



STATUTORY INSTRUMENTS.

**S.I. No. 420 of 2015**

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CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013  
(SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT  
IN TRANSFERABLE SECURITIES) REGULATIONS 2015

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(SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT  
IN TRANSFERABLE SECURITIES) REGULATIONS 2015

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CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013  
(SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT  
IN TRANSFERABLE SECURITIES) REGULATIONS 2015

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the “Act”), the Bank, having consulted with the Minister for Finance and the Minister for Enterprise, Jobs and Innovation in accordance with section 49(1) of the Act hereby makes the following regulations:

PART 1

PRELIMINARY AND GENERAL

*Citation and commencement*

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015.

(2) (a) Subject to paragraph (b), these Regulations commence on 1 November 2015.

(b) In relation to UCITS authorised by the Bank prior to the date of commencement of these Regulations, as referred to in paragraph (a), Regulation 33(3) of these Regulations shall commence on 1 November 2016.

*Interpretation*

2. (1) In these Regulations, unless the context otherwise requires:

“actively managed UCITS ETF” means a UCITS ETF, in respect of which the responsible person has discretion over the composition of its portfolio and which, subject to the stated investment objectives and policies, may have the objective of outperforming an index;

“alternative investment fund” has the meaning given to the term in Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013);

“AIF” means an alternative investment fund;

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 6th October, 2015.*

“annual tracking difference” means the difference between the annual return of an index-tracking UCITS and the annual return of the tracked index;

“anti-dilution levy” means a charge imposed on subscriptions or on redemptions as relevant, to offset the dealing costs of buying or selling assets of the UCITS, as a result of net subscriptions or of net redemptions on a dealing day;

“associated company” has the meaning given to the term in schedule 4, paragraph 20 of the Companies Act 2014 (No. 38 of 2014);

“central counterparty” means a person specified in Regulation 8(5);

“constitutional document” means:

- (a) in the case of a unit trust, the trust deed,
- (b) in the case of an investment company, the memorandum and articles of association,
- (c) in the case of a common contractual fund, the deed of constitution; and
- (d) in the case of an Irish Collective Asset-management Vehicle, the instrument of incorporation.

“directed brokerage services” means brokerage services in relation to a UCITS pursuant to which a commission or similar payment is paid to or secured by the entity which issues instructions;

“EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“ESMA” means the European Securities and Markets Authority;

“FDI” means a financial derivative instrument;

“financial resources” has the meaning given to the term in Schedule 9;

“group undertaking” means an undertaking that is included in the same group for the purposes of preparing consolidated accounts, in accordance with Directive 2013/34/EU or in accordance with recognised international accounting rules;

“index-tracking UCITS” means a UCITS the strategy of which is to replicate (by any means including physical or synthetic replication) or track the performance of an index or indices;

“index-tracking leveraged UCITS” means a UCITS the strategy of which is to have a leveraged exposure to an index or exposure to a leveraged index;

“indicative net asset value” means a measure of the intraday value of the net asset value of a UCITS ETF based on the most up-to-date information. For the avoidance of doubt the indicative net asset value is not necessarily the value at which investors on the secondary market purchase and sell their units;

“investment adviser” means a firm appointed by:

- (a) a responsible person, or
- (b) an investment manager (including any sub investment manager),

to provide investment advice in respect of some or all of the assets of a UCITS and which does not have any discretionary powers over any of the assets of that UCITS;

“investment fund” means a UCITS or an AIF;

“investment manager” means a firm appointed by a responsible person to manage some or all of the assets of a UCITS on a discretionary basis and shall include any sub investment manager appointed by an investment manager;

“KIID” means a key investor information document of a UCITS;

“legal maturity” means the date when the principal of a security is to be repaid in full and which is not subject to any optionality;

“management company” has the meaning given to the term in the UCITS Regulations, with the exception of Part 11 where the term refers exclusively to a management company for which the Bank is the management company’s home Member State;

“minimum capital requirement report” means a report prepared in accordance with Regulation 95;

“multilateral trading facility” has the meaning given to the term in Article 4 of MiFID;

“resident in the State” means a person who is present in the State for the whole of 110 business days per year;

“regulatory criteria” means those non-exhaustive considerations in respect of a regulated market, including those set out in Schedule 1, to which the responsible person shall have regard when assessing the eligibility of a market for investment;

“responsible person” means a management company, where one has been designated to act in respect of a particular UCITS and in the absence of any such designation, the UCITS itself. In the case of Regulation 47, the responsible person means the UCITS investment company where the designated management company is being replaced;

“SEC” means the Securities and Exchange Commission of the United States of America;

“soft commission” means an agreement or other arrangement under which an entity receives goods or services in return for which it agrees to direct, or in fact directs, business through or to another person or otherwise confers an economic advantage on that other person;

“tracking error” means the volatility of the difference between the return of the index-tracking UCITS and the return of the index or indices that is or are tracked;

“UCITS ETF” means a UCITS at least one unit or share class of which is traded throughout the day on at least one regulated market or multilateral trading facility with at least one market maker which takes action to ensure that the stock exchange value of its units does not vary significantly from its net asset value and where applicable from its indicative net asset value;

“UCITS Regulations” means European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) (as amended);

“umbrella UCITS” means a UCITS which has one or more sub-funds;

“valuation policy” has the meaning given to that term by Regulation 34;

“weighted average life” (“WAL”) means the average length of time to the legal maturity of all the underlying assets in the UCITS reflecting the relative holdings in each asset;

“weighted average maturity” (“WAM”) means the average length of time to maturity or, if shorter, to the next interest rate reset to a money market rate, of all the underlying assets in the UCITS reflecting the relative holding in each case.

(2) For the purposes of these Regulations, in particular Part 2, Chapter 2 of these Regulations, any investment restrictions (which are applicable to particular types of assets invested in by a UCITS) or borrowing restrictions (which are applicable to borrowing by a UCITS) apply to the net asset value of the UCITS and to each sub-fund of an umbrella fund as if each sub-fund was a separate UCITS.

(3) A word or expression used in these Regulations and also used in the UCITS Regulations or the description or explanation of a matter set out in the UCITS Regulations and referred to in these Regulations has, unless the contrary intention appears, the same meaning (description or explanation) in these Regulations that it has in the UCITS Regulations.

## PART 2

## RESTRICTIONS ON UCITS

## Chapter 1

*General**General restrictions*

3. Where a counterparty has discretion over the composition or management of a UCITS investment portfolio or of the underlying of the FDI, the arrangement between the relevant UCITS and the counterparty shall be an investment management delegation arrangement and the responsible person shall comply with the requirements on delegation in the UCITS Regulations.

*Eligible assets: transferable securities*

4. (1) A responsible person shall ensure that investment by a UCITS in a partly paid transferable security does not expose the UCITS to loss beyond the amount to be paid for it.

(2) For the purpose of ensuring the ability of the UCITS to comply with Regulation 104(1) of the UCITS Regulations, a responsible person shall:

- (a) assess (and document this assessment in writing) its liquidity risk, where information is available to the responsible person that would lead it to determine that investment by the UCITS in a transferable security could compromise the ability of the UCITS to comply with Regulation 104(1) of the UCITS Regulations;
- (b) assess (and document this assessment in writing), by reference to the factors specified in this sub-paragraph at a minimum, the liquidity risk of a transferable security when investing in any transferable security:
  - (i) the volume of and turnover in the transferable security;
  - (ii) if price is determined by supply and demand in the market, the issue size and the portion of the issue that the investment manager plans to buy;
  - (iii) the opportunity and timeframe to buy or sell the transferable security;
  - (iv) an assessment of the quality of secondary market activity in the transferable security and an analysis of the quality and number of intermediaries and market makers dealing in the transferable security concerned;
- (c) assess (and document this assessment in writing):
  - (i) the liquidity of transferable securities; and
  - (ii) the negotiability of transferable securities held in the portfolio;

where such transferable securities are not admitted to trading on a regulated market as defined in Regulation 68(1)(a) to (d) of the UCITS Regulations, in order to ensure compliance with Regulation 104(1) of the UCITS Regulations.

*Closed-ended funds*

5. A responsible person shall not invest the assets of a UCITS in a closed-ended fund for the purpose of circumventing the investment restrictions set out in the UCITS Regulations.

*Money-market instruments*

6. (1) A responsible person shall only invest assets of a UCITS in a money-market instrument where the responsible person has:

- (a) assessed the liquidity of that money-market instrument;
- (b) retained written records of that assessment.

(2) In assessing the liquidity of a money-market instrument for the purpose of sub-paragraph (1)(a), the responsible person shall take the following factors into account:

- (a) in respect of the particular money-market instrument:
  - (i) the frequency of trades and quotes for the instrument;
  - (ii) the number of dealers who are willing to purchase and sell the instrument;
  - (iii) the willingness of the relevant dealers to make a market in the relevant instrument;
  - (iv) the nature of market place trades;
  - (v) the size of the particular issuance or programme; and
  - (vi) the possibility to repurchase, redeem or sell the relevant instrument in a short period and whether such repurchase, redemption or sale can be achieved at limited cost in terms of fees and bid/offer prices and with very short settlement delay; and
- (b) in respect of the UCITS:
  - (i) unit-holder structure and the concentration of unit-holders of the UCITS;
  - (ii) the purpose of funding of unit-holders;
  - (iii) the quality of information on the cash flow patterns of the UCITS; and
  - (iv) the prospectus's guidelines of the UCITS on limiting withdrawals.

(3) Where a responsible person considers that an amortization method can be used to assess the value of a money-market instrument it shall ensure that this method will not result in a material discrepancy between the value of the money-market instrument and the value calculated according to the amortization method as set out in Regulation 88.

(4) Where the presumption of liquidity and accurate valuation provided for in paragraph 5 of Schedule 3 of the UCITS Regulations cannot be relied upon, the money-market instrument shall be subject to an appropriate assessment by the responsible person.

(5) A responsible person must be able to demonstrate that it has assessed liquidity for all money-market instruments which are traded on a regulated market but for which the responsible person was not able to rely on a presumption of liquidity.

*Deposits with credit institutions*

7. A responsible person shall only invest assets of the UCITS in deposits if such deposits meet the requirements of Regulation 68(1)(f) of the UCITS Regulations and are made with a credit institution which is within at least one of the following categories:

- (a) a credit institution authorised in the EEA;
- (b) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988; or
- (c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

*Financial derivative instruments*

8. (1) A responsible person shall only invest assets of the UCITS in an FDI if:

- (a) the FDI does not expose the UCITS to risks which the UCITS could not otherwise assume;
- (b) the FDI does not cause the UCITS to diverge from its investment objectives disclosed in its prospectus; and
- (c) the FDI is dealt in on a regulated market or alternatively the conditions in paragraph (3) are satisfied.

(2) Where a responsible person enters, on behalf of a UCITS, into a total return swap or invests in other FDIs with similar characteristics, the assets held by the UCITS shall comply with Regulations 70, 71, 72, 73 and 74 of the UCITS Regulations.

(3) A responsible person shall only invest assets of the UCITS in an OTC derivative if the derivative counterparty is within at least one of the following categories:

- (a) a credit institution that is within any of the categories set out in Regulation 7;
  - (b) an investment firm authorised in accordance with MiFID; or
  - (c) a group company of an entity issued with a bank holding company licence from the Federal Reserve of the United States of America where that group company is subject to bank holding company consolidated supervision by that Federal Reserve.
- (4) Where a counterparty within subparagraphs (b) or (c) of paragraph (3):
- (a) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and
  - (b) where a counterparty is downgraded to A-2 or below (or comparable rating) by the credit rating agency referred to in subparagraph (a) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay.
- (5) Where an OTC derivative referred to in subparagraphs (a), (b) and (c) of paragraph (3) is subject to a novation, the counterparty after the novation must be:
- (a) an entity that is within any of the categories set out in subparagraphs (a), (b) and (c) of paragraph (3); or
  - (b) a central counterparty that is:
    - (i) authorised or recognised under EMIR; or
    - (ii) pending recognition by ESMA under Article 25 of EMIR, an entity classified:
      - (I) by the SEC as a clearing agency; or
      - (II) by the Commodity Futures Trading Commission of the United States of America as a derivatives clearing organisation.
- (6) (a) Risk exposure to the counterparty shall not exceed the limits set out in Regulation 70(1)(c) of the UCITS Regulations, assessed in accordance with subparagraph (b).
- (b) In assessing risk exposure to the counterparty to an OTC derivative for the purpose of Regulation 70(1)(c) of the UCITS Regulations:
- (i) a responsible person shall calculate the exposure to the counterparty using the positive mark-to-market value of the OTC derivative with that counterparty;

- (ii) a responsible person may net derivative positions with the same counterparty, provided that the UCITS is able to legally enforce netting arrangements with the counterparty. For this purpose netting is permissible only in respect of OTC derivatives with the same counterparty and not in relation to any other exposures the UCITS has with the same counterparty;
- (iii) a responsible person may take account of collateral received by the UCITS in order to reduce the exposure to the counterparty, provided that the collateral meets with the requirements specified in paragraphs (3), (4), (5), (6), (7), (8), (9) and (10) of Regulation 24.

#### *Financial Index*

9. (1) A responsible person shall ensure that it is able to demonstrate that a financial index in which assets of the UCITS are invested satisfies the following:

- (a) an index should have a clear, single objective in order to represent an adequate benchmark for the market;
- (b) the universe of the index components and the basis on which these components are selected for the strategy should be clear to investors and competent authorities; and
- (c) if cash management is included as part of the index strategy, the responsible person must be able to demonstrate that this cash management does not affect the objective nature of the index calculation methodology.

(2) If a financial index has been created and calculated on the request of a single market participant, or of a very limited number of market participants, and according to the specifications of that market participant or those market participants, it shall not constitute an adequate benchmark of the market to which it refers.

(3) A responsible person shall ensure that a due diligence exercise on the quality of the financial index is carried out and documented, prior to investment of the assets of the UCITS in the index, and on an on-going basis, considering matters including:

- (a) whether the index methodology contains an adequate explanation of the weightings and classification of the components on the basis of the investment strategy;
- (b) whether the index represents an adequate benchmark;
- (c) matters relating to the index components; and
- (d) an assessment of the availability of information on the index, including:

- (i) whether there is a clear narrative description of the benchmark;
- (ii) whether there is an independent audit and the scope of such an audit; and
- (iii) the frequency with which the index is published and whether this will affect the ability of the UCITS to calculate its net asset value.

(4) A responsible person shall not invest assets of the UCITS in a financial index where a single component's impact on the overall return of that index exceeds the diversification requirements set out in Regulation 71 of the UCITS Regulations.

(5) A responsible person shall not invest assets of the UCITS in a leveraged financial index where a single component's impact on the overall return of that index, taking into account the leverage, exceeds the diversification requirements set out in Regulation 71 of the UCITS Regulations.

(6) A responsible person shall not invest assets of the UCITS in a financial index:

- (a) that rebalances on an intraday or daily basis, or the rebalancing frequency of which prevents investors from being able to replicate the financial index;
- (b) in respect of which the index provider does not disclose, in a manner that is easily accessible by and free of charge to investors and prospective investors, the information prescribed in paragraph (7) on the full calculation methodology sufficient to enable investors to replicate the financial index; or
- (c) information on the performance of which is not freely available to investors.

(7) The information on the full calculation methodology that must be disclosed shall include:

- (a) index constituents;
- (b) index calculation (including the effect of leverage within the index);
- (c) re-balancing methodologies;
- (d) index changes;
- (e) information on any operational difficulties in providing timely or accurate information; and
- (f) important parameters or elements to be taken into account by investors to replicate the financial index.

(8) A responsible person shall only invest assets of the UCITS in a financial index if that index complies with the conditions set out in paragraph (9).

(9) (a) The conditions to which paragraph (8) refers are that:

- (i) the financial index publishes, in a manner that is easily accessible by and free of charge to investors and prospective investors, its constituents together with, in accordance with subparagraph (b), their respective weightings;
- (ii) the methodology for the selection and the rebalancing of the components of the financial index is based on a set of pre-determined rules and objective criteria;
- (iii) the index-provider does not accept payments from potential index components for inclusion in the index;
- (iv) the methodology of the financial index does not permit retrospective changes to previously published index values; and
- (v) the financial index is subject to independent valuation.

(b) The requirements to which subparagraph (a)(i) refers are that:

- (i) weightings are published after each re-balancing which publication may be on a retrospective basis; and
- (ii) the information on the constituents of the financial index and their respective weightings shall:
  - (I) cover the previous period since the last rebalancing; and
  - (II) include all levels of the index.

(10) A responsible person shall only invest assets of the UCITS in a commodity index if the conditions specified in paragraph (11) are satisfied in respect of that investment in that commodity index.

(11) The conditions to which paragraph (10) refers are that:

- (a) the relevant commodity index is comprised of different commodities; and
- (b) sub-categories of a commodity shall be regarded as being the same commodity for the calculation of the diversification limits set out in Regulation 71 of the UCITS Regulations if those sub-categories are highly correlated within the meaning of paragraph (12).

(12) For the purposes of paragraph (11) two components of a commodity index that are sub-categories of the same commodity are highly correlated if 75 per cent of the correlation observations are above 0.8, where correlation observations are calculated as follows:

- (a) on the basis of equally-weighted daily returns of the corresponding commodity prices, and
- (b) from a 250-day rolling time window over a five-year period.

## Chapter 2

### *Investment Restrictions*

#### *Investment funds*

10. (1) Where, by virtue of an investment in the units of another investment fund, a responsible person, an investment manager or an investment adviser receives a commission on behalf of the UCITS (including a rebated commission), the responsible person shall ensure that the relevant commission is paid into the property of the UCITS.

(2) Where a responsible person invests the assets of a sub-fund within an umbrella UCITS in the units of another sub-fund within that umbrella UCITS, that investment is subject to the requirements in paragraph (3), in addition to the provisions of paragraph (1).

(3) The requirements for the purposes of paragraph (2) are:

- (a) the investment shall not be made in a sub-fund which itself holds units in any other sub-fund within the umbrella UCITS; and
- (b) where a responsible person, on behalf of a sub-fund (the “Investing Fund”) of an umbrella UCITS invests in the units of other sub-funds of that umbrella (each a “Receiving Fund”), the rate of the annual management fee which investors in the Investing Fund are charged in respect of that portion of the Investing Fund’s assets invested in Receiving Funds (whether such fee is paid directly at the Investing Fund level, indirectly at the level of the Receiving Funds or a combination of both) shall not exceed the rate of the maximum annual management fee which investors in the Investing Fund may be charged in respect of the balance of the Investing Fund’s assets, such that there shall be no double charging of the annual management fee to the Investing Fund as a result of its investments in the Receiving Fund. This provision is also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the UCITS.

(4) Where a responsible person proposes that a sub-fund within an umbrella UCITS will invest in the units of another sub-fund within that umbrella by way of transfer for consideration, that responsible person shall, in writing, notify the Bank of that proposal and of the rationale for the proposed investment, in advance of the proposed date of investment.

#### *Deposits*

11. (1) Deposits with any single credit institution, other than a credit institution specified in Regulation 7, held as ancillary liquidity, shall not exceed:

- (a) 10 per cent of net assets of the UCITS; or
- (b) where the deposit is made with the depositary, 20 per cent of net assets of the UCITS.

(2) For the purposes of paragraph (1), credit institutions which are group companies shall be regarded as a single credit institution for the purpose of calculating the limits contained in this Regulation.

*Recently issued transferable securities*

12. (1) Subject to paragraph (2), a responsible person shall not invest any more than 10 per cent of the assets of a UCITS in securities of the type to which Regulation 68(1)(d) of the UCITS Regulations applies.

(2) Paragraph (1) does not apply to investment by a responsible person in US securities known as “Rule 144A securities” provided that:

- (a) the relevant securities have been issued with an undertaking to register the securities with the SEC within one year of issue; and
- (b) the securities can be realised by the UCITS within seven days at the price, or approximately at the price, at which they are valued by the UCITS.

*Financial derivative instruments*

13. (1) For the purpose of Regulation 70 of the UCITS Regulations and the calculation of issuer concentration limits of a UCITS, a responsible person shall:

- (a) include any net exposure to a counterparty generated through a securities lending or repurchase agreement, where net exposure means the amount receivable by a UCITS less any collateral provided by the UCITS;
- (b) include exposures created through the reinvestment of collateral; and
- (c) establish whether the exposure of the UCITS is to an OTC counterparty, a broker, a central counterparty or a clearing house.

(2) The position exposure of a UCITS, if any, to the underlying assets of an FDI, including an FDI that is embedded in transferable securities, money-market instruments or investment funds, when combined with positions resulting from direct investments:

- (a) shall be calculated in accordance with paragraph (3); and
- (b) shall not exceed the investment limits set out in Regulations 70 and 73 of the UCITS Regulations.

(3) For the purposes of paragraph (2):

- (a) when calculating issuer-concentration risk, the FDI (including embedded FDI) must be looked through in determining the resultant position exposure and this position exposure shall be taken into account in the issuer concentration calculations;
- (b) a responsible person shall calculate the position exposure of the UCITS using the commitment approach or the maximum potential loss as a result of default by the issuer approach, whichever is greater; and
- (c) a responsible person shall calculate the position exposure, regardless of whether a UCITS uses VaR for global exposure purposes.

(4) Paragraph (2) does not apply in the case of an index-based FDI provided the underlying index meets the criteria set out in Regulation 71(1) of the UCITS Regulations.

#### *Borrowings by a UCITS*

14. (1) A responsible person shall not offset credit balances of a UCITS, such as cash, against borrowings, when determining the percentage of borrowings that are outstanding.

(2) A responsible person shall ensure that a UCITS with foreign currency borrowings which exceed the value of the back to back deposit treats that excess as borrowing for the purpose of Regulation 103 of the UCITS Regulations.

## Chapter 3

### *Financial Derivative Instruments*

#### *Cover requirements*

15. (1) Where the initial margin posted to and variation margin receivable from a broker relating to an exchange-traded derivative or an OTC derivative is not protected by client money rules or other similar arrangements to protect the UCITS in the event of the insolvency of the broker, the responsible person shall calculate exposure of the UCITS within the OTC counterparty limit as referred to in Regulation 70(1)(c) of the UCITS Regulations.

- (2) A responsible person shall ensure that, at all times:
  - (a) the UCITS is capable of meeting all its payment and delivery obligations incurred by transactions involving FDI;
  - (b) the risk management process of the UCITS includes the monitoring of FDI transactions to ensure that every such transaction is covered adequately;
  - (c) a transaction in FDI which gives rise to, or could potentially give rise to, a future commitment on behalf of a UCITS is covered in accordance with the conditions specified in paragraph (3).

(3) The conditions to which subparagraph (c) of paragraph (2) refers are:

- (a) in the case of an FDI that is, automatically or at the discretion of the UCITS, cash-settled, the UCITS must, at all times, hold liquid assets that are sufficient to cover the exposure;
- (b) in the case of an FDI that requires physical delivery of the underlying asset, either:
  - (i) the asset must at all times be held by a UCITS; or
  - (ii) where either or both of the conditions in subparagraphs (a) and (b) of paragraph (4) applies, the UCITS must cover the exposure with sufficient liquid assets.

(4) The conditions to which clause (ii) of subparagraph (b) of paragraph (3) refers are:

- (a) the underlying asset consists, or the underlying assets consist, of highly liquid fixed income securities;
- (b) (i) the exposure can be covered without the need to hold the underlying assets;
- (ii) the specific FDI is addressed in the risk management process; and
- (iii) details of the exposure are provided in the prospectus.

*Risk management process and reporting*

16. (1) A responsible person shall in writing notify the Bank of material amendments to the initial filing of the risk management process of a UCITS, in advance of the amendment being made.

(2) The Bank may object to the making of any proposed amendment that is notified to it under paragraph (1).

(3) (a) No proposed amendment to which the Bank has objected under paragraph (2) shall be made to the risk management process of a UCITS.

(b) Where the Bank has objected under paragraph (2) to the making of a proposed amendment to the risk management process of a UCITS, neither:

(i) the relevant management company, nor (ii) the relevant UCITS,

shall engage in any activity that is associated with or which would derive from the proposed amendment to which the objection has been made.

*Calculation of global exposure*

17. A responsible person shall ensure that, at all times:

(a) the UCITS complies with the limits on global exposure;

- (b) the UCITS establishes and implements appropriate internal risk management measures and limits, irrespective of whether the UCITS uses a commitment approach or the VaR approach or any other methodology to calculate global exposure. For the purpose of subparagraph (1), paragraph 12 of Schedule 9 of the UCITS Regulations, a UCITS shall only select a methodology where ESMA has published guidelines on the selected methodology; and
- (c) it calculates the global exposure in accordance with Schedule 2.

*Global exposure: commitment approach (structured UCITS)*

18. (1) The responsible person of a structured UCITS within the meaning of Article 36(1) of Commission Regulation (EU) No 583/2010, shall only calculate global exposure of a structured UCITS using the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations in the following circumstances:

- (a) the UCITS is managed passively and structured to achieve, at maturity, the pre-defined payoff and holds at all times the assets needed to ensure that this pre-defined payoff will be met;
- (b) the UCITS is formula-based and the pre-defined payoff can be divided into a limited number of separate scenarios which are dependent on the value of the underlying assets and which offer investors different payoffs;
- (c) an investor can be exposed to only one payoff profile at any time during the life of the UCITS;
- (d) the use of the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations to calculate global exposure for the individual scenarios is appropriate taking into account the provisions of:
  - (i) guideline 1, paragraph 2(d) of the ESMA Guidelines on Risk Measurement and the Calculation of Global Exposure for Certain Types of Structured UCITS (Ref: ESMA 4/2011/112);
  - (ii) paragraphs 11 to 13 of Schedule 9 of the UCITS Regulations; and
  - (iii) guidelines 1, 4 and 5 of box 1 of the ESMA Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref: CESR/10-788);
- (e) the UCITS has a final maturity not exceeding nine years;
- (f) the UCITS does not accept new subscriptions from the public after the initial marketing period;

- (g) the maximum loss the UCITS can suffer when the portfolio switches from one payoff profile to another is limited to 100 per cent of the initial offer price; and
- (h) the impact of the performance of a single underlying asset on the payoff profile, when the UCITS switches from one scenario to another, complies with the diversification requirements of the UCITS Regulations based on the initial net asset value of the UCITS.

(2) The responsible person of a structured UCITS, within the meaning of Article 36(1) of Commission Regulation (EU) No 583/2010, shall use the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations, adjusted as provided for in paragraph (3), as the calculation method for a structured UCITS.

(3) The adjustments to which paragraph (2) refers are that:

- (a) the formula-based investment strategy for each pre-defined payoff is broken down into individual payoff scenarios;
- (b) the FDI implied in each scenario is assessed to establish whether the derivative may be excluded from the calculation of global exposure under boxes 3 and 4 of the ESMA Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref: CESR/10-788); and
- (c) the responsible person calculates the global exposure of the individual scenarios to assess compliance with the global exposure limit of 100 per cent of net asset value.

*Global exposure: Value at Risk approach*

19. (1) A responsible person that calculates the global exposure of a UCITS using the VaR approach shall consider all of the positions of the UCITS portfolio.

(2) A responsible person shall at all times set the maximum VaR limit of a UCITS according to its defined risk profile.

(3) A responsible person shall ensure that a UCITS that uses the VaR approach uses:

- (a) the relative VaR approach, or
- (b) the absolute VaR approach,

whichever is the most appropriate methodology given the risk profile and investment strategy of the UCITS to calculate global exposure as set out in Schedule 4.

(4) For the purposes of paragraph (3):

- (a) a responsible person shall ensure that there is consistency in the choice of the type of VaR used by the UCITS; and

- (b) the decision as to whether to use the relative VaR approach or the absolute VaR approach, and the assumptions underlying that decision, must be documented fully by the responsible person.
- (5) A responsible person shall ensure that:
  - (a) the VaR approach used by the UCITS takes into account, as a minimum, general market risk and, if applicable, idiosyncratic risk;
  - (b) the event risks or the default risks, or (as the case may be) both, to which the UCITS is exposed following its investments are also be taken into account in the stress testing programme for the purposes of Regulation 21;
  - (c) the VaR approach used by the UCITS is appropriate having regard to the investment strategy that is being pursued and the types and complexity of the financial instruments used by the UCITS;
  - (d) the VaR approach it selects for the UCITS:
    - (i) provides for completeness;
    - (ii) assesses the risks with a high level of accuracy; and
    - (iii) complies with the conditions set out in paragraph (6); and
  - (e) in assessing the global exposure by means of a VaR approach, it complies with the quantitative and qualitative minimum requirements set out in Schedule 4.
- (6) The conditions to which clause (iii) of subparagraph (d) of paragraph (5) refers are that:
  - (a) all the positions of the UCITS portfolio are included in the VaR calculation;
  - (b) the approach captures adequately all the material market risks associated with portfolio positions and, in particular, the specific risks associated with FDI. For this purpose, the VaR approach must cover all the risk factors that have more than a negligible influence on the fluctuation of the portfolio's value;
  - (c) the quantitative models that are used within the VaR approach, including pricing tools, estimation of volatilities and correlations, shall provide for a high level of accuracy; and
  - (d) all data that is used within the VaR approach shall provide for consistency, timeliness and reliability.

*Back-testing*

20. (1) A responsible person shall conduct a back-testing programme for the UCITS for the purpose of monitoring the accuracy and performance of its VaR approach.

(2) The back-testing programme to which paragraph (1) refers shall provide, for each business day, a comparison of:

- (a) the one-day VaR measure generated by the UCITS model for the UCITS end-of-day positions; and
- (b) the one-day change of the UCITS portfolio value by the end of the subsequent business day.

(3) The back-testing programme to which paragraph (1) refers shall be conducted at least on a monthly basis, subject to always performing retroactively the comparison for each business day as detailed in paragraph (2).

(4) A responsible person shall determine and monitor any overshooting of a UCITS on the basis of its back-testing programme.

(5) Where the results of the back-testing programme undertaken by virtue of this Regulation reveal a percentage of overshootings that exceeds 4 for the most recent 250 business days in the case of a 99 per cent confidence interval, the responsible person must review the VaR approach and make appropriate adjustments.

(6) Where, in the case of a 99 per cent confidence interval, the number of overshootings for a UCITS for the most recent 250 business days exceeds 4, the responsible person shall:

- (a) inform the senior management of the responsible person, at least quarterly; and
- (b) inform the Bank, at least semi-annually; and
- (c) comply with paragraph (7).

(7) A responsible person shall provide the senior management of the responsible person and the Bank with:

- (a) an analysis of the sources of overshootings;
- (b) an explanation of the sources of overshootings; and
- (c) a statement of what measures, if any, have been taken to improve the accuracy of the VaR approach.

(8) For the purposes of this Regulation, “overshooting” means a one-day change in the value of the relevant portfolio that exceeds the related one-day value-at-risk measure calculated by the VaR approach.

*Stress-testing*

21. (1) A responsible person shall, in accordance with paragraph (2), conduct a rigorous, comprehensive and adequate stress-testing programme for a UCITS which uses the VaR approach.

(2) The requirements to which paragraph (1) refers are:

- (a) the stress-testing programme shall be conducted in accordance with the qualitative and quantitative requirements of paragraphs (5) and (6);
- (b) without prejudice to subparagraph (c), stress tests shall be conducted regularly and in any event not less frequently than once a month;
- (c) stress tests shall be conducted whenever a change in the value or the composition of a UCITS or a change in market conditions makes it likely that the test results will differ significantly from the results of the then-most-recent stress test.

(3) A responsible person shall ensure that the stress-testing programme:

- (a) is designed to measure any potential major depreciation of the value of a UCITS as a result of unexpected changes in the relevant market parameters and correlation factors; and
- (b) measures changes in the relevant market parameters and correlation factors which could result in a major depreciation of the value of a UCITS.

(4) A responsible person shall:

- (a) integrate the stress tests required by this Regulation into the risk management process of a UCITS;
- (b) consider the results of the stress tests when making investment decisions for the UCITS; and
- (c) adapt the design of the stress tests in line with the composition of the UCITS and the market conditions that are relevant for the UCITS.

(5) A responsible person shall ensure that the stress tests:

- (a) cover all risks that affect the value or the fluctuations in value of the UCITS to any significant degree;
- (b) without prejudice to the generality of subparagraph (a), take into account those risks that are not fully captured by the VaR approach that is used;
- (c) are appropriate for analysing potential situations in which the use of significant leverage would expose the UCITS to significant downside

risk and could potentially lead to the UCITS having a net asset value less than zero; and

- (d) focus on those risks which, though not significant in normal circumstances, are likely to be significant in stress situations, including:
  - (i) the risk of unusual correlation changes;
  - (ii) the illiquidity of markets in stressed market situations; and
  - (iii) the behaviour of complex structured products under stressed liquidity conditions.
- (6) A responsible person shall:
  - (a) establish and implement written clear procedures relating to the design of, and ongoing adaptation of, the stress tests of a UCITS;
  - (b) on the basis of the procedures established and implemented in accordance with subparagraph (a), develop a written programme for conducting stress tests;
  - (c) include in the programme developed in accordance with subparagraph (b) an explanation as to why the programme is suitable for the UCITS; and
  - (d) document clearly, in the programme developed in accordance with subparagraph (b):
    - (i) completed stress tests;
    - (ii) the results of completed stress tests; and
    - (iii) the reasons behind any intention to deviate from the programme.

*Value at Risk approach: additional safeguards*

22. (1) A responsible person which calculates global exposure using a VaR approach for a UCITS shall monitor the leverage of the UCITS regularly.

(2) A responsible person shall ensure that the UCITS supplements both the VaR approach and the stress-testing framework, by taking into account the risk profile and the investment strategy that is being pursued, with other risk measurement methods.

## Chapter 4

### *Efficient Portfolio Management*

*Portfolio management techniques*

23. (1) A responsible person shall only use efficient portfolio management techniques and instruments for the purposes of Regulation 69(2) of the UCITS Regulations where same are in the best interests of the UCITS.

(2) A responsible person shall ensure that all the revenues arising from efficient portfolio management techniques and instruments, net of direct and indirect operational costs, are returned to the UCITS.

*Collateral*

24. (1) A responsible person shall ensure, in engaging in efficient portfolio management techniques and instruments, that:

- (a) every asset that is received by a UCITS as a result of engaging in efficient portfolio management techniques and instruments is treated as collateral;
- (b) such techniques comply with the criteria set down in paragraph (2);
- (c) at all times, collateral that is received by a UCITS meets the criteria specified in Schedule 3.

(2) A responsible person shall ensure that the UCITS risk management process identifies, manages and mitigates risks linked to the management of collateral, including operational risks and legal risks.

- (3) (a) Where a UCITS receives collateral on a title transfer basis, the responsible person shall ensure that that collateral is held by the depositary.
- (b) Where a UCITS receives collateral on any basis other than a title transfer basis, that collateral may be held by a third party depositary provided that that depositary is subject to prudential supervision and is unrelated and unconnected to the provider of the collateral.

(4) A responsible person shall not sell, pledge or re-invest the non-cash collateral received by the UCITS.

(5) Where a responsible person invests the cash collateral received by the UCITS, such investments shall only be made in one or more of the following:

- (a) a deposit with a credit institution referred to in Regulation 7;
- (b) a high-quality government bond;
- (c) a reverse repurchase agreement, provided the transaction is with a credit institution referred to in Regulation 7 and the UCITS is able to recall at any time the full amount of cash on an accrued basis; or
- (d) a short-term money-market fund as defined in the ESMA Guidelines on a Common Definition of European Money-Market Funds (Ref: CESR/10-049).

(6) Where a responsible person invests the cash collateral received by the UCITS:

- (a) that investment shall comply with the diversification requirements applicable to non-cash collateral; and
  - (b) invested cash collateral shall not be placed on deposit with the counterparty or with any entity that is related or connected to the counterparty.
  
- (7) A responsible person shall ensure that, where a UCITS receives collateral for at least 30 per cent of its assets:
  - (a) there is in place a stress testing policy that prescribes the components set out in paragraph (8); and
  - (b) stress tests are carried out regularly under normal and exceptional liquidity conditions to enable the responsible person to assess the liquidity risk attached to the collateral.
  
- (8) The components of the stress-testing policy to which paragraph (7) refers are:
  - (a) the design of stress test scenario analysis including calibration, certification and sensitivity analysis;
  - (b) the empirical approach to impact assessment, including back-testing of liquidity risk estimates;
  - (c) the reporting frequency and the threshold(s) for limits and losses; and
  - (d) the mitigation actions to be taken to reduce loss including haircut policy and gap risk protection.
  
- (9) A responsible person shall, in accordance with paragraph (10), establish and ensure adherence to a haircut policy for the UCITS, adapted for each class of assets received as collateral.
  
- (10) The requirements to which paragraph (9) refers are:
  - (a) when devising the haircut policy, a responsible person shall take into account the characteristics of the assets, such as the credit standing or the price volatility, as well as the outcome of the stress tests performed in accordance with Regulation 21;
  - (b) the responsible person shall document the haircut policy; and
  - (c) the responsible person shall justify and document each decision to apply a specific haircut or to refrain from applying any haircut, to any specific class of assets.
  
- (11) Where a counterparty to a repurchase or a securities lending agreement, which has been entered into by the responsible person on behalf of the UCITS:

- (a) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and
- (b) where a counterparty is downgraded to A-2 or below (or comparable rating) by the credit rating agency referred to in subparagraph (a) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay.

(12) A responsible person shall ensure that it is at all times able to recall any security that has been lent out or to terminate any securities lending agreement to which it is party.

*Repurchase and reverse repurchase agreements*

25. (1) A responsible person that enters into a reverse repurchase agreement on behalf of a UCITS shall ensure that the UCITS is at all times able to recall the full amount of cash or to terminate the relevant agreement on either an accrued basis or a mark-to-market basis.

(2) In circumstances in which cash is, by virtue of the obligation under paragraph (1), callable at any time on a mark-to-market basis, the responsible person shall use the mark-to-market value of the reverse repurchase agreement for the calculation of the net asset value of the UCITS.

(3) A responsible person that enters into a repurchase agreement shall ensure that a UCITS is at all times able to recall any securities that are subject to the repurchase agreement or to terminate the repurchase agreement into which it has entered.

## Chapter 5

### *Share Classes*

*Creation of share classes in a UCITS*

26. (1) Subject to paragraphs (2) and (3), a responsible person may create a share class, or more than one share class, within the relevant UCITS, or within a sub-fund of an umbrella UCITS, only if the following conditions are satisfied:

- (a) the constitutional document of the UCITS provides for the creation of share classes and, in the case of an umbrella UCITS, the provision in the constitutional document to establish the way in which sub-funds, and share classes within sub-funds, are created, is clear and unambiguous;
- (b) each UCITS and, in the case of umbrella UCITS, each sub-fund thereof consists of a single common pool of assets;
- (c) the capital gains or losses and income arising from the common pool of assets must be distributed or must accrue equally to each unit-holder relative to their participation in the UCITS or sub-fund thereof, or must both be distributed and accrue in that manner; and

- (d) unit-holders in a share class must be treated equally and fairly, or where there is more than one share class all unit-holders in the different share classes must be treated fairly.
- (2) A responsible person shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies.
- (3) Where a UCITS engages in currency hedging at the level of a share class, the responsible person shall:
- (a) ensure that over-hedged positions do not exceed 105 per cent of the net asset value of the hedged currency share class;
  - (b) keep hedged positions under review to ensure that over-hedged positions do not exceed the level permitted by subparagraph (a);
  - (c) in the review that is required by virtue of subparagraph (b), incorporate a procedure to ensure that any position that is materially in excess of 100 per cent of net assets shall not be carried forward from month to month;
  - (d) clearly attribute transactions to a specific class;
  - (e) not combine or offset currency exposures of different currency classes or allocate currency exposures of assets of the UCITS to separate share classes; and
  - (f) ensure that the costs and gains or losses of the hedging transactions will accrue solely to the relevant class.

## Chapter 6

### *Constitutional Documents*

#### *Fees*

27. (1) (a) Subject to subparagraph (b), a responsible person shall ensure that the constitutional document of the UCITS specifies, as applicable:
- (i) the maximum fee that may be charged by the management company; and
  - (ii) the maximum fee that may be charged by an investment manager appointed by the responsible person, where that fee is paid directly out of the assets of the UCITS.
- (b) In the case of a UCITS constituted as an ICAV or investment company the matters specified in subparagraph (a) may be included in either the constitutional documents of the UCITS or in the relevant management agreement.

(2) Any fee, under paragraph (1), that is specified as being payable to a management company or to an investment manager shall include any performance-related fee that that management company or investment manager (as the case may be) may charge.

(3) (a) The maximum fee that may be charged by a management company or an investment manager pursuant to paragraph (1) shall not be increased without approval of the unit-holders of the UCITS on the basis of a simple majority of votes cast in general meeting or such other majority as is specified in the constitutional document of the relevant UCITS or with the prior written approval of all unit-holders of the fund (in accordance with the constitutional documents).

(b) If a fee that is disclosed in the prospectus for a UCITS is less than the maximum relevant fee that is permitted in the constitutional document, prior unit-holder approval is required for any proposed increase in the fee that is disclosed in the prospectus, unless the prospectus also provides that a fee greater than the fee disclosed in the prospectus may be charged.

(4) (a) A responsible person shall provide unit-holders of a UCITS with reasonable notice in the event of an increase in the maximum fee that may be charged by a management company or an investment manager.

(b) Notice given for the purposes of subparagraph (a) must be sufficient to enable a unit-holder, to redeem some or all of the unit-holder's units prior to the implementation of the proposed increase.

#### *Investment*

28. A responsible person shall include a list of the stock exchanges, markets and regulated derivatives markets in which the UCITS may invest in the constitutional document of the UCITS.

#### *Umbrella UCITS*

29. A responsible person shall ensure that the constitutional document of an umbrella UCITS provides that the assets of each sub-fund:

(a) belong exclusively to the relevant sub-fund; and

(b) may not be used to discharge, directly or indirectly, the liabilities of or claims against any other sub-fund and are not available for any such purpose.

#### *Distributions out of, and charging of fees and expenses to, capital*

30. (1) A responsible person shall not make any distribution from, or charge any fee or expense to, the capital of a UCITS, unless permitted by the constitutional document of the UCITS.

(2) Where, in accordance with paragraph (1), a responsible person is permitted by the constitutional document of a UCITS to make distributions from or

charge fees and expenses to the capital of a UCITS, every such distribution or charge must be in accordance with any provisions contained in that constitutional document concerning the making of a distribution or the imposition of a charge.

(3) A responsible person of a UCITS which proposes to make distributions out of capital shall:

- (a) include the risk warning in its prospectus, as specified in Regulation 68(1)(d);
- (b) ensure that any income statement issued to unitholders includes a statement to explain the effect of this accounting policy, including wording to the effect that the investor's capital amount has been reduced;
- (c) include the following in bold text in the subscription application form, if fees and expenses which may be charged to capital include management fees:

“Unitholders should note that all or part of fees and expenses including (if applicable) management fees may be charged to the capital of the UCITS. This will have the effect of lowering the capital value of your investment.”

*Dealing in specie*

31. (1) A responsible person shall ensure that, where the constitutional document of a UCITS provides for subscription in specie, it also contains provisions that require, in respect of such a subscription in specie, that:

- (a) the nature of the assets to be transferred into the UCITS would qualify as investments of the UCITS in accordance with the investment objectives, policies and restrictions of the UCITS;
  - (b) assets that are to be transferred must be vested with the depositary or arrangements must be made to vest the assets with the depositary;
  - (c) the amount of units to be issued must not exceed the amount that would be issued for the cash equivalent of the subscription in specie; and
  - (d) the depositary is satisfied that either:
    - (i) the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unit-holders of the UCITS; or
    - (ii) there is unlikely to be any material prejudice to the existing unit-holders of the UCITS.
- (2) (a) This paragraph does not apply to a UCITS ETF the original subscription to which was made in specie.

- (b) Subject to subparagraph (a), a responsible person shall ensure that, where the constitutional document of a UCITS provides for redemption in specie, it also contains provisions that require, in respect of such a redemption in specie, that:
    - (i) redemption in specie is at the discretion of the UCITS and with the consent of the redeeming unit-holder; and
    - (ii) asset allocation is subject to the approval of the depositary.
  - (c) Notwithstanding subparagraph (b), where the redeeming unit-holder requests redemption of a number of units that represent 5 per cent or more of the net asset value of the UCITS, the responsible person may, without the consent of the redeeming unitholder, where utilising the discretion of the UCITS, determine to provide redemption in specie subject to such redemption being provided for in the constitutional documents and:
    - (i) in that event the UCITS shall, if requested to do so, sell the assets on behalf of the unit-holder after the redemption has been effected; and
    - (ii) the cost of any sale in accordance with clause (i) can be charged to the unit-holder.
- (3) A responsible person shall ensure that, where the constitutional document of a UCITS provides for distribution in specie upon a winding up, it shall also require that, in respect of such a distribution in specie upon a winding up:
- (a) an ordinary resolution or the prior written approval of all unit-holders of the relevant fund or a resolution passed by such majority as is specified in the constitutional document, is required; and
  - (b) the UCITS must sell the assets if a unit-holder requests it to do so, in which event the costs of such sale may be charged to the redeeming unit-holder.

*Replacement of depositary*

32. For the purposes of Regulation 46, a responsible person shall ensure that the constitutional document of a UCITS provides that:

- (a) the appointment of the new depositary must be approved in advance by the Bank;
- (b) the current depositary may not retire until a new depositary is appointed in accordance with paragraph (a); and

(c) if:

- (i) despite attempts by the responsible person to appoint a new depositary, no replacement for the current depositary has been appointed in accordance with this Regulation, and
- (ii) the current depositary is unwilling or unable to continue to act as such,

then:

- (I) a general meeting of the UCITS shall be convened at which an ordinary resolution, or such a resolution passed by such majority as is specified in the constitutional document, to wind up or otherwise dissolve the UCITS is proposed; and
- (II) the appointment of the current depositary may be terminated only upon the revocation of the authorisation of the UCITS.

## Chapter 7

### *Dealing*

#### *Subscriptions and redemptions*

33. (1) (a) Subject to subparagraph (b), a responsible person shall not accept an application for subscription or redemption of units in a UCITS after the dealing deadline.
- (b) A responsible person may in exceptional circumstances accept an application for subscription or redemption of units in a UCITS after the dealing deadline, and before the valuation point, provided that:
- (i) the decision to accept the application after the dealing deadline has been approved by senior management of the responsible person; and
  - (ii) the exceptional circumstances under which the application was received is fully documented by the responsible person.
- (2) A responsible person shall pay the redemption proceeds to a redeeming unit-holder within ten business days of the relevant dealing deadline.
- (3) Where:
- (a) the total requests for redemption on any dealing day for a UCITS or a sub-fund thereof exceed at least 10 per cent of the total number of units in the UCITS or sub-fund or at least 10 per cent of the net asset value of the UCITS or sub-fund, and
  - (b) the responsible person decides to refuse to redeem any units in excess of 10 per cent of the total number of units in the UCITS or sub-fund

or 10 per cent of the net asset value of the UCITS or sub-fund or such higher percentage that the responsible person may determine,

the UCITS shall reduce pro rata any request for redemption on that dealing day and shall treat the redemption requests as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

## Chapter 8

### *Valuation*

#### *Valuation policy*

34. (1) A responsible person shall establish and ensure adherence to a valuation policy that satisfies the requirements of paragraph (2).

(2) (a) A valuation policy shall set out the valuation methodology of the assets of the UCITS, in accordance with paragraph (3).

(b) The valuation policy shall be included in the constitutional document of the UCITS.

(3) A valuation policy shall provide and ensure that:

(a) the valuation methodologies of a UCITS and the pricing of units treat incoming, existing and outgoing investors in the UCITS fairly;

(b) where the valuation policy is to calculate both a bid and offer price for units in a UCITS, the methodologies for both must be clear, unambiguous and disclosed;

(c) the valuation methodologies, including provisions which allow for a switch from a mid-market to a bid or offer basis, are applied on a consistent basis throughout the life of a UCITS; and

(d) there is consistency in the valuation methodologies adopted throughout the various categories of assets.

#### *Dealing*

35. (1) (a) A responsible person may deal in the units of a UCITS only at forward prices.

(b) In this Regulation “forward prices” means the net asset value next computed after receipt of subscription or redemption requests.

(2) A responsible person shall ensure that the frequency of valuation set out in the constitutional document of a UCITS is consistent with dealing arrangements.

#### *Methods of valuation*

36. (1) A responsible person shall value the assets of a UCITS in accordance with Schedule 5 unless an alternative method of valuation has been agreed in

advance with the Bank or the Bank has, in advance of a valuation date, required the responsible person to adopt an alternative method of valuation.

(2) Where a responsible person adjusts the value of an asset of a UCITS, the rationale for doing so must be documented clearly.

*Responsibility for valuation policy*

37. (1) A responsible person shall:

- (a) ensure that securities prices and currency rates used by a UCITS for valuation purposes are:
  - (i) up-to-date; and
  - (ii) provided by or obtained from a source that the responsible person considers to be reputable and reliable; and
- (b) keep the reliability of its sources of prices and rates under review.

(2) A responsible person shall establish and maintain systems and procedures to enable the responsible person to, at least, do the following in respect of the relevant UCITS:

- (a) verify uncertain prices and rates;
- (b) ensure that investment restrictions are not breached;
- (c) ensure that dividends, expenses and taxes are accounted for properly;
- (d) provide movement thresholds at which price movements are reviewed;
- (e) query prices in which there appears to be little or no movement over time;
- (f) provide for the valuation policy in relation to unlisted or illiquid securities; and
- (g) provide for the valuation policy in relation to OTC derivatives.

(3) A responsible person shall ensure that full and detailed records of the valuations of a UCITS are maintained to permit any valuation to be re-performed.

(4) A responsible person shall ensure that reconciliation of cash, debtors and creditors of a UCITS takes place at the same frequency as the valuation.

*Anti-dilution levy*

38. A responsible person may apply an anti-dilution levy to a UCITS only if the constitutional document of the relevant UCITS provides that:

- (a) in calculating the redemption price for the UCITS the responsible person may, on any dealing day on which there are net redemptions,

adjust the redemption price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS; and

- (b) in calculating the subscription price for the UCITS the responsible person may, on any dealing day on which there are net subscriptions, adjust the subscriptions price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS.

## Chapter 9

### *Remuneration*

#### *Restriction on payment of certain fees*

39. A responsible person shall not pay the fees and expenses of the directors of the management company directly out of the assets of the UCITS.

## Chapter 10

### *Transactions involving Connected Persons*

#### *Interpretation: Chapter 10 of Part 2*

40. In this Chapter, “connected person” means the management company or depositary to a UCITS; and the delegates or sub-delegates of such a management company or depositary (excluding any non-group company sub-custodians appointed by a depositary); and any associated or group company of such a management company, depositary, delegate or sub-delegate.

#### *Restrictions on transactions with connected persons*

41. (1) A responsible person shall ensure that any transaction between a UCITS and a connected person is:

- (a) conducted at arm’s length; and
- (b) in the best interests of the unit-holders of the UCITS.

(2) A responsible person may enter into a transaction, on behalf of a UCITS, with a connected person only if at least one of the conditions in paragraphs (a), (b) or (c) is complied with:

- (a) the value of the transaction is certified by either:
  - (i) a person who has been approved by the depositary as being independent and competent; or
  - (ii) a person who has been approved by the responsible person as being independent and competent in the case of transactions involving the depositary;
- (b) execution is on best terms on an organised investment exchange under the rules of the relevant exchange;

- (c) execution is on terms which the depositary or, in the case of a transaction involving the depositary, the responsible person is satisfied conform to the requirements set out in paragraph (1) above.
- (3) In the event of a transaction to which this Chapter applies:
- (a) the depositary or, in the case of a transaction involving the depositary, the responsible person shall document how it has complied with paragraph (2); and
  - (b) where a transaction is conducted in accordance with subparagraph (c) of paragraph (2), the depositary or, in the case of a transaction involving the depositary, the responsible person shall document their rationale for being satisfied that the transaction conforms with the requirements set out in paragraph (1).

## Chapter 11

### *Directed Brokerage Services*

#### *Rebates of commission*

42. A responsible person shall ensure that, where a person, acting on its behalf, successfully negotiates the recapture of a portion of any commission charged by a broker or a dealer in connection with the purchase or sale of securities, the rebate of commission is paid to the UCITS.

#### *Costs, fees and expenses of directed brokerage services*

43. (1) A responsible person shall only reimburse out of the assets of the UCITS the operator of a directed brokerage service or similar arrangement for the costs, fees and expenses of that directed brokerage service or similar arrangement where the requirements set out in paragraph (2) are met.

- (2) The requirements for the purposes of paragraph (1) are that:
- (a) the costs, fees and expenses of the relevant directed brokerage service or similar arrangement:
    - (i) are reasonable and vouched properly; and
    - (ii) have been incurred directly by the operator in providing the relevant services or arrangement;
  - (b) the prospectus disclosure required by Regulation 70 has been made;
  - (c) the operator of the directed brokerage services or other arrangement invoices the responsible person separately for the relevant costs, fees and expenses.

## PART 3

## SUPERVISORY REQUIREMENTS

*General conditions*

44. (1) (a) Where a UCITS is authorised by the Bank as an umbrella UCITS, the responsible person shall on behalf of the UCITS obtain the prior approval of the Bank for the establishment of each sub-fund of that umbrella UCITS.
- (b) An application to the Bank for approval for the purposes of subparagraph (a) shall include:
- (i) details of proposed sub-funds; and
  - (ii) the proposed amendment or the proposed supplement (as the case may be) to the prospectus which will set out the investment objectives and policy of each of the proposed new sub-funds.
- (c) The responsible person of a UCITS shall ensure that the prospectus of the UCITS discloses:
- (i) a statement to the effect that relevant direct and indirect operational costs and fees, arising from efficient portfolio management techniques, may be deducted from the revenue delivered to the UCITS. These costs and fees should not include revenue;
  - (ii) the identity of the entity to which the relevant direct and indirect operational costs and fees are paid; and
  - (iii) if the entity to which the relevant direct and indirect operational costs and fees are paid is a related party to the management company or the depositary, that fact.
- (2) Subject to paragraph (4), a responsible person shall notify the Bank of each of the following, should it arise:
- (a) any proposal to amend the prospectus of the UCITS;
  - (b) any proposal to amend any material agreement that has been entered into with a third party by or on behalf of a UCITS;
  - (c) any proposal to replace a third party that has entered into a material agreement with the UCITS;
  - (d) any proposal to change the auditor of the UCITS and the reasons for the proposed change.
- (3) A notification made for the purposes of paragraph (2) shall include sufficient information on the proposal to enable the Bank to consider and assess the proposal.

(4) If the Bank objects to a proposal notified to the Bank pursuant to paragraph (2)(a), (b) or (c), it shall not be proceed.

*Charges for redemption or repurchase of units*

45. (1) Subject to paragraph (2), a responsible person shall not increase the maximum relevant charge without the prior approval of unit-holders given on the basis of a simple majority of votes cast in general meeting or with the prior written approval of all unit-holders of the relevant UCITS (in accordance with the constitutional document) or such other majority as is specified in the constitutional document of the relevant UCITS.

(2) A responsible person shall:

- (a) provide unit-holders with reasonable notice of any proposed increase in the relevant fee; and
- (b) permit a unit-holder to redeem any or all of the unit-holder's units prior to the implementation of the proposed increase.

(3) In this Regulation, "relevant charge" means, in the context of a particular UCITS, a charge relating to the redemption or repurchase of units in that UCITS.

*Replacement of depositary*

46. (1) A responsible person shall establish and implement procedures that are to be followed for the purpose of replacing a depositary, which shall be approved by the board of the responsible person.

(2) Where a UCITS replaces its depositary, each of the retiring depositary and the new depositary shall notify the Bank as soon as practicable of whether that retiring depositary or new depositary (as the case may be) is satisfied or dissatisfied with the transfer of assets.

(3) A responsible person may terminate the appointment of the depositary only:

- (a) upon the appointment of a new depositary; or
- (b) upon the revocation of the authorisation of the UCITS.

*Replacement of Management company, general partner or third party*

47. (1) A responsible person shall establish and implement procedures that are to be followed for the purpose of replacing the management company or administration company.

(2) The procedures for the replacement of a management company or an administration company shall be approved by the board of the responsible person.

*Monthly returns*

48. (1) A responsible person shall submit to the Bank periodic returns each of which complies with the requirements of paragraph (2).

(2) The requirements for the purposes of paragraph (1) are:

- (a) returns shall be made on a monthly basis;
- (b) each return shall relate to a complete calendar month;
- (c) a return shall be made to the Bank not later than the tenth business day of the month that is subsequent to the month to which the return relates;
- (d) each return subsequent to the first return shall be in respect of the calendar month that is subsequent to the month to which the most recently submitted return relates;
- (e) a return must be denominated in the base currency of the relevant UCITS;
- (f) a return shall include:
  - (i) the Bank code issued to the sub-fund of the UCITS;
  - (ii) the base currency of the UCITS;
  - (iii) the type of UCITS, designated by investment strategy;
  - (iv) the total gross asset value of the UCITS at month-end;
  - (v) the total net asset value of the UCITS at month-end;
  - (vi) the number of units in circulation at month-end;
  - (vii) the net asset value per unit at month-end;
  - (viii) payments received from the issues of units during the relevant month;
  - (ix) payments made for the repurchase of units during the relevant month;
  - (x) the net amount from issues and repurchases during the relevant month;
  - (xi) the profit or loss arising from the operations of the UCITS in the relevant month;
  - (xii) investment management fees (excluding performance fees):
    - (I) accrued, and

- (II) paid,
  - in the relevant month; and
- (xiii) all other charges, fees and expenses (excluding investment management fees):
  - (I) accrued, and
  - (II) paid,
    - in the relevant month.

*Quarterly returns*

49. (1) A responsible person shall submit to the Bank periodic returns each of which complies with the requirements of paragraph (2).

(2) The requirements for the purposes of paragraph (1) are:

- (a) each return shall be known as a Money-Market and Investment Fund return;
- (b) returns shall be made on a quarterly basis;
- (c) each return shall relate to a period of three complete and consecutive calendar months;
- (d) a return shall be made to the Bank not later than the tenth business day of the month that is subsequent to the last of the months to which the return relates; and
- (e) each return subsequent to the first return shall be in respect of the three-month period that is subsequent to the last of the months to which the most recently submitted return relates.

PART 4

PROSPECTUS REQUIREMENTS

*General requirements*

50. (1) A responsible person shall ensure that it and the UCITS complies with the terms of the UCITS prospectus.

(2) A responsible person shall translate a prospectus of a UCITS into another language only if such translation contains the same information and has the same meaning as in the prospectus that has been submitted to the Bank.

- (3) (a) A responsible person shall not make any change to the investment objectives, or any material change to the investment policy, of a UCITS, each as disclosed in the prospectus, unless unit-holders have, in advance and on the basis of a simple majority of votes cast in general meeting or with the prior written approval of all unit-holders

of the relevant UCITS (in accordance with the constitutional document) or such other majority as is specified in the constitutional document of the relevant UCITS, approved the relevant change or changes.

- (b) For the purposes of subparagraph (a), a change would be “material” if, were it to be made, it would alter significantly the asset type, credit quality, borrowing limits or risk profile of the relevant UCITS.
- (4) (a) A responsible person shall provide all unit-holders of the UCITS with reasonable notice of the relevant change or changes in the event that, in accordance with paragraph (3), any change is made in the investment objectives or any material change is made in the investment policy
  - (b) Notice given for the purposes of subparagraph (a) must be sufficient to enable a unit-holder, acting reasonably, to redeem some or all of the unit-holder’s units prior to the implementation of the relevant change or changes.
- (5) A responsible person shall, in the next-occurring periodic report, notify unit-holders of material changes to the content of the prospectus.
- (6) A responsible person shall ensure that the prospectus:
    - (a) lists those stock exchanges, markets and regulated derivatives markets on which assets of the UCITS are listed or traded; and
    - (b) includes only those stock exchanges, markets and regulated derivatives markets which, at the date of the prospectus, satisfy the regulatory criteria.

#### *Advertising*

51. (1) A responsible person shall ensure that the name of a UCITS and its regulatory status shall be shown clearly in any advertisement relating to that UCITS.

(2) A responsible person shall ensure that an advertisement relating to a UCITS shall not contain information which is false or misleading or presented in a manner that is deceptive.

(3) A responsible person shall ensure that an advertisement relating to a UCITS shall refer to the key investor information document and the prospectus issued by the relevant UCITS.

(4) A responsible person shall ensure that no advertisement relating to a UCITS is inconsistent with any relevant provision of the key investor information document or of the prospectus issued by the relevant UCITS.

(5) Without prejudice to Regulation 94, a responsible person shall comply with the advertising standards set out in Schedule 6 where the relevant UCITS is:

- (a) authorised in a Member State other than the State and is marketing its units in the State, or
- (b) authorised in the State and is marketing its units in the State or in a state that does not have any statutory regulation of marketing.

*Prospectus: general*

52. A responsible person shall ensure that the following matters are disclosed in the prospectus of a UCITS:

- (a) the identity and, in brief form, details of the financial group or entity that is promoting the UCITS;
- (b) details of the persons who accept responsibility for information contained in the prospectus;
- (c) details of the principal investment manager of the UCITS;
- (d) details of sub-investment managers, if these are paid out of the assets of the UCITS directly and a statement that details of sub-investment managers not paid out of the assets of the UCITS directly, if any, shall be available on request to unit-holders;
- (e) if the UCITS proposes to create hedged currency share classes, that fact;
- (f) the distribution provisions on the termination or winding up of the UCITS, in particular those affecting unit-holders; and
- (g) details of the FDI exposures for the purposes of Regulation 15(4)(b)(iii).

*Prospectus: investment policy*

53. (1) A responsible person shall ensure that the investment policy of a UCITS, as it is disclosed in the prospectus in accordance with the UCITS Regulations, shall set out:

- (a) the types of asset in which the UCITS proposes to invest;
- (b) the basis upon which the UCITS will select its investments;
- (c) the place or places in which a UCITS will invest, indicating the countries or regions in which such investments will be made; and
- (d) whether it is intended to seek exposure to a country or region through investment in companies or instruments that are listed or traded on a stock exchange or market that is located in another jurisdiction.

- (2) A responsible person that proposes, on behalf of a UCITS, to take short positions shall, in the prospectus of the UCITS, disclose:
- (a) in relation to each of the categories of assets in which it may invest, whether the UCITS will take long positions or short positions or both; and
  - (b) the percentage of the assets of the UCITS that it anticipates will be invested in long positions and in short positions respectively.
- (3) A responsible person shall ensure that a UCITS that uses FDI includes the following information in its prospectus:
- (a) a description of the types of FDI that the UCITS may use and the extent to which the UCITS may be leveraged; and
  - (b) the method used to calculate global exposure.
- (4) A responsible person that uses, on behalf of a UCITS, the VaR approach shall, in the prospectus of the UCITS and in accordance with paragraph (5), disclose:
- (a) the expected level of leverage of the UCITS;
  - (b) that there is a possibility of higher leverage levels; and
  - (c) information on the reference portfolio.
- (5) For the purposes of paragraph (4):
- (a) leverage shall be calculated as the sum of the notionals of the derivatives that are used;
  - (b) the calculation of leverage within subparagraph (a) may be supplemented with leverage calculated on the basis of a commitment approach; and
  - (c) the creation of leveraged exposure to an index via FDI, or the inclusion of a leverage feature in an index, shall be taken into account in assessing compliance with the prospectus disclosure requirements of paragraph (4).
- (6) A responsible person that uses, on behalf of a UCITS, total return swaps, or other FDI with the same characteristics as a total return swap, shall include the following in the prospectus of the UCITS:
- (a) information on the underlying strategy or index and composition of the investment portfolio or index;
  - (b) information on the counterparty to the transactions;

- (c) a description of the risk of counterparty default and the effect of any such default on investor returns;
- (d) details of the extent to which the counterparty assumes any discretion over the composition or management of the UCITS investment portfolio or over the underlying of the FDI; and
- (e) whether the approval of the counterparty is required in relation to any UCITS investment portfolio transaction.

(7) If a counterparty has discretion over the composition or management of the UCITS investment portfolio or of the underlying of the FDI then the responsible person shall, in the prospectus of the UCITS, identify the counterparty as an investment manager.

#### *Financial index*

54. (1) A responsible person that uses, on behalf of a UCITS, a financial index for investment purposes shall, in the prospectus of the UCITS, provide sufficient disclosure to allow a prospective investor understand the following:

- (a) the market that the index is representing;
- (b) why the index is being used as part of the investment strategy of the UCITS;
- (c) whether the investment will be made directly, through investment in the constituents of the index, or indirectly, through an FDI; and
- (d) where additional information on the index may be obtained.

(2) A responsible person that intends to make use, on behalf of a UCITS, of the increased diversification limits referred to in Regulation 71 of the UCITS Regulations, shall, in the prospectus of the relevant UCITS:

- (a) disclose the intention to make use of the increased diversification limits; and
- (b) provide a description of the exceptional market conditions that necessitate this investment.

(3) A responsible person shall, in the prospectus of the relevant UCITS, disclose the rebalancing frequency of the financial index in which it invests and its effects on the costs within the index.

#### *Structured UCITS*

55. A responsible person of a structured UCITS, within the meaning of Article 36(1) of Commission Regulation (EU) No 583/2010, shall ensure that the prospectus of the UCITS includes, in clear language that can be understood easily by a retail investor, disclosure of:

- (a) its investment policy;

- (b) the underlying exposure; and
- (c) payoff formulas.

*Fund of funds*

56. A responsible person that is permitted to invest more than 20 per cent of the net assets of the relevant UCITS in other investment funds shall, in the prospectus of that relevant UCITS and in any promotional literature issued, include a prominent statement to this effect.

*Index-tracking funds*

57. (1) A responsible person of an index-tracking UCITS shall include the following in the prospectus of the UCITS:

- (a) a description of the index including information on the underlying components or details of where the exact composition of the index is published;
- (b) information on how the index will be tracked and the implications of the chosen method for unit-holders in terms of their exposure to the underlying index and counterparty risk;
- (c) information on the anticipated level of tracking error in normal market conditions; and
- (d) a description of factors that are likely to affect the ability of the UCITS to track the performance of the index, including transaction costs, small illiquid components and dividend re-investments.

(2) A responsible person of an index-tracking leveraged UCITS shall include the following information in the prospectus of the UCITS:

- (a) a description of the leverage policy and how the leverage policy is implemented;
- (b) the cost of the leverage (where relevant);
- (c) the risks associated with the leverage policy;
- (d) a description of the impact of any reverse leverage;
- (e) a description of how the performance of the UCITS may differ significantly from the multiple of the index performance over the medium term to the long term.

*Efficient portfolio management*

58. (1) A responsible person shall, in the prospectus of the relevant UCITS, include:

- (a) a description of its intentions regarding techniques and instruments which may be used for the purposes of efficient portfolio management. This should include reference to the techniques and instruments

which the UCITS can utilise and a detailed description of the inherent risks, including counterparty risk and potential conflict of interest, that may arise;

- (b) information on the impact of efficient portfolio management techniques and instruments on the performance of the UCITS;
  - (c) information on the policy regarding direct and indirect operational costs and fees arising in the context of these techniques; and
  - (d) information on the collateral policy of the UCITS arising from (as the case may be) OTC derivatives or efficient portfolio management techniques and instruments or both.
- (2) A disclosure for the purposes of paragraph (1) shall include:
- (a) permitted types of collateral;
  - (b) the level of collateral required;
  - (c) the haircut policy; and
  - (d) in the case of cash collateral:
    - (i) the re-investment policy; and
    - (ii) the risks arising from the re-investment policy.

#### *Dealing*

59. (1) A responsible person shall, in the prospectus of the relevant UCITS, disclose the following information in respect of dealing:

- (a) the initial offer period;
  - (b) the initial offer price;
  - (c) in bold typeface, prominently at the beginning of the prospectus (or the relevant supplement to the prospectus, where appropriate), the maximum redemption charge; and
  - (d) the time limits within which the equivalent of the net issue price is to be paid into the assets of the UCITS.
- (2) A responsible person that proposes to apply an anti-dilution levy to subscriptions or redemptions shall, in the prospectus of the relevant UCITS, include a provision to the following effect:

“In calculating the subscription or redemption price for the UCITS the directors may, on any dealing day on which there are net subscriptions or redemptions, adjust (as relevant) the subscription or redemption price by adding or deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS.”

*Redemption in specie*

60. (1) Subject to paragraph (3), where the prospectus of a UCITS provides for redemption in specie, the responsible person shall, in the prospectus of the relevant UCITS, also provide as follows:

- (a) redemption in specie is:
  - (i) at the discretion of the UCITS, and
  - (ii) subject to the consent of the redeeming unit-holder;
- (b) asset allocation is subject to the approval of the depositary;
- (c) a determination to provide redemption in specie may be at the sole discretion of the responsible person where the redeeming unit-holder requests redemption of a number of units that represent at least 5 per cent of the net asset value of the UCITS.

(2) In the event of a redemption in specie in accordance with subparagraph (c) of paragraph (1):

- (a) the responsible person shall, if so requested by the redeeming unit-holder, sell the assets on behalf of that unit-holder; and
- (b) the cost of the sale of the relevant units may be charged to the unit-holder.

(3) Paragraph (1) does not apply to an exchange-traded fund where the original subscription was made in specie.

*Remuneration and costs arising*

61. (1) A responsible person shall ensure that the prospectus of the relevant UCITS includes:

- (a) in the same section of the prospectus and in a form that can be easily understood and analysed by unit-holders and prospective investors, information on remuneration, costs and expenses to be borne by the UCITS;
- (b) the policy of the UCITS regarding direct and indirect operational costs and fees arising from efficient portfolio management techniques and instruments that may be deducted from the revenue delivered to the UCITS.

(2) A responsible person of an umbrella UCITS shall state clearly in the prospectus the charges (if any) that are applicable to the exchange of units in one sub-fund of the umbrella UCITS for units in another sub-fund of the umbrella UCITS.

*Umbrella UCITS*

62. (1) A responsible person of an umbrella UCITS investment company shall include the following statement in the prospectus:

“An umbrella fund with segregated liability between sub-funds”.

(2) Where an umbrella UCITS issues a supplement to the prospectus in relation to the establishment of a new sub-fund, the supplement shall:

- (a) state that the UCITS is constituted as an umbrella UCITS; and
- (b) name the other existing sub-funds of that umbrella UCITS or ensure that the prospectus is updated to include the names of all existing sub-funds.

(3) Where an umbrella UCITS investment company was authorised by the Bank and commenced trading before 30 June 2005 and does not have segregated liability between sub-funds, the responsible person shall disclose clearly in the relevant prospectus the potential risks to investors arising from the absence of the segregation of liability between sub-funds.

*Authorisation status*

63. A responsible person shall ensure that the prospectus of the UCITS:

- (a) states that the authorisation of the UCITS by the Bank is not an endorsement or guarantee of the UCITS by the Bank;
- (b) states that the Bank is not responsible for the contents of the prospectus; and
- (c) includes the following statement:

“The authorisation of this UCITS by the Central Bank of Ireland shall not constitute a warranty as to the performance of the UCITS and the Central Bank of Ireland shall not be liable for the performance or default of the UCITS.”

*Risk disclosures*

64. (1) A responsible person shall, in the prospectus of the UCITS, disclose, and describe in a comprehensive manner, the risks that are applicable to investing in that particular UCITS.

(2) A disclosure for the purposes of paragraph (1) shall make reference to at least:

- (a) the fact that prices of units may fall as well as rise;
- (b) that investors are recommended to consult a stockbroker or financial adviser about the contents of the prospectus; and
- (c) where relevant, the fact that the difference at any one time between the sale and repurchase price of units in the UCITS arising from the

repurchase charge means that the investment should be viewed as medium term to long term investment.

(3) A responsible person of a UCITS that has investment objectives or an investment policy that involves investing:

- (a) more than 20 per cent of the assets of the UCITS in emerging markets,
- (b) more than 30 per cent of the assets of the UCITS in bonds or warrants that are below investment grade,

or both, shall insert a risk warning informing investors that an investment in the UCITS should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors.

(4) A risk warning notice for the purposes of paragraph (3):

- (a) shall be inserted and highlighted at the beginning of the prospectus (or the relevant supplement to the prospectus, where appropriate); and
- (c) must cross-refer to the more detailed disclosure of risk factors which are contained in the body of the prospectus (or supplement).

(5) Where paragraph (3) applies the relevant prospectus (or the relevant supplement to the prospectus, where appropriate) shall contain a full description of the risks that are involved.

#### *UCITS that use financial derivative instruments*

65. A responsible person of a UCITS that intends to invest principally in FDIs shall insert a warning of this intention at the beginning of the relevant prospectus (or the relevant supplement to the prospectus, where appropriate) and of any other promotional literature.

#### *Cash and money-market funds*

66. A responsible person of a UCITS that has an investment objective or an investment policy that involves investing substantially in deposits or money-market instruments shall provide a risk warning in the prospectus drawing attention to the difference between the nature of a deposit and the nature of an investment in the UCITS, with particular reference to the risk that the value of the principal invested in the UCITS may fluctuate.

#### *Structured UCITS*

67. A responsible person of a structured UCITS, as defined in Article 36(1) of Commission Regulation No 583/2010, shall include in the prospectus a prominent risk warning informing investors who redeem their investment prior to maturity that they do not benefit from the pre-defined payoff and may suffer significant losses.

#### *Distributions out of capital*

68. (1) A responsible person may only make a distribution out of capital where the prospectus of the relevant UCITS includes each of the following:

- (a) an explanation of the rationale underlying the policy to make distributions out of capital;
  - (b) in accordance with paragraph (2), a risk warning, set out prominently at the front of the prospectus, that describes the effects of making a distribution from capital;
  - (c) a statement that a distribution out of capital may have different tax implications to a distribution of income so that investors are recommended to seek advice in this regard; and
  - (d) a statement indicating the greater risk of capital erosion that exists and the likelihood that, due to capital erosion, the value of future returns would also be diminished.
- (2) A risk warning referred to in subparagraph (b) of paragraph (1) shall highlight that, in the event of the making of a distribution out of capital:
- (a) capital will be eroded;
  - (b) the distribution is achieved by forgoing the potential for future capital growth; and
  - (c) this cycle may continue until all capital is depleted.
- (3) A responsible person shall charge fees and expenses, including management fees, to the capital of a UCITS only if the prospectus of the relevant UCITS includes each of the following:
- (a) a statement that fees and expenses, including management fees, or a portion of any such fee or expense, may be charged to capital;
  - (b) an explanation of the rationale underlying the policy to charge fees and expenses to capital;
  - (c) a risk warning, set out prominently in bold text at the front of prospectus, which states:
 

“Unit-holders should note that all or part of fees and expenses, including (if applicable) management fees, will may be charged to the capital of the UCITS. This will have the effect of lowering the capital value of your investment”;

and
  - (d) a description of the effects that the charging of fees and expenses (including management fees) to capital may have, including that capital may be eroded.
- (4) Where a UCITS invests more than 20 per cent in fixed-income instruments and the priority of the UCITS is the generation of income rather than capital growth, the responsible person shall ensure that:

- (a) this priority is disclosed in the prospectus of the relevant UCITS; and
- (b) the prospectus of the relevant UCITS includes a statement that a distribution made during the life of the UCITS must be understood as a type of capital reimbursement.

*Conflicts of interest*

69. (1) A responsible person shall include in the prospectus of the relevant UCITS a description of the potential conflicts of interest that could arise between the management company, investment manager and the UCITS and, where applicable, details of how such conflicts will be managed.

(2) A responsible person shall include in the prospectus of the relevant UCITS a description of soft commission arrangements that may be entered into by a responsible person or a connected person.

(3) Where it is envisaged that a UCITS and connected persons may enter into transactions with each other, the responsible person shall ensure that the prospectus discloses the fact that such transactions may occur.

(4) In this Regulation “connected person” has the meaning given to the term in Regulation 40.

*Directed brokerage services and similar arrangements*

70. A responsible person shall, in the prospectus of the UCITS, disclose details of any directed brokerage services or similar arrangements that are operated in relation to the UCITS, including details of the services provided.

*Share classes*

71. (1) A responsible person that uses FDI at share class level shall include in the UCITS prospectus a clear description of the strategies that the UCITS pursues and the effect that this may have on the relevant share class.

(2) A responsible person shall ensure that the prospectus of the relevant UCITS includes:

- (a) a description of the general currency hedging strategies of the UCITS and the features of individual currency share classes;
- (b) where a UCITS intends to invest in any asset that is denominated in a currency other than the base currency, a disclosure:
  - (i) as to whether it is the intention of the UCITS to hedge the resulting currency exposure back into the base currency and, if it is so intended, to what extent; and
  - (ii) of the general costs and, if relevant, exchange rate risk that is associated with the currency strategy;
- (c) where a UCITS has established an unhedged currency share class, a disclosure:

- (i) that a currency conversion will take place upon subscriptions, redemptions and distributions at prevailing exchange rates; and
  - (ii) that the value of the share expressed in the class currency will be subject to exchange rate risk in relation to the base currency; and
- (d) where a UCITS has established hedged share classes, a disclosure of this fact, in accordance with paragraph (3).
- (3) A disclosure for the purposes of subparagraph (d) of paragraph (2) shall state:
- (a) that, to the extent that hedging is successful, the performance of the class is likely to move in line with the performance of the underlying asset or assets;
  - (b) that investors in the hedged class will not benefit if the class currency falls against the base currency or against the currency in which the assets of the UCITS are denominated; and
  - (c) the implications (for unit-holders) of the hedging policy, including at least the following:
    - (i) a statement indicating the extent to which the UCITS intends to hedge against currency fluctuations and noting that, while not the intention, nonetheless over-hedged or under-hedged positions may arise due to factors outside of the control of the UCITS;
    - (ii) a statement that over-hedged positions shall not exceed 105 per cent of the net asset value of the class;
    - (iii) a statement that the hedged positions will be kept under review to ensure that over-hedged positions do not exceed the permitted level;
    - (iv) a statement that transactions will be attributable clearly to a specific class;
    - (v) a statement that currency exposures of different currency classes may not be combined or offset and that currency exposures of assets of the UCITS may not be allocated to separate share classes; and
    - (vi) a statement that the costs and gains or losses of the hedging transactions will accrue solely to the relevant class.
- (4) A review for the purposes of clause (iii) of subparagraph (c) of paragraph (3) shall incorporate a procedure to ensure that any position materially in excess of 100 per cent of net assets is not carried forward from month to month.

## PART 5

## KEY INVESTOR INFORMATION DOCUMENT

*General*

72. A responsible person shall ensure that a KIID for a UCITS complies with:

- (a) the ESMA Guidelines on clear language and layout of the key investor information document (Ref: CESR/10-1320);
- (b) the ESMA Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (Ref: CESR/10-674);
- (c) the ESMA Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (Ref.: CESR/10-673);
- (d) the ESMA template for the Key Investor Information Document (Ref.: CESR/10-1321);
- (e) the ESMA Guidelines selection and presentation of performance scenarios in the Key Investor Information document for structured UCITS (Ref.: CESR/10-1318).

*Investment objective and policy*

73. (1) A responsible person shall ensure that the following are included in the KIID:

- (a) where a UCITS is established as an index-tracking UCITS, the KIID shall include, in summary form, information on how the index will be tracked and the implications of the chosen method for unitholders in terms of their exposure to the underlying index and counterparty risk; and
- (b) where a UCITS is established as an index-tracking leveraged UCITS, the KIID shall include, in summary form, the following information:
  - (i) a description of the leverage policy, how this is achieved (i.e. whether the leverage is at the level of the index or arises from the way in which the UCITS obtains exposure to the index), the cost of the leverage (where relevant) and the risks associated with this policy;
  - (ii) a description of the impact of any reverse leverage (i.e. short exposure);
  - (iii) a description of how the performance of the UCITS may differ significantly from the multiple of the index performance over the medium to the long term.

(2) In relation to a structured UCITS, as defined in Article 36(1) of Commission Regulation No. 583/ 2010, if the pre-determined pay-off is available only to those investors that buy units at a certain point and hold them until a certain date, the responsible person shall ensure that the relevant KIID:

- (a) includes a statement to this effect;
- (b) details the consequences for an investor of buying and selling units in the UCITS other than in instances in which the pre-determined pay-off is available; and
- (c) if a guarantee from an independent third party is offered, includes an explanation of such guarantee.

*Risk and reward profile*

74. (1) A responsible person shall calculate a synthetic risk and reward indicator in accordance with the methodology prescribed in ESMA Guidelines for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (Ref: CESR/10-673).

- (2) (a) A responsible person of a UCITS established as a feeder fund shall, in the KIID, include:
  - (i) a description of the risk and reward profile of the UCITS; and
  - (ii) where the ancillary assets held by the feeder UCITS impact on the risk and reward profile of the UCITS, a disclosure of this fact.
- (b) A description for the purposes of clause (i) of subparagraph (a) shall not be materially different to the risk and reward profile of the corresponding master UCITS.

*Filing requirements*

75. (1) A responsible person of an umbrella UCITS shall submit a KIID to the Bank prior to the approval of a new sub-fund.

(2) When filed with the Bank in accordance with paragraph (1), a KIID must be accompanied by written confirmation from the responsible person or the legal adviser to the UCITS to the Bank that:

- (a) the KIID complies with the requirements of the UCITS Regulations, Commission Regulation (EU) No 583/2010 and these Regulations;
- (b) the information in the KIID does not conflict with the content of the prospectus.

(3) Every new KIID and amended KIID shall be submitted by the responsible person to the Bank.

## PART 6

## GENERAL OPERATIONAL REQUIREMENTS

*Regulated markets*

76. (1) A responsible person shall, regularly, review the list of stock exchanges and regulated markets that are specified in the prospectus of the relevant UCITS to ensure that those stock exchanges and regulated markets continue to meet with the regulatory criteria.

(2) A responsible person shall consult with the depositary to ensure that adequate custody arrangements are in place before including additional stock exchanges or markets in the prospectus.

*Directed brokerage services or similar arrangements*

77. A responsible person shall, at least, on an annual basis, review any directed brokerage services or similar arrangements and associated costs to a UCITS, where such services or arrangements are being operated in relation to that UCITS.

## PART 7

## ANNUAL AND HALF-YEARLY REPORTS OF A UCITS

*Publication of annual and half-yearly reports*

78. (1) The responsible person shall prepare and submit to the Bank annual and half yearly reports of a UCITS in accordance with Regulation 88 of the UCITS Regulations.

(2) The responsible person shall ensure that:

- (a) the first annual or half-yearly report be prepared within 9 months of the launch UCITS and shall be published and submitted to the Bank within 2 months if half-yearly or 4 months for annual; and
- (b) the first annual report shall be submitted to the Bank within 18 months of the incorporation or establishment of that UCITS and shall be published within 4 months.

(3) Where an umbrella UCITS produces separate periodic reports for individual sub-funds, the responsible person shall, in the report for each sub-fund, name the other sub-funds and state that the reports of such sub-funds are available free of charge on request from the management company.

(4) Each annual and half-yearly report shall state whether the board of directors of the responsible person is satisfied that:

- (a) there are in place arrangements, evidenced by written procedures, to ensure that the obligations that are prescribed by Regulation 41(1) are applied to all transaction with a connected party; and

- (b) all transaction with a connected party that was entered into during the period to which the report relates complied with the obligations that are prescribed by Regulation 41(1).

*Additional information to be included in the annual report*

79. (1) The responsible person shall in the annual report of the UCITS:

- (a) in addition to the requirements of the UCITS Regulations, include the information that is prescribed in Schedule 7;
- (b) document all material changes that have occurred in the disposition of the assets of the UCITS.

(2) For the purposes of subparagraph (b) of paragraph (1):

- (a) a material change is defined as aggregate purchases of a security exceeding 1 per cent of the total value of purchases for the period or aggregate disposals greater than 1 per cent of the total value of sales;
- (b) if there were fewer than 20 purchases that met the material changes definition, the UCITS shall disclose those purchases and such number of the next largest purchases so that at least 20 purchases are disclosed; and
- (c) if there were fewer than 20 sales that met the material changes definition, the UCITS shall disclose those sales and such number of the next largest sales so that at least 20 sales are disclosed.

(3) If a sub-fund within an umbrella investment company invests in the units of another sub-fund within that umbrella, the responsible person shall, in its annual report:

- (a) disclose the fact of that investment; and
- (b) explain the policies that have been adopted by the umbrella investment company to disclose cross-investments between sub-funds within that umbrella investment company.

*Additional information to be included in the half-yearly report*

80. (1) A responsible person shall (on behalf of the UCITS), in its half-yearly report:

- (a) in addition to the requirements of the UCITS Regulations, include the information that is prescribed in Schedule 8;
- (b) document all material changes that have occurred in the disposition of the assets of the UCITS.

(2) For the purposes of subparagraph (b) of paragraph (1) the criteria specified in Regulation 79(2) shall apply.

(3) If a sub-fund within an umbrella investment company invests in the units of another sub-fund within that umbrella, the responsible person shall, in its half-yearly report:

- (a) disclose the fact of that investment; and
- (b) explain, in a note to the half-yearly report, the policies that have been adopted by the umbrella investment company to disclose cross-investments between sub-funds within that umbrella investment company.

## PART 8

### REQUIREMENTS IN RESPECT OF SPECIFIC TYPES OF FUND

#### *Interpretation: Part 8*

81. In this Part, references to a “Short-Term Money-Market Fund” means a money market fund referred to in Regulation 86, “Money-Market Fund” means a money-market fund referred to in Regulation 87 and “money market fund” means either a Short-Term Money-Market Fund or a Money-Market Fund.

#### *Exchange-traded funds*

82. (1)

A responsible person of a UCITS ETF shall ensure that, in its name and in each of the types of document set out in paragraph (2), the relevant UCITS ETF uses the identifier “UCITS ETF” to identify it as an exchange-traded fund.

(2) The types of document to which paragraph (1) refers are, in respect of the particular UCITS ETF:

- (a) the constitutional document;
- (b) the prospectus;
- (c) the KIID; and
- (d) marketing communications.

(3) A responsible person of a UCITS ETF shall, in:

- (a) the prospectus,
- (b) the KIID, and
- (c) the marketing communications of the UCITS ETF,

disclose the policy of the UCITS ETF regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.

(4) A responsible person of a UCITS ETF, that calculates the indicative net asset value, shall, in its prospectus, disclose:

- (a) how the indicative net asset value is calculated;
- (b) the frequency of that calculation.

(5) A responsible person of a UCITS which is not a UCITS ETF shall not use the identifier UCITS ETF, ETF or exchange-traded fund in any type of document, including those specified in paragraph (2).

*Actively managed UCITS ETFs*

83. A responsible person of a UCITS that is an actively managed UCITS ETF shall, in:

- (a) the prospectus,
- (b) the KIID, and
- (c) the marketing communications of the actively managed UCITS ETF, disclose:
  - (i) that the UCITS ETF is an actively managed UCITS ETF; and
  - (ii) how the UCITS ETF will meet the stated investment policy including, where applicable, its intention to outperform an index.

*Treatment of secondary market investors of a UCITS ETF*

84. (1) In circumstances in which units of a UCITS ETF purchased on a secondary market may not be redeemable from the UCITS, the responsible person shall include the following wording in the prospectus and in the marketing communications of the relevant UCITS ETF:

“UCITS ETF’s units purchased on the secondary market cannot usually be sold directly back to UCITS ETF. Investors must buy and sell units on a secondary market with the assistance of an intermediary (e.g. a stockbroker) and may incur fees for doing so. In addition, investors may pay more than the current net asset value when buying units and may receive less than the current net asset value when selling them.”

(2) Where the stock exchange value of the units of a UCITS ETF varies significantly from its net asset value, the responsible person shall ensure that an investor who has acquired:

- (a) a unit, or
- (b) where applicable, any right to acquire a unit that was granted by way of distributing a respective unit,

on the secondary market, may sell the unit back to the UCITS ETF directly.

(3) Where paragraph (2) applies, the responsible person of the relevant UCITS ETF shall communicate to the relevant regulated market that the UCITS ETF accepts direct redemptions at the level of the UCITS ETF.

(4) Where paragraph (2) applies:

- (a) a responsible person of a UCITS ETF shall, in its prospectus, disclose:
  - (i) the process that is to be followed by an investor who has purchased a unit on the secondary market; and
  - (ii) the potential costs involved in redeeming directly from the UCITS ETF; and
- (b) the responsible person shall ensure that the costs for redeeming directly from the UCITS are not excessive.

*Money-market UCITS*

85. (1) A responsible person of a UCITS that is a money-market fund shall, in:

- (a) the prospectus, and
- (b) the KIID,

state whether the relevant UCITS is a Short-Term Money-Market Fund or a Money-Market Fund.

(2) A responsible person of a UCITS that is a money-market fund shall, in its prospectus:

- (a) include a risk warning highlighting the difference between the nature of a deposit and the nature of an investment in a money-market fund, including mention of the risk that the principal invested in a money-market fund is capable of fluctuation;
- (b) provide information to investors on the risk and reward profile of the fund so as to enable an investor to identify any specific risks linked to the investment strategy of the money-market fund.

(3) Information that is provided in accordance with subparagraph (b) of paragraph (2) shall:

- (a) in the case of every money-market fund, include, where relevant, investment in new asset classes, financial instruments or investment strategies that have unusual risk and reward profiles; and
- (b) in the case of a Money-Market Fund, take account of the longer WAM and WAL.

*Short-Term Money-Market Funds*

86. (1) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall ensure that the primary investment objectives of the UCITS are to:

- (a) maintain the principal of the fund; and

(b) provide a return in line with money-market rates.

(2) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall ensure that the relevant UCITS:

(a) invests only in the following:

(i) high quality money-market instruments, as determined by the responsible person, that comply with the criteria for money-market instruments as set out in the UCITS Regulations; and

(ii) deposits with credit institutions specified in Regulation 7;

(b) takes into account and documents the assessment by the responsible person of at least the following factors, in determining the quality of a relevant investment:

(i) the credit quality of the instrument;

(ii) the nature of the asset class represented by the instrument;

(iii) in the case of a structured financial instrument, the operational and counterparty risk associated with the instrument; and

(iv) the liquidity profile of the instrument;

(c) for the purposes of clause (i) of subparagraph (b), where a money-market instrument:

(i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and

(ii) where a money-market instrument is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in clause (i) this shall result in a new credit assessment being conducted of the instrument by the responsible person without delay; and

(d) monitors the credit quality of each of its investments on an ongoing basis.

(3) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall ensure the relevant UCITS:

(a) invests only in securities or instruments that have a residual maturity until the legal redemption date of not greater than 397 days;

(b) provides daily net asset value and price calculations and has daily subscriptions and redemptions of units;

(c) ensures that the WAM of the portfolio does not exceed 60 days;

- (d) ensures that the WAL of the portfolio does not exceed 120 days;
  - (e) takes into account the impact of FDIs, deposits and efficient portfolio management techniques and instruments when calculating the WAM and WAL;
  - (f) ensures that it is not exposed, directly or indirectly, to equities or commodities, including through any FDI;
  - (g) invests only in FDIs when these are in line with the money-market investment strategy of the UCITS;
  - (h) invests only in FDIs that give exposure to foreign exchange for hedging purposes;
  - (i) does not invest in a non-base currency unless the exposure is fully hedged;
  - (j) does not invest in another investment fund unless that other investment fund also is a short-term money-market fund; and
  - (k) has either a constant or fluctuating net asset value.
- (4) For the purposes of subparagraph (d) of paragraph (3), when calculating the WAL for securities, including structured financial instruments:
- (a) the responsible person shall base the maturity calculation on the residual maturity until the legal redemption of the instruments; and
  - (b) for the purposes of paragraph (a), where a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity if the following conditions apply at all times:
    - (i) the put option can be exercised freely by the UCITS at its exercise date;
    - (ii) the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and
    - (iii) the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.

#### *Money-Market Funds*

87. (1) A responsible person of a UCITS that is a Money-Market Fund shall ensure that the primary investment objectives of the UCITS are to:

- (a) maintain the principal of the fund; and
- (b) provide a return in line with money-market rates.

- (2) A responsible person of a UCITS that is a Money-Market Fund shall ensure that the relevant UCITS:
- (a) invests only in the following:
    - (i) high quality money-market instruments, as determined by the responsible person that comply with the criteria for money-market instruments as set out in the UCITS Regulations; and
    - (ii) deposits with credit institutions referred to in Regulation 7;
  - (b) takes into account and documents the assessment by the responsible person of at least the following factors, in determining the quality of a relevant investment:
    - (i) the credit quality of the instrument;
    - (ii) the nature of the asset class represented by the instrument;
    - (iii) in the case of a structured financial instrument, the operational and counterparty risk associated with the instrument; and
    - (iv) the liquidity profile of the instrument;
  - (c) For the purposes of clause (i) of subparagraph (b), where a money-market instrument:
    - (i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and
    - (ii) where a money-market instrument is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in clause (i) this shall result in a new credit assessment being conducted of the instrument by the responsible person without delay; and
  - (d) monitors the credit quality of each of its investments on an ongoing basis.
- (3) A responsible person of a UCITS that is a Money-Market Fund shall ensure the relevant UCITS:
- (a) invests only in securities or instruments that have a residual maturity until the legal redemption date of not greater than two years, provided that the time remaining until the next interest reset date is not greater than 397 days;
  - (b) provides daily net asset value and price calculations and has daily subscriptions and redemptions of units;
  - (c) ensures that the WAM of the portfolio does not exceed six months;

- (d) ensures that the WAL of the portfolio does not exceed 12 months;
- (e) takes into account the impact of FDIs, deposits and efficient portfolio management techniques and instruments when calculating the WAM and WAL;
- (f) ensures that the UCITS is not exposed, directly or indirectly, to equities or commodities, including through FDIs;
- (g) invests only in FDIs that give exposure to foreign exchange for hedging purposes;
- (h) does not invest in a non-base currency unless the exposure is fully hedged;
- (i) does not invest in another investment fund unless that other investment fund is a short-term money-market fund or a money-market fund; and
- (j) has a fluctuating net asset value.

(4) For the purposes of subparagraph (d) of paragraph (2), a floating rate security must reset to a money-market rate or index.

(5) (a) Subject to subparagraph (b), for the purposes of subparagraph (d) of paragraph (3), when calculating the WAL for a security, including a structured financial instrument, the responsible person shall base the maturity calculation on the residual maturity until the legal redemption of the instrument.

- (b) When a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity if the following conditions apply at all times:
  - (i) the UCITS can exercise the put option, at its exercise date, freely;
  - (ii) the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and
  - (iii) the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.

*Short-Term Money-Market Funds: valuation on the basis of amortised cost*

88. (1) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall not permit that UCITS to follow an amortised cost valuation methodology unless the UCITS or, where relevant, its delegate has demonstrated expertise in the operations of money market funds that follow this method of valuation.

- (2) For the purposes of paragraph (1), expertise shall be demonstrable where any of the following conditions is satisfied:
- (a) the short-term money-market fund has obtained a triple-A rating from an internationally recognised rating agency;
  - (b) the responsible person is engaged in the management, or has been engaged in the management, of a triple-A rated money-market fund; or
  - (c) in circumstances other than those in subparagraph (a) or subparagraph (b), where the responsible person or, where relevant, its delegate, has demonstrated to the Bank (through separate application) that appropriate expertise exists in the operation of this type of Money-Market Fund.
- (3) Where a UCITS is a Short-Term Money-Market Fund which uses the amortised cost valuation methodology, the responsible person of that UCITS shall:
- (a) ensure that, upon appointment and at all times thereafter, the persons responsible for the operation of that UCITS, including under any delegation arrangements, have the necessary expertise;
  - (b) carry out a weekly review of discrepancies between the market value and the amortised cost value of its money-market instruments;
  - (c) where a discrepancy in excess of 0.3 per cent occurs between the market value and the amortised cost value of the portfolio:
    - (i) conduct a daily review; and
    - (ii) notify the Bank of that discrepancy and provide to the Bank a description of the action, if any, that will be taken to reduce such discrepancy;
  - (d) in its constitutional document, provide:
    - (i) for the escalation procedure that is required by paragraph (4); or
    - (ii) that a review of the amortised cost valuation vis-à-vis market valuation will be carried out in accordance with the requirements of the Bank.
- (4) For the purposes of the weekly review that is mandated by subparagraph (b) of paragraph (3), the responsible person shall have in place an escalation procedure to ensure that any material discrepancy between the market value and the amortised cost value of a money-market instrument is brought to the attention of personnel who are responsible for the investment management of the UCITS.

(5) For the purposes of paragraph (4):

- (a) a discrepancy in excess of 0.1 per cent between the market value and the amortised cost value of the portfolio shall be brought to the attention of the responsible person; and
- (b) a discrepancy in excess of 0.2 per cent between the market value and the amortised cost value of the portfolio shall be brought to the attention of senior management of the responsible person, and to the attention of the depositary.

(6) A responsible person of a UCITS that is a Short-Term Money-Market Fund, which uses the amortised cost valuation methodology, shall:

- (a) document the occurrence and the outcome of every weekly review, every daily review and every engagement (if any) of the escalation procedure that is set out in paragraph (4);
- (b) undertake and document a monthly portfolio analysis, incorporating stress-testing of the portfolio, to examine portfolio returns under various market scenarios to determine if the portfolio constituents are appropriate to meet pre-determined levels of credit risk, interest rate risk, market risk and investor redemptions.

(7) A responsible person shall ensure that a UCITS that is a Money Market Fund shall not follow the amortised cost valuation methodology.

*European Central Bank reporting requirements*

89. (1) The responsible person of every Money-Market Fund that meets the definition of “Money Market Fund” in Article 1a of Regulation (EU) No 883/2011 of the European Central Bank of 25 August 2011 amending Regulation (EC) No 25/2009 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32) (ECB/2001/12) and domiciled within a Monetary Union Member State shall submit sets of data to the Bank at each of two frequencies:

- (a) a monthly return, in accordance with paragraph (2), that shall be provided to the Bank within six business days of the last business day of the month to which it relates; and
- (b) a quarterly return, in accordance with paragraph (3).

(2) A return prepared for the purposes of subparagraph (a) of paragraph (1) shall:

- (a) consist of aggregated and summarised balance sheet data;
- (b) break down all components of assets into three general issuer categories:
  - (i) Irish;

- (ii) other Monetary Union Member States; and
- (iii) the rest of the world.

(3) A return prepared for the purposes of subparagraph (b) of paragraph (1) shall:

- (a) be prepared, on a quarterly basis, to the end of March, the end of June, the end of September and the end of December;
- (b) be received by the Bank within ten business days of the last business day of the quarter to which it relates; and
- (c) includes a more detailed breakdown of the data that is included in the monthly return that is prepared for the purposes of subparagraph (a) of paragraph (1), including a profile of the issuers and the maturity of the assets that the Money-Market Fund holds.

## PART 9

### GUARANTEED UCITS

#### *General*

90. A responsible person shall not use the word “guaranteed” in the name of a UCITS unless there is in place, in accordance with Regulation 91, a specific legally enforceable guarantee between the UCITS and a legally independent third party of substance, for the benefit of the unit-holders.

#### *Legal agreement*

91. (1) For the purposes of Regulation 90:

- (a) the guarantee shall be evidenced in a contract that is legally enforceable under Irish law before the courts of Ireland, unless it can be demonstrated that the law of another jurisdiction or the existence of a non-exclusive foreign jurisdiction clause is best market practice;
- (b) the responsible person shall satisfy itself, and retain records to demonstrate the basis for that satisfaction, that it is within the legal capacity of the guarantor to enter the guarantee;
- (c) the guarantee shall not contain any onerous provision in respect of the UCITS that would permit the guarantor to invalidate the guarantee.

(2) A responsible person shall, in advance of using the word “guaranteed” in the name of a UCITS, provide to the Bank written confirmation from the legal adviser to the UCITS that the guarantee satisfies the conditions set out in paragraph (1).

(3) The responsible person shall not act as a guarantor for the purposes of this Part.

(4) For the purposes of Regulation 90, the guarantor must be:

- (a) an entity of substance and good standing; and
- (b) a credit institution with paid-up share capital in excess of €100 million which is of a type that is mentioned in Regulation 7.

*Disclosure*

92. The responsible person of that UCITS shall, in a prominent position in its prospectus, disclose the following provisions of the guarantee:

- (a) the legal name and any business or trading name of the guarantor;
- (b) the obligations of the UCITS under the guarantee, including detail on the cost of the guarantee;
- (c) the nature, timing and terms of the guarantee;
- (d) a warning to the effect that any performance of the guarantee is dependent on the solvency of the guarantor at the relevant time;
- (e) a clear description of the upside limitation as well as the downside protection, sufficient for an investor to make an informed judgement about the practical and economic value of the guarantee; and
- (f) where relevant, the impact on an investor who sells their units prior to the maturity of the guarantee.

PART 10

CROSS-BORDER NOTIFICATION OF UCITS

*Outward marketing: UCITS authorised under the UCITS Regulations*

93. (1) A responsible person shall notify the Bank promptly upon that responsible person receiving approval to market the units of a UCITS in a jurisdiction other than a Member State of the EEA.

(2) A responsible person that markets units of a UCITS in a Member State of the EEA or is approved to market the units of a UCITS in a jurisdiction other than a Member State of the EEA shall notify the Bank in the event that the UCITS ceases to market units in that Member State or jurisdiction.

*Inward marketing: UCITS authorised in another Member State*

94. (1) A responsible person of a UCITS that is authorised in another Member State and which proposes to market its units in the State shall provide to the Bank written confirmation from the relevant facilities agent that the facilities agent has agreed to act for the UCITS.

(2) The responsible person of a UCITS that is authorised in another Member State and which markets its units in the State, shall ensure that the prospectus of the relevant UCITS provides the following information for Irish investors:

- (a) details of the facilities agent and of the facilities that are being maintained; and

(b) relevant provisions of Irish tax laws.

(3) Where:

(a) a UCITS that is authorised in another Member State and which markets its units in the State ceases such marketing to investors in the State, or

(b) an umbrella UCITS ceases marketing any sub-fund to investors in the State,

the responsible person of the relevant UCITS or umbrella UCITS shall, in writing, inform the Bank promptly of that fact.

## PART 11

### MANAGEMENT COMPANIES

#### Chapter 1

##### *General Requirements*

##### *Operating conditions*

95. (1) A management company shall, in accordance with paragraphs (2) and (3), prepare and submit to the Bank financial accounts of the management company.

(2) A management company shall:

(a) prepare annual audited accounts of the management company in the format prescribed by the Bank from time to time; and

(b) submit the annual audited accounts of the management company to the Bank within four months of the year-end.

(3) A management company shall:

(a) prepare half-yearly accounts of the management company twice in every financial year to cover, respectively:

(i) the first six months of the financial year of the relevant management company, and

(ii) the second six months of the relevant financial year; and

(b) in each case to which subparagraph (a) applies, submit the half-yearly accounts to the Bank within two months of the end of the relevant half-year to which the particular accounts relate; and

(c) prepare the half-yearly accounts in the format prescribed by the Bank from time to time.

- (4) Every set of financial accounts specified in paragraphs (2) and (3) shall be accompanied by a minimum capital requirement report.
- (5) A minimum capital requirement report of a management company shall be:
- (a) prepared in the format prescribed by the Bank from time to time; and
  - (b) completed by the relevant management company.
- (6) A management company shall maintain an up to date business plan.
- (7) Where, by virtue of an investment in the units of another investment fund, a management company or the delegate of a management company (as the case may be) receives a commission (including a rebated commission):
- (a) the commission is the property of the investment fund on behalf of which the investment has been made; and
  - (b) the management company treats the commission as such property.
- Capital*
96. (1) (a) A management company shall hold its expenditure requirement as specified in Regulation 17(6) of the UCITS Regulations in the form of eligible assets as defined in paragraph 6 of Schedule 9.
- (b) For the purpose of subparagraph (a) the expenditure requirement is calculated as one quarter of a management company's total expenditure taken from the most recent annual accounts.
- (c) For the purpose of subparagraph (b) total expenditure includes all expenditure incurred by a management company less the following items which may be deducted:
- (i) profit shares;
  - (ii) bonuses;
  - (iii) net losses arising in the translation of foreign currency balances;
  - (iv) shared commissions and fees payable which are directly related to commission;
  - (v) fees, brokerages and other charges which are paid to clearing houses, exchanges and brokers;
  - (vi) fees to tied agents;
  - (vii) interest paid on client money; and
  - (viii) any other non-recurring expenses from non-ordinary activity.

- (2) (a) A management company must be in a position to demonstrate its ongoing compliance with the capital requirements of these Regulations and of the UCITS Regulations.
- (b) Where the financial position of a management company changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, that management company must:
  - (i) notify the Bank immediately; and
  - (ii) take any necessary steps to rectify its position.

*Organisational requirements: general*

97. (1) The board of a management company shall:
- (a) be responsible for the managerial functions of the management company specified in Schedule 10;
  - (b) be responsible for making all material decisions that affect the operation and conduct of the business of the management company;
  - (c) have the competence to make all material decisions that affect the operation and conduct of the business of the management company.
- (2) The board of a management company shall put in place, and ensure adherence to, the following:
- (a) procedures that are designed to ensure compliance by the management company with every legal and regulatory requirement to which the management company and every investment fund that is under its management are subject;
  - (b) procedures that are designed to ensure that every relevant risk pertaining to the management company and to every investment fund that is under its management can and is being identified, monitored and managed;
  - (c) procedures to:
    - (i) ensure and verify that the investment policy and strategies of every investment fund that is under the management of the management company are complied with; and
    - (ii) ensure the availability to the board of the management company of up-to-date information on portfolio performance;
  - (d) procedures to ensure that every relevant accounting record (including the annual and half-yearly financial statements) of the management company and of every investment fund that is under the management

of the UCITS management fund is maintained properly and is readily available;

- (e) procedures to ensure compliance with regulatory capital requirements of the management company;
- (f) procedures for the effective internal audit of the management company and of every investment fund that is under its management;
- (g) proper accounting policies and procedures in respect of the management company and every investment fund that is under its management;
- (h) procedures to ensure that clear structures are in place for the ongoing monitoring of any work that is delegated to a third party; and
- (i) procedures to ensure that any complaint from a unit-holder is addressed promptly and effectively.

*Organisational requirements: delegation*

98. (1) Where a management company delegates activities, it shall designate a specific director of the management company or other individual (in this Regulation referred to as the “designated person”), who shall:

- (a) be identified in the business plan of the management company;
  - (b) on a day-to-day basis, monitor and control each of the individual activities of the management company identified in Regulation 97(2) and Schedule 10.
- (2) (a) A management company shall put in place a procedure, which must be set out in its business plan, that specifies how the designated person shall monitor and control the managerial function(s) for which he or she has been designated.
- (b) A procedure for the purposes of paragraph (a) shall include a provision for the receipt of reports from delegates for the purpose of monitoring and controlling the managerial function(s) for which he or she has been designated.
- (3) The board of a management company shall, by resolution, adopt a statement of responsibility in relation to the managerial functions and the procedures that will apply in respect of each managerial function.
- (4) Where a management company delegates activities, the management company shall ensure that its business plan provides for the following requirements in relation to the reports that the designated person is to receive and the required action that the designated person is to take in response:
- (a) a list of the types of report that the designated person is to receive from parties who have an involvement, by delegation or otherwise, in

the performance of activities relevant to that managerial function and the identity of those parties;

- (b) details concerning the frequency of the reports. These provisions must include procedures for immediate reporting to the designated person of all material issues that arise;
- (c) a policy regarding the circumstances in which action by a designated person is required; and
- (d) procedures that the designated person is to follow in the event that he or she is required, by the policy that is referred to in subparagraph (c), to take action, including escalation to the board of the management company.

(5) A management company shall not designate the same person to perform the investment management managerial function and either the fund risk management managerial function or the operational risk management managerial function.

(6) A responsibility that is set out in paragraph 40 of Schedule 5 to the UCITS Regulations:

- (a) may not be delegated by the relevant management company; and
- (b) shall be carried out by senior management of the management company.

*Code of conduct in relation to collective portfolio management*

99. (1) A management company shall have in place, and ensure adherence to, procedures:

- (a) to prevent late trading;
- (b) to take into account the risks associated with market timing;
- (c) for the effective consideration and proper handling of complaints.

(2) A management company shall ensure that any complainant is notified of his, her or its right to refer the relevant complaint to the Financial Services Ombudsman.

*Directors*

100. (1) A management company shall upon the resignation or removal of a director of the management company from the office of director, or other termination of such a director's service as such, notify the Bank of that resignation, removal or other termination of service and, to the fullest extent known to the management company, the reason for it.

(2) For the purpose of paragraph (1), a management company shall notify the Bank immediately in writing of the resignation, removal or other termination of the service of a director of that management company.

(3) No person may, simultaneously, be a director of a management company and of the depositary of any investment fund that the relevant management company manages.

(4) A management company shall have a minimum of two directors that are resident in the State.

(5) A management company shall obtain from every proposed appointee to the board of directors details of all concurrent directorships that are held by those persons.

(6) The board of a management company shall appoint a chairperson on a permanent basis.

(7) A management company shall ensure that:

(a) an organisation effectiveness role shall be performed by an independent Chairman or an independent board member, and

(b) shall not be performed by a person with responsibility in relation to any of the managerial functions specified in Schedule 10.

(8) In the case of investment companies that have designated a management company, paragraphs (1) to (5) of Regulation 100 apply to the investment company and the management company and those paragraphs shall be read accordingly.

#### *Record-keeping*

101. (1) A management company shall retain, in a readily accessible form and for a period of at least six years, a written record of each of the following types, including, so far as possible, relevant original documentation:

(a) a complete record of every transaction into which the management company enters (whether on its own behalf or on behalf of any investment fund that is under its management);

(b) records that are sufficient to demonstrate compliance with the provisions of the UCITS Regulations, including any conditions that the Bank may, from time to time, impose on the management company or on any investment fund that is under its management and these Regulations.

(2) Where any record of a management company is not retained by the management company in legible form, the management company shall ensure that such record is capable of being reproduced in a legible form.

(3) If the Bank terminates the authorisation of a management company, that management company shall retain each of the records of the types referred to

in paragraph (1) for the outstanding term of the six year period referred to in that paragraph.

- (4) (a) A management company shall put in place and ensure adherence to procedures for the maintenance, security, privacy and preservation of records and working papers of the management company and of every investment fund that is under its management.
- (b) A management company shall ensure that all records and working papers to which paragraph (a) applies are, to the greatest extent reasonably possible, safeguarded against loss, unauthorised access, alteration and destruction.

*Management resources*

102. A management company shall ensure that, at all times, it has adequate management resources to conduct its activities effectively and ensure compliance with the UCITS Regulations and these Regulations.

*Relationship with the Bank*

103. (1) Without prejudice to its obligation to comply with the UCITS Regulations, a management company shall consult with the Bank prior to:

- (a) engaging in any significant new activity;
- (b) establishing any branch, office or subsidiary; or
- (c) introducing material changes to the management company's operating model.

(2) A management company shall notify the Bank in writing immediately that the management company becomes aware of:

- (a) any breach of the UCITS Regulations or of the Bank's requirements that are applicable to the relevant UCITS or to the management company (including these Regulations);
- (b) any breach of other Irish legislation which breach may be of prudential concern to the Bank or which may be likely to impact on the reputation or good standing of the relevant UCITS or of the management company;
- (c) the bringing of any legal proceedings by or against the relevant UCITS or the management company;
- (d) the initiation of any criminal prosecution against the relevant UCITS or the management company or against any officer or employee of the management company;
- (e) any situation or event that impacts, or potentially impacts, to a significant extent on the relevant UCITS or on the management company;

- (f) the imposition of any fine, administrative sanction or other penalty on the relevant UCITS or on the management company by any other entity, in the State or in any other jurisdiction, that performs a prudential or regulatory function in respect of financial services entities;
- (g) a visit to the relevant UCITS or to the management company by any entity other than the Bank, in the State or in any other jurisdiction, that performs a prudential or regulatory function in respect of financial services entities.

(3) A management company shall obtain the prior approval of the Bank to any proposed change to the name of the relevant management company.

(4) A management company shall inform the Bank in writing promptly of any change to the registered office, postal address, telephone number or email address of the management company.

(5) (a) A management company shall, on its headed paper, state that it is regulated by the Bank.

(b) A management company shall not include in any material or documents issued by it or on its behalf or by any delegate, any reference to the role of the Bank in relation to the supervision of the management company's activities that is misleading or inaccurate.

(6) Where a management company provides management services to an investment fund that is not authorised by the Bank, the management company shall ensure that the prospectus issued by the relevant investment fund does not, in any way, imply that the investment fund is regulated by the Bank.

(7) Without prejudice to Regulations 48 and 49, where a management company provides fund administration services to an investment fund that is not authorised by the Bank, the management company shall submit to the Bank a quarterly return containing the following aggregate information for each such investment fund that the management company manages, within each base currency category:

- (a) the domicile of each relevant investment fund;
- (b) the number of investment funds;
- (c) the number of unit-holders in each investment fund; and
- (d) the total net asset value of all investment funds that the management company manages.

*Financial control, management and company secretarial information*

104. (1) A management company shall ensure that its records contain at least each of the types of material set out in Schedule 11 and, where applicable, with the level and nature of content that is described for that type of material in the said Schedule.

(2) A management company shall notify the Bank in advance of any proposed or anticipated change of auditor of the management company and of the reasons for the proposed change.

*Internally-managed investment companies*

105. An internally-managed investment company shall comply with the following provisions of these Regulations:

- (a) Regulation 95(6) and (7);
- (b) Regulations 97 and 98;
- (c) Regulation 99;
- (d) Regulation 100 (1) — (6);
- (e) Regulation 101;
- (f) Regulations 103(3) and (4);
- (g) Regulations 104;
- (h) Schedule 4 of the UCITS Regulations; and
- (i) paragraphs 30-32, 34-40 (excluding 40(c)), 41-43, 54-61 and 64 of Schedule 5 to the UCITS Regulations.

Chapter 2

*Management Company Passport*

*Notifications*

106. (1) Without prejudice to the UCITS Regulations, where a management company proposes to:

- (a) establish a branch in another Member State in accordance with Regulation 27 of the UCITS Regulations, or
- (b) under the freedom to provide services, engage in an activity in another Member State in accordance with Regulation 28 of the UCITS Regulations,

the management company shall include, in the programme of operations that is submitted to the Bank, the information that is set out in paragraph (2).

(2) The information to which paragraph (1) refers is:

- (a) a description of the activities that it is proposed will be undertaken;
- (b) a description of the risk management process which the management company has put in place;

- (c) a description of the procedures and arrangements for the handling of complaints from, and making information available to, investors; and
- (d) in the case of a proposal to establish a branch in accordance with Regulation 27 of the UCITS Regulations, details of the address of the proposed branch and the names of those who will be responsible for the branch.

*Assessment: general requirements*

107. (1) Where a management company proposes to:

- (a) establish a branch in another Member State in accordance with Regulations 27 of the UCITS Regulations, or
- (b) under the freedom to provide services, engage in an activity in another Member State in accordance with Regulations 28 of the UCITS Regulations,

the management company shall review its assessment of:

- (i) the nature, scale and complexity of its business, and
- (ii) the nature and range of services and activities that are undertaken in the course of that business,

in order to determine the impact that establishing a branch or pursuing an activity under the freedom to provide services in accordance with the UCITS Regulations would have on the nature, scale and complexity of its business, and in particular on its organisational structure and resources.

(2) For the purposes of the assessment required by paragraph (1), a management company shall consider the impact which the establishment of a branch or the provision of activities under the freedom of services in another Member State would have on:

- (a) the corporate governance of the management company;
- (b) the administration function of the management company; and
- (c) the interaction of the management company with the relevant trustee or depositary in the other state or states.

(3) Where a management company proposes to establish a branch or, under the freedom to provide services, engage in an activity in another Member State, the management company shall specify in the programme of operations that it submits to the Bank:

- (a) how the management company will address any increased strain on its corporate governance due to the increase in the workload and responsibilities of its board of directors; and

- (b) where relevant, the steps that the management company will take to ensure that the delegation of its administration activities to an entity that is not authorised or supervised by the Bank will not interfere with the effective supervision of the management company by the Bank.

*Assessment: governance issues*

108. (1) A management company that is managing a UCITS that is authorised in another Member State shall have in place, and utilise, resources to develop awareness by the management company of the manner in which the competent authority of the home state of the relevant UCITS operates, both in terms of the UCITS authorisation process and ongoing supervision.

(2) A management company that is managing a UCITS that is authorised in another Member State shall include in the programme of operations that it submits to the Bank:

- (a) the identity of the employee of the management company, or designated persons, who has expertise concerning the regulatory requirements applicable in the home state of the relevant UCITS;
- (b) a description of how the management company will monitor compliance with regulatory requirements that are applicable in the home state of the relevant UCITS on a day-to-day basis;
- (c) where a UCITS is an investment company, the resources that the management company is putting in place to address the need to have a representative available to travel to the home state of the relevant UCITS to attend and report at board meetings of the relevant UCITS; and
- (d) an analysis of the impact that managing a UCITS that is authorised in another Member State is likely to have on the management company's minimum capital requirement and how this impact will be addressed.

(3) A management company shall ensure that it has in place, and utilises, sufficient resources to supervise the services that are provided to every UCITS that is under its management.

*Assessment: administrator issues*

109. (1) Where a management company engages an administrator that is established under the laws of and located in a state other than the State, the management company shall include in the delegation agreement with that administrator provisions that have the following effects:

- (a) ensuring that the Bank has effective access to data related to the delegated functions of the management company;
- (b) ensuring that the Bank has effective access to the business premises of the administrator, where not prohibited by the laws of the jurisdiction in which the administrator is established; and

- (c) requiring that the administrator co-operates with the Bank in respect of the functions that the management company delegates to the administrator from time-to-time.

(2) Where an administrator is located in another Member State, a management company shall, in the programme of operations that it submits to the Bank specify, and adhere to, any additional record-keeping procedures that the management company establishes to address the fact that the records of the administrator are not located in the State.

(3) A management company shall ensure that the programme of operations that it submits to the Bank addresses how the management company will ensure that, at all times, a person with the requisite detailed knowledge of the day-to-day operation of the UCITS will be available to the Bank.

(4) A management company shall undertake an annual due diligence assessment of any administrator that the management company engages and which is located in another Member State to ensure a high standard of oversight by the management company over such administrators.

*Assessment: depositary issues*

110. (1) A management company shall ensure that no agreement between it and a depositary that is located outside the State impairs the ability of the Bank to gain access to relevant documents and information of the management company, evidencing any and all matters which are potentially relevant to the arrangements and organisational decisions described in Regulation 29(1) of the UCITS Regulations.

(2) A management company shall, in the programme of operations that it submits to the Bank, specify the steps that it will take to ensure compliance with this Regulation.

## PART 12

### UCITS DEPOSITARIES

*Organisational requirements*

111. (1) A depositary shall have and maintain:

- (a) sound and effective administrative and internal control mechanisms;
- (b) complete and accurate records;
- (c) adequate arrangements for ensuring that the employees of the depositary are trained and supervised suitably, adequately and properly; and
- (d) defined procedures to ensure compliance with all applicable laws.

(2) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall have and maintain a minimum capital requirement of the higher of:

- (a) initial capital of at least €125,000;
  - (b) an amount equal to one quarter of its total expenditure as set out in the most recent annual accounts of the depositary.
- (3) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall:
- (a) calculate its minimum capital requirement in accordance with Schedule 9;
  - (b) have financial resources, calculated in accordance with Schedule 9, at least equal to its minimum capital requirement;
  - (c) hold its minimum capital requirement in the form of eligible assets pursuant to Schedule 9; and
  - (d) be in a position to demonstrate its compliance with the minimum capital requirement throughout the relevant reporting period.

#### *Governance*

112. (1) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall notify the Bank immediately if, for any reason, a person that is performing a pre-approval controlled function ceases to do so.

(2) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall have at least two directors that are resident in the State.

#### *Operating conditions*

113. (1) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall, in accordance with paragraphs (2) and (3), prepare and submit to the Bank financial accounts of the depositary.

(2) A depositary shall:

- (a) prepare annual audited accounts of the depositary in the format prescribed by the Bank from time to time;
- (b) submit the annual audited accounts of the depositary to the Bank within 4 months of the year-end; and
- (c) ensure that, when submitted to the Bank in accordance with subparagraph (b), the annual accounts of the depositary are accompanied by the annual audited accounts of every corporate shareholder of the depositary.

(3) A depositary shall:

- (a) prepare half-yearly accounts of the depositary twice in every financial year to cover, respectively:
  - (i) the first six months of the financial year of the relevant depositary,

- (ii) the second six months of the relevant financial year; and
  - (b) in each case to which subparagraph (a) applies, submit the half-yearly accounts to the Bank within two months of the end of the relevant half-year to which the particular accounts relate; and
  - (c) prepare the half-yearly accounts in the format prescribed by the Bank from time to time.
- (4) Every set of financial accounts specified in paragraphs (2) and (3) shall be accompanied by a minimum capital requirement report.
- (5) A minimum capital requirement report of a depositary shall be:
- (a) prepared in accordance with Schedule 9; and
  - (b) completed by the relevant depositary;

*Depositary obligations and restrictions*

114. (1) A depositary shall not delegate to a third party the duties imposed upon a depositary by sub-paragraphs (a) — (c) and such duties shall be carried out in the State:

- (a) paragraph (2) (c) and paragraph (3);
  - (b) Regulation 34 of the UCITS Regulations;
  - (c) Regulation 47 of the UCITS Regulations.
- (2) A depositary shall establish and implement written procedures for the purpose of dealing with any breach by the relevant UCITS or by the depositary of any of the following:
- (a) the UCITS Regulations;
  - (b) any requirement that the Bank imposes on the relevant UCITS or on the depositary, including these Regulations; or
  - (c) any provision of the prospectus of the relevant UCITS.
- (3) A depositary shall notify the Bank promptly of any material breach by the UCITS or by the depositary of any requirement, obligation or document to which paragraph (2) relates.
- (4) A depositary shall notify the Bank promptly of any non-material breach by the UCITS or by the depositary of any requirement, obligation or document to which paragraph (2) relates, if the relevant breach is not resolved within four weeks of the depositary becoming aware of that breach.
- (5) (a) A depositary shall maintain a written record of every breach by the UCITS or by the depositary to which paragraph (2) relates and of the steps taken to resolve such breaches.

(b) A depositary shall retain for at least six years every record that it creates or maintains in accordance with subparagraph (a).

(6) Where a UCITS proposes to invest in another investment fund, the depositary shall:

(a) ensure that the UCITS has, and implements, adequate procedures for the purpose of ensuring that every underlying investment fund meets the requirements of the UCITS Regulations and of the Bank, including these Regulations; and

(b) ensure that it reviews the decisions of the management company regularly for the purpose of ensuring that the procedures to which subparagraph (a) refers to have been adopted by the UCITS and are being adhered to.

(7) (a) A depositary shall:

(i) subject to subparagraph (c), ensure that there is legal separation of non-cash assets that are held under custody and that such assets are held on a fiduciary basis; and

(ii) maintain appropriate internal controls to ensure that records identify the nature and amount of every asset in custody, the ownership of each asset and where the documents of title to that asset are located.

(b) Where a depositary utilises the services of a sub-custodian, the depositary shall ensure that the sub-custodian complies with subparagraph (a).

(c) For the purposes of applying clause (i) of subparagraph (a) in respect of any non-cash asset that is:

(i) located, or

(ii) in the case of a non-cash asset of a type the governing law of which is determined by the place of registration of the asset, registered,

in any jurisdiction that does not recognise fiduciary duties, the depositary shall ensure that, under the law governing the relevant asset, the legal entitlement of the UCITS to the relevant asset is assured.

(8) (a) Where a depositary utilises the services of a global sub-custodian, the depositary shall ensure that:

(i) non-cash assets are held on a fiduciary basis by the global sub-custodian's network of custodial agents;

- (ii) the depositary receives from the global sub-custodian's custodial agents regular confirmation that the assets are held in accordance with this paragraph;
  - (iii) the depositary maintains records of the location and amount of every security held by each of the global sub-custodian's custodial agents; and
  - (iv) the relationship between the depositary and the global sub-custodian is set out in a formal contract between the two entities.
- (b) For the purposes of applying clause (i) of subparagraph (a) in respect of any non-cash asset that is:
- (i) located, or
  - (ii) in the case of a non-cash asset of a type the governing law of which is determined by the place of registration of the asset, registered,

in any jurisdiction that does not recognise fiduciary duties, the depositary shall ensure that, under the law governing the relevant asset, the legal entitlement of the UCITS to the relevant asset is assured.

*Operating conditions*

115. (1) A depositary shall not have a director who is also simultaneously a director of:

- (a) the relevant management company;
- (b) the relevant administration company; or
- (c) the relevant UCITS investment company.

(2) A depositary shall not register any security in the name of the relevant UCITS unless:

- (a) this is standard market practice within the market in question;
- (b) any security so registered cannot be assigned, transferred, exchanged or delivered without the prior authority of the depositary or of the depositary's agent; and
- (c) the depositary agreement between the depositary and the relevant UCITS permits the depositary to register a security in the name of the relevant UCITS.

(3) The termination of the appointment of a depositary shall only be permitted:

- (a) upon the revocation of the authorisation of a UCITS; or
- (b) upon the appointment of a replacement depositary.

*Depository agreement*

116. (1) A UCITS and a depository shall enter into a depository agreement.
- (2) A depository agreement shall include provisions requiring that:
- (a) where the depository proposes to appoint a third party as a safekeeping agent, the depository shall exercise due care and diligence in choosing and appointing that third party;
  - (b) a depository shall only appoint a third party as a safe-keeping agent where that person has and maintains the expertise, competence and standing appropriate to discharge the relevant responsibilities; and
  - (c) where a depository appoints a third party as a safe-keeping agent, the depository shall maintain an appropriate level of supervision over the safe-keeping agent and make appropriate inquiries from time to time to confirm that the obligations of the safekeeping agent continue to be discharged competently.
- (3) The depository agreement shall not, directly or indirectly, limit the potential liability of the depository to only those duties that are described in the depository agreement.

*Permitted markets*

117. (1) (a) A depository shall review the list of stock exchanges and markets that are mentioned in the UCITS prospectus to ascertain if the depository can provide, at the date of the prospectus, for the safe-keeping of the assets of a UCITS which may be traded on these exchanges or markets, by or under the UCITS Regulations.
- (b) If a depository cannot provide custody in accordance with paragraph (a), the depository must consult with the UCITS to ensure that the relevant exchanges or markets are removed from the list in the UCITS prospectus.
- (2) A depository shall ensure that a UCITS for which the depository acts as depository keeps the list of permitted stock exchanges and markets in the prospectus under review to ensure that the markets meet with all applicable regulatory criteria on an ongoing basis.

*Valuation of a UCITS*

118. (1) Where a UCITS values a security that is listed or traded on a regulated market taking into account the level of premium or discount at the date of the valuation, the depository shall ensure that valuing a security on this basis is justifiable in the context of establishing the probable realisation value of that security.
- (2) A depository shall ensure that the valuation methodologies that are provided for in the constitutional document of the UCITS are adhered to and that the operations of the UCITS are controlled properly.

(3) A depositary shall carry out and document:

- (a) a detailed initial review, and
- (b) subsequent periodic reviews,

of the overall valuation methodologies of a UCITS for which the depositary acts as depositary.

*Dealing in specie*

119. (1) A responsible person shall only accept subscriptions for units of a UCITS on an in specie basis where the depositary is satisfied that the terms of any exchange are not such as are likely to result in any material prejudice to the existing unit-holders of the relevant UCITS.

(2) A responsible person shall only accept redemption for units of a UCITS on an in specie basis where the depositary approves the asset allocation.

*Relationship with the Bank*

120. (1) A depositary may provide services to an investment fund that is not authorised by the Bank only if the depositary is satisfied that the prospectus issued by the investment fund does not imply, in any way, that the investment fund is regulated by the Bank.

(2) Where a depositary provides depositary services to an investment fund that is not authorised by the Bank, the depositary shall submit to the Bank, every three months, a return that sets out the following aggregate information for every investment fund that is not authorised by the Bank and to which the depositary provides services, within each base currency category:

- (a) the domicile of each relevant investment fund;
- (b) the number of investment funds;
- (c) the number of unit-holders in each investment fund; and
- (d) the total net asset value of each investment fund / of all investment funds to which the depositary provides services.

(3) For the purposes of this Regulation, information is not required in respect of any investment fund that is included in the return that is prepared by an authorised firm in accordance with Regulation 103(7).

## PART 13

### MISCELLANEOUS PROVISIONS

*Reporting requirements*

121. Accounts, reports and returns required by these Regulations to be submitted or otherwise provided to the Bank shall be made using the Bank's Online Reporting System and in accordance with these Regulations.

*Service of notice or other document by the Bank*

122. The Bank may, in addition to the methods specified in section 61G of the Central Bank Act 1942, give or serve a notice or other document under these Regulations to a natural person, a partnership or body corporate, electronically, that is to say by electronic mail to an email address, or by facsimile number, furnished for that purpose by the person, partnership or body corporate as the case may be, to the Bank.

*Records and Compliance*

123. (1) A responsible person shall maintain up-to-date records containing all information and documents prepared in compliance with these Regulations.

(2) A responsible person shall, upon being required by the Bank to do so, provide, to the Bank, records evidencing compliance with these Regulations for a period specified by the Bank (up to a maximum period of six years).

*Transitional requirements*

124. (1) Where, at the commencement of these Regulations, the responsible person is not in compliance with the requirement in Regulation 53(2) in relation to a prospectus approved by the Bank before the commencement of these Regulations, that person shall ensure that any subsequent amendments to the prospectus ensure compliance with Regulation 53(2).

(2) A management company and depositary shall comply with the requirements contained in Regulation 95(3)(a)(ii) and Regulation 113(3)(a)(ii) respectively in relation to the financial year of the management company or depositary starting after the commencement of these Regulations.

(3) A management company shall comply with Regulation 97(1)(c) and Regulation 100(7) by 30 June 2016.

Signed for and on behalf of the CENTRAL BANK OF IRELAND  
on this the 1st day of October 2015.

CYRIL ROUX,  
Deputy Governor (Financial Regulation).

## SCHEDULE 1

*Regulation 2(1)***Regulatory Criteria**

In respect of a relevant market, the regulatory criteria to which the responsible person shall have regard include:

1 a general overview of the market, having regard to issues which would be relevant to the operation of the market and investments therein;

2 whether the relevant market displays any or each of the following characteristics:

(a) Regulated

The market must be regulated. Such a market is subject to supervision by an authority or authorities, duly appointed or recognised by the state in which it is located. The authority(ies) should generally have the power to impose capital adequacy rules, to supervise directly members of the market, to impose listing standards, to ensure transparency in dealings and to impose penalties where breaches of rules or standards occur. The clearance and settlement system for transactions should also be regulated and should have acceptable settlement periods.

(b) Recognised

The market must be recognised or registered by an authority or authorities, duly appointed or recognised by the state in which it is located. Investment in the market by locally based retail investment funds should be permitted by the relevant authorities.

(c) Operating Regularly

Trading must take place with reasonable frequency and the market should have regular trading hours. The assessment must have regard to liquidity in the market, including the number of members/participants, and the ability of the market to provide fair prices on an on-going basis. Custody arrangements should also be satisfactory, ie a depositary must be satisfied that it can provide for the safe-keeping of the assets of an authorised UCITS in accordance with the conditions set down in the UCITS Regulations.

(d) Open to the Public

The market must be open to the public. The public should have direct or indirect access to the securities traded on the market. The degree to which overseas investors are permitted to invest and any rules which may impede the repatriation of capital or profits must be taken into account.

## SCHEDULE 2

*Regulation 17***Netting and Hedging**

## Netting

1 A responsible person shall only net positions:

- (i) Between FDI, if the FDI refer to the same underlying asset, including where the maturity date of the FDI is different;
- (ii) Between an FDI which has an underlying asset that is a transferable security, money market instrument or a collective investment undertaking and that same corresponding underlying asset.

## Hedging

2 The responsible person may only take hedging arrangements into account when calculating global exposure where the hedging arrangements offset the risks linked to some assets and if the hedging arrangements comply with all of the following:

- (i) They do not aim to generate a return;
- (ii) They result in a verifiable reduction of risk at the UCITS level;
- (iii) They offset risk linked to FDI;
- (iv) They relate to the same asset class; and
- (ii) They are efficient in stressed market conditions.

## SCHEDULE 3

*Regulation 24(1)*

## Conditions for Collateral Received by a UCITS

The conditions for the receipt of collateral by a UCITS, to which Regulation 24 refers, are:

## 1 Liquidity

Collateral received, other than cash, should be highly liquid and traded on a regulated market or multilateral trading facility with transparent pricing in order that it can be sold quickly at a price that is close to its pre-sale valuation. Collateral that is received should also comply with the provisions of Regulation 74 of the UCITS Regulations.

## 2 Valuation

Collateral that is received should be valued on at least a daily basis and assets that exhibit high price volatility should not be accepted as collateral unless suitably conservative haircuts are in place.

## 3 Issuer Credit Quality

Collateral received should be of high quality. The responsible person shall ensure that:

- (i) where the issuer was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and
- (ii) where an issuer is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in (i) this shall result in a new credit assessment being conducted of the issuer by the responsible person without delay.

## 4 Correlation

Collateral received should be issued by an entity that is independent from the counterparty. There should be a reasonable ground for the responsible person to expect that it would not display a high correlation with the performance of the counterparty.

## 5 Diversification (Asset Concentration)

- (i) Subject to subparagraph (2) collateral should be sufficiently diversified in terms of country, markets and issuers with a maximum exposure to a given issuer of 20 per cent of the net asset value of the UCITS. When a UCITS is exposed to different counterparties, the different baskets of collateral should be aggregated to calculate the 20 per cent limit of exposure to a single issuer.

- (ii) A UCITS may be fully collateralised in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country, or a public international body to which one or more Member States belong. Such a UCITS should receive securities from at least 6 different issues, but securities from any single issue should not account for more than 30 per cent of the UCITS' net value. UCITS that intend to be fully collateralised in securities issued or guaranteed by a Member State should disclose this fact in the prospectus of the UCITS. UCITS should also identify the Member States, local authorities, or public international bodies or guaranteeing securities which they are able to accept as collateral for more than 20 per cent of their net asset value.

#### 6 Immediately Available

Collateral received should be capable of being fully enforced by the UCITS at any time without reference to or approval from the counterparty.

## SCHEDULE 4

*Regulation 19***Calculation of Global Exposure using the Value at Risk (VaR) Approach**

1 The responsible person shall calculate global exposure under the relative VaR approach, as follows:

- (a) Calculate the VaR of the UCITS current portfolio, including derivatives;
- (b) calculate the VaR of a reference portfolio;
- (c) verify that the VaR of the UCITS portfolio is not greater than twice the VaR of the reference portfolio in order to ensure a limitation of the global leverage ratio of the UCITS to 2. This limit shall be presented as follows:

$$\frac{(\text{VaR UCITS} - \text{VaR Reference Portfolio}) \times 100}{\text{VaR Reference Portfolio}} \leq 100\%$$

2 The UCITS responsible person shall ensure that the reference portfolio and the related processes comply with the following criteria:

- (a) The reference portfolio should be unleveraged and should, in particular, not contain any FDI or embedded FDI, except that:
  - (i) a UCITS engaging in a long/short strategy may select a reference portfolio which uses FDI to gain the short exposure;
  - (ii) a UCITS which intends to have a currency hedged portfolio may select a hedged index as a reference portfolio.
- (b) the risk profile of the reference portfolio should be consistent with the investment objectives, policies and limits of the UCITS portfolio;
- (c) If the risk/return profile of a UCITS changes frequently or if the definition of a reference portfolio is not possible, then the relative VaR approach should not be used;
- (d) The process relating to the determination and the ongoing maintenance of the reference portfolio should be integrated in the risk management process and be supported by adequate procedures. Guidelines governing the composition of the reference portfolio should be developed. In addition, the actual composition of the reference portfolio and any changes should be clearly documented.

**Absolute VaR approach**

3 The responsible person shall only use the absolute VAR approach subject to the requirements set out in Part 2 of these Regulations.

**VaR approach: Quantitative requirements**

- 4 The absolute VaR of a UCITS shall not be greater than 20 per cent of its net asset value.
- 5 The calculation of the absolute and relative VaR shall be carried out in accordance with the following parameters:
  - (a) one-tailed confidence interval of 99 per cent;
  - (b) holding period equivalent to 1 month (20 business days);
  - (c) effective observation period (history) of risk factors of at least 1 year (250 business days) unless a shorter observation period is justified by a significant increase in price volatility (for instance extreme market conditions);
  - (d) quarterly data set updates, or more frequent when market prices are subject to material changes;
  - (e) at least daily calculation.
- 6 A confidence interval and/or a holding period differing from the default parameters above may be used by the responsible person provided the confidence interval is not below 95 per cent and the holding period does not exceed 1 month (20 business days).
- 7 For UCITS referring to an absolute VaR approach, the use of other calculation parameters goes together with a rescaling of the 20 per cent limit to the particular holding period and/or confidence interval. The rescaling can only be done under the assumption of a normal distribution with an identical and independent distribution of the risk factor returns by referring to the quantiles of the normal distribution and the square root of time rule.

**VaR approach: Qualitative requirements**

- 8 The UCITS Regulations provide that the risk management function is responsible inter alia for ensuring compliance with the UCITS risk limit system, including statutory limits concerning global exposure. The responsible person shall ensure that its risk management function is responsible for:
  - (a) sourcing, testing, maintaining and using the VaR approach on a day-to-day basis;
  - (b) supervising the process relating to the determination of the reference portfolio where the UCITS reverts to a relative VaR approach;
  - (c) ensuring on a continuous basis that the model is adapted to the UCITS portfolio;
  - (d) performing continuous validation of the model;

- (e) validating and implementing a documented system of VaR limits consistent with the risk profile of the UCITS. The risk profile of the UCITS shall be approved by senior management and the board of directors;
  - (f) monitoring and controlling the VaR limits;
  - (g) monitoring on a regular basis the level of leverage generated by the UCITS;
  - (h) producing on a regular basis reports relating to the current level of the VaR measure (including back testing and stress testing) for senior management.
- 9 The responsible person shall ensure that the VaR approach and the related outputs represent an integral part of the daily risk management work. The responsible person shall ensure that the VaR approach and its related outputs are integrated into the investment process led by the investment managers as part of the risk management programme of the UCITS to keep the UCITS risk profile under control and consistent with its investment strategy.
- 10 The responsible person shall ensure that its VaR approach is validated as conceptually sound and adequate in respect of all material risks by an independent person, when developed. An independent person for this purpose is a person who has not been engaged in the development of the VaR approach. Where there is any significant change to the VaR approach, the responsible person shall ensure that this change is independently validated. A significant change for these purposes shall include the use of a new product by the UCITS, the need to improve the model following the back testing results, or a decision taken by the responsible person to change certain aspects of the model in a significant way.
- 11 In accordance with paragraph 8(d), the risk management function shall perform ongoing validation of the VaR model (this includes, but is not limited to back testing) in order to ensure the accuracy of the model's calibration. The review shall be documented. Where necessary, the model shall be adjusted.

### **Documentation and procedures**

- 12 The responsible person shall document its VaR approach and related processes and techniques in accordance with the documentation requirements referred to in paragraph 1(a) of Schedule 9 of the UCITS Regulations and shall include, inter alia, the following:
- (a) the risks covered by the model;
  - (b) the model's methodology;
  - (c) the mathematical assumptions and foundations;
  - (d) the data used;

- (e) the accuracy and completeness of the risk assessment;
- (f) the methods used to validate the model;
- (g) the back testing process;
- (h) the stress testing process;
- (i) the validity range of the model; and
- (j) the operational implementation.

## SCHEDULE 5

*Regulation 36(1)***Methods of Valuation**

The valuation methodology for the purposes of Regulation 36(1) is:

1 Securities that are listed or traded on a regulated market;

Valuation shall be the closing or last known market price.

Where a security is listed on more than one exchange, the relevant market shall be:

- (a) the exchange that constitutes the main market, or
- (b) the exchange that the responsible person determines provides the fairest criteria in a value for the security.

2 Unlisted Securities and Securities that are listed or traded on a regulated market where the market price is unrepresentative or not available:

The value of the security is its probable realisation value which shall be estimated with care and in good faith.

The security shall be either:

- (a) valued by the responsible person,
- (b) valued by a competent person appointed by the responsible person and approved for the purpose by the depositary, or
- (c) valued by any other means, provided that the value is approved by the depositary.

3 Investment Funds

Valuation shall be based on the latest bid price or latest net asset value, as published by the investment fund.

Valuation based on a mid-price or offer price is acceptable if consistent with the valuation policy. A responsible person may, in accordance with paragraph 1 of this Schedule, undertake a valuation based on market prices where the investment fund in which the investment is made is listed on a regulated market.

4 Cash (in Hand or on Deposit)

Value is the nominal or face value plus accrued interest.

5 Exchange-Traded Futures and Options Contracts (including Index Futures)

Valuation is based on the settlement price as determined by the market where the exchange-traded future or option contract is traded.

If a settlement price is not available the exchange-traded future contract or option contract may be valued in accordance with paragraph 2 of this Schedule.

#### 6 Amortised cost

Where it is not the intention or objective of a responsible person to apply amortised cost valuation to the portfolio of a UCITS as a whole, a money-market instrument within such a portfolio shall only be valued on an amortised basis if the money-market instrument has a residual maturity of less than three months and does not have any specific sensitivity to market parameters, including credit risk.

## SCHEDULE 6

*Regulation 51(5)***Advertising Standards for Certain UCITS**

The advertising standards for the purposes of Regulation 51(5) are:

- 1 The design and presentation of an advertisement must be:
  - (a) clear, fair, accurate and not misleading; and
  - (b) such that the advertisement can be understood easily and clearly.
- 2 Where footnotes are used in an advertisement they should be of sufficient size and prominence to be legible easily; where appropriate they should be linked to the relevant part of the main copy.
- 3 It must be clear from the design and presentation of an advertisement that it is an advertisement such that any person who looks at it can see immediately that it is an advertisement.
- 4 No statement made or risk warning given in an advertisement may be obscured or disguised in any way, nor may the effect of any risk warning be diminished, by the content, design or format of the advertisement.
- 5 An advertisement must not, whether by inaccuracy, ambiguity, exaggeration, omission or otherwise, mislead investors about any matter that is likely to influence an investor's attitude to the investment.
- 6 (a) Every advertisement must be prepared with care and with the aim of ensuring that a potential investor understands fully the nature of any commitment into which the investor would enter if the investor were to acquire a unit in the relevant UCITS.  
  
(b) In preparing an advertisement a UCITS shall take into account the fact that the complexities of finance may be beyond the understanding of some people to whom the opportunity being offered will appeal and therefore no advertisement may take advantage of inexperience or credulity.
- 7 When an advertisement contains a forecast or projection, such as a specific growth rate or a specific return or rate of return, it must make clear the basis upon which that forecast or projection is made, explaining, where relevant:
  - (a) whether reinvestment of income is assumed;
  - (b) whether account has been taken of the incidence of any taxes or duties and, if it has, how such account has been taken;
  - (c) whether the forecast or projected rate of return will be subject to any deductions other than upon premature realisation or otherwise.

- 8 Advertisements leading to the employment of money in anything the value of which is not guaranteed must include a warning that the value of the investment can reduce as well as increase and, therefore, that the return on the investment necessarily will be variable.
- 9 An advertisement must not describe an investment as being guaranteed or partially guaranteed (or by words that convey such a meaning or impression) unless there is in place a legally enforceable agreement with a third party that undertakes:
  - (a) in the case of a full guarantee, to meet, in full, an investor's claim under the guarantee;
  - (b) in the case of a partial guarantee, to meet, to whatever extent is stated in the advertisement, the investor's claim under the partial guarantee.

Where values are guaranteed, sufficient detail must be included in the advertisement to give the reader a fair view of the nature of the guarantee.

- 10 An advertisement making claims, whether specific or not, as to anticipated growth in value or rate of return must include a prominent statement to the effect, as appropriate, that neither past experience nor the current situation are necessarily accurate guides to the future growth in value or rate of return.
- 11 An advertisement that contains information on past performance must also contain the following warning, presented in the advertisement no less prominently than the information on past performance:

“Past performance may not be a reliable guide to future performance”
- 12 An advertisement that quotes past experience in support of a forecast or projected growth in the value or rate of return:
  - (a) must not be misleading in relation to present prospects of an investment; and
  - (b) must indicate the circumstances in which, and the period over which, such experience has been gained, in a way that is fair and representative.
- 13 An advertisement relating to offers to facilitate the planned withdrawal from capital as an income equivalent, such as by cashing in units of the UCITS, must contain a statement explaining clearly the effect that any such withdrawal would have on the investment.
- 14 When claims to investment skill in an advertisement are based upon an asserted increase in the value of particular items purchased or recommended for purchase by the advertiser in the past, that person must be in a position to substantiate that:
  - (a) the purchase or recommendation upon which the assertion is based was made at the time claimed; and

- (b) the present value asserted for the investment corresponds to the price actually obtained for identical items when sold in the open market in the period immediately preceding the advertisement.

No claim to an increase in the value of investments or collectibles should be based upon the performance within a given market of selected items only unless that claim can be substantiated in accordance with paragraphs (a) and (b).

15 The terms “tax-free” and “tax-paid”, and words, terms or phrases creating a similar impression, may be used in an advertisement only if:

- (a) it is made clear in the advertisement which particular tax or taxes or duty or duties are involved; and
- (b) the advertiser states clearly what liability may arise and by whom it will be paid if it does arise.

16 When the achievement or maintenance of a return that is claimed or offered in an advertisement for a given investment is in any way dependent upon the assumed effects of tax or duty:

- (a) this fact must be explained clearly; and
- (b) the advertisement must make it clear that no undertaking is or can be given that the fiscal system may not be revised with consequent effects upon the return that is offered.

17 Where an advertisement relates to a high volatility UCITS, it must state that the investment may be subject to sudden and large falls in value, and, if it is the case, that the investor could lose the total value of the initial investment.

18 Where a UCITS is described as being likely to yield income or as being suitable for an investor that is seeking income from the investment, and where the income from the UCITS can fluctuate, the advertisement must contain the following warning:

“Income may fluctuate in accordance with market conditions and taxation arrangements”

19 Where a UCITS is denominated in a currency other than that of the country in which the advertisement is issued, the advertisement must contain the following warning:

“Changes in exchange rates may have an adverse effect on the value price or income of the product”

20 An advertisement shall, where relevant:

- (a) state that the difference at any one time between the sale and repurchase price of a unit in the UCITS means that the investment should be viewed as medium term to long term;
- (b) refer to the impact of a redemption charge.

## SCHEDULE 7

*Regulation 79(1)***Additional Information to be Included in the Annual Report**

The information to which Regulation 79(1) refers is:

- 1 A statement of the assets and liabilities or the balance sheet of the UCITS showing, separately, the following:
  - (a) money-market instruments;
  - (b) investment funds;
  - (c) deposits with credit institutions;
  - (d) FDI.
- 2 An analysis, in accordance with the criteria set out in Schedule 12 of the UCITS Regulations, of the portfolio of the UCITS which distinguishes between:
  - (a) UCITS and AIFs;
  - (b) deposits;
  - (c) FDI dealt in on a regulated market;
  - (d) OTC derivatives.
- 3 A general description of the use of FDI and of the efficient portfolio management techniques and instruments that have been employed during the reporting period and the resulting amount of commitments, identifying:
  - (a) the types of FDI concerned, including:
    - (i) OTC derivatives;
    - (ii) the underlying exposures; and
    - (iii) where relevant, the type and amount of collateral received to reduce counterparty exposure.
  - (b) the purposes underlying the use of the various instruments, together with the attendant risks, for the purpose of enabling a unit-holder to assess the nature of those instruments.
- 4 (a) Open financial derivative positions at the reporting date shall be marked to market and identified specifically in the portfolio statement required by paragraph 4 of Schedule 12 to the UCITS Regulations.

- (b) For the purposes of subparagraph (a), information on open option positions shall include:
    - (i) the strike price;
    - (ii) the final exercise date; and
    - (iii) an indication of whether or not such positions are covered.
  - (c) Counterparties to OTC derivatives shall be identified in the annual report, in the same section in which open financial derivative positions are identified.
- 5 In the case of a UCITS that engages in financial derivative transactions or in efficient portfolio management techniques and instruments (or in both), an explanation of the treatment of realised and unrealised gains or losses arising from financial derivative transactions and from the use of such efficient portfolio management techniques and instruments.
- 6 In the case of a UCITS that engages in efficient portfolio management techniques and instruments, information on:
- (a) the exposure obtained through efficient portfolio management techniques and instruments;
  - (b) the identity of the counterparty to the relevant efficient portfolio management techniques and instruments;
  - (c) the type and amount of collateral received by the UCITS to reduce counterparty exposure;
  - (d) the revenues arising from efficient portfolio management techniques and instruments for the entire reporting period, together with the direct and indirect operational costs and fees incurred; and
  - (e) the method used to calculate global exposure.
- 7 Where a UCITS uses a relative VaR approach, the following information on the reference portfolio must be included.
- (a) information regarding the level of leverage employed during the relevant period.
  - (b) For the purposes of paragraph (a):
    - (i) leverage is to be calculated as the sum of the notionals of the derivatives used;
    - (ii) the calculation in subparagraph (i) may be supplemented with leverage calculated on the basis of a commitment approach

- 8 Information regarding the VaR measure, including at least the lowest, the highest and the average utilization of the VaR limit calculated during the financial year.
- 9 Information on the model and inputs used for calculating the VaR limit to which paragraph (8) refers.
- 10 In the case of an index-tracking UCITS:
  - (a) information on the size of the tracking error at the end of the period under review and an explanation of any divergence between the anticipated and realised tracking error for the relevant period;
  - (b) information on the annual tracking difference between the performance of the UCITS and the performance of the index tracked; and
  - (c) an explanation for the annual tracking difference.
- 11 A report from the depositary of the UCITS;
- 12 A description of soft commission arrangements affecting the UCITS during the period;
- 13 Details of the amounts paid under any directed brokerage services or similar arrangements;
- 14 Details of any distributions out of capital;
- 15 A description of any material changes in the prospectus during the reporting period;
- 16 A list of exchange rates used in the annual report;
- 17 A report from the board of directors, in accordance with Regulation 78(4);
- 18 Details of all sub-investment managers engaged by the investment manager to act in relation to the UCITS; and
- 19 The identity of the issuer where collateral received from the issuer has exceeded 20 per cent of the net asset value of the UCITS and indicate whether the UCITS has been fully collateralised in securities issued or guaranteed by a Member State.

## SCHEDULE 8

*Regulation 80(1)***Additional Information to be Included in the Half-Yearly Report**

The information to which Regulation 80(1) refers is:

- 1 A statement of the assets and liabilities or the balance sheet of the UCITS showing, separately, the following:
  - (a) money-market instruments;
  - (b) investment funds;
  - (c) deposits with credit institutions; and
  - (d) FDI.
- 2 An analysis, in accordance with the criteria set out in Schedule 12 of the UCITS Regulations, of the portfolio of the UCITS which distinguishes between:
  - (a) UCITS and AIFs;
  - (b) deposits;
  - (c) FDI dealt in on a regulated market; and
  - (d) OTC derivatives.
- 3 A description of soft commission arrangements affecting the UCITS during the reference period.
- 4 A general description of the use of FDI and of the efficient portfolio management techniques and instruments that have been employed during the reporting period and the resulting amount of commitments:
  - (a) identifying:
    - (i) the types of FDI concerned, including OTC derivatives;
    - (ii) the underlying exposures; and
    - (iii) where relevant, the type and amount of collateral received to reduce counterparty exposure; and
  - (b) indicating the purposes underlying the use of the various instruments, together with the attendant risks, for the purpose of enabling a unit-holder to assess the nature of those instruments.

- 5 (a) Open financial derivative positions at the reporting date of the half-yearly report shall be marked to market and identified specifically in the portfolio statement required by paragraph 4 of Schedule 12 to the UCITS Regulations.
  - (b) For the purposes of subparagraph (a), information on open option positions shall include:
    - (i) the strike price;
    - (ii) the final exercise date; and
    - (iii) an indication of whether or not such positions are covered.
  - (c) Counterparties to OTC derivatives shall be identified in the half-yearly report, in the same section in which open financial derivative positions are identified.
- 6 In the case of a UCITS that engages in financial derivative transactions or in efficient portfolio management techniques and instruments (or in both), an explanation of the treatment of realised and unrealised gains or losses arising from such financial derivative transactions and from the use of such efficient portfolio management techniques and instruments.
  - 7 In the case of a UCITS that engages in efficient portfolio management techniques and instruments, information on:
    - (a) the exposure obtained through efficient portfolio management techniques and instruments;
    - (b) the identity of the counterparty to the relevant efficient portfolio management techniques and instruments;
    - (c) the type and amount of collateral received by the UCITS to reduce counterparty exposure; and
    - (d) the revenues arising from efficient portfolio management techniques and instruments for the entire reporting period, together with the direct and indirect operational costs and fees incurred.
  - 8 In the case of an index-tracking UCITS, information on the size of the tracking error at the end of the period under review;
  - 9 Details of any distribution out of capital;
  - 10 A description of any material changes in the prospectus during the reporting period;
  - 11 A list of exchange rates used in the half-yearly report;
  - 12 A report from the board of directors in accordance with Regulation 78(4); and

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13 Details of all sub-investment managers engaged by the investment manager to act in relation to the UCITS.

## SCHEDULE 9

*Regulation 111***Minimum Capital Requirement Report**

The requirements for the preparation of a minimum capital requirement report are:

**1 Interpretation**

In this Schedule, unless the context otherwise requires:

“expenditure requirement” means one quarter of a depositary’s total expenditure as set out in the most recent annual audited accounts;

“minimum capital requirement” means the higher of the initial capital requirement and the expenditure requirement;

“total expenditure” means all expenditure incurred by a firm.

**2 Calculating “Total Expenditure”**

For the purposes of the minimum capital requirement report:

(a) the following may be deducted from the figure for total expenditure:

- (i) depreciation;
- (ii) profit shares, bonuses;
- (iii) net losses arising in the translation of foreign currency balances;
- (iv) shared commissions paid (other than to officers and staff of the depositary) that have been paid with the prior agreement of the Bank; and
- (v) exceptional and extraordinary non-recurring expense items that have been paid with the prior agreement of the Bank; and

(b) every deduction from the figure for total expenditure shall be either:

- (i) identified clearly in the most recent annual audited accounts; or
- (ii) supported by a letter from the auditor of the UCITS confirming the relevant figure.

**3 Financial Resources**

A depositary shall have financial resources at least equal to its Minimum Capital Requirement.

Financial Resources are calculated as the aggregate of:

- (a) Fully paid in equity capital;
- (b) Perpetual non-cumulative preference shares;
- (c) Eligible Capital Contributions pursuant to paragraph 4 of this Schedule;
- (d) Subordinated Loan Capital pursuant to paragraph 4 of this Schedule;
- (e) Share premium accounts;
- (f) Disclosed revenue and capital reserves (excluding revaluation reserves);
- (g) Interim net profits (may only be included if they have been audited); and
- (h) Other reserves.

Less

Current year losses not included in disclosed revenue and capital reserves specified in paragraph 3(a) — (h) of this Schedule.

#### 4 Eligible Capital Contributions and Subordinated Loan Capital (both Perpetual and Redeemable)

The following conditions apply to eligible capital contributions and to subordinated loan capital (both perpetual and redeemable):

- (a) the prior approval of the Bank must be obtained in respect of the inclusion of the eligible capital contribution or subordinated loan capital in the financial resources for capital adequacy purposes
- (b) subordinated loan capital may not be incorporated in the calculation of the initial capital requirement;
- (c) the Bank must be provided with documentation, including a copy of the original bank statement showing receipt of the relevant funds, that the depositary has received the eligible capital contribution or subordinated loan capital or both (as the case may be);
- (d) the Bank may require the auditor of the depositary to confirm the receipt of additional capital;
- (e) the depositary must use (as the case may be) the template capital contribution agreement, perpetual loan subordination agreement or loan subordination agreement (for redeemable subordinated loan capital), each without amendment, that the Bank may specify and make available, including on the Bank's website, from time to time;

#### 5 Redeemable Subordinated Loan Capital

Without prejudice to paragraph 4 of this Schedule, the following conditions also apply to redeemable subordinated loan capital:

- (a) the extent to which redeemable subordinated loan capital ranks as a financial resource, for the purposes of calculating financial resources, will be reduced on a straight-line basis over the five years immediately preceding the repayment date;
- (b) the qualifying amount of redeemable subordinated debt is calculated as follows:

Remaining term to maturity \_\_\_\_\_

Gross Amount \_\_\_\_\_

Less Amortisations \_\_\_\_\_

= Qualifying Amount \_\_\_\_\_

## 6 Eligible Assets

- (a) An eligible asset must be:
- (i) accessible easily;
  - (ii) free from any lien or charge; and
  - (iii) maintained outside the depositary's group.
- (b) The eligible assets, shall be held in an account that is separate to the account that is, or the accounts that are, used by a depositary for the day-to-day running of its business.
- (c) The Bank must be provided with a recent written statement, from a source independent of the depositary, evidencing the location of every eligible asset.
- (d) Eligible assets are calculated as the value of total assets of the depositary less the aggregate value of the items of the depositary that are set out in clauses (i) to (xi):
- (i) fixed assets,
  - (ii) intangible assets,
  - (iii) cash or cash equivalents held with group companies,
  - (iv) debtors,
  - (v) bad debt provisions,
  - (vi) prepayments,
  - (vii) intercompany amounts (gross),
  - (viii) loans issued,

- (ix) investment funds that are not daily dealing,
- (x) investments in any investment fund that is promoted by a group company of the depositary or to which a group company of the depositary provides services, and
- (xi) any other asset that is not accessible easily and which is not included in clauses (i) to (x),

where “total assets” are non-current assets plus current assets.

## SCHEDULE 10

*Regulation 97***Managerial functions of the Management company**

The board of a management company shall be responsible for the following managerial functions:

- (a) *Regulatory compliance:* The board shall put in place, and ensure adherence to, procedures designed to ensure compliance with all applicable legal and regulatory requirements of the management company itself and all investment funds under management. The board shall have arrangements in place to ensure that complaints from unitholders regarding matters other than distribution are addressed promptly and effectively;
- (b) *Fund risk management:* The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the investment funds under management can be identified, monitored and managed at all times;
- (c) *Operational risk management:* The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the management company can be identified, monitored and managed at all times;
- (d) *Investment management:* The board shall put in place, and shall ensure adherence to, procedures to
  - (i) ensure and verify that the investment approach of each investment fund is complied with; and
  - (ii) ensure availability of up to date information on portfolio performance;
- (e) *Capital and financial management:* The board shall put in place, and ensure adherence to, procedures to ensure compliance with regulatory capital requirements of the management company. The board shall put in place, and ensure adherence to, procedures to ensure all relevant accounting records of the management company and of the investment funds under management are properly maintained and are readily available, including production of annual and half-yearly financial statements. The board shall put in place, and ensure adherence to, procedures to ensure that proper accounting policies and procedures are employed in respect of the management company and all investment funds under management.
- (f) *Distribution:* The board shall put in place, and shall ensure adherence to, procedures to ensure and verify that the distribution strategy of each investment fund is complied with. The board shall have arrangements in place to ensure that complaints from unitholders regarding distribution matters are addressed promptly and effectively.

## SCHEDULE 11

*Regulation 104*

## Records of a Management company

The types of material and level and nature of content for the purposes of Regulation 104 are:

## 1 Financial Materials

- (a) details of all money received and expended by the management company whether on its own behalf or on behalf of any investment fund that is under its management, together with details of how such receipts and payments arose;
- (b) a record of all income and expenditure of the management company explaining its nature;
- (c) a record of all assets and liabilities of the management company, long and short positions and off-balance sheet items, including any commitments or contingent liabilities;
- (d) details of all purchases and sales of investment instruments by the management company distinguishing those that have been made by the management company on its own account and those that have been made on behalf of any investment fund that is under its management;
- (e) any working papers that are necessary to show the preparation of any return that has been submitted to the Bank.

## 2 Management Information

Management information records maintained in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate manner, the financial and business information that will enable the management company to:

- (a) identify, quantify, control and manage the management company's risk exposures;
- (b) make timely and informed decisions;
- (c) monitor the performance of all aspects of the management company's business on an up-to-date basis; and
- (d) monitor the quality of the management company's assets.

## 3 Company Secretarial Material

- (a) the share register;
- (b) the register of interests of directors and the secretary;

- (c) copies of the signed minutes of meetings of the board of directors;
- (d) every other statutory document that the management company is, by statute, required to maintain.

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