

INTRODUCTORY

1 Interpretation

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

“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 reference date”, in relation to a relevant holder, means the date first notified by the relevant holder to the Commission as the annual accounting reference date of the relevant holder, or if the relevant holder has changed its annual accounting reference date in accordance with Article 98, the most recent date notified to the Commission as the relevant holder’s annual accounting reference date;

“annual financial statements” in relation to a relevant holder, has the meaning given in Article 93;

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

“authorized signatory” in relation to a relevant holder, means a person notified by the relevant holder to the Commission either in its application for a permit or subsequently in accordance with Part 2 of this Order, as having authority to sign statements and documents on behalf of the relevant holder;

“bankruptcy” includes any analogous proceedings under the law of any country or territory outside Jersey;

“business day”, in relation to a relevant holder and to anything done or to be done in Jersey, means any day other than a Saturday, a Sunday or a bank holiday;

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

“civil partner” includes a reputed civil partner or a person cohabiting with another as a civil partner;

“client bank account” has the meaning given in Article 120;

“client money” has the meaning given in Article 121;

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

“compliance officer”, in relation to a relevant holder, means the individual nominated by the relevant holder as responsible for compliance matters;

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

- (a) the same person is the controller of both the relevant holder and that other company;
- (b) if a group of 2 or more persons are controllers of both the relevant holder and that other 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 the relevant holder and that other company are members of the same group;

“connected customer”, in relation to a relevant holder, means any customer of the holder who is –

- (a) an officer or employee of the holder;
- (b) a controller of the holder;
- (c) the spouse or civil partner or infant child or step-child of any individual described in sub-paragraphs (a) and (b) of this definition;
- (d) a person in his or her capacity as trustee of a trust the beneficiaries of which he or she knows or ought reasonably to know include any person described in sub-paragraphs (a) to (c) of this definition; or
- (e) a company which is a connected company of the holder;

“controller” in relation to a relevant holder 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 company 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 a company which, in relation to an open-ended investment company, is entrusted by that company with the custody of the property of that company;

“customer”, in relation to a relevant holder, does not include any person who as a beneficiary under a trust (not being the settlor) benefits from the performance by the relevant holder as the trustee of any activities which constitute the carrying on of business as a functionary;

“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;

“director” in relation to a relevant holder includes any person who occupies the position of director, by whatever name called;

“employee”, in relation to a person, means an individual who is employed in connection with that person’s business as a functionary whether under a contract of service or for services or otherwise, and “employed” and “employment” shall be construed accordingly;

“employee manager”, in relation to a relevant holder, means an employee who, under the immediate authority of his or her employer, is responsible

either alone or jointly with one or more other person for the conduct of his or her employer's business as a functionary;

"execution-only customer", in relation to the effecting of a transaction by a relevant holder, means a person, not being a market counterparty, with or for whom that transaction is effected in circumstances in which the relevant holder can reasonably assume that the person is not relying upon the relevant holder to advise him or her on or to exercise any judgment on his or her behalf as to the merits of or the suitability for him or her of that transaction;

"finance officer" in relation to a relevant holder means the individual nominated by the relevant holder as responsible for finance;

"financial quarter", in relation to a relevant holder, means –

- (a) the period beginning with the day on which the relevant holder commences to carry on business and ending with the date as at which it prepares its first quarterly balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which a quarterly balance sheet of the relevant holder is prepared for the purposes of this Order and ending with the day at which the next quarterly balance sheet of the relevant holder is so prepared;

"financial year", in relation to a relevant holder, means –

- (a) the period beginning with the day on which the relevant holder commences to carry on business and ending with the date as at which it prepares its first annual balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the relevant holder is prepared for the purposes of this Order and ending with the day as at which the next annual balance sheet of the relevant holder is so prepared;

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

"General Provisions Order" means the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988;³

"holding company" has the meaning given in Article 2;

"investment" has the same meaning as in the General Provisions Order;

"investment agreement" means an agreement relating to units made between an investor or potential investor and a relevant holder;

"Law" means the Collective Investment Funds (Jersey) Law 1988;⁴

"long term eligible subordinated loan", in relation to a relevant holder, means a loan made to the relevant holder under the terms of a duly executed agreement in a form acceptable to the Commission;

"manager" means –

- (a) in relation to a unit trust, the company which under the trust deed is the manager of that fund; and

- (b) in relation to an 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;

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

“net assets”, in relation to a relevant holder and any time, means the amount by which the value of the assets of the relevant holder at that time would be taken to exceed the amount of the relevant holder’s liabilities at that time on the following assumptions –

- (a) that those amounts are the amounts which would be shown in a balance sheet of the relevant holder prepared as at that time and complying with the requirements of this Order as to the form and content of a relevant holder’s balance sheet; and
- (b) that liabilities in respect of capital and reserves are disregarded;

“officer” includes a director, employee manager or secretary;

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

“operator”, means a holder of a permit who is any of the following –

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

“prospectus” has the same meaning as in the General Provisions Order;

“quarterly accounting reference date”, in relation to a relevant holder, means its annual accounting reference date and the dates 3 months, 6 months and 9 months before that date;

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

“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 the General Provisions Order;

“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 overseas investment exchange” means an investment exchange which at the time in question is a recognized overseas

investment exchange for the purposes of the Financial Services Act 1986 of the United Kingdom;

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

“relevant holder” means, except in Parts 9, 13 and 15 and Schedules 4, 5 and 6, a holder of a permit which is any of the following –

- (a) in relation to a recognized unit trust, the trustee or the manager; and
- (b) in relation to a recognized open-ended investment company, that company, the custodian or the manager,

and in Parts 9, 13 and 15 and Schedules 4, 5 and 6, “relevant holder” shall have the meaning given in Articles 63, 92 and 113 and the first paragraph of each such Schedule respectively;

“report to management”, in relation to a relevant holder, means a report sent to the relevant holder by the auditor of that relevant holder commenting on matters arising out of the auditor’s audit of the relevant holder’s annual financial statements;

“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;

“short term eligible subordinated loan”, in relation to a relevant holder, means a loan drawn down under a duly executed facility agreement in a form acceptable to the Commission;

“spouse” includes a reputed spouse or a person cohabiting with another as a spouse;

“subsidiary” has the meaning given in Article 2;

“The Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

“trustee” means a company which is the trustee of a unit trust;

“unit trust” means a fund which takes the form of a unit trust.⁵

(2) In this Order –

- (a) references to the effecting of a transaction by a relevant holder for or on behalf of another person include references to the relevant holder’s arranging for a transaction to be effected by a third party with that person;
- (b) a person for whom services are provided by a relevant holder for reward is not to be regarded as not being a customer of the relevant holder because the relevant holder is remunerated by a third party for the performance of those services and not by that person;

- (c) references to certificates evidencing title to any property include references to documents which are not certificates but which serve to evidence title to that property.
- (3) In this Order and, 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 the person’s favour by the other company of that power;
 - (b) that a person’s appointment to the directorship follows necessarily from the person’s 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 Acts and omissions of employees, etc. attributed to the relevant holder

For the purposes of determining whether a relevant holder has complied with any provisions of this Order, any act or omission of any employee of the relevant holder which falls within the scope of his or her employment, of any agent of the relevant holder which falls within the scope of the agent's authority to act on behalf of the relevant holder and of any sub-contractor of the relevant holder which falls within the scope of the sub-contractor's instructions to act on behalf of the relevant holder shall be treated as the act or omission of the relevant holder.

4 Application

- (1) This Order applies to holders of a permit which are functionaries of a recognized fund.
- (2) Each obligation imposed under each provision of this Order applies as a separate condition of the permit of each such holder which is a functionary of the description stated in that provision.

PART 2

NOTIFICATION

5 Timing and form of notification

Any information required to be notified under this Order shall be notified in writing, forthwith, unless otherwise stated.

6 Notification of name and address and events

- (1) A relevant holder shall notify the Commission in writing of the following changes not less than 28 days before the change is implemented –
 - (a) a change in its registered name;
 - (b) a change in the address of the head office of the relevant holder;
 - (c) a change in the address of the registered office of the relevant holder;
 - (d) a change in the address of the place for service of notices or documents, if different from its registered address.

-
- (2) A relevant holder shall give notice to the Commission of the occurrence of any of the following –
- (a) the bankruptcy of the relevant holder or of a company which is a subsidiary or holding company of the relevant holder;
 - (b) the appointment of a liquidator of the relevant holder;
 - (c) the making of a composition or arrangement with creditors of the relevant holder;
 - (d) an application by the relevant holder for, the granting, or refusal of any application for, or revocation of, authorization to carry on investment, banking or insurance business in any country or territory outside Jersey;
 - (e) the appointment of inspectors by any statutory or other regulatory authority to investigate the affairs of the relevant holder;
 - (f) the imposition of disciplinary measures or sanctions on the relevant holder in relation to its business as a functionary by any statutory or other regulatory authority;
 - (g) the bringing of any action against the relevant holder under Article 35 of the Law;
 - (h) the conviction of the relevant holder of any offence under legislation relating to banking, insurance or other financial services, companies or bankruptcy, or for any offence involving fraud or dishonesty.⁶

7 Controllers

- (1) A relevant holder shall notify the Commission in writing where any person becomes or ceases to be a controller of the relevant holder. The notice shall be given within 7 days beginning with the day on which the relevant holder becomes aware of the relevant matter.
- (2) The notice shall include the following information in relation to any person who becomes a controller of the relevant holder –
 - (a) its name;
 - (b) its principal business;
 - (c) the names of the controller's directors, partners or employee managers, if any;
 - (d) the address of its registered or head office;
 - (e) the percentage of the voting power which the controller can exercise or control the exercise of, at any general meeting of the relevant holder.
- (3) Any change in the information relating to controllers submitted to the Commission at the time of application, or subsequently, must likewise be notified forthwith to the Commission, but this shall not include the information specified in paragraph (2)(e).⁷

8 Subsidiaries, holding company and major shareholdings

- (1) A relevant holder shall notify the Commission of the formation, acquisition, disposal or dissolution of a subsidiary. The notice shall specify the following –
 - (a) the subsidiary's name;
 - (b) its principal business, if any.
- (2) A relevant holder shall notify the Commission where it becomes or ceases to be a subsidiary of another company. The notice shall specify the following information if this has not already been notified –
 - (a) the holding company's name;
 - (b) its principal business;
 - (c) the names of its directors;
 - (d) the address of the registered office.⁸

9 Directors, employee managers and other officers

- (1) A relevant holder shall give notice to the Commission of the fact that (including the date on which) any person has –
 - (a) become; or
 - (b) ceased to be,one of the following –
 - (i) a director of the relevant holder;
 - (ii) an employee manager of the relevant holder;
 - (iii) the compliance officer of the relevant holder;
 - (iv) the finance officer of the relevant holder;
 - (v) an authorized signatory of the relevant holder;
 - (vi) the secretary of the relevant holder,including in a case to which sub-paragraph (b) applies, a statement of the reasons for the change.
- (2) Where a notice given under paragraph (1)(a) relates to a director, the notice shall specify whether the director is executive or non-executive.
- (3) The notice given under paragraph (1)(a) in respect of the persons referred to in clauses (i), (ii), (iii) and (iv) thereof shall include such information concerning the individual in question as may be required by the Commission in the relevant holder's form of application for a permit under Article 6 of the Law, where this has not already been notified.⁹

10 Individuals

A relevant holder shall give notice to the Commission of the following matters in relation to any individual who is an officer or employee of the relevant holder –

- (a) a change of name;

- (b) a conviction of any offence involving fraud or other dishonesty;
- (c) a conviction for an offence under legislation relating to banking or other financial services, companies or bankruptcy;
- (d) the declaring of the property of the individual *en désastre*;
- (e) the imposition of disciplinary measures or sanctions by any regulatory authority in relation to the individual's professional or business activities;
- (f) the making of an order by a court disqualifying that individual from serving as director of a company or from being concerned with the management of a company;
- (g) the summary dismissal of that individual and of the reasons for the dismissal.¹⁰

11 Annual reporting requirements

- (1) A relevant holder shall submit a report to the Commission each year specifying any changes in the information originally submitted to the Commission at the time of the application to the Commission for a permit or thereafter under this Order, under the following headings –
 - (a) the countries or territories outside Jersey in which the relevant holder carries on investment or banking business indicating whether this is done through a branch office, or subsidiary or otherwise;
 - (b) any authorization held by the relevant holder to carry on investment or banking business, outside Jersey.
- (2) The first report under paragraph (1) shall be submitted to the Commission within 12 months of the date on which the relevant holder became a relevant holder and thereafter at intervals of 12 months.¹¹

12 Number of staff and value of recognized funds

- (1) A manager of a recognized fund, a trustee of a recognized unit trust and the custodian of a recognized open-ended investment company shall each notify the Commission of the following –
 - (a) the total net asset value comprised in recognized funds under its management or its trusteeship or custodianship, as the case may be;
 - (b) the number of staff employed by it.
- (2) The information to be notified under paragraph (1) shall be notified to the Commission once a year on or before the last day of January each year, stating the information as at 31st December of the previous year.¹²

PART 3**GENERAL****13 Description of business**

A relevant holder shall not, in any business letters, notices and other publications of a relevant holder which relate to its business as a functionary of a recognized fund, use a designation of its business activities or any part of them which is misleading.

14 Ban on “volume overrides”, “benefits in kind” and reciprocal arrangements

- (1) A manager of a recognized fund shall not induce or attempt to induce any person to introduce investment business to it or to a fund of which it is the manager, to any of its associates or to any person at its direction or the direction of any of its associates –
 - (a) by arranging for the making of or the offering to make gifts to that person or at the manager’s direction the value or frequency of which is such that the gifts can reasonably be expected to influence the judgment of that person in making recommendations to customers or in making decisions on their behalf;
 - (b) by providing or offering to provide that person with, or arranging for that person to be provided with or offered, any direct or indirect benefit or reward other than –
 - (i) a gift not forbidden to be made or offered by subparagraph (a), and
 - (ii) the payment of a commission in money no part of which is calculated by reference to the size or volume of other transactions entered into or expected to be entered into by the manager or by a fund of which it is the manager as a consequence of introduction by that person; or
 - (c) by placing or offering to place business with or at the direction of that person or any associate of the person’s in return for the placing of investment business by that person with the manager, with any associate of the manager or with any person at the direction of the manager or of an associate of the manager.
- (2) Without prejudice to Article 15, this Article does not apply to benefits or rewards provided or offered by a manager of a recognized fund to –
 - (a) an employee of the manager;
 - (b) an associate of the manager or an employee of such an associate.
- (3) For the purpose of this Article, a “gift” includes the provision of entertainment and travel facilities and the payment for them.

15 Product bias

An operator of a recognized fund shall ensure that rates of commission and their frequency of payment and other inducements provided by it in relation to different products or services marketed by it are such that no person who will benefit from those inducements will be likely to be so influenced by them as to recommend to anyone the acquisition of units or the effecting of a transaction when to do so would be a breach of Article 29 or Article 30.

16 Excessive charging and “churning”

- (1) An operator of a recognized fund shall not charge unfairly or unreasonably for the services it provides.
- (2) An operator of a recognized fund shall not effect transactions for account of that fund with unnecessary frequency or in excessive size.

17 Disclosure

- (1) Any disclosure or confirmation required to be made by this Order shall be so expressed that it can reasonably be expected that it will be readily understood by the person or class of persons to whom it is addressed.
- (2) Any statement made or given in writing which would otherwise comply with a requirement of this Order concerning disclosure shall be deemed not to have been made or given if what is stated or delivered is accompanied by any oral or written statement having the effect of negating, qualifying or otherwise reducing the impact of what it accompanies.
- (3) A relevant holder shall be taken to have made any disclosure required by this Order to be made to a person by a particular time (other than a disclosure required to be made in writing) if –
 - (a) that person is aware at that time of what had to be disclosed to the person; or
 - (b) the relevant holder has taken steps which can reasonably be expected to result in that person’s being made aware by that time of what had to be disclosed to the person.

18 Complaints

- (1) A relevant holder shall ensure in relation to each complaint relating to the conduct of its business as a functionary of a recognized fund, made to it by any person –
 - (a) that the complaint is investigated promptly and thoroughly;
 - (b) that appropriate action is taken; and
 - (c) that the complainant is reminded that –
 - (i) it is open to the complainant to report the matter to the Commission, and

- (ii) if the complainant is dissatisfied with the outcome of the relevant holder's investigation of the complaint, the complainant may ask the Commission to investigate the complaint.¹³
- (2) The investigation referred to in paragraph (1) shall be made by an officer or employee of the relevant holder who was not concerned in the particular action or inaction complained of (otherwise than in a general supervisory capacity) being a person of such experience, competence and seniority as to be relied on to investigate the complaint adequately.

19 Supervision

- (1) A relevant holder shall in relation to its business as a functionary of a recognized fund establish and maintain procedures –
 - (a) for the supervision of each of its officers and employees; and
 - (b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond the person's competence to give or to provide.
- (2) Two or more relevant holders which are companies in a group may comply with this Article collectively in whole or in part by the establishment and maintenance of supervision procedures for the group as a whole or for part of the group.
- (3) Procedures established under this Article shall be recorded in writing.

20 Force majeure

- (1) If any event happens or any circumstances arise which make it impossible or impracticable for a relevant holder to comply with any requirement imposed upon it by Parts 3 to 14, the relevant holder shall forthwith inform the Commission of what has happened and the steps (if any can be taken) which the relevant holder proposes to take to deal with the emergency.¹⁴
- (2) Where the event or the circumstances notified under paragraph (1) is or are outside the control of the relevant holder, of any associate of the relevant holder and of any employee of the relevant holder or of such an associate, the relevant holder shall not be regarded as in breach of the requirements of Parts 3 to 14 to the extent that the event or circumstances make it impossible or impracticable to comply with those requirements, so long as the relevant holder is taking all practicable steps available to it to relieve the emergency.

21 Operators of recognized funds: significant influence over company management

- (1) An operator of a recognized fund may only acquire or cause to be acquired on behalf of any such fund of which it is the operator the

securities of any body carrying rights to vote at general meetings of the body if –

- (a) immediately before the acquisition the aggregate number of such securities of that body held on behalf of recognized funds of which it is the operator do not give it power significantly to influence the conduct of business of that body; and
 - (b) the acquisition will not give it such power.
- (2) If an operator of a recognized fund acquires power significantly to influence the conduct of business of a company it shall take steps to dispose of securities in that company so as to reduce the extent to which it can influence the conduct of business of that company to below a significant level and shall do so –
- (a) if the acquisition was in circumstances or for reasons beyond its control, as soon as is reasonably practicable having regard to the interests of participants and potential participants in the fund or funds in question and, in any event within the period of 6 months beginning with the date on which it becomes aware that it has acquired that power; or
 - (b) if the acquisition was not in those circumstances or for those reasons, forthwith upon its becoming aware of the acquisition,

and where, apart from this provision, the sale of any securities included in the property of a recognized fund and required by sub-paragraph (b) would result in a realised loss being sustained, it shall from its own resources pay into the property of the fund cash sufficient to compensate for that loss.

- (3) For the purpose of this Article an operator of a recognized fund shall be taken to have power significantly to influence the conduct of business of a company if it can, by virtue of securities held on behalf of all recognized funds of which it is the operator, exercise or control the exercise of 20% or more of the votes cast at general meetings of that company (disregarding for this purpose any temporary suspension of voting rights in respect of the securities of that company).

22 Operators of recognized funds to observe the terms of prospectus

An operator of a recognized fund shall take all reasonable steps to ensure compliance with every statement in the most recently published prospectus which is a statement of how the operator will perform its functions under the fund or how it will comply with any duty imposed on it by the Law or by Regulations or Orders made under it.

23 Trustee of recognized unit trust to report manager's running a "negative box" or delaying settlement

The trustee of a recognized unit trust shall report in writing to the Commission any facts within the knowledge of the trustee from which it appears or might appear that the manager has failed –

- (a) to instruct the trustee to create units in the fund when the manager should have done so to avoid the manager's having an obligation to sell a number of units in the fund greater than the number of units therein which the manager holds for its own account; or
- (b) to pay or to transfer property to the trustee when obliged to do so as a consequence of the creation of units in the fund,

and the trustee shall do this without unreasonable delay upon the relevant facts coming to the trustee's knowledge.¹⁵

24 Recognized open-ended investment company and its custodian to report manager's running a "negative box" or delaying settlement

- (1) A recognized open-ended investment company shall report in writing to the Commission any facts within the knowledge of the company from which it appears or might appear that the manager of that recognized fund has failed –

- (a) to procure the issue of units in the fund when the manager should have done so to avoid the manager's having an obligation to sell a number of units in the fund greater than the number of units therein which the manager holds for its own account; or
- (b) to pay or to transfer property to the company when obliged to do so as a consequence of the issue of units in the fund,

and the company shall do this without unreasonable delay upon the relevant facts coming to the company's knowledge.

- (2) The custodian of a recognized open-ended investment company shall report in writing to the Commission any facts within the knowledge of the custodian from which it appears or might appear that the manager has failed in either or both of the respects stated in paragraph (1)(a) and (b), and the custodian shall do this without unreasonable delay upon the relevant facts coming to the custodian's knowledge.¹⁶

25 Operator of a recognized fund to execute customer's instructions with dispatch

An operator of a recognized fund which receives and accepts an instruction to effect a transaction on behalf of a customer shall do so at such time as the customer has stipulated in the customer's instruction or, if no such time is stipulated, with dispatch, unless delay is justified by the need to comply with other requirements of Parts 3 to 10 or is otherwise in the interests of the customer.

26 Prohibition of portfolio management services for customers other than funds

A manager of a recognized fund shall not itself provide, or hold itself out as able and willing itself to provide, a service of managing investments, including units, whether on a discretionary basis or otherwise, for a customer other than a fund of which it is the manager.

PART 4

KNOW YOUR CUSTOMER

27 Personal and financial situation

- (1) Subject to paragraph (2) an operator of a recognized fund shall not sell units in that fund to any person unless it has taken reasonable steps to ascertain from that person such facts about the person's personal and financial situation as may be expected to be relevant to the sale of such units to the person; but the operator need not pursue enquiries made of a person to whom such units are to be sold if the person has refused to answer them.
- (2) This Article does not apply in the case of a sale which is –
 - (a) a sale to an officer of the operator or an execution-only customer; or
 - (b) a sale entered into in pursuance of an invitation to enter into such a transaction made solely by means of an advertisement issued by or on behalf of the fund being an advertisement –
 - (i) to which Article 56 applies, and
 - (ii) which is permitted by that Article to be issued.

28 Understanding of risk

An operator of a recognized fund shall not recommend to a person a transaction in units in that fund, or effect a transaction in such units with or for a person who is not an execution-only customer unless, before the recommendation is made or the transaction is effected, the operator has taken all reasonable steps to satisfy itself that that person understands the extent to which the person will be exposed to risk by entering into the transaction.

PART 5

CUSTOMER RELATIONS

29 Suitability of units and transactions in them

- (1) An operator of a recognized fund shall not make a recommendation to a person to purchase, sell or exchange any units in the fund, unless it has reasonable grounds for believing that the transaction is suitable for that person having regard to the facts known, or which ought reasonably to be known, to it about the units and as to that person's other investments and the person's personal and financial situation.
- (2) An operator of a recognized fund shall not effect with or for a customer who is not an execution-only customer, a transaction which the customer has instructed the operator to effect if the operator believes, or ought reasonably to believe, that such a transaction is unsuitable for that customer unless the operator has advised the customer not to proceed with the customer's proposal and the customer, following the giving of that advice, has repeated the instructions.
- (3) This Article does not apply in the case of a transaction entered into as a result of an advertisement which contained no recommendation that the transaction was suitable for any particular person, but this is only if the operator has given no advice in connection with the effecting of the transaction.

30 Best execution

- (1) An operator of a recognized fund in effecting a transaction for account of that fund, shall take all reasonable steps to ensure that the terms of the transaction are such that the transaction 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.
- (2) In determining, for the purposes of this Article, whether a transaction is effected on the best available terms regard shall be had, in comparing one possible manner of effecting the transaction with another, not only to the price to be paid or received but also to such of the following factors as are relevant –
 - (a) the other terms of the transaction;
 - (b) the likelihood of the counterparty expeditiously and satisfactorily performing the counterparty's obligations; and
 - (c) any other advantages which would be likely to enure directly or indirectly to the fund in connection with the transaction or in connection with other transactions likely to be effected by the manager for the fund on other occasions.

31 Units: illustrations of future benefits

An operator of a recognized fund shall not publish or cause to be published to any person –

- (a) any forecast of the realisable value of an investment in units in a recognized fund; or
- (b) any illustration of what such realisable value might be on any particular assumption.

32 Units: statements and forecasts of future income

An operator of a recognized fund shall not publish or cause to be published to any person any statement, forecast or estimate of the future income likely to be derived from investment in units of that fund unless –

- (a) the forecast is based on –
 - (i) actual amounts of income received at the time the forecast is made and which will be included in a future distribution, and
 - (ii) assumed amounts of income which are expected to be received after the date on which the forecast is published based on an extrapolation from past experience which the operator reasonably believes to be justified;
- (b) to the extent that the forecast is based on other factors, those factors are relevant, and are fairly taken into account in arriving at the forecast; and
- (c) the operator reasonably believes that the forecast is not misleading.

33 Units: disclosure of product particulars

An operator of a recognized fund shall not recommend to any person a transaction relating to the purchase by the person of units in the fund unless the operator, at the time it makes the recommendation, gives the person or forthwith thereafter sends to the person a prospectus.

34 Disclosure by operators of recognized funds

- (1) Subject to paragraph (4) an operator of a recognized fund which effects a transaction with a customer relating to the sale of units in the fund shall –
 - (a) give or send to the customer a written statement of the basis on which the remuneration of the operator payable by the customer for the services performed by the operator in connection therewith will be determined;
 - (b) subject to paragraph (3), give or send to the customer a prospectus; and
 - (c) if any commission is or will be payable by or on behalf of the operator or an associate of the operator in connection with the transaction to any person other than an officer or employee of the

operator, give or send to the customer a written statement concerning those commissions which identifies that person and which discloses the amount of the commission unless it has previously been disclosed to the customer.

- (2) Each such statement shall be given or sent forthwith upon the transaction's being effected.
- (3) No statement is required to be sent under paragraph (1)(b) by an operator if the transaction was effected following a recommendation of that transaction by the operator and the operator complied with Article 33 in connection with that recommendation.
- (4) Where the sale is a result of a response to an advertisement such as is described in Article 56(1) and which complies with Article 57, that compliance shall be taken as fulfilling the obligations under paragraph (1)(a) and (b) of this Article.

35 Series of transactions treated as one

Where a series of transactions has been effected by the manager of a recognized fund for account of funds of which it is the manager but so as to achieve one investment decision or objective of the manager, all the transactions in the series effected in the period of 24 hours beginning with the effecting of the first transaction in the series, and all the transactions in the series effected in each successive period of 24 hours (other than one following a period in which no transaction is effected), may for the purpose of determining the price of each such transaction effected in that period be treated as one transaction at a uniform price by striking a weighted average of the different prices of the transactions in the series effected during that period.

36 Allocation of bargains between funds

- (1) Where a manager of a recognized fund has acted in relation to a transaction collectively for the account of 2 or more funds of which it is the manager and of which one or more is a recognized fund, and all cannot be satisfied, the transaction shall, subject to paragraph (2), be allocated between the funds for whom the manager has acted –
 - (a) in a manner which the manager in good faith believes does not unfairly benefit one fund at the expense of another;
 - (b) so as to be reasonable in the interests of each fund; and
 - (c) so as not to conflict with any limitations which may have been placed on the manager's discretion under the management agreement or agreements relating to the recognized funds for the account of which it so acted.
- (2) A manager of a recognized fund shall ensure that each allocation made in pursuance of paragraph (1) is made in accordance with standards and procedures which are uniform for all such allocations made by the manager and that such standards and procedures are set out in written

instructions which are brought to the notice of all individuals within the manager who may be concerned in making such allocations.

- (3) A manager of a recognized fund shall, in relation to any allocation required to be made in pursuance of paragraph (1) –
 - (a) take the initial step in the procedures referred to in paragraph (2) within the first 24 hours after the time when the transaction is effected; and
 - (b) after taking that initial step, take all reasonable steps to complete the allocation as soon as possible.

37 Insider dealing

- (1) Subject to paragraph (2) if an officer or employee of a relevant holder is prohibited by the Company Securities (Insider Dealing) (Jersey) Law 1988¹⁷ from effecting a transaction, the relevant holder shall not effect such a transaction as a principal on its own account unless –
 - (a) the only reason why that officer or employee was so prohibited was because of his or her knowledge of the relevant holder's intentions; or
 - (b) none of the officers or employees of the relevant holder involved in effecting or arranging for the effecting of the transaction on behalf of the relevant holder knew or ought to have known of the circumstances giving rise to that prohibition;
- (2) For the purposes of paragraph (1) none of the officers or employees shall be regarded as having a duty to know of the circumstances mentioned in that paragraph if –
 - (a) arrangements exist within the relevant holder, or within a group which includes the relevant holder, for securing that information obtained by individuals employed in one part of the relevant holder's business or of the group's business, as the case may be, will be withheld from individuals employed in another part of it; and
 - (b) those officers or employees are individuals from whom information about those circumstances is intended to be withheld under those arrangements.
- (3) A relevant holder shall use its best endeavours to ensure that none of its officers or employees effects a transaction on its behalf with or for any person if that officer or employee has reason to believe that the effecting of that transaction by that person is prohibited by Part 3A of the Financial Services (Jersey) Law 1998^{18, 19}.

PART 6

ADVERTISEMENTS

38 Interpretation

In this Part of this Order –

“advertisement” means an advertisement relating to a recognized fund or units in such a fund or a relevant holder, but does not include a prospectus;

“image advertisement” means an advertisement which contains no matter other than any of the following –

- (a) matter promoting public awareness of a relevant holder or of a relevant holder and its associates together;
- (b) a description of the nature of the services provided or the products marketed by a relevant holder or by a relevant holder and its associates together;
- (c) matter commending a relevant holder, or a relevant holder and its associates together, in general but not any particular service provided or product marketed by the relevant holder or by the relevant holder and its associates together;
- (d) a statement that further information will be supplied if requested;

“issue”, in relation to an advertisement, includes causing it to be issued;

“short form advertisement” means an advertisement which contains a statement of an advertiser’s name and contains no other matter than any of the following –

- (a) a symbol or logogram representing the advertiser;
- (b) the address of the advertiser;
- (c) the telephone number of the advertiser;
- (d) a description of the advertiser’s business;
- (e) a fee charged by the advertiser for its services;
- (f) the names of units, prices indicative of those at which the advertiser will or may buy or sell or arrange for the buying or selling of those units, how those prices differ from previous prices, income and yields from those units and the earnings out of which income is paid,

and an advertisement is also a short form advertisement if it contains a statement of the advertiser’s name and no other matter than any of the matters described in sub-paragraph (f).

39 Contents of advertisements

An operator of a recognized fund shall not issue an advertisement unless the requirements of this Part in so far as they apply to it are complied with in relation to that advertisement.

40 Prominence of required statements

The significance of any statement or other matter required by this Order to be included in an advertisement shall not be disguised either through lack of prominence in relation to the other matter in the advertisement or by the inclusion of matter calculated to minimise the significance of the statement.

41 Approval

An operator of a recognized fund which issues an advertisement shall ensure that the advertisement is approved prior to its issue by –

- (a) an individual within the operator, or within a group of which the operator is a member, appointed for the purpose of this Article; and
- (b) the trustee or custodian.

42 Advertisements to be clear and not misleading

- (1) The contents of an advertisement and the manner of its presentation shall be such that the advertisement is not likely to be misunderstood by those to whom it is addressed including, if it be the case, persons who cannot be expected to have any special understanding of the matter in the advertisement.
- (2) An advertisement shall not contain any statement, promise or forecast unless the operator issuing the advertisement has taken all reasonable steps to satisfy itself that each such statement, promise or forecast is not misleading in the form or context in which it appears.
- (3) An advertisement shall not contain any statement purporting to be a statement of fact which the operator issuing it does not reasonably believe at the time of its issue, on the basis of evidence of which it has a record in its possession, to be true.
- (4) An advertisement shall not contain any statement of fact which, although true when the advertisement is issued, the operator has reason to believe is likely to become untrue before the advertisement ceases to be current.
- (5) An advertisement shall not state that any person is of any particular opinion unless the operator issuing the advertisement has taken all reasonable steps to satisfy itself that the advertiser or other person, as the case may be, is of that opinion when the advertisement is issued.
- (6) If the units or service to which an advertisement relates are available in limited quantities, for a limited period or on special terms for a limited period the advertisement may say so but, if that is not the case, the advertisement shall not contain any statement or matter which implies that it is so.

43 Advertisements to be distinguished from other matter

- (1) The terms of an advertisement and the manner of its presentation shall be such that it appears to be an advertisement issued with the object of promoting the units, service or operator to which it relates.
- (2) Where the medium in which the advertisement is carried contains or presents other matter the advertisement shall be distinguished from that other matter so that what is an advertisement does not appear to be or to form part of a news item, report, bulletin, entertainment, instruction, story, drama, performance or other such means of communication.

44 Advertisements to identify the investments or services to which they relate

Except in the case of a short form advertisement or an image advertisement, the nature of the investments or the services to which an advertisement relates shall be clearly described.

45 Promotions to be genuine

An advertisement shall not be issued with the intention not of persuading persons who respond to the advertisement to pursue the subject matter of the advertisement but instead of persuading them to enter into an investment agreement, or use financial services, of a description not mentioned in the advertisement.

46 Disclosure of advertiser's capacity

An advertisement which invites those to whom it is addressed to enter into an investment agreement with a named person shall –

- (a) disclose, by statement or by necessary implication whether it is proposed that the named person will enter into the agreement as a principal on the person's own account or as an agent for another person; and
- (b) state if the named person is to enter into the agreement as an agent for another person and that person can be identified when the advertisement is issued, the name of that other person.

47 Advertisement not to imply approval of the States, the Minister or the Commission²⁰

An advertisement shall not contain any matter which states or implies that the units which are the subject of the advertisement or any matter in the advertisement have or has the approval of the States, the Minister or the Commission.

48 Synopses to be fair

An advertisement which states some only of the rights and obligations attaching to units in a recognized fund or some only of the terms and conditions of an investment agreement shall –

- (a) state sufficient of them to give a fair view of the nature of the units or of the investment agreement, of the financial commitment undertaken by an investor in acquiring the units or in entering into the agreement and of the risk involved; and
- (b) state how a prospectus relating to the units can be obtained.

49 Commendation

An advertisement may include a quotation from a statement made by any person commending units in a recognized fund or a service if and only if –

- (a) where the person is an employee or associate of the operator, that fact is disclosed in the advertisement;
- (b) the quotation is included with that person's consent;
- (c) the statement is relevant to the units or service which is the subject of the advertisement;
- (d) where the whole of the statement is not quoted, what is quoted represents fairly the message contained in the whole of the statement; and
- (e) the statement has not become inaccurate or misleading through the passage of time since it was made.

50 Comparison with other investments

- (1) An advertisement shall not compare or contrast –
 - (a) units in a recognized fund with an alternative application of an investor's funds; or
 - (b) a service or a provider of a service or of units in a recognized fund with an alternative service or provider,

unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated.

- (2) Without prejudice to the generality of paragraph (1) if, in the case of an advertisement of units in a recognized fund, comparison is made between the performance of an investment in those units over a period of time with the performance of an alternative application of the investor's funds over the same period of time, the comparison shall be on an offer to bid basis, that is to say, on the basis of what it would have cost to acquire an amount of the units and the alternative at the beginning of the period and what a disposal of that amount of the units and the alternative would have realised at the end of the period, and the fact that that is the basis of the comparison shall be stated.

- (3) Without prejudice to the generality of paragraph (1) if, in the case of an advertisement of units in a recognized fund, comparison is made between the performances of an index over the same period of time, the comparison shall be on whatever basis is consistent with the basis on which the index is constructed, and the fact that that is the basis of the comparison shall be stated.

51 Taxation

- (1) An advertisement which refers to taxation shall contain a warning that the levels and bases of taxation can change.
- (2) An advertisement which contains any matter based on an assumed rate of taxation shall state what that rate is.
- (3) An advertisement which refers to reliefs from taxation –
- (a) shall state that the reliefs are those which currently apply; and
 - (b) shall contain a statement that the value of a relief from taxation depends upon the circumstances of the taxpayer.
- (4) An advertisement which refers to reliefs from taxation shall distinguish between reliefs which apply directly to investors and those which apply to a fund in which the investor participates.

52 Cancellation rights

An advertisement may state (if it be the case) that an investor who enters into an investment agreement to which the advertisement relates will be given an opportunity to cancel the agreement but, if it does so, the advertisement shall state the period during which the investor will have the right and the time when that period will begin.

53 Past performance

An advertisement shall not contain information about the past performance of units in a recognized fund of any description unless –

- (a) it is relevant to the performance of the units the subject of the advertisement;
- (b) except where the source of the information is the advertiser itself, the source of the information is stated;
- (c) if the whole of the information is not set out –
- (i) what is included is not unrepresentative, unfair or otherwise misleading, and
 - (ii) the exclusion of what is excluded does not have the effect of exaggerating the success or performance over the period to which the information which is included relates;

- (d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities have changed;
- (e) in the case of an advertisement of units, any comparison made between the value of an investment in those units at different times is on an offer to bid basis, that is to say, on the basis of what it would have cost to acquire an amount of the units at the earlier time and what a disposal of that amount of those units would have realised at the later time, and the fact that that is the basis of the comparison is stated; and
- (f) the advertisement contains a warning that the past is not necessarily a guide to the future.

54 Indications of the scale of business activities

An advertisement shall not contain any statement indicating the scale of the activities or the extent of the resources of a manager of a recognized fund or of any group of which such a person is a member, so as to imply that the resources available to support performance of the manager's obligations are greater than they are.

55 Risk warnings

- (1) This Article applies to any advertisement which is not –
 - (a) a short form advertisement; or
 - (b) an image advertisement.
- (2) An advertisement to which this Article applies shall contain a statement or statements in accordance with this Article warning of the risk involved in acquiring or holding the units the subject of the advertisement.
- (3) Where the advertisement relates to units in a recognized fund in the case of which deductions for charges and expenses are not made uniformly throughout the period during which the units are in issue but are loaded disproportionately onto the early years, the advertisement shall draw attention to that fact and that accordingly, if the investor withdraws from an investment in the units in the early years, the investor may not get back the amount invested.
- (4) The statement shall draw attention to the fact that the value of units can fluctuate in value in money terms and to the fact that the investor may not get back the amount invested.
- (5) Where the advertisement offers units in a recognized fund as likely to yield a high income or as suitable for an investor particularly seeking income from the investor's investment to the fact that income from the units may fluctuate in value in money terms.
- (6) Where the advertisement relates to units in a recognized fund denominated in a base currency other than sterling, the advertisement

shall draw attention to the fact that changes in rates of exchange between currencies may cause the value of the units to diminish or to increase.

56 General duty of disclosure in “off-the-page” and “off-the-screen” advertisements

- (1) This Article applies to an advertisement containing –
- (a) an offer by an operator of a recognized fund to enter into an investment agreement with a person who responds to the advertisement; or
 - (b) an invitation to a person to respond to the advertisement by making an offer to an operator of a recognized fund to enter into an investment agreement, and
- in either case, specifying the manner in which that response is invited to be made.
- (2) An operator of a recognized fund shall not issue an advertisement to which this Article applies if the advertisement contains any matter likely to lead to the supposition that the investment agreement the subject of the advertisement is or is thought to be suitable for a particular individual who is the recipient of the advertisement.
- (3) An operator of a recognized fund shall not issue an advertisement to which this Article applies unless the advertisement is contained in a printed document or is otherwise capable of being examined continuously for a reasonable period of time.

57 “Off-the-page” advertisements for units

An operator of a recognized fund shall not issue an advertisement to which Article 56 applies unless –

- (a) the advertisement contains information about the following matters –
- (i) any maximum amount below which any one person may not invest in the fund,
 - (ii) if regular amounts are invited to be invested in the fund, what those amounts may be,
 - (iii) a statement of the investment objectives of the fund and of any policies which the operator of the fund proposes to adopt in selecting the investments in which the funds of the fund will be invested,
 - (iv) the most recent difference between the bid and offer prices of the units expressed as a percentage of the maximum offer price and the minimum permitted such difference or, if there is no such maximum, the discretion available to the operator to vary the difference,
 - (v) in the case of a lump sum investment, the price at which units will be issued or, if this price is not fixed at the time of the issue of the advertisement, the basis for determining that price,

- (vi) in the case of a series of payments, the basis for determining the price at which units will be issued,
 - (vii) the nature and amount or rate of the charges which will be made to the customer and what discretion the operator of the fund has to vary these (including charges which are included in the price at which units are issued),
 - (viii) what the annual gross yield is expected to be in the future on the basis of the most recent price or the price at which units are to be issued,
 - (ix) where information about current prices of units and the most recent yield or the anticipated future yields may be seen or obtained,
 - (x) if an investor may authorize the income due to the investor to be reinvested in the fund, that fact and how the income will or may be reinvested,
 - (xi) the name of the trustee or custodian,
 - (xii) if an application will not be acknowledged, that fact,
 - (xiii) when certificates will be sent to the investor,
 - (xiv) the frequency with which the property of the fund is valued for the purposes of determining the creation and cancellation prices of units and when the operator of the fund will be available and willing to deal in those units,
 - (xv) how units may be sold or cancelled and when payments on sale or cancellation will be made,
 - (xvi) details of any arrangements under which an investor may make regular withdrawals from the amount of the investor's units in the fund,
 - (xvii) when statements of the value of a person's units in the fund will be sent to the investor, and
 - (xviii) where and how copies of the prospectus may be obtained; and
- (b) the advertisement contains a statement that a person entering into an investment agreement in consequence of a response to the advertisement will not have a right to cancel the agreement,

but the statement required by sub-paragraph (b) may be omitted if the operator provides such a right as is referred to therein voluntarily.

PART 7

CONTRACT NOTES

58 Contract notes: general

- (1) Subject to paragraph (2), an operator of a recognized fund shall, after a transaction relating to units in that fund has been effected with or on behalf of a customer, deliver or send or arrange for the delivery or

sending to the customer (or to a person nominated by the customer for the purpose, not being the operator or an associate of the operator) of a statement (a “contract note”) relating to the transaction specifying the matters described in Article 59.

- (2) In the case of a transaction effected for the purposes of an arrangement with the operator for the making of a series of payments by the customer for the purchase of units in a recognized fund (including ad hoc payments made in addition to those in the series), a contract note need not be delivered or sent to the customer (or to a person nominated by the customer for the purpose, not being the operator or an associate of the operator) after the transaction has been entered into but if contract notes are not sent, a statement shall be delivered or sent to the customer (or to a person nominated as above stated) not less frequently than once every 6 months giving the particulars, which otherwise would have been shown in contract notes, of transactions effected with or for the customer in the period to which the statement relates.

59 Contents of contract notes relating to transactions in recognized funds

- (1) A contract note shall specify –
- (a) the name and address of, in the case of a recognized unit trust, the manager of the fund and, in the case of a recognized open-ended investment company, that company and its manager;
 - (b) the customer’s account number;
 - (c) the date of the transaction;
 - (d) the name of the fund and the number of units the subject of the transaction;
 - (e) the nature of the transaction and the price of the units;
 - (f) where the total consideration is payable at the settlement date, the amount thereof;
 - (g) where the transaction involves the conversion of one currency into another, the rate of exchange obtained in effecting that conversion;
 - (h) the amount of any charge made by the operator to the customer in respect of the transaction and, except where all such charges to the customer are made on the same basis, the basis on which the amount of the charge was determined;
 - (i) the amounts of any fees, taxes or duties, except where those amounts have been included in the operator’s charges stated in accordance with sub-paragraph (h);
 - (j) where any commission is or will be payable by or on behalf of the operator or an associate of the operator in connection with the transaction to any person other than an officer or employee of the operator, the matters which the operator is required to disclose in a written statement given or sent to the customer by Article 34(1)(c);
 - (k) the settlement date;

-
- (l) the date of the transaction and either the time of the transaction or a statement that the time of the transaction will be supplied on request; and
 - (m) a statement that the price at which the transaction has been effected is on a historic or forward price basis as the case may be.
 - (2) The matters required to be disclosed in a contract note by paragraph (1)(h) and (j) shall be so disclosed notwithstanding any provision concerning disclosure in any agreement between the operator and the customer.
 - (3) If –
 - (a) an operator is dependent upon being notified by another person of any fact required to be included in a contract note and the operator has not been notified of that fact; or
 - (b) the transaction involves the conversion of one currency into another and that conversion has not been made,so much of the information required to be specified in the contract note as depends on notification of that fact or the making of that conversion may be omitted but that fact or the rate of conversion shall then be stated in a supplementary contract note sent as soon as the operator knows of it.
 - (4) If any information is omitted from a contract note in accordance with paragraph (3) the fact of its omission shall be stated with an indication that it is to be supplied later or that it cannot be supplied at all if that be the case.
 - (5) Where an operator has, on behalf of a customer, instructed another person to effect a transaction, it shall be a sufficient compliance with this Article if the operator delivers to the customer a copy of any contract note delivered to it in respect of the transaction and that copy, together with any document attached thereto, complies with the requirements of this Article.
 - (6) Subject to paragraphs (7) and (8), the contract note shall be sent before the close of business on the business day next following the day on which the transaction was effected but –
 - (a) for this purpose a transaction effected after the close of business on any day but before the end of that day shall be treated as having been effected before the close of business on the following business day; and
 - (b) where paragraph (5) applies, the operator may delay compliance with this paragraph by one day in order to receive the contract note from the person who effected the transaction on the operator's instructions.
 - (7) If transactions in a series effected in a period of 24 hours fall to be treated as one transaction in pursuance of Article 35, paragraph (6) shall have effect as if for the reference therein to the day on which the transaction was effected there were substituted a reference to the end of that period of 24 hours.

- (8) If a transaction falls to be allocated in accordance with Article 36, paragraph (6) shall have effect in relation to that transaction as if for the reference to the day on which the transaction was effected there were substituted a reference to the day on which the allocation was made.

PART 8

DEALINGS BY OFFICERS AND EMPLOYEES OF OPERATORS OF RECOGNIZED FUNDS

60 Interpretation

For the purposes of this Part a person is connected with an officer or employee of an operator of a recognized fund if the person is so connected with that officer or employee, by reason of any domestic or business relationship (other than that arising solely because the person is a customer of the operator), that that officer or employee can reasonably be expected –

- (a) to have influence over the person's judgment as to how the person's property is to be invested and how the person is to exercise any rights attaching to his or her investments; or
- (b) to be consulted before any such judgment is made.

61 Duties of an operator

An operator of a recognized fund shall take all reasonable steps to procure that each of its officers and each of its employees observes the requirements of this Part as set out in Article 62 (on the basis that those requirements do not apply to an investment which is a life policy) and shall ensure that –

- (a) those requirements are set out in a written notice given to each officer and each employee;
- (b) each officer and each employee signs an undertaking that the officer or employee will observe those requirements; and
- (c) in the case of an employee, it is a term of the employee's contract of employment with the operator that the employee shall observe those requirements.

62 Requirements to be made of officers and employees

- (1) An officer or employee of an operator of a recognized fund should not, on his or her own account or on that of a person connected with the officer or employee, effect any transaction relating to an investment at any time if he or she knows that the operator is forbidden by Article 37 to effect that transaction at that time on the operator's own account.
- (2) An officer or employee of an operator of a recognized fund should not, on his or her own account or on that of a person connected with the officer or employee, acquire or dispose of any investment if to do so

would to his or her knowledge involve him or her in a conflict of his or her own interest or of an interest of a person connected with him or her with that of any customer or with his or her duty to any customer.

- (3) An officer or employee of an operator of a recognized fund should not, on his or her own account or on that of a person connected with him or her, effect any transaction relating to an investment of a description in relation to which the operator carries on business as a functionary unless the officer or employee does so with the consent of the operator given in accordance with paragraph (4) and the officer or employee should, forthwith upon the effecting of such a transaction, inform the operator that it has been effected.
- (4) For the purposes of paragraph (3) the consent of the operator may be a general consent relating to all transactions except where the transaction is with a customer of the operator (other than a market counterparty) in which case the consent must be specific to the transaction in question.
- (5) An officer or employee of an operator of a recognized fund who effects a transaction relating to an investment of a description in which the operator carries on business as a functionary, either on his or her own account or on that of a person connected with him or her, with or through the agency of a person carrying on investment business other than the operator, should inform that other person, in relation to that transaction, that he or she is an officer or employee of the operator; and he or she should not request or accept from that other person any credit or special dealings facilities in connection with the transaction unless the operator has consented to his or her doing so specifically in relation to that transaction.
- (6) An officer or employee of an operator of a recognized fund should take all reasonable steps within his or her power to ensure that any person connected with him or her, when that person is acting on his or her own account, observes the requirements of this Part as though they applied to that person; but this paragraph does not apply where the person connected with the officer or employee of the operator is an officer or employee of another operator of a recognized fund and the person so connected acts on his or her own account in connection with a transaction relating to an investment of a description in relation to which that other operator carries on business as a functionary.

PART 9

COMPLIANCE PROCEDURES AND COMPLIANCE REVIEW

63 Application

This Part applies to relevant holders other than the holder of a permit which is a recognized open-ended investment company, and in this Part “relevant holder” shall be construed accordingly.

64 Compliance procedures and compliance review

- (1) A relevant holder shall establish and shall maintain in writing rules and procedures (“compliance procedures”) by reference to which each officer and employee of the relevant holder can ensure that he or she complies with the requirements of the Law, this Order and any other Regulations or Orders made under the Law in his or her dealings with or on behalf of recognized funds; and the relevant holder shall not less frequently than once in every 12 months carry out a review of its compliance procedures to ensure that they are effective.
- (2) A relevant holder shall arrange for a review of a reasonably representative sample of its business as a functionary of a recognized fund by an officer or employee of the relevant holder appointed for the purpose to be carried out not less frequently than once in every 12 months for the purpose of checking that this Order has been complied with during the period under review.
- (3) The review referred to in paragraph (1) shall extend to the records, compliance procedures, supervision procedures and accounts relating to recognized funds of which the relevant holder is a functionary and of holders of units in those funds.
- (4) In relation to the review of the accounts of unit holders it shall be sufficient compliance with this Article if a representative sample of their accounts, selected at random, are reviewed.
- (5) The review of a unit holder’s account shall be conducted by an officer or employee of the relevant holder who has not been concerned in the management of that account (otherwise than in a general supervisory capacity) being a person of such experience, competence and seniority as to be relied on to carry out such a review adequately.

PART 10**MAINTENANCE OF RECORDS****65 Records to be reproducible in printed form**

- (1) For the purposes of this Part any matter required to be recorded –
 - (a) shall be recorded in English but may be recorded in another language if the relevant holder has facilities for providing a translation of the record into English within a reasonable time of any request being made for production of such a translation by any person with authority to make the request; and
 - (b) may be recorded in any form so long as the record can be automatically reproduced in hard printed form.
- (2) An obligation under this Part to make a record of information contained in a document may be fulfilled by keeping a copy of that document as the record.

66 Transactions

- (1) Simultaneously with the receipt by an operator of a recognized fund of instructions from a customer to effect a transaction and also as soon as possible after the making of a decision by the operator to do so for account of the fund, the operator shall make a record of –
 - (a) the investment and the number of units thereof the subject of the instruction or the decision;
 - (b) the nature of the proposed transaction;
 - (c) in the case of instructions, the date and time they were received.
- (2) Where an operator of a recognized fund in arranging a transaction gives instructions to another person to effect it, the operator shall simultaneously with the giving of the instructions make a record of –
 - (a) the name of the other person so instructed;
 - (b) the terms of the instructions; and
 - (c) the date and time on which the instructions were so given.
- (3) In relation to a transaction effected by or on the instructions of an operator of a recognized fund (whether on its own account or for the account of a customer) the operator shall make a record of –
 - (a) the date and time the transaction was effected;
 - (b) the investment and the number of units the subject of the transaction;
 - (c) the price and other terms on which the transaction was effected including, where any conversion between currencies is involved, the rate of exchange;
 - (d) the parties to the transaction;
 - (e) where the operator effected the transaction in the capacity of both buyer and seller, that fact; and
 - (f) where the operator effected the transaction on behalf of more than one customer, the names of those customers or, where the operator effected the transaction in whole or in part on behalf of funds of which it is the manager generally, that fact including where it acted for such funds generally in relation to part of a transaction only, the proportion of the whole of the transaction in relation to which it so acted.
- (4) The information required by paragraph (3) to be recorded shall –
 - (a) if the information is supplied to the operator by someone else, be recorded as soon as it is received by the operator; and
 - (b) in any other case, be recorded simultaneously with the effecting of the transaction,

but in any case within sub-paragraph (a) it shall be a sufficient compliance with paragraph (3) if the information is recorded exactly as communicated to the operator and any subsequent correction of any

inaccuracy in the information as so received is recorded as soon as the correct information is received by the operator.

- (5) Where a manager of a recognized fund has effected a transaction on behalf of more than one fund in accordance with Article 36 it shall, forthwith upon making the allocation required by that Article, make a record of –
 - (a) the date and time of the allocation;
 - (b) the investments the subject of the allocation; and
 - (c) the identity of the fund and the designation of the relevant account of the fund.
- (6) Each record made in pursuance of this Article shall be kept for at least 3 years from the date when it is made.

67 Operators of recognized funds

- (1) An operator of a recognized fund shall, in relation to each company whose securities (carrying rights to vote at general meetings of the company) are part of the property of any fund (whether or not a recognized fund) of which it is the manager, keep a record of the number of those securities held from time to time by it or included in the property of a fund of which it is the operator.
- (2) An operator of a recognized fund shall keep a record of and the sources of information about each rate of exchange between one currency and another used –
 - (a) in connection with a transaction involving any property of the fund; or
 - (b) in valuing the property of the fund for any purpose prescribed by the Minister under Article 11 of the Law.
- (3) An operator of a recognized fund shall keep a record of all prices of units in the fund which it causes to be published in any newspaper.
- (4) The manager of a recognized unit trust shall keep a record of –
 - (a) the date and the time of day on which instructions are given to the trustee by the manager to create or cancel units and the number of units or the value of units, or both, as the case may be, the subject of those instructions; and
 - (b) the number of units held by the manager as a principal on its own account at each time as at which a valuation of the property of the fund is carried out for the purposes of determining the prices at which units of the fund may be created, cancelled, sold or repurchased.
- (5) The manager of a recognized open-ended investment company shall keep a record of –
 - (a) the date and the time of day on which application is made to the company and the custodian by the manager to create or cancel

units and the number of units or the value of units, or both, as the case may be, which are the subject of that application; and

- (b) the number of units held by the manager as a principal on its own account at each time as at which a valuation of the property of the fund is carried out for the purposes of determining the prices at which units of the fund may be created, cancelled, sold or repurchased.
- (6) A record created for the purposes of this Article shall be kept for a period of at least 3 years beginning with the day on which the record is created.

68 Creation and cancellation of units in a recognized unit trust

- (1) A trustee of a recognized unit trust shall keep a record of –
 - (a) the date on and the time of day at which instructions are received by the trustee from the manager to create or cancel units and the number of units, or the value of units, or both, as the case may be, the subject of those instructions; and
 - (b) the date on and the time of day and price at which units in the fund are created or cancelled and the number of those units.
- (2) A record created for the purposes of this Article shall be kept for a period of at least 3 years beginning with the day on which the record is created.

69 Creation and cancellation of units in a recognized open-ended investment company

- (1) A custodian of a recognized open-ended investment company shall keep a record of –
 - (a) the date on and the time of day at which an application is received by the custodian from the manager to create or cancel units and the number of units, or the value of units, or both, as the case may be, the subject of that application; and
 - (b) the date on and the time of day and price at which units in the fund are created or cancelled and the number of those units.
- (2) A record created for the purposes of this Article shall be kept for a period of at least 3 years beginning with the day on which the record is created.

70 Know your customer and suitability

- (1) An operator of a recognized fund shall maintain a record in relation to each customer who is not an execution-only customer or an employee of the operator of the facts about the customer's personal and financial situation and competence in financial matters known to the operator which may be expected to be relevant to the compliance by the operator with Article 27 or 29.

- (2) A record kept for the purposes of this Article shall identify whether or not the person concerned is a connected customer of the operator.
- (3) A record made in pursuance of this Article need not be kept after the expiry of a period of 3 years following the making of the record during which no service is performed by the operator for the person to whom the record relates.

71 Advertisements

- (1) An operator of a recognized fund shall, in relation to each advertisement to which Part 6 applies and which it issues, not being a short form advertisement within the meaning of Article 38, make a record of –
 - (a) the advertisement;
 - (b) the name of the individual who approved its issue or its contents; and
 - (c) if the advertisement contains any statement purporting to be a statement of fact, how access may be obtained to the record of the evidence which, in accordance with Article 42(3), supported that statement.
- (2) Each such record shall be kept for at least 3 years from the date of the latest publication of the advertisement to which it relates.

72 Register of associates

- (1) A relevant holder shall maintain a record of –
 - (a) the names of all persons known to the relevant holder to be associates of the relevant holder and identifying which of them is the officer of the relevant holder designated as having ultimate responsibility for each of the following matters –
 - (i) compliance,
 - (ii) finance,
 - (iii) advertising and marketing, and
 - (b) in relation to each person named in the record the matters notified to the relevant holder on the basis of which the relevant holder has concluded that that person is a fit and proper person to be engaged in the relevant holder's business.
- (2) No entry in the register relating to any person shall be removed until 3 years have expired from the time when that person ceases to be an associate of the relevant holder.

73 Register of connected customers

An operator of a recognized fund shall maintain a register recording the names of its customers who are connected customers.

74 Register of officers and employees

- (1) An operator of a recognized fund shall maintain a register recording the names of its officers and employees with an entry against each name indicating –
 - (a) the categories of transaction in respect of which the person named is competent to advise and to assess their suitability for investors; and
 - (b) the nature of that person's training, experience and formal qualifications (if any) on the basis of which the person is judged to be so competent.
- (2) No entry in the register relating to an individual shall be removed until 3 years have expired from the time when that individual ceased to be an officer or employee of the operator.

75 Dealings by officers and employees

- (1) A relevant holder shall make a written record of each consent given and transaction notified under Article 62(3).
- (2) Each such record shall be kept for a period of 3 years from the time when the consent ceases to be relevant or the transaction is notified, as the case may be.

76 Disciplinary action

A relevant holder shall, in relation to any steps taken by it to discipline any of its employees, make a record identifying the employee, the particulars of the offence in question and the steps taken and that record shall be kept for a period of 6 years from the time the steps were taken.

77 Compliance procedures

- (1) A relevant holder's compliance procedures established and maintained in accordance with Article 63 shall be set out in a written document and a copy of it shall be kept at every office in Jersey from which the relevant holder's business as a functionary is carried on.
- (2) Copies of the document setting out a relevant holder's compliance procedures shall be available to each officer and employee of the relevant holder at each place at or from which the relevant holder carries on business in Jersey.

78 Complaints

- (1) This Article applies in relation to complaints relating to the conduct of business as a functionary of a fund made in writing to the relevant holder and to such complaints made otherwise than in writing to which the relevant holder has responded in writing.

- (2) A relevant holder shall keep copies of each complaint in relation to which this Article applies together with a record of the action taken in response to the complaint.
- (3) Copies of all such complaints shall be kept at an office or offices of the relevant holder in Jersey designated for the purpose and copies of all such complaints kept at one office shall be kept together at that office.
- (4) The record of each such complaint and of the action taken in response to it shall be kept for at least 3 years from the date when the complaint was received.

79 Inspection of records

Any record or document required under this Part to be kept shall at any time during the period in which it is required to be kept be produced to the Commission or to any person with the authority of the Commission on demand at such reasonable time and place as may be specified by the Commission or that person.²¹

PART 11

FINANCIAL RECORDS

80 Accounting records

- (1) A relevant holder shall cause accounting records to be kept in accordance with this Article.
- (2) The accounting records shall be sufficient to show and explain the relevant holder's transactions (whether effected on the relevant holder's own behalf or on behalf of others) and shall be such as to –
 - (a) disclose with reasonable accuracy, in relation to any point in time, the financial position of the relevant holder at that time;
 - (b) demonstrate whether or not the relevant holder is at that time complying with the requirements of Part 12 insofar as applicable to the relevant holder; and
 - (c) enable the relevant holder to prepare a balance sheet, a profit and loss account and a statement of financial resources as at any date and complying with the requirements of Schedule 6 and to do so within a reasonable time after that date.
- (3) The accounting records shall in particular contain –
 - (a) entries from day to day of all sums of money received and expended by the relevant holder, and the matters in respect of which the receipt and expenditure takes place;
 - (b) a record of all income and expenses of the relevant holder explaining their nature;
 - (c) a record of all assets and liabilities of the relevant holder including any commitments or contingent liabilities;

- (d) entries from day to day of all purchases and sale of investments by the relevant holder distinguishing those which are made by the relevant holder on its own account and those which are made by the relevant holder on behalf of others;
- (e) entries from day to day of the receipt and dispatch of documents of title or documents evidencing title to investments which are in the possession or control of the relevant holder;
- (f) a record of investments of which the documents of title or the documents evidencing title are in the possession or control of the relevant holder identifying –
 - (i) where those documents are kept,
 - (ii) the beneficial owner of each of those investments,
 - (iii) the purposes for which those documents are held, and
 - (iv) whether those investments are subject to any charge;
- (g) entries from day to day of –
 - (i) all money which is paid into or out of a client bank account maintained for the purposes of Part 16, and
 - (ii) receipts and payments of client money not passed through such a client bank account, identifying the person to whom each such receipt or payment relates; and
- (h) a record of –
 - (i) balances on individual client bank accounts, and
 - (ii) balances with individual clients stating the name of each client and the amount held or received for that client.

81 Reconciliation of client money

- (1) A relevant holder shall, at least once every 5 weeks, reconcile –
 - (a) the total of the balances on the relevant holder's client bank accounts, as recorded by the relevant holder under Article 80(3)(h)(i); with
 - (b) the total of the corresponding credit balances in respect of its clients as recorded by the relevant holder,and, where any difference arises, correct it forthwith.
- (2) A relevant holder shall, at the same time as carrying out the reconciliation under paragraph (1), or more often, reconcile –
 - (a) the balance on each client bank account, as recorded by the relevant holder; with
 - (b) the balance on that account as set out on the statement issued by the bank,and, where any difference arises, correct it forthwith unless the difference arises solely as a result of differences between the accounting and settlement systems of the bank and the relevant holder.

82 Reconciliation of customers' investments held by the relevant holder

- (1) A relevant holder shall at least twice in every financial year carry out a reconciliation in accordance with this Article and correct any discrepancies thereby revealed.
- (2) The first such reconciliation shall be carried out at some time in the 5th and 6th months of the financial year and the second shall be carried out at some time in the 11th and 12th months of the financial year.
- (3) The requirements of this Article in relation to each such reconciliation are the following –
 - (a) in relation to documents of title and documents evidencing title to investments of the relevant holder's customers which are in the possession of the relevant holder, the relevant holder shall inspect and count all those documents and, in the case of registrable investments, reconcile any results which show discrepancies with the books and records of the appropriate registrar; and
 - (b) the relevant holder shall reconcile the results of each inspection under sub-paragraph (a) with the records maintained by the relevant holder under Article 80(3)(f).
- (4) This Article does not apply in relation to documents of title or documents evidencing title to investments of the relevant holder's customers which are in the possession of the relevant holder because the relevant holder has effected or is about to effect transactions in those investments in circumstances in which the customers do not intend the relevant holder to retain possession of those documents for their safe custody.

83 Records to be up to date

The obligations under this Part are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

84 Audit trail

- (1) Information required by this Part to be recorded shall be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the relevant holder.
- (2) The information shall, in particular, be recorded in such manner as to enable early identification of aggregates and of the particular items which have contributed to those aggregates.
- (3) All records shall be arranged, filed and indexed so as to permit prompt access to any particular record.

85 Nature of records

- (1) An obligation under this Part to make a record of information contained in a document may be fulfilled by keeping a copy of that document as the record.
- (2) Matters recorded otherwise than by keeping a document or a copy of a document may be recorded in any form so long as the record can be reproduced in hard printed form.
- (3) Records shall be in English but may be in another language if the relevant holder has facilities for producing a translation of the record into English within a reasonable time of any request being made for production of such a translation by the Commission or any other person with authority to make the request.²²
- (4) Where all the records relating to a customer are not kept together, each document or group of documents relating to that customer shall be accompanied by an indication that other records relating to that customer exist and how access to them can be obtained.
- (5) The relevant holder may accept and rely on records supplied by a third party so long as those records are capable of being and are reconciled with records created by the relevant holder.

86 Retention of records

A relevant holder shall keep –

- (a) the records which it is required by this Part to make; and
- (b) any working papers which are created to assist in the preparation of the financial statements required to be prepared by Part 13,

for a period of 10 years after the date on which they are made or prepared and during the first 2 of those years they shall either be kept at a place where the relevant holder carried on business or in such manner that they can be produced at such a place within 24 hours of demand.

87 Inspection of records

Any record or document required under this Part to be kept shall at any time during the period in which it is required to be kept be produced to the Commission or to any person with the authority of the Commission on demand at such reasonable time and place as may be specified by the Commission or that person.²³

PART 12

FINANCIAL RESOURCES

88 Interpretation

In this Part and in Schedules 1 to 5 –

“approved bank” means any institution which is an approved bank for any purpose within the meaning of Part 16;

“gross capital” has the meaning assigned to it in Schedule 1;

“investment position risk requirement”, in relation to a manager, trustee or custodian of a recognized fund and any time means –

- (a) in relation to investments or assets other than units in a recognized fund, the amounts calculated in relation to that manager, trustee or custodian and to that time in accordance with the principles set out in Schedule 4; and
- (b) in relation to units in a recognized fund, the amounts calculated in relation to that manager, trustee or custodian and to that time in accordance with the principles set out in Schedule 5;

“liquid capital” has the meaning given in Schedule 2;

“relevant annual expenditure” has the meaning given in Schedule 3;

“securities” means investments falling within paragraph 1, 2, 3, 4 or 5 of Part 1 of Schedule 1 to the General Provisions Order and (insofar as it relates to any of those paragraphs) paragraph 11 of that Part.

89 Financial resources: trustees and custodians

A trustee or custodian shall maintain at any time –

- (a) an amount of gross capital of at least £4,000,000; and
- (b) if at that time it has an investment position risk requirement, an amount of gross capital at least equal to the amount of that requirement.

90 Financial resources: managers

Subject to Article 91 a manager of a recognized fund shall maintain at any time an amount of liquid capital of at least the aggregate of the manager’s investment position risk requirement at that time and the greatest of the amounts specified in sub-paragraphs (a), (b) and (c) in relation to the manager –

- (a) £10,000;
- (b) one-quarter of the manager’s relevant annual expenditure for the most recently completed financial year of the manager for which audited accounts have been or ought to have been submitted to the Commission in accordance with Part 13;

- (c) one-half of the manager's annual fund management fees for recognized funds for the most recently completed financial year of the manager for which audited accounts have been submitted to the Commission in accordance with Part 13.²⁴

91 Relevant annual expenditure and fund management fees for first financial year

In calculating the required amount of liquid capital of a manager of a recognized fund at any time before it has or ought to have submitted to the Commission audited accounts for its first financial year Article 90 shall have effect as if –

- (a) for references to the manager's relevant annual expenditure for the most recently completed financial year of the manager for which audited accounts have been or ought to have been submitted to the Commission, there were substituted references to an estimate of the manager's expenditure in its first financial year based on the audited accounts or the budgeted profit and loss account required to be submitted to the Commission in the manager's application for a permit; and
- (b) for references to the manager's annual fund management fees for the most recently completed financial year of the manager for which audited accounts have been or ought to have been submitted to the Commission, there were substituted references to an estimate of the manager's annual fund management fees in its first financial year based on the audited accounts or the budgeted profit and loss account required to be submitted to the Commission in the manager's application for a permit.²⁵

PART 13

FINANCIAL STATEMENTS

92 Application

This Part applies to relevant holders other than the holder of a permit which is a recognized open-ended investment company, and in this Part "relevant holder" shall be construed accordingly.

93 Annual financial statements

- (1) For the purposes of this Order a relevant holder's annual financial statements for any financial year consist of –
 - (a) an annual balance sheet –
 - (i) made up as at the relevant holder's annual accounting reference date in that year, or

- (ii) if for any year the Commission has consented to the relevant holder's annual balance sheet for that year being made up as at a different date, made up as at that date;
- (b) an annual profit and loss account for the period ending on the date as at which the annual balance sheet is made up and beginning with the day following the date as at which the immediately preceding annual balance sheet of the relevant holder was made up;
- (c) an annual statement of the financial resources made up as at the date as at which the annual balance sheet is made up;
- (d) in the case of a relevant holder which is a manager of a recognized fund, a reconciliation of –
 - (i) the amounts shown in the annual balance sheet, with
 - (ii) the amounts shown in the quarterly balance sheet made up as at the date as at which the annual balance sheet is made up,and a reconciliation of –
 - (iii) the amounts shown in the annual profit and loss account, with
 - (iv) the sum of the amounts shown in the quarterly profit and loss accounts for the financial year ending on the date as at which the annual balance sheet is made up.²⁶
- (2) A relevant holder shall prepare its annual financial statements for each financial year in accordance with this Order and submit them to the Commission within 4 months after the date as at which the annual balance sheet for that financial year is prepared.²⁷
- (3) The annual financial statements of a relevant holder shall be submitted to a meeting of the directors of the relevant holder and the meeting shall be invited to pass a resolution approving those statements; but this does not apply if the annual balance sheet is signed by all the directors.
- (4) The annual balance sheet shall be signed by 2 directors of the relevant holder.
- (5) The balance sheet shall contain a statement (in a position immediately above the signatures to the balance sheet) –
 - (a) where paragraph (3) applies, whether the financial statements were approved at a meeting of the directors of the relevant holder, and, if so, the date on which they were approved;
 - (b) where paragraph (3) does not apply, that the balance sheet is signed by all the directors of the relevant holder.
- (6) A relevant holder's annual financial statements shall be submitted to the relevant holder's auditor for audit and an auditor's report thereon shall be obtained complying with the requirements of Articles 100 and 101 and the relevant holder shall submit that auditor's report to the Commission together with the financial statements which are submitted in accordance with paragraph (2).²⁸
- (7) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records

that report shall when submitted to the Commission be accompanied by a written document (signed by those who signed the balance sheet) stating –

- (a) whether or not all the accounting records of the relevant holder have been made available to the auditor for the purpose of the auditor's audit;
- (b) whether or not all transactions undertaken by the relevant holder have been properly reflected and recorded in the relevant holder's accounting records; and
- (c) whether or not all other records of the relevant holder and related information have been made available to the auditor.²⁹

94 Quarterly financial statements

- (1) For the purposes of this Order the quarterly financial statements of a manager of a recognized fund for any financial quarter consist of –
 - (a) a quarterly balance sheet –
 - (i) made up as at the manager's quarterly accounting reference date in that quarter, or
 - (ii) if for any quarter the Commission has consented to the manager's quarterly balance sheet for that quarter being made up as at a different date, made up as that date; and
 - (b) a quarterly profit and loss account for the period ending on the date as at which the quarterly balance sheet is made up and beginning with the day following the date as at which the immediately preceding quarterly balance sheet of the manager was made up; and
 - (c) a quarterly statement of financial resources made up as at the date as at which the quarterly balance sheet is made up.³⁰
- (2) A manager shall prepare its quarterly financial statements for each financial quarter in accordance with this Order and submit them to the Commission within one month after the date as at which the quarterly balance sheet for that financial quarter is prepared.³¹
- (3) A quarterly balance sheet shall be signed by 2 authorized signatories of the manager.

95 Monthly financial statements

- (1) For the purposes of this Order the monthly financial statement of a manager of a recognized fund is a statement of financial resources made up as at the day in each month which corresponds to its annual accounting reference date.
- (2) A manager of a recognized fund shall prepare a statement of financial resources for each month and shall do so and submit it to the Commission within 2 weeks after the date as at which the statement is prepared.³²

- (3) The monthly financial statement shall be signed by 2 authorized signatories of the manager.

96 Date which may be substituted for the accounting reference date

- (1) Subject to paragraph (4) a relevant holder may comply with the obligation to prepare an annual balance sheet as at a particular annual accounting reference date by preparing an annual balance sheet as at any other date within the period beginning 14 days before that annual accounting reference date and ending 14 days after it but if it does so it must prepare its quarterly balance sheet (in the case of a manager) for the last quarter of the financial year as at that other date.
- (2) Subject to paragraph (4) a manager of a recognized fund may comply with the obligation to prepare a quarterly balance sheet for any of the first three quarters of a financial year as at a particular quarterly accounting reference date by preparing a quarterly balance sheet as at any other date within the period beginning 7 days before that quarterly accounting reference date and ending 7 days after it.
- (3) Subject to paragraph (4) a manager of a recognized fund may comply with the obligation to prepare a monthly statement of financial resources under Article 95 as at a particular date by preparing such a statement as at any other date within the period beginning 4 days before that particular date and ending 4 days after it.
- (4) A relevant holder may take advantage of this Article only if the relevant holder has given notice in writing to the Commission of its intention to do so –
- (a) in the case of the financial statements relating to the first financial year of the relevant holder, before the end of the period of 2 months beginning with the date on which the relevant holder commenced to carry on business; or
- (b) in any other case, before the end of the period of 2 months beginning with the immediately preceding annual accounting reference date.³³

97 First annual balance sheet

A relevant holder may within the period of 2 months beginning with the date on which it commences to carry on business give notice in writing to the Commission that it does not intend to prepare its first annual balance sheet as at its first annual accounting reference date but instead to do so on a specified date within the period of 12 months beginning with the date on which it commenced to carry on business and, if it does so –

- (a) Article 93 shall have effect in relation to that first annual balance sheet as if references to that specified date were substituted for references to the annual accounting reference date; and
- (b) Article 94 shall have effect in relation to quarterly balance sheets in the period beginning with the date on which the relevant holder commences

to carry on business and ending on the date as at which it prepares its first annual balance sheet as if references therein to the manager's quarterly accounting reference dates were to that specified date and the quarterly dates preceding it.³⁴

98 Change of accounting reference date

A relevant holder may give notice in writing to the Commission that it has changed its annual accounting reference date and it may, at the same time, give notice to the Commission that it does not intend to prepare its next annual balance sheet as at the first occasion on which the new accounting reference date arrives but instead to do so as at a specified date within the period of 12 months beginning with the immediately previous annual accounting reference date and, if it does so—

- (a) Article 93 shall have effect in relation to that next annual balance sheet as if references to that specified date were substituted for references to the annual accounting reference date;
- (b) Article 94 shall have effect in relation to quarterly balance sheets in the period ending on that specified date as if references therein to the manager's quarterly accounting reference dates were to the specified date and the quarterly dates preceding it.³⁵

99 Form and content of financial statements

- (1) A relevant holder's financial statements prepared under this Order shall comply with the requirements of Schedule 6 (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account, the statement of financial resources, and any additional information to be provided by way of notes to the financial statements.
- (2) A relevant holder's balance sheet shall give a true and fair view of the state of affairs of the relevant holder as at the balance sheet date, a relevant holder's profit and loss account shall give a true and fair view of the profit or loss of the relevant holder for the period to which it relates and a relevant holder's statement of financial resources shall be properly prepared in accordance with this Part and the amounts stated therein properly calculated in accordance with the Part 12.
- (3) Paragraph (2) overrides –
 - (a) the requirements of Schedule 6; and
 - (b) all other requirements of this Order as to the matters to be included in a relevant holder's financial statements or in notes to those statements,and paragraphs (4) and (5) have effect instead.
- (4) If a balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with paragraph (2), any necessary additional information shall be

provided in the balance sheet or profit and loss account or in a note to the financial statements.

- (5) If, owing to special circumstances in the case of any relevant holder, compliance with any such requirement in relation to a balance sheet or profit and loss account would prevent compliance with paragraph (2) (even if additional information were provided in accordance with paragraph (4)), the relevant holder shall depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary in order to comply with paragraph (2)).
- (6) If the relevant holder departs from any such requirement, particulars of the departure, the reason for it and its effects shall be given in a note to the financial statements.

100 Contents of auditor's report

- (1) The auditor's report shall be addressed to the Commission and shall state whether or not the annual financial statements of the relevant holder have been audited in accordance with approved auditing standards.³⁶
- (2) The auditor's report shall also state whether in the opinion of the auditor –
 - (a) the annual financial statements of the relevant holder have been prepared in accordance with this Part;
 - (b) the annual financial statements of the relevant holder give a true and fair view –
 - (i) in the case of the annual balance sheet, of the state of the affairs of the relevant holder at the date as at which the balance sheet was prepared, and
 - (ii) in the case of the profit and loss account, of the relevant holder's profit or loss for the period to which that account relates;
 - (c) the statement of financial resources has been prepared and calculated in accordance with the requirements of this Part and with the principles set out in Schedule 6;
 - (d) in the case of a manager of a recognized fund, the reconciliation referred to in Article 93(1)(d) has been properly carried out;
 - (e) the relevant holder has, throughout the financial year kept accounting records in accordance with the requirements of Part 11;
 - (f) the balance sheet and the profit and loss account are in agreement with the relevant holder's accounting records and returns;
 - (g) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the auditor's audit;
 - (h) the relevant holder had, as at the date at which the balance sheet was prepared, financial resources of at least the minimum which the relevant holder was required at that date to have in order to comply with the requirements of Part 12;

- (i) the relevant holder has maintained throughout the financial year systems adequate to enable it –
 - (i) to comply with Part 16 insofar as applicable to it, and
 - (ii) to be in a position that it could as at any time carry out a reconciliation in accordance with Article 82; and
- (j) the relevant holder was in compliance with the requirements of Part 16 insofar as applicable to it, at the date as at which the balance sheet was prepared.

101 Qualified reports

- (1) Where the auditor's report states that one or more of the requirements of Article 100 have not been met, the report shall include a statement specifying the relevant requirements and the respects in which they have not been met; except that the auditor may disregard trivial breaches of Part 16 which were rectified upon discovery and which have caused no loss to any customer of the relevant holder.
- (2) Where the auditor is unable to form an opinion as to whether one or more of the requirements of Article 100 have been met, the report shall specify those requirements and give the reason why the auditor has been unable to form an opinion.

102 Availability of financial statements for inspection

Financial statements which are required by this Order to be prepared but not submitted to the Commission shall be produced to the Commission or to any person with the authority of the Commission on demand at such reasonable time and place as may be specified by the Commission or that person.³⁷

PART 14

FINANCIAL NOTIFICATION

103 Form and timing of notification

Any information required to be notified under this Part, shall be notified in writing forthwith, unless otherwise stated.

104 Breach of financial resources requirements

- (1) A relevant holder to which Part 12 applies shall notify the Commission by telephone or telex or other equivalent means where the relevant holder has reason to believe that it is or will be in breach of that Part.
- (2) The notice under paragraph (1) shall specify the steps which the relevant holder is taking, or has taken, to remedy the breach.³⁸

105 Deficiency in subsidiary

- (1) A relevant holder shall notify the Commission if it has reason to believe that there is a deficiency of net assets, as defined in paragraph (2), in a subsidiary company.
- (2) A “deficiency of net assets” for the purposes of this Article means the amount by which the liabilities of the relevant subsidiary at the relevant time would exceed the assets of that subsidiary at that time on the following assumptions –
 - (a) that the amounts of those assets and liabilities are those which would be shown in a balance sheet of the subsidiary prepared at that time and giving a true and fair view of its state of affairs; and
 - (b) that liabilities of the subsidiary in respect of capital and reserves are disregarded.³⁹

106 Change in notified information

A relevant holder shall notify the Commission of any changes in the information originally submitted to the Commission in the relevant holder’s application for a permit concerning –

- (a) guarantees, indemnities and other such commitments given by the relevant holder; and
- (b) where the relevant holder is a member of a group, guarantees and other financial support given to the relevant holder by other members of the group.⁴⁰

107 Substantial borrowings

- (1) A manager of a recognized fund shall notify the Commission if it has reason to believe that its liability to repay unsecured loans (other than those liabilities specified in paragraph (2)) exceeds 10 times its net assets.
- (2) The following liabilities to repay monies borrowed shall be disregarded for the purposes of this Article –
 - (a) liabilities in respect of long term and short term eligible subordinated loans;
 - (b) liabilities to repay money borrowed to finance the purchase of units to the extent that the manager’s position in those units is a long position.⁴¹

108 Failure to comply with obligations, etc.

A relevant holder shall give notice to the Commission where it has reason to believe that –

- (a) it will be unable to submit a financial statement as required by Part 13 insofar as applicable to it;

- (b) it will be unable to make a payment to a recognized investment exchange or recognized clearing house by the due date as required under the rules of that exchange or clearing house;
- (c) it will be unable to comply or unable to demonstrate compliance with Parts 3 to 13 and 16 insofar as applicable to it, as a result of a failure in accounting systems;
- (d) a director or employee has been engaged in activities involving fraud or other dishonesty in relation to the relevant holder's business;
- (e) the relevant holder's auditor has decided to qualify the auditor's report on the annual financial statements of the relevant holder.⁴²

109 Misleading financial statements

A relevant holder shall notify the Commission when it has reason to believe that any information previously submitted to the Commission under this Part and Part 13 was misleading in any material respect at the time it was submitted.⁴³

110 Other audited financial statements

A relevant holder other than a recognized open-ended investment company shall send the Commission a copy of any audited financial statements, including group accounts, which it is required to prepare by or under any other enactment. The accounts shall be submitted to the Commission as soon as they are sent to any person entitled to receive them.⁴⁴

111 Auditor's report to management

- (1) A relevant holder other than a recognized open-ended investment company shall notify the Commission of the following –
 - (a) whether the relevant holder has received a report to management from its auditor in respect of the auditor's audit of the annual financial statements most recently submitted by the relevant holder to the Commission;
 - (b) whether the report contained any recommendations to the relevant holder to remedy any weakness in the system and internal controls of the relevant holder;
 - (c) whether the relevant holder has implemented or is implementing those recommendations, and if not, the reasons for that decision.
- (2) The notice under paragraph (1) shall be submitted within the 2 months after the date on which the relevant holder is required to submit the annual financial statements to the Commission under Part 13.⁴⁵

112 Reconciliation of client money

A relevant holder shall notify the Commission if it has not carried out the reconciliations required by Article 81, or if having done so, it is unable to correct any difference as required by that Article.⁴⁶

PART 15**APPOINTMENT OF AUDITORS****113 Application**

This Part applies to relevant holders other than a holder of a permit which is a recognized open-ended investment company, and in this Part “relevant holder” shall be construed accordingly.

114 Appointment of auditors

- (1) A relevant holder shall not carry on, or hold itself out as carrying on, business as a functionary unless it has appointed an auditor in accordance with this Order.
- (2) A relevant holder shall appoint its first auditor appointed under this Order to hold office until the submission of the auditor’s report on the relevant holder’s annual financial statements prepared in accordance with Part 13, in respect of the second financial year of the relevant holder.
- (3) Thereafter the relevant holder shall appoint an auditor to hold office for a minimum of 12 months, which shall include the date as at which the annual financial statements of the relevant holder are prepared.
- (4) Where a vacancy occurs in the office of auditor and the relevant holder fails to appoint a replacement within 4 weeks of the vacancy occurring, the relevant holder shall give written notice of that fact to the Commission forthwith.⁴⁷

115 Qualifications for appointment as auditor

- (1) Subject to paragraph (2) there may be appointed as an auditor of a relevant holder a person qualified under Article 113 of the Companies (Jersey) Law 1991⁴⁸ for appointment as auditor of a company under Article 109 of that Law.⁴⁹
- (2) None of the following persons is qualified for appointment as an auditor of a relevant holder –
 - (a) a director, officer, or employee of the relevant holder;
 - (b) a controller of the relevant holder or an employee of such controller;
 - (c) any person whose close relative is one of the persons mentioned in sub-paragraphs (a) and (b);
 - (d) a company;

- (e) any person disqualified by the Commission.⁵⁰

116 Engagement letters

The relevant holder shall ensure that the auditor appointed under this Order has the power and duties listed in Article 117 and that –

- (a) those powers and duties are set out in a written instrument (an “engagement letter”);
- (b) the engagement letter is signed by the relevant holder and the auditor; and
- (c) the relevant holder retains a copy of the engagement letter.

117 Powers and duties

- (1) The auditor shall have –
 - (a) a right of access at all times to the accounting and other records of the relevant holder and all other documents relating to its business; and
 - (b) a right to require from the relevant holder such information and explanation as the auditor thinks necessary for the performance of the auditor’s duties as auditor.
- (2) The auditor shall submit a report to the Commission on the annual financial statements in accordance with the Part 13 and the report shall state the matters laid down in the Articles contained in that Part.
- (3) The auditor shall, in preparing the auditor’s report to the Commission under paragraph (2), carry out such investigations as will enable the auditor to form an opinion as to the matters required to be stated in the report.⁵¹

118 Notification

- (1) A relevant holder shall, within 14 days, give notice to the Commission of the appointment, removal or resignation of an auditor.
- (2) The notice of appointment of an auditor shall contain the name and address of the auditor, and the auditor’s qualifications.
- (3) A notice of the resignation or removal of the auditor shall comply with the requirements of Article 119.⁵²

119 Resignation or removal of auditors

- (1) Where an auditor resigns or is removed by the relevant holder, a notice to that effect sent to the Commission under Article 117 must contain either –
 - (a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor’s resignation or removal

- which the auditor considers should be brought to the attention of the Commission; or
- (b) a statement signed by the auditor of such circumstances as are mentioned above.
- (2) For the purposes of this Order, failure to reappoint an auditor at the end of the auditor's terms of office shall be deemed to be removal of that auditor.⁵³

PART 16

CLIENTS' MONEY

120 Interpretation

In this Part of this Order –

“approved bank” means in relation to a client bank account, as defined below, of an operator of a recognized fund –

- (a) in the case of a client bank account opened at a branch in Jersey, a person registered under the Depositors and Investors (Prevention of Fraud) (Jersey) Law 1967;⁵⁴ and
- (b) in the case of a client bank account opened at a branch outside Jersey –
 - (i) the Bank of England,
 - (ii) the Central Bank of another member State,
 - (iii) an authorized institution within the meaning of the Banking Act 1987 of the United Kingdom,
 - (iv) a bank which is a subsidiary or parent company of an authorized institution within clause (iii),
 - (v) 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, and
 - (vi) 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; and

“client bank account” means an account at an approved bank which –

- (a) is in the name of a manager of a recognized fund or, in the case of a recognized open-ended investment company, that company;
- (b) includes in its title the description “client account” or, if with a branch of the bank outside Jersey, such description in an official language of the country in question as is equivalent to “client account”; and

- (c) is a deposit (and not a share) account if the approved bank is a building society but which otherwise may be current or a deposit account.

121 Client money

- (1) Subject to paragraph (2), client money is money of any currency which in the course of carrying on business an operator of a recognized fund –
 - (a) holds or receives (whether or not in Jersey) in respect of any investment agreement entered into, or to be entered into, with or for a client and which is not immediately due and payable on demand to the operator for its own account; or
 - (b) pays into a client bank account in pursuance of an obligation to do so under this Order.
- (2) For the purposes of paragraph (1)(a) money shall not be regarded as being immediately due and payable to an operator of a recognized fund for its own account to the extent that the obligations of the operator in respect of which the money is held or received, remain unperformed.

122 Client money to be held on trust

- (1) An operator of a recognized fund shall hold client money received or held by it in the course of business carried on in Jersey, on trust upon the terms and for the purposes set out in this Order and, subject thereto, *pari passu*, for the respective clients for whom that client money is received or held, and in determining the entitlement of clients to money held in the operator's client bank accounts, save as provided in paragraph (2), money held in all such accounts shall be treated as pooled.
- (2) In the event of an overall shortfall in the client bank accounts of an operator of a recognized fund then, notwithstanding paragraph (1) –
 - (a) if and to the extent that the shortfall results from the fact that a bank outside Jersey in which client money is held becomes insolvent or does not recognize that money in the account is held for clients in accordance with this Order, the claims of clients whose client money was, with their consent, held in that account shall be postponed to the valid claims to client money of all other clients;
 - (b) the claims of clients in respect of their client settlement money against the operator's client bank accounts shall be restricted to the money in the operator's client settlement bank accounts unless and until the valid claims of all other clients to client money (except as provided in sub-paragraph (a)) have been met in full.
- (3) In the event of an overall surplus in the client bank accounts of an operator of a recognized fund after all valid claims of clients to client money have been met, the same shall be held for the operator and, subject

to compliance with this Order, may be withdrawn from the client bank accounts.

- (4) The provisions of this Order as to the duties of an operator of a recognized fund holding client money shall have effect in addition to the corresponding duties which would be owed by a person holding clients' money as a trustee under the general law.
- (5) An operator of a recognized fund shall make a declaration of trust in the form set out in Schedule 7.

123 Client bank accounts

- (1) An operator of a recognized fund which receives or holds client money shall open one or more client bank accounts.
- (2) All money which is client money by virtue of Article 121(1)(a) and which is received in Jersey by an operator of a recognized fund and all money payable by an operator of a recognized fund which becomes client money by virtue of Article 121(1)(b) shall (subject to paragraph (3)) be held in a client bank account in Jersey.
- (3) Notwithstanding the foregoing paragraph, an operator of a recognized fund, with the consent of the client and subject to paragraph (5), may hold client money of that client in a client bank account outside Jersey.
- (4) On opening a client bank account with an approved bank an operator of a recognized fund shall give written notice to the bank concerned –
 - (a) that all money standing to the credit of that account is held by the operator as a trustee (or agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the operator;
 - (b) requiring the bank to acknowledge in writing that it accepts the terms of the notice.
- (5) If, in the case of a client bank account at a bank outside Jersey, the bank declines to give the acknowledgement required in paragraph (4)(b) or if the operator has any other ground for believing that client money will not be protected as effectively as it would be if held in a client bank account in Jersey, the operator shall not pay client money into that account or transfer client money to that account.

124 Payment into a client bank account

- (1) Client money held or received by an operator of a recognized fund in cash shall be paid forthwith either into a client bank account or to the client concerned. Money held or received by an operator of a recognized fund in the form of a cheque, draft or electronic transfer drawn in favour of the operator which includes client money shall be paid forthwith into a client bank account unless it represents money payable to one client only in which case it may be endorsed over or paid to the client concerned or as the client shall direct.

- (2) Subject to paragraph (3), an operator of a recognized fund which is liable to pay money to a client in respect of an investment agreement entered into with or for that client in the course of the operator's business shall forthwith upon the same becoming due and payable ensure that such money is held for that client bank account unless it discharges the operator's debt by paying such money directly to the client.
- (3) No money, other than money required by paragraph (1) or (2) to be paid into a client bank account, shall be paid into such an account unless –
 - (a) the money is the operator's own money and it is required to be so paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or
 - (b) the money is the operator's own money and it is paid in order to restore in whole or in part any money paid out of the account in contravention of this Order.

125 Withdrawal from a client bank account

- (1) When a cheque or draft is paid into a client bank account and that cheque or draft includes money which is not client money, that money which is not client money shall be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque or draft.
- (2) The following may be withdrawn from a client bank account but not, in the case of money withdrawn under sub-paragraphs (d) to (h), so as to exceed the total of the money held for the time being in the account for the client concerned –
 - (a) money, not being client money, paid into the account for the purpose of opening or maintaining the account;
 - (b) money paid into the account in contravention of this Order;
 - (c) money required to be withdrawn in pursuance of paragraph (1);
 - (d) money properly required for a payment to or on behalf of a client;
 - (e) money properly required for or towards payment of a debt due to an operator of a recognized fund from a client otherwise than in respect of fees or commissions earned by the operator;
 - (f) subject to paragraph (3), money properly required for or towards payment of fees or commissions payable to an operator of a recognized fund and specified in a statement delivered to the client showing how those fees and commissions have been calculated;
 - (g) money drawn on a client's authority or in conformity with any contract between an operator of a recognized fund and the client;
 - (h) money which may be properly transferred into another client bank account or into a bank account in the name of the individual client.
- (3) Money shall not be withdrawn from a client bank account for or towards payment of fees or commission payable to the operator of a recognized fund unless –

- (a) the fees or commission have been accurately calculated in accordance with a formula agreed in writing by the client on the basis of which the amount thereof can be determined without exercise of subjective judgment;
 - (b) 7 days have elapsed since the date of delivery to the client of the statement referred to in paragraph (2)(f) and the client has not questioned the amount therein specified as due; or
 - (c) the precise amount thereof has been agreed by the client or has been finally determined by a court or arbitrator.
- (4) Money which may be withdrawn in accordance with paragraph (2) by way of payment from a client or an operator of a recognized fund shall be withdrawn immediately the operator becomes entitled under that paragraph to withdraw it.

126 Accounting records and auditors' reports

- (1) An operator of a recognized fund subject to Part 11 shall cause records to be kept and maintained in relation to its client money in accordance with the requirements of that Part and shall cause its auditor to report thereon in accordance with the Part 13.
- (2) The auditor shall be required to report in writing whether or not, in the auditor's opinion –
 - (a) the operator has adequate systems to have enabled it to comply with this Part throughout the period reported on; and
 - (b) the operator was, at the conclusion of that period, in compliance with this Part disregarding trivial breaches which were rectified upon discovery and which have caused no loss to any client of the operator.
- (3) Where the auditor is unable to form an opinion on whether or not this Part has been complied with, the report shall specify the matters in respect of which the auditor is unable and the reasons why.
- (4) The report referred to in paragraph (3) shall be addressed to the Commission and the manager shall ensure that the report, forthwith upon its completion, is sent to the Commission.⁵⁵

PART 17

FINAL PROVISIONS

127 Citation

This Order may be cited as the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988.

SCHEDULE 1

FINANCIAL RESOURCES: GROSS CAPITAL

A relevant holder's gross capital at any time (the "relevant time") is the amount of its net assets at that time adjusted in accordance with the following requirements.

1 Fixed intangible assets

The relevant holder's fixed intangible assets at the relevant time shall be deducted from the relevant holder's net assets.

2 Subordinated loans

Liabilities in respect of eligible long term and short term subordinated loans shall be disregarded in accordance with the following principles –

- (a) the aggregate amount of liabilities which may be so disregarded shall not exceed 400% of the amount by which the relevant holder's capital and reserves exceeds the amount of its fixed intangible assets;
- (b) liabilities in respect of short term eligible subordinated loans may be disregarded only if the relevant holder has an investment position risk requirement at the relevant time and then only to the extent of that requirement.

3 Commission on indemnity terms

If, in the case of a relevant holder which is a trustee or custodian, at the relevant time it has received commissions by life offices on terms such that a proportion is liable to be repaid to the life office should the life policies to which they relate be allowed to lapse by the policy holder (indemnity terms), there shall be a reserve calculated which shall be included as a liability.

4 Taxation

The provision made for taxation shall be the minimum required to be made by Part 13.

5 Deficiencies in subsidiaries

There shall be deducted from the relevant holder's net assets the amount by which the liabilities of any subsidiary of the relevant holder would at the relevant time be taken to exceed the assets of that subsidiary at that time on the following assumptions –

- (a) that the amounts of those assets and liabilities are those which would be shown in a balance sheet of the subsidiary prepared at that time giving a true and fair view of the state of affairs and complying with the requirements of the Companies (Jersey) Law 1991;⁵⁶ and
- (b) that liabilities of the subsidiary in respect of capital and reserves are disregarded.

6 Uncovered foreign currency exposures

- (1) An amount equal to 10% of the aggregate of the uncovered net short open positions in each currency (including the currency in which the relevant holder's books of account are maintained) at the relevant time shall be deducted from the relevant holder's net assets.
- (2) For this purpose in arriving at the net open position in a particular currency –
 - (a) all assets and liabilities denominated in that currency and all forward contracts to make purchases and sales of that currency shall be included; and
 - (b) a long or short spot position in the currency shall be offset against any opposite forward position in that currency.

7 Adjustment of investments to market value

A long or short position in any investment of any description within any category in Column 1 of the Table in Schedule 4 shall be valued at its realisable market value (calculated at bid prices for a long position and at offer prices for a short position).

SCHEDULE 2

FINANCIAL RESOURCES: LIQUID CAPITAL

The liquid capital of a manager of a recognized fund at any time (the “relevant time”) is the amount of its gross capital at that time adjusted in accordance with the following requirements.

1 Bank undertakings

If at the relevant time an approved bank has undertaken to make payment to the manager in accordance with the terms of an agreement made between the approved bank, the manager and the Commission in a form acceptable to the Commission, there shall be added to the amount of the manager’s gross capital at the relevant time the lower of the following 3 amounts –

- (a) the first amount is the aggregate of the amounts of the payments so undertaken to be made; and
- (b) the second amount is –
 - (i) if the manager has at the relevant time an investment position risk requirement, 30% of the amount by which the minimum amount of liquid capital which the manager is required to maintain at the relevant time in accordance with this Order exceeds that investment position risk requirement, or
 - (ii) if the manager does not at the relevant time have an investment position risk requirement, 30% of the minimum amount of liquid capital which the manager is required to maintain at the relevant time in accordance with this Order;
- (c) the third amount is the amount by which 400% of the amount of the manager’s capital and reserves less its fixed intangible assets at the relevant time exceeds the aggregate of the amounts of the liabilities under eligible subordinated loans which have been disregarded in determining the amount of the manager’s gross capital at the relevant time.⁵⁷

2 Land and buildings

The value of any land and buildings shall be disregarded unless repayment of debts repayable more than one year after the relevant time is secured by a charge of those land and buildings (being debts not otherwise secured by the charge of an asset of the manager whose value is not disregarded in whole or in part under this Schedule) in which case the land and buildings shall be included at whichever is the smallest of –

- (a) the aggregate amount of the debts of the manager repayable more than one year after the relevant time;

- (b) 85% of an independent valuation of the land and buildings made not earlier than 18 months before the relevant time; and
- (c) 85% of the net book value at which the land and buildings were included in –
 - (i) the last annual balance sheet submitted to the Commission in accordance with Part 13, or
 - (ii) if no such balance sheet has been submitted in the balance sheet of the manager submitted to the Commission with the manager's application for a permit.⁵⁸

3 Other fixed assets

All other tangible fixed assets shall be disregarded.

4 Loan accounts

Where a manager holds documents of title or documents evidencing title to securities as security for –

- (a) repayment of money lent by the manager; or
- (b) money due to be paid to the manager in connection with the purchase for or sale to another person of those securities which the manager has for genuine commercial reasons agreed may be postponed,

there shall be deducted from any amount due which is so secured any amount by which the amount due exceeds the realisable market value of the securities at the relevant time; that value being for this purpose discounted by the investment position risk factor appropriate to each of such securities as specified in Column 2 of the Table in Schedule 4 .

5 Debtors arising from transactions in units

If any amount due to be paid to the manager has arisen from a transaction relating to the sale, repurchase, cancellation or redemption of units in a fund and has at the relevant time been due and unpaid for more than 30 days after the settlement date of the transaction there shall be a deduction from gross capital of an amount equal to the excess of the amount due to be paid to the manager over the cancellation or redemption price multiplied by the number of units at the relevant time.

6 Group investments

Shares in connected companies shall be disregarded unless they are readily realisable investments and the connected company is not a subsidiary.

7 Prepaid expenses

Prepaid expenses shall be disregarded except to the extent that the period of prepayment does not exceed 3 months.

8 Cash and deposits

All cash and deposits shall be disregarded except –

- (a) money on deposit with a local authority in the United Kingdom, a member of the Finance Houses Association or with an approved bank which may be withdrawn within 90 days after the relevant time;
- (b) balances on current accounts with approved banks; and
- (c) money on deposit with the National Savings Bank.

9 Physical stocks

Physical stocks shall be disregarded.

10 Commissions, investment management fees, and other debtors

- (1) Other amounts owed to the manager shall be disregarded except –
 - (a) amounts owed in respect of –
 - (i) commissions,
 - (ii) investment management fees,
 - (iii) other fees earned in connection with the manager's business, which are due to the manager and which have been outstanding no longer than 30 days from the date on which they were due to be received, and
 - (b) amounts owed in respect of –
 - (i) interests on investments,
 - (ii) repayment of marketable debt instruments at maturity or call,
 - (iii) dividends declared in respect of shares dealt in on a recognized investment exchange,
 - (iv) the market value of scrip issues and rights issues, and
 - (v) proceeds arising from takeovers and mergers, which have been outstanding no longer than 30 days from the date on which they were due to be received;
 - (c) other debts owed to the manager to the extent that they are properly secured.
- (2) For the purposes of paragraph (1)(c) –
 - (a) a debt owed to a manager of a recognized fund is properly secured if it is fully secured by a charge in favour of the manager of a readily realisable investment and the manager has in its possession or under its control a document of title to that investment or is otherwise able to realise it so as to discharge the debt; and

- (b) the extent to which an asset is properly secured is measured by the realisable value (calculated on the basis of bid prices) of the investment which secures the debt.

11 Accrued income

- (1) Accrued income relating to investment management fees shall be disregarded except to the extent that it has at the relevant time been outstanding for no more than 6 months.
- (2) Other accrued income shall be disregarded except to the extent that it relates to interest on marketable debt instruments.

12 Other assets

All current assets and fixed assets investments shall be disregarded except –

- (a) those the subject of a specific investment position risk requirement in accordance with Schedule 4 or 5; and
- (b) those the subject of the previous paragraphs of this Schedule.

SCHEDULE 3

FINANCIAL RESOURCES: DEFINITION OF “RELEVANT ANNUAL EXPENDITURE”

For the purposes of this Order the “relevant annual expenditure” of a manager of a recognized fund in relation to a financial year of the manager is the aggregate of the manager’s revenue for that year and the amount of any loss before taxation for that year less the aggregate of the amounts of the following items for that year –

- (a) profit before tax;
- (b) staff bonuses;
- (c) employees’ and directors’ shares in profits;
- (d) other appropriations of profits;
- (e) payments made to other persons by way of sharing with them commissions received by the manager; and
- (f) interest charges in respect of borrowing made to finance the acquisitions of the manager’s investments.

SCHEDULE 4**FINANCIAL RESOURCES: INVESTMENT POSITION RISK
REQUIREMENT: INVESTMENTS AND ASSETS OTHER THAN UNITS IN
RECOGNIZED FUNDS**

- 1 This Schedule applies to relevant holders other than a holder of a permit which is a recognized open-ended investment company and in this Schedule “relevant holder” shall be construed accordingly.
- 2 For the purposes of this Schedule 2 investments or assets are of the same description if an obligation to sell a unit of one of them can be fulfilled by the delivery or transfer of title to a unit of the other.
- 3
 - (1) The investment risk position requirement of a relevant holder at any time in investments and assets other than units in a recognized fund is the aggregate of the amounts of its specific investment position risk requirements at that time.
 - (2) For this purpose a relevant holder has a specific investment position risk requirement at any time in relation to each description of investment or assets falling within any of the categories set out in Column 1 of the Table below in which it has a position at that time and that requirement is an amount equal to the percentage specified in Column 2 of the Table below opposite the category set out in Column 1 of the Table to which that description of investment or asset belongs of –
 - (a) the market value (calculated on the basis of bid prices) at that time of the amount of the manager’s long position (if any) in investments or assets of that description; or
 - (b) the market value (calculated on the basis of offer prices) at that time of the amount of the manager’s short position (if any) in investments or assets of that description.

TABLE**INVESTMENT POSITION RISK FACTORS**

	Column 1	Column 2
I	Debt instruments issued by Her Majesty’s Government or by a local authority in the United Kingdom with less than 12 months to final redemption;	2%
II	Debt instruments issued or accepted by an approved bank with less than 90 days to final redemption;	2%
III	Debt instruments issued by Her Majesty’s Government or by a local authority in the United Kingdom with more than 12 months	5%

	but less than 5 years to final redemption;	
IV	Other debt instruments which are marketable investments with less than 12 months to final redemption;	5%
V	Floating Rate Notes which are marketable investments with no more than 20 years to final redemption;	5%
VI	Debt instruments issued by Her Majesty's Government or by a local authority in the United Kingdom with more than 5 years to final redemption;	10%
VII	Other debt instruments which are marketable investments with less than 5 years to final redemption;	10%
VIII	Floating Rate Notes which are marketable investments with 20 years or more to final redemption;	10%
IX	Other debt instruments which are marketable investments;	15%
X	Shares listed on the Official List of The Stock Exchange or on a recognized overseas or designated investment exchange;	25%
XI	Single premium unit linked bonds and units in what under the Financial Services Act 1986 of the United Kingdom is an authorized unit trust scheme or a recognized scheme other than units in a Jersey recognized fund;	25%
XII	Physical stocks other than those disregarded by virtue of Schedule 2 to this Order;	30%
XIII	Other shares which are traded on a recognized or designated investment exchange;	35%
XIV	Other shares in which there is a market maker;	35%
XV	Futures, options and contracts for differences in respect of which exposure to loss is not limited to the purchase price of the investment;	4 times initial margin requirement
XVI	Other investments other than shares disregarded by virtue of paragraph 6 of Schedule 2 to these rules.	100% of amount

of asset

In the Table “final redemption” means the earliest date on which the manager may receive (either by virtue of the maturity of the investment or the exercise of an option by the manager) repayment of the principal amount of the debt instrument.

SCHEDULE 5

**FINANCIAL RESOURCES: INVESTMENT POSITION RISK
REQUIREMENT: UNITS IN RECOGNIZED FUNDS**

- 1 This Schedule applies to relevant holders other than a holder of a permit which is a recognized open-ended investment company and in this Schedule “relevant holder” shall be construed accordingly.
- 2 For the purpose of this Schedule –
“market value” shall mean the current realisable value calculated on the basis of bid prices for long positions and on the basis of offer prices for short positions.
- 3 (a) The investment position risk requirement (“PRR”) for the positions of a relevant holder in units of recognized funds shall be calculated in accordance with CIF Method 1 (sub-paragraph (b)), or CIF Method 2 (sub-paragraphs (c) and (d)). Positions shall be included at their market value.
(b) CIF Method 1
Where the relevant holder opts to use CIF Method 1, the PRR shall be 25% of the aggregate market value of all positions in units of funds.
(c) CIF Method 2
Where the relevant holder opts to use CIF Method 2 the PRR shall be calculated by multiplying the aggregate market value of positions in units of funds which are invested wholly in the categories of investment shown in the table below by the appropriate investment position risk factor (“PRF”) also shown below.

Types of Investment	PRF
Fixed income debt instruments and floating rate notes	5%
Equities issued in – U.K., Japan or U.S.A.	10%
Australia, Belgium, Canada, Denmark, France, Germany, Hong Kong, Italy, Netherlands, Norway, Singapore, Spain, Sweden or Switzerland	15%
All others	25%

- (d) Where a fund contains investments in more than one category the appropriate PRF shall be either –
 - (i) the highest applicable PRF, or
 - (ii) an average PRF based on the proportion of the market value of the individual investments in the funds, which is attributable to each category in the table of paragraph 3(c).

SCHEDULE 6

FORM AND CONTENTS OF FINANCIAL STATEMENTS

PART I – GENERAL RULES

- 1 This Schedule applies to relevant holders other than a holder of a permit which is a recognized open-ended investment company and in this Schedule “relevant holder” shall be construed accordingly.
- 2
 - (1) Subject to the following provisions of this Schedule, the annual financial statements of a relevant holder shall –
 - (a) in the case of the annual balance sheet show the items listed in the balance sheet format set out in Appendix A;
 - (b) in the case of the annual profit and loss account show the items listed in the profit and loss account format set out in Appendix B;
 - (c) in the case of the annual statement of financial resources show the items listed in the statement of financial resources format set out in Appendix C appropriate to the relevant holder.
 - (2) Subject to the following provisions of this Schedule, the quarterly financial statements of a manager of a recognized fund shall –
 - (a) in the case of the quarterly balance sheet show the items listed in the balance sheet format set out in Appendix A;
 - (b) in the case of the quarterly profit and loss account show the items listed in the profit and loss account format set out in Appendix B;
 - (c) in the case of the quarterly statement of financial resources show the items listed in the statement of financial resources format set out in Appendix C appropriate to the manager and the answers to the questions listed in that Appendix.
 - (3) Subject to the following provisions of this Schedule, the monthly financial statement of a manager of a recognized fund shall show the items listed in the statement of financial resources format set out in Appendix C.
 - (4) The items in every financial statement, other than the annual financial statements, shall be shown in the order and under the headings and sub-headings given in the format.
- 3 Any item required in accordance with paragraph 2 to be shown in a financial statement of a relevant holder may be shown in greater detail than required by the appropriate format.

- 4 A financial statement of a relevant holder may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.
- 5 In preparing a balance sheet or a profit and loss account a relevant holder may combine items to which Arabic numbers are assigned in the appropriate format if the Commission has agreed in writing that that relevant holder may make that combination.⁵⁹
- 6 Subject to paragraph 7(3), a heading or sub-heading corresponding to an item listed in the format appropriate to a relevant holder's balance sheet or profit and loss account shall not be included if there is no amount to be shown for that item in respect of the period to which the balance sheet or profit and loss account relates.
- 7
- (1) In respect of every item shown in the relevant holder's annual balance sheet, or annual profit and loss account the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown.
- (2) Where the corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet, profit and loss account or statement of financial resources relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.
- (3) Paragraph 6 does not apply in any case where an amount can be shown for the item in question in respect of the financial year immediately preceding that to which the balance sheet, profit and loss account or statement of financial resources relates.
- 8 Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

PART 2 – ACCOUNTING PRINCIPLES AND RULES

- 9 General
- Subject to paragraph 14, the amounts to be included in respect of all items shown in the relevant holder's balance sheet and profit and loss account shall be determined in accordance with generally accepted accounting principles and rules, with the Companies (Jersey) Law 1991,⁶⁰ with the accounting standards contained in United Kingdom Statements of Standard Accounting Practice (SSAPs) which are effective when this Order comes into operation and with the following rules.
- 10 Substance over form

Subject to paragraph 9, items shall be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

11 Reporting currency

All amounts shall be shown in pounds.

12 Income tax

Where the profits of a relevant holder are chargeable to income tax in Jersey, provision shall be made for taxation, other than deferred taxation to the following extent –

- (a) the total amount of the income tax (or a fair estimate thereof) payable or expected to be payable on the whole of the profits of the relevant holder up to the balance sheet; or
- (b) whichever is the greater of –
 - (i) the total amount of the income tax (or a fair estimate thereof) outstanding in respect of all years of assessment ended on and before the balance sheet date and, where applicable, the accrued proportion for the year of assessment in which the balance sheet date falls, or
 - (ii) the total amount of the income tax (or a fair estimate thereof) which would be payable if the relevant holder had ceased business at the balance sheet date.

Provision for deferred taxation shall be made in accordance with SSAP 15.

13 Cad counterparty balances

All balances with counterparties which are due to be settled against delivery of documents of title or documents evidencing title shall be reflected at their gross amounts unless the parties to the transaction have expressly agreed in writing that they shall be settled on a net basis.

14 Departure from accounting principles and rules

If it appears to the relevant holder that there are special reasons for departing from any of the principles and rules stated above in preparing the relevant holder's financial statements in respect of any financial year the relevant holder may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the financial statements.

APPENDIX A

BALANCE SHEET FORMAT

A FIXED ASSETS

- I Intangible Assets
 - 1 Development Costs
 - 2 Goodwill
 - 3 Other

- II Tangible Assets
 - 1 Freehold land and buildings
 - 2 Leasehold land and buildings
 - 3 Motor vehicles
 - 4 Office equipment and computers
 - 5 Fixtures and fittings
 - 6 Payments on account
 - 7 Other tangible assets
- III Investments
 - 1 Loans to and shares in group companies and connected companies
 - 2 Other listed investments
 - 3 Other unlisted investments
- B CURRENT ASSETS
 - I Physical stocks
 - II Debtors ⁽¹⁾
 - 1 Trade debtors ⁽²⁾
 - 2 Other debtors
 - 3 Amounts due from connected and group companies
 - 4 Prepayments and accrued income
 - III Investments (long positions)⁽³⁾
 - IV Cash at bank and in hand
- C CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR
 - 1 Bank loans and overdrafts
 - 2 Eligible subordinated loans ⁽⁶⁾
 - 3 Other debenture loans
 - 4 Trade creditors ⁽⁴⁾
 - 5 Investments (short positions)⁽⁵⁾
 - 6 Income tax
 - 7 Other taxation and social security
 - 8 Amounts due to group and connected companies
 - 9 Other creditors
 - 10 Accruals and deferred income
- D NET CURRENT ASSETS (LIABILITIES)
- E TOTAL ASSETS LESS CURRENT LIABILITIES
- F CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR
 - 1 Bank loans and overdrafts
 - 2 Eligible subordinated loans ⁽⁶⁾
 - 3 Other debenture loans
 - 4 Trade creditors ⁽⁴⁾
 - 5 Income tax
 - 6 Amounts due to group and connected companies
 - 7 Other creditors

- 8 Accruals and deferred income
- G PROVISIONS FOR LIABILITIES AND CHARGES
 - 1 Commissions on indemnity terms
 - 2 Pensions and similar obligations
 - 3 Taxation including deferred taxation
 - 4 Other provisions
- H TOTAL ASSETS LESS TOTAL LIABILITIES
- I CAPITAL AND RESERVES
 - 1 Called up share capital ⁽⁷⁾
 - 2 Share premium account
 - 3 Revaluation reserve
 - 4 Other reserves
 - 5 Profit and loss account

[In the case of an annual balance sheet]

Approved by the directors on

Signature

Signature

[In the case of a quarterly balance sheet]

..... (Authorized Signatory) (date)

..... (Authorized Signatory) (date)

Notes on the balance sheet format

- (1) Debtors
 - The amount falling due after more than one year shall be shown separately for each item included under debtors
- (2) Trade debtors
 - (a) CAD debtors
 - The amounts outstanding from persons due to settle against delivery of securities –
 - outstanding for more than 14 days
 - outstanding for 14 days or less
 - (b) Private clients
 - Amounts outstanding in respect of securities transactions from persons due to settle otherwise than against delivery of securities –
 - outstanding for more than 30 days
 - outstanding for 30 days or less
 - (c) Fees
 - Amounts outstanding for more than 30 days from due date

-
- Amounts outstanding for 30 days or less from
due date
- (d) Other
- Amounts outstanding for more than 30 days
Amounts outstanding for 30 days or less
- (3) Investments (long positions)
- (i) Debt instruments
- | | | |
|-----------------------|---|--------------|
| U.K. Government and |) | reported |
| Local Authority debt. |) | separately |
| Accepted or issued |) | for |
| by an approved bank. |) | maturities |
| Floating Rate Notes. |) | of – |
| |) | 0 – 90 |
| Other debt |) | days; |
| instruments – |) | 90 days – |
| marketable |) | 12 months; |
| investments; |) | 12 months – |
| not marketable |) | 5 years; |
| investments. |) | more than 5 |
| |) | years; |
| |) | and in total |
- (ii) Shares (other than in group companies)
- U.K. listed
- U.K. unlisted –
- marketable investments
- not marketable investments
- Overseas listed on a recognized overseas or
designated investment exchange
- Overseas unlisted
- (iii) Collective investment funds
- Units in U.K. authorized unit trust schemes
and recognized schemes (other than Jersey
recognized funds)
- Units in recognized funds
- Other
- (iv) Futures, options, contracts for differences
- Futures
- Purchased options
- Written options
- Contracts for differences
- (v) Shares in group companies
- (vi) Other investments (specify)
- (4) Trade creditors –
- (a) amounts due to be paid against delivery of securities
- (b) amounts due to be paid in respect of securities transactions
otherwise than against delivery of securities
- (c) others
- (5) Investments (short positions)

The same detail should be given as that required by note (3) above

-
- (6) Eligible subordinated loans –
- (a) eligible long term subordinated loans;
 - (b) eligible short term subordinated loans;
 - (c) committed undrawn subordinated loan facilities;
 - (d) bank undertakings.
- (7) Called up share capital
- Any amount of share capital which has not been paid up shall be shown separately
- (8) Contingent liabilities and commitments –
- (a) amounts subject to an investment position risk factor;
 - (b) other amounts arising in the ordinary course of business;
 - (c) other contingent liabilities not provided for;
 - (d) capital commitments contracted for but not provided for;
 - (e) capital commitments authorized but not contracted for;
 - (f) pension commitments not provided for;
 - (g) other financial commitments not provided for.
- The following additional information shall be given, where relevant –
- (i) whether any valuable security has been provided by the firm in connection with a contingent liability or commitment;
 - (ii) the amounts which relate to undertakings on behalf of or for the benefit of group and connected companies.

APPENDIX B

PROFIT AND LOSS ACCOUNT FORMAT

A DEALING

Gains/losses on principal dealings (trading)

- 1 equities
- 2 debt instruments
- 3 futures, options and contracts for differences
- 4 units in recognized funds
- 5 other – specify

B REVENUE

- I Commissions on transactions in collective investments funds
 - 1 U.K. authorized unit trust schemes and recognized schemes (other than Jersey recognized funds)

- 2 recognized funds
 - 3 other – specify
 - II Commissions on transactions in life assurance policies
 - 1 commission on indemnity terms
 - 2 other initial commission
 - 3 renewal commission
 - 4 other – specify
 - III Commissions on securities transactions
 - 1 equities
 - 2 debt instruments
 - 3 other – specify
 - IV Commissions on transactions in futures, options, contracts for differences, etc.
 - 1 futures
 - 2 options
 - 3 contracts for differences
 - 4 other – specify (e.g. commodities)
 - V Annual fund management fees
 - 1 recognized funds
 - 2 other funds
 - VI Fee income in respect of financial advice and general investment management
 - VII Interest and dividends
 - 1 investment positions – recognized funds
 - 2 loan accounts and margin accounts
 - 3 in respect of balances in client bank accounts
 - 4 other (specify)
 - VIII Dealing and settlement services
 - IX Annual fund custodian and fund trustee fees
 - 1 recognized funds
 - 2 other funds
 - X Retained underwriting and placing commissions
 - XI Other revenue – specify if material
- C EXPENDITURE

-
- I Commissions
 - 1 paid to staff
 - 2 paid to investment businesses
 - 3 other (specify)
 - II Salaries and other employment costs (exclusive if commission)
 - III Directors or partners emoluments
 - IV Staff bonuses
 - V Interest charges
 - 1 payable to depositors
 - 2 other (specify)
 - VI Establishment costs
 - VII Communications and marketing
 - VIII Office equipment and services
 - IX Provisions for losses, bad and doubtful debts
 - X Professional charges
 - XI Investment exchange and clearing house charges
 - XII Regulatory fees and expenses
 - XIII Audit fees (including expenses)
 - XIV Miscellaneous office expenses
 - XV Other expenditure – specify if material
 - D PROFIT OR LOSS BEFORE TAXATION
 - E TAXATION
 - F PROFIT OR LOSS AFTER TAXATION
 - G EXTRAORDINARY ITEMS
 - H PROFIT OR LOSS FOR THE FINANCIAL YEAR

APPENDIX C

FINANCIAL RESOURCES STATEMENT FORMAT:

- (1) TRUSTEES AND CUSTODIANS OF RECOGNIZED FUNDS

GROSS CAPITAL

Total assets less total liabilities (line H of the Balance Sheet)	£	_____
Less: fixed intangible assets	(£	_____)
Plus: long term eligible subordinated loans	_____	
short term eligible subordinated loans ⁶¹	_____	
excess taxation	_____	
Other: addition/(deduction) – specify	_____	
Total gross capital	£	_____

MINIMUM FINANCIAL RESOURCES REQUIREMENT

Total gross capital (as above)	£	_____
Deduct: fixed monetary requirement	(£4,000,000)	
investment position risk requirement	(_____)	
	(_____)	
Excess gross capital	£	_____

FINANCIAL RESOURCES STATEMENT FORMAT:

(2) MANAGER OF RECOGNIZED FUND: SECTION A

	£	£	Liquid capital £
FINANCIAL RESOURCES (Section B)			X
Less: INVESTMENT POSITION RISK REQUIREMENT (as calculated in accordance with Schedules 4 and 5)			(x)
Less: FINANCIAL RESOURCES REQUIREMENT			
The greatest of			
A: Fixed amount (see Article 90(a))		£10,000	

B:	Proportion of relevant annual expenditure (Schedule 3)		
Total revenue		x	
Add:	Loss before taxation	x	
Less:	Profit before taxation	(x)	
	Staff bonuses	(x)	
	Profit shares	(x)	
	Other appropriations of profits	(x)	
	Sub-agents' commission	(x)	
	Interest charges	(x)	
Relevant annual expenditure		£ x	
Multiplied by one-quarter (Article 90(b))			£ x
C:	Annual fund management fees for recognized funds	x -----	
	multiplied by one half (Article 90(c))		£ x
Greatest of A, B and C			(x)
SURPLUS			£x

FINANCIAL RESOURCES STATEMENT FORMAT:

(3) MANAGER OF RECOGNIZED FUND: SECTION B

	Balance sheet per financial statements	Gross capital adjustment (Schedule 1)	Liquid capital adjustment (Schedule 2)	Admissible amount
	£			£
FIXED ASSETS				
Intangible Assets	x	Paragraph 1		—
Tangible assets				
Land and buildings	x		Paragraph 2	x

Motor vehicles	x		Paragraph 3	—
Other Investments	x		Paragraph 3	—
	x	Paragraphs 5 and 7	Paragraph 6	x
CURRENT ASSETS				
Physical stocks	x		Paragraph 9	x
Debtors				
Trade debtors	x			x
Prepayments and accrued revenue	x		Paragraphs 7 and 11	x
Other	x		Paragraphs 10 and 12	x
Investments	x	Paragraph 7		x
Cash at bank and in hand	x		Paragraph 8	x
CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR				
Eligible subordinated loans (Section C)	(x)	Paragraph 2		(x)*
Other	(x)		Paragraph 5	(x)
CREDITORS: AMOUNT FALLING DUE AFTER MORE THAN ONE YEAR				
Eligible subordinated loans (Section C)	(x)	Paragraph 2		(x)*
Other	(x)		Paragraph 4	(x)
PROVISIONS FOR LIABILITIES AND CHARGES				
Commission on indemnity terms	(x)	Paragraph 3		(x)

Other	(x)	(x)
TOTAL ASSETS LESS TOTAL LIABILITIES	£ x	
OTHER ADJUSTMENTS		
Taxation	Paragraph 4	x
Assets and liabilities not used in course of investment business		x
Uncovered foreign currency exposures	Paragraph 6	(x)
Bank undertakings	Paragraph 1	x
Exceptional items		x
LIQUID CAPITAL		£ x

* See Section C for the calculation and method of disclosure

FINANCIAL RESOURCES STATEMENT FORMAT:

(4) MANAGER OF RECOGNIZED FUND: SECTION C

ELIGIBLE LOANS

The "Admissible Amount" shall be the greater of – Total A and Total E	£
Eligible short term loans per Balance Sheet	x
Less: Investment position risk requirement	(x)
Total A	£ x
Eligible short term loans per Balance Sheet	x
Add: Eligible long term loans per Balance Sheet	x
Total B	£ x

Share capital and reserves	x
Less: Fixed intangible assets	(x)
Total C	£ x
Total D = Total C multiplied by 400%	£ x
Total E = Total B – Total D	£ x

Note: There is no need to apportion the admissible amount between short term loans and long term loans. The admissible amount should be entered in Column 4 of Section B against the category where the larger amount originated.

SUPPLEMENTARY INFORMATION.

- 1 Number of deals/bargains ----
- 2 Total funds under management
 - (a) recognized funds ----
 - (b) other funds ----
- 3 Positions subject to investment position risk factors

	Long	Short (if applicable)	IPRR
Units in U.K. authorized or recognized schemes			
Units in recognized funds			
Units in other funds			
Other (specify)	_____	_____	_____
	_____	_____	_____
4 Client money balances			
(i) total amount held as at reporting date			----
(ii) highest total since previous reporting date as shown on bank statements			----

- | | | |
|-------|---|------------|
| 5 | Total suspense account balances | ---- |
| 6 | Reconciliations performed since previous reporting date | |
| (i) | All Bank Account Statements | Yes/No/N/A |
| (ii) | All Clearing House Statements | Yes/No/N/A |
| (iii) | All Clients' Money Account Statements | Yes/No/N/A |
| (iv) | All Suspense Accounts | Yes/No/N/A |
| (v) | All Brokers' Statements | Yes/No/N/A |
| 7 | Guarantees, warranties or other financial commitments relating to group or connected companies. | |

SCHEDULE 7

(Article 122)

**FORM OF CLIENT MONEY TRUST DECLARATION FOR OPERATORS OF
RECOGNIZED FUNDS**

Abbreviations and terms used in this Form –

“client bank account” means a client bank account as defined in Article 120 of the Permit Conditions Order;

“client money” means client money as defined in Article 121 of the Permit Conditions Order;

“company” means the company named in answer to A1 below;

“fund” means the collective investment fund named in answer to A2 below;

“General Provisions Order” means the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988;⁶²“Law” means the Collective Investment Funds (Jersey) Law 1988;⁶³“Permit Conditions Order” means the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988;⁶⁴**PART A**

- A1 Name of applicant for permit:
.....
(the “company”)
- A2 Name of collective investment fund to which the application for permit pertains:
.....
(the “fund”)
- A3 The fund takes the form of: a unit trust/an open-ended investment company*
- A4 In relation to the fund the company is: the open-ended investment company itself/the manager*
- A5 Has an application for a recognized fund certificate been made in respect of the fund? Yes/No.* If so, state the date of the application:.....

PART B⁶⁵

By way of “cause” for the grant of a permit by the Commission, we, on behalf of the company:

agree with the Commission and declare that

- (a) all client money which is held or which has been received by the company or which has been paid into a client bank account by the company, shall be held on trust as required by Article 122 of the Permit Conditions Order;
- (b) all client money which is so held, received or paid hereafter shall also be held on trust as required by Article 122 of the Permit Conditions Order; and
- (c) such trusts are irrevocable by the company except with the consent of the Commission.

SIGNED

..... (date)
(director of the company)

SIGNED

..... (date)
(director of the company)

* Delete whichever is NOT applicable.

ENDNOTES**Table of Legislation History**

Legislation	Year and Number	Commencement
Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988	R&O.7816	31 October 1988
Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Amendment) (Jersey) Order 1991	R&O.8204	13 May 1991
Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Amendment No. 2) (Jersey) Order 1992	R&O.8415	20 July 1992
Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Amendment No. 3) (Jersey) Order 1998	R&O.9259	1 July 1998
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	R&O.101/2003	14 October 2003
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	R&O.44/2005	9 December 2005
Financial Services (Amendment No. 3) (Jersey) Law 2008	L.6/2008	9 April 2008 (R&O.47/2008)
Civil Partnership (Consequential Amendments) (Jersey) Regulations 2012	R&O.47/2012	2 April 2012

Table of Renumbered Provisions

Original	Current
PART I	PART 1
1(3), (4)	spent, omitted from this revised edition
1(5)	1(3)
PART II	PART 2
PART III	PART 3
PART IV	PART 4
PART V	PART 5
PART VI	PART 6
56(2)	repealed by

Original	Current
	R&O.8204
(3)	56(2)
(4)	(3)
PART VII	PART 7
59(1)(i)	59(1)(a)
(ii)	(b)
(iii)	(c)
(iv)	(d)
(v)	(e)
(vi)	(f)
(vii)	(g)
(viii)	(h)
(ix)	(i)
(x)	(j)
(xi)	(k)
(xii)	(l)
(xiii)	(m)
PART VIII	PART 8
PART IX	PART 9
PART X	PART 10
PART XI	PART 11
PART XII	PART 12
PART XIII	PART 13
94(3)	94(2)
(4)	(3)
100(2)(j)	100(2)(i)
(k)	(j)
PART XIV	PART 14
PART XV	PART 15
PART XVI	PART 16
120 definition “client bank account”(i)	120 definition “client bank account”(a)
(ii)	(b)
(iii)	(c)
PART XVII	PART 17
FIRST SCHEDULE	SCHEDULE 1
Para. 3(2),(3),(4),(5)	spent, omitted from this edition
SECOND SCHEDULE	SCHEDULE 2
THIRD SCHEDULE	SCHEDULE 3
FOURTH SCHEDULE	SCHEDULE 4
FIFTH SCHEDULE	SCHEDULE 5

Original	Current
SIXTH SCHEDULE	SCHEDULE 6
PART I	PART 1
PART II	PART 2
SEVENTH SCHEDULE	SCHEDULE 7

Table of Endnote References

¹	<i>This Order has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government.</i>
²	<i>chapter 13.100</i>
³	<i>chapter 13.100.60</i>
⁴	<i>chapter 13.100</i>
⁵ Article 1(1)	<i>amended by R&O.9259, R&O.47/2012</i>
⁶ Article 6	<i>amended by R&O.9259</i>
⁷ Article 7	<i>amended by R&O.9259</i>
⁸ Article 8	<i>amended by R&O.9259</i>
⁹ Article 9	<i>amended by R&O.9259</i>
¹⁰ Article 10	<i>amended by R&O.9259</i>
¹¹ Article 11	<i>amended by R&O.9259</i>
¹² Article 12	<i>amended by R&O.9259</i>
¹³ Article 18(1)	<i>amended by R&O.9259</i>
¹⁴ Article 20(1)	<i>amended by R&O.9259</i>
¹⁵ Article 23	<i>amended by R&O.9259</i>
¹⁶ Article 24	<i>amended by R&O.9259</i>
¹⁷	<i>chapter 13.150</i>
¹⁸	<i>chapter 13.225</i>
¹⁹ Article 37(3)	<i>amended by L.6/2008</i>
²⁰ Article 47	<i>and heading amended by R&O.9259</i>
²¹ Article 79	<i>amended by R&O.9259</i>
²² Article 85(3)	<i>amended by R&O.9259</i>
²³ Article 87	<i>amended by R&O.9259</i>
²⁴ Article 90	<i>amended by R&O.9259</i>
²⁵ Article 91	<i>amended by R&O.9259</i>
²⁶ Article 93(1)	<i>amended by R&O.9259</i>
²⁷ Article 93(2)	<i>amended by R&O.9259</i>
²⁸ Article 93(6)	<i>amended by R&O.9259</i>
²⁹ Article 93(7)	<i>amended by R&O.9259</i>
³⁰ Article 94(1)	<i>amended by R&O.9259</i>
³¹ Article 94(2)	<i>amended by R&O.9259</i>
³² Article 95(2)	<i>amended by R&O.9259</i>
³³ Article 96(4)	<i>amended by R&O.9259</i>
³⁴ Article 97	<i>amended by R&O.9259</i>
³⁵ Article 98	<i>amended by R&O.9259</i>
³⁶ Article 100(1)	<i>amended by R&O.9259</i>
³⁷ Article 102	<i>amended by R&O.9259</i>
³⁸ Article 104	<i>amended by R&O.9259</i>
³⁹ Article 105	<i>amended by R&O.9259</i>
⁴⁰ Article 106	<i>amended by R&O.9259</i>
⁴¹ Article 107	<i>amended by R&O.9259</i>
⁴² Article 108	<i>amended by R&O.9259</i>
⁴³ Article 109	<i>amended by R&O.9259</i>
⁴⁴ Article 110	<i>amended by R&O.9259</i>
⁴⁵ Article 111	<i>amended by R&O.9259</i>
⁴⁶ Article 112	<i>amended by R&O.9259</i>

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- ⁴⁷ Article 114 *amended by R&O.9259*
⁴⁸ *chapter 13.125*
⁴⁹ Article 115(1) *amended by R&O.8415*
⁵⁰ Article 115 *amended by R&O.9259*
⁵¹ Article 117 *amended by R&O.9259*
⁵² Article 118 *amended by R&O.9259*
⁵³ Article 119 *amended by R&O.9259*
⁵⁴ *chapter 13.450*
⁵⁵ Article 126(4) *amended by R&O.9259*
⁵⁶ *chapter 13.125*
⁵⁷ Schedule 2 *paragraph 1 amended by R&O.9259*
⁵⁸ Schedule 2 *paragraph 2 amended by R&O.9259*
⁵⁹ Schedule 6 *paragraph 5 amended by R&O.9259*
⁶⁰ *chapter 13.125*
⁶¹ *This addition is limited to the amount of the investment position risk requirement*
⁶² *chapter 13.100.60*
⁶³ *chapter 13.100*
⁶⁴ *chapter 13.100.70*
⁶⁵ Schedule 7 *Part B amended by R&O.9259*