



STATUTORY INSTRUMENTS.

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EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS
2011

(Prn. A11/1185)

EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS
2011

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(NO. 12 OF 2005)

EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS
2011

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009¹, Commission Directive 2010/43/EU of 1 July 2010² and Commission Directive 2010/44/EU of 1 July 2010³, hereby make the following Regulations:

PART 1

PRELIMINARY

Citation

1. These Regulations may be cited as the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011.

Commencement

2. These Regulations come into operation on 1 July 2011.

Interpretation — general

3. (1) In these Regulations—

“articles”, in relation to a company, has the meaning assigned to it by the Companies Act 1963 (No. 33 of 1963);

“Bank” means the Central Bank of Ireland;

“branch”, in relation to a management company, means, subject to paragraph (2), a part of the company which has no legal personality and which provides services for which the company has been authorised;

“client” means a natural or legal person, or any other undertaking (including a UCITS), to whom a management company provides a service of collective portfolio management or services pursuant to Regulation 16(2)(a);

“close links” means a situation in which 2 or more natural or legal persons are linked by—

¹OJ No. L302, 17.11.2009, p. 32

²OJ No. L176, 10.07.2010, p. 42

³OJ No. L176, 10.07.2010, p. 28

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 8th July, 2011.*

- (a) participation, being the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or
- (b) subject to paragraph (3), control, being the relationship between a parent undertaking and a subsidiary, as defined in Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983⁴ based on Article 54(3)(g) of the Treaty on consolidated accounts and in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

“collective portfolio management” means the management of UCITS and other collective investment undertakings, and includes the functions specified in Schedule 1;

“common contractual fund” means a collective investment undertaking, being an unincorporated body established by a management company under which the participants by contractual arrangement participate and share in the property of the undertaking as co-owners;

“Community act” means an act adopted by an institution of the European Communities;

“competent authority” means the Bank or, in the case of another Member State, the body or bodies designated by that State to act as a competent authority for the purposes of the Directive;

“counterparty risk”, in relation to a UCITS, means the risk of loss for the UCITS resulting from the fact that the counterparty to a transaction entered into by the UCITS may default on its obligations prior to the final settlement of the transaction’s cash flow;

“court” means the High Court;

“credit institution” means a credit institution within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006⁵ relating to the taking up and pursuit of the business of credit institutions (recast);

“cross-border merger” means a merger of UCITS—

- (a) at least 2 of which are established in different Member States, or
- (b) established in the same Member State into a newly constituted UCITS established in another Member State;

“debt securities” has the meaning assigned to it by paragraph (b) of the definition in this Regulation of “transferable securities”;

⁴OJ No. L193, 18.07.1983, p. 1

⁵OJ No. L177, 30.06.2006, p. 1

“Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), including the associated implementing measures contained in Directive 2010/43 and Directive 2010/44/EU;

“Directive 2010/43/EU” means Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company;

“Directive 2010/44/EU” means Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure;

“directors”, in relation to a management company, investment company or trustee, means those persons who—

- (a) under the Companies Acts or the trust deed or the deed of constitution or the memorandum and articles of association, represent the management company, the investment company or the trustee, as the case may be, or
- (b) who effectively determine the policy of the management company, the investment company or the trustee, as the case may be,

and includes shadow directors within the meaning of the Companies Act 1990 (No. 33 of 1990);

“domestic merger” means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Regulation 117;

“durable medium” means an instrument which enables an investor to store information addressed personally to the investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“individual portfolio management services” means the services referred to in subparagraph (a) of paragraph (2) of Regulation 16, and includes the discretionary portfolio management services referred to in clause (i) of that subparagraph and the non-core services referred to in clause (ii) of that subparagraph;

“initial capital” means the funds as referred to in Article 57(a) and (b) of Directive 2006/48/EC;

“investment company” means—

- (a) an investment company with fixed capital, or
- (b) an investment company with variable capital;

“investment company with fixed capital” means a company so referred to in Regulation 4(6)(b);

“investment company with variable capital” means a company so referred to in Regulation 4(6)(c);

“issue” means the issue of units of a UCITS;

“KII Regulation” means Commission Regulation (EU) No. 583/2010 of 1 July 2010⁶ implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website;

“liquidity risk”, in relation to a UCITS, means the risk that a position in the UCITS portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with Regulation 104(1) is thereby compromised;

“management company” means a company the regular business of which is the management of UCITS in the form of unit trusts, common contractual funds or investment companies (or any combination thereof), and includes the functions specified in Schedule 1;

“management company’s home Member State” means the Member State in which the management company has its registered office;

“management company’s host Member State” means a Member State, other than the management company’s home Member State, within the territory of which the management company has a branch or provides services;

“market risk”, in relation to a UCITS, means the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the UCITS portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer’s creditworthiness;

“Member State” means a Member State of the European Union;

“merger” means an operation whereby—

- (a) one or more UCITS or sub-funds thereof (“merging UCITS”), on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or a sub-fund thereof (“receiving UCITS”), in exchange for the issue to their unit-holders

⁶OJ No. L176, 10.07.2010, p. 1

of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,

- (b) 2 or more UCITS or sub-funds thereof (“merging UCITS”), on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or a sub-fund thereof (“receiving UCITS”), in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units, or
- (c) one or more UCITS or sub-funds thereof (“merging UCITS”), which continue to exist until the liabilities have been discharged, transfer their net assets to another sub-fund of the same UCITS, to a UCITS which they form or to another existing UCITS or a sub-fund thereof (“receiving UCITS”);

“merging UCITS”, in relation to a merger, means a merging UCITS as specified in paragraph (a), (b) or (c) of the definition in this Regulation of “merger”;

“MIFID” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004⁷ on markets in financial instruments amending Council Directives 85/611/EC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC;

“MIFID Regulations” means the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“money market instruments” means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time, as construed in accordance with paragraph (4) as read with Schedule 3;

“operational risk”, in relation to a UCITS, means the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company concerned or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS;

“OTC derivative” means a financial derivative instrument dealt in over-the-counter;

“own funds” means, subject to paragraph (5), own funds as referred to in Title V, Chapter 2, Section 1 of Directive 2006/48/EC;

“parent undertaking” means a parent undertaking as defined in Articles 1 and 2 of the Seventh Council Directive 83/349/EEC;

“proposed management company” means a person who is seeking authorisation from the Bank to be an authorised management company;

⁷OJ No. L145. 30.04.2004, p. 1

“qualifying holding”, in relation to a proposed management company or authorised management company, means, subject to paragraph (6)—

- (a) a direct or indirect holding of shares or other interest in the company which represents 10% or more of the capital of, or the voting rights in, the company, or
- (b) a direct or indirect holding of shares or other interest in the company which is less than 10% of the capital of, or the voting rights in, the company which, in the opinion of the Bank, makes it possible to exercise a significant influence over the management of the company in which the holding subsists;

“qualifying shareholder” means a person who has or controls a qualifying holding;

“rebalancing of the portfolio”, in relation to a UCITS, means a significant modification of the composition of the portfolio of the UCITS;

“receiving UCITS”, in relation to a merger, means a receiving UCITS as specified in paragraph (a), (b) or (c) of the definition in this Regulation of “merger”;

“redemption” means the purchase of units from a holder by a management company or investment company;

“relevant person”, in relation to a management company, means—

- (a) a director, partner or equivalent, or manager, of the company,
- (b) an employee of the company and any other natural person whose services are placed at the disposal and under the control of the company and who is involved in the provision by the company of collective portfolio management, or
- (c) a natural person who is directly involved in the provision of services to the company under a delegation arrangement to third parties for the purpose of the provision by the company of collective portfolio management;

“repurchase” means the purchase of units from a holder by a management company or investment company;

“senior management”, in relation to a management company, means the person or persons who effectively conduct the business of the company in accordance with Regulation 17(1)(c);

“shares” has the meaning assigned to it by paragraph (a) of the definition in this Regulation of “transferable securities”;

“sub-fund” means a separate portfolio of assets maintained by a UCITS in accordance with its trust deed, deed of constitution or articles;

“subsidiary” means a subsidiary undertaking within the meaning of Regulation 4 of the European Communities (Companies Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“supervisory function”, in relation to a management company, means the relevant persons or body or bodies responsible for the supervision of the company’s senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the company’s obligations under these Regulations;

“synthetic risk and reward indicators” means synthetic indicators within the meaning of Article 8 of the KII Regulation;

“third country” means a country that is not a Member State, and includes a state, province, region or dependent territory of such a country;

“transferable securities” means—

- (a) shares in companies and other securities equivalent to shares in companies (in these Regulations referred to as “shares”) and which fulfil the criteria specified in Part 1 of Schedule 2 applicable to them,
- (b) bonds and other forms of securitised debt (in these Regulations referred to as “debt securities”) and which fulfil the criteria specified in Part 1 of Schedule 2 applicable to them,
- (c) other negotiable securities which carry the right to acquire any securities which fall within paragraph (a) or (b) by subscription or exchange and which fulfil the criteria specified in Part 1 of Schedule 2 applicable to them, or
- (d) securities specified for the purposes of this paragraph in Part 2 of Schedule 2,

other than the techniques and instruments referred to in Regulation 69(2)(a);

“trustee”, in relation to a UCITS, means an institution referred to as a depository in the Directive;

“UCITS home Member State” means the Member State in which the UCITS is authorised;

“UCITS host Member State” means a Member State, other than the UCITS home Member State, in which the units of the UCITS are marketed;

“umbrella fund” means, subject to paragraph (7), a UCITS which is divided into 2 or more sub-funds;

“undertaking for collective investment in transferable securities” or “UCITS” has the meaning assigned to it by Regulation 4(3);

“unit” includes a share and any other instrument granting an entitlement to share in the investments or relevant income of a collective investment undertaking, and whether or not the undertaking is a UCITS to which these Regulations apply;

“unit-holder” means a natural or legal person holding one or more units in a UCITS;

“unit trust” means a collective investment undertaking constituted as a trust under which the property concerned is held on trust for the participants;

“usual time limits” means those time limits which are acceptable market practice in the context of a particular transaction.

(2) For the purposes of these Regulations, all the places of business set up in the same Member State by a management company with its headquarters in another Member State shall be regarded as a single branch of the company.

(3) For the purposes of paragraph (b) of the definition in paragraph (1) of “close links”—

(a) a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings, and

(b) situations in which 2 or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close links between such persons.

(4) Schedule 3 shall apply to the interpretation of references in these Regulations to money market instruments.

(5) Articles 13 to 16 of Directive 2006/49/EC of 14 June 2006⁸ on the capital adequacy of investment firms and credit institutions (recast) shall, with all necessary modifications, apply to the definition in paragraph (1) of “own funds”.

(6) (a) For the purposes of the definition in paragraph (1) of “qualifying holding”, the voting rights referred to in Article 7 of Directive 88/627/EEC of 12 December 1988⁹ on the information to be published when a major holding in a listed company is acquired or disposed of shall be taken into account.

(b) For the purposes of subparagraph (a), the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004¹⁰ on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC shall be taken into account.

⁸OJ No. L177, 30.06.2011, p. 201

⁹OJ No. L348, 17.12.1988, p. 62

¹⁰OJ No. L390, 31.12.2004, p. 38

(7) Part 8 shall apply to each sub-fund of an umbrella fund as if the sub-fund were a separate UCITS.

(8) Unless the contrary intention appears—

(a) a word or expression used in these Regulations and also in the Directive has in these Regulations the same meaning as it has in the Directive, and

(b) a reference to any other enactment, EC Directive or Regulation shall be construed as a reference to the enactment, EC Directive or Regulation, as the case may be, as amended by any other enactment, EC Directive or Regulation.

PART 2

SCOPE

Scope

4. (1) Subject to paragraph (9), these Regulations apply to UCITS deemed to be established in the State as specified in Regulation 6.

(2) Subject to paragraph (9), Part 12 applies to UCITS authorised in another Member State which proposes to market units in the State.

(3) Subject to paragraph (9), for the purposes of these Regulations, UCITS are undertakings—

(a) the sole object of which is the collective investment in either or both—

(i) transferable securities,

(ii) other liquid financial assets referred to in Regulation 68,

of capital raised from the public and which operate on the principle of risk-spreading,

and

(b) the units of which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets.

(4) Action taken by a UCITS to ensure that the stock exchange value of its units does not vary significantly from their net asset value shall be regarded as equivalent to repurchase or redemption referred to in paragraph (3)(b).

(5) UCITS may consist of several sub-funds.

(6) UCITS may be constituted as—

(a) unit trusts,

- (b) investment companies with fixed capital that are registered as public limited companies,
- (c) investment companies with variable capital that are registered as public limited companies and the articles of which provide that—
 - (i) the amount of the paid-up share capital of the investment company concerned shall at all times be equal to the net asset value of the company, and
 - (ii) the shares of the investment company concerned shall have no par value,
 or
- (d) common contractual funds.

(7) A UCITS to which these Regulations apply shall not convert itself into a collective investment undertaking which would not be subject to the Directive and any such purported conversion shall be void.

(8) Without prejudice to Part 7, a UCITS to which these Regulations apply and which proposes to convert itself into a collective investment undertaking to which these Regulations apply shall comply with such conditions as the Bank may consider prudent to specify in relation to the conversion, for the purposes and in the interest of the orderly and proper regulation of UCITS in accordance with these Regulations.

(9) These Regulations do not apply to—

- (a) investment companies the assets of which are invested through the intermediary of subsidiary companies wholly or mainly otherwise than in transferable securities,
- (b) collective investment undertakings of the closed-ended type,
- (c) collective investment undertakings which raise capital without promoting the sale of their units to the public within the Community or any part of it, and
- (d) collective investment undertakings the units of which, under the fund rules or the instruments of incorporation of the investment company concerned, may be sold only to the public in third countries.

Restriction of Unit Trusts Act 1990

5. The Unit Trusts Act 1990 (No. 37 of 1990) shall not apply to UCITS authorised under these Regulations or authorised by a competent authority in another Member State in accordance with the Directive.

UCITS established in the State

6. For the purposes of these Regulations, a UCITS which is authorised by the Bank pursuant to these Regulations shall be deemed to be established in the State.

PART 3

AUTHORISATION OF UCITS

Prohibition on UCITS carrying on activities in the State without authorisation

7. (1) Subject to paragraph (2) and Regulations 8 and 10, a UCITS to which these Regulations apply shall not carry on activities as such in the State unless it has been authorised under these Regulations by the Bank.

(2) A UCITS which is established in another Member State and which has received authorisation from the competent authority in that State pursuant to the Directive may market its units in the State provided it complies with the requirements of Part 12.

Requirements for authorising unit trust, common contractual fund or investment company

8. (1) A unit trust or common contractual fund shall be authorised only if the Bank—

- (a) has approved the application of the management company to manage the unit trust or common contractual fund,
- (b) has approved the trust deed or deed of constitution, and
- (c) has approved the choice of trustee.

(2) An investment company shall be authorised only if the Bank—

- (a) has approved its articles,
- (b) has approved the choice of trustee,
- (c) where relevant, has approved the application of the designated management company to manage it, and
- (d) is satisfied that it complies with the requirements of Part 6.

Application of management company not established in the State

9. Without prejudice to Regulation 8, where a management company is not established in the State, the Bank shall decide the application for authorisation of the UCITS in accordance with Regulation 31.

Circumstances in which Bank shall not authorise UCITS

10. (1) The Bank shall not authorise a UCITS which appoints a management company if the management company is not authorised for the management of UCITS in the management company's home Member State.

(2) The Bank shall not authorise a UCITS if any of the directors of the trustee are not of sufficiently good repute or are not sufficiently experienced.

(3) For the purposes of paragraph (2), a trustee shall forthwith communicate to the Bank the names of the directors of the trustee and of every person succeeding them in office.

(4) The Bank shall not authorise a UCITS if it is legally prevented from marketing its units in the State, including through a provision in the trust deed, deed of constitution or articles.

Time limit within which Bank shall inform management or investment company whether or not it is authorised

11. Without prejudice to Regulation 42(4)(d), the Bank shall inform a management company or, where applicable, an investment company, within 2 months of the submission of a complete application, whether or not authorisation of the UCITS has been granted.

Approval of Bank necessary for subsequent changes

12. Neither the management company nor the trustee shall be replaced, nor shall the trust deed, the deed of constitution or the investment company's articles be amended, without the approval of the Bank.

Applications for authorisation

13. An application for authorisation shall be made in writing by a management company or the investment company and shall contain such information, including additional information, as the Bank may reasonably specify for the purpose of determining the application.

Bank shall make law, etc. on UCITS accessible

14. (1) The Bank shall ensure that complete information on the laws, regulations and administrative provisions implementing the Directive which relates to the constitution and functioning of the UCITS are easily accessible at a distance or by electronic means.

(2) The Bank shall ensure that such information is available in the English language in a clear and unambiguous manner and kept up to date.

PART 4

OBLIGATIONS REGARDING MANAGEMENT COMPANIES

Chapter 1

Conditions for taking up business

Authorisation of management company

15. Subject to these Regulations, the Bank may grant or refuse to grant to a management company applying to it under these Regulations an authorisation to operate as a management company. The grant of authorisation is subject to the conditions and requirements referred to in Regulations 17 and 18.

Activities of management company

16. (1) (a) Save as otherwise provided for in this Regulation, a management company shall not engage in activities other than the management of UCITS authorised according to these Regulations or the Directive and other collective investment undertakings which are not covered by these Regulations and for which the management company is subject to prudential supervision but which cannot be marketed in other Member States under the Directive.
- (b) The activity of the management of unit trusts, common contractual funds and investment companies includes, but is not limited to, the activities specified in Schedule 1.
- (2) (a) Subject to subparagraph (b), a management company may be authorised to provide, as well as the management of collective investment undertakings, the following additional services:
- (i) the management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the investment instruments listed in Section C of the Annex to the MIFID;
- (ii) as non-core services:
- (I) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;
- (II) the safekeeping and administration in relation to units of collective investment undertakings.
- (b) A management company shall not be authorised—
- (i) to provide only the services referred to in clauses (i) and (ii) of subparagraph (a), or
- (ii) to provide the non-core services referred to in clause (ii) of subparagraph (a) without being authorised to provide the services referred to in clause (i) of subparagraph (a).
- (3) The definition in Regulation 3(1) of “management company”, and Regulations 32, 33, 76 and 99 to 102 of the MIFID Regulations, shall, with all necessary modifications, apply to the provision of the services referred to in clauses (i) and (ii) of subparagraph (a) of paragraph (2) by a management company.
- (4) A management company which provides individual portfolio management services shall comply with the client asset requirements issued by the Bank under the MIFID Regulations.
- (5) As part of the provision of collective portfolio management services, a management company authorised pursuant to these Regulations may maintain

client asset accounts for processing subscription and salespersons moneys. In such case, the management company shall comply with the client asset requirements issued by the Bank under the MIFID Regulations, as applicable and subject to any conditions which may be imposed by the Bank pursuant to Regulation 123.

Conditions for authorisation of management company and grounds for withdrawal of authorisation

17. (1) Without prejudice to any other legislative provision, a management company shall not be authorised by the Bank unless—

- (a) it is a body corporate with its registered office and head office in the State,
 - (b) it has an initial capital of at least €125,000, and
 - (c) the persons who effectively conduct the business of the management company are of sufficiently good repute and are sufficiently experienced in relation to the type of UCITS to be managed by the management company.
- (2) (a) Where close links exist between a management company and other natural or legal persons, the Bank shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.
- (b) The Bank shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with whom a management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of the Bank's supervisory functions.
- (c) The Bank shall require a management company to provide it with the information the Bank requires to monitor compliance with the conditions referred to in this paragraph on a continuous basis.
- (3) The conduct of a management company's business shall be decided by at least 2 persons meeting the conditions specified in paragraph (1)(c).
- (4) Subject to paragraphs (5) to (7), when the net asset value of the portfolios of the management company exceeds €250,000,000, the company shall provide an additional amount of own funds which shall be equal to 0.02% of the amount by which the value of the portfolios of the company exceeds €250,000,000.
- (5) The total of the initial capital and the additional amount required to be held pursuant to paragraph (4) by a management company shall not be required to exceed €10,000,000.
- (6) The own funds of the management company shall never be less than the amount prescribed by the Bank in accordance with the terms of Directive 2006/49/EC.

- (7) (a) A management company need not provide up to 50% of the additional amount of own funds referred to in paragraph (4) if it benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking.
- (b) Such credit institution or insurance undertaking shall have its registered office in a Member State but may have its registered office in a third country provided that such institution or undertaking is subject to prudential rules considered by the Bank to be equivalent to those laid down in Community law.
- (8) For the purpose of paragraph (4), the following portfolios shall be deemed to be the portfolios of the management company:
- (a) unit trusts and common contractual funds, managed by the company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
- (b) investment companies for which the company is the designated management company; and
- (c) other collective investment undertakings managed by the company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.
- (9) For the purposes of paragraph (1)(c), a management company shall forthwith communicate to the Bank the names of the persons who effectively conduct the business of the company and of every person succeeding them in office.
- (10) A management company may start business as soon as authorisation has been granted.
- (11) The Bank shall inform a proposed management company within 6 months of the date of receipt of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.
- (12) A proposed management company which has been refused authorisation may apply to the court in accordance with Regulation 135.
- (13) A proposed management company shall have the same right to apply to the court as in paragraph (12) where the Bank fails to take a decision on authorisation within the time prescribed in paragraph (11).
- (14) The Bank may withdraw the authorisation issued to a management company only where the company—
- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by these Regulations for more than the previous 6 months, unless the Bank has provided for the authorisation to lapse automatically in such cases,

- (b) has obtained the authorisation by making false statements or by any other irregular means,
- (c) no longer fulfils the conditions under which authorisation was granted,
- (d) no longer complies with Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Regulation 16(2)(a)(i), or
- (e) has seriously or systematically infringed the rules or requirements of the Bank imposed pursuant to these Regulations.

Application for authorisation

18. (1) An application for authorisation of a proposed management company shall be in such form and contain such particulars as the Bank shall reasonably specify from time to time and, without prejudice to the generality of the foregoing, shall include such particulars or information as the Bank may request in relation to—

- (a) the type of business to be carried on or likely to be carried on by the company,
- (b) any person or persons having a qualifying shareholding in, or having ownership of, the company, and
- (c) the memorandum of association and articles of association of the company.

(2) A proposed management company shall not be authorised by the Bank unless it satisfies the Bank—

- (a) that the company has made arrangements to ensure that its activities will be carried out in such a manner that the requirements of these Regulations are complied with,
- (b) that, where applicable, the memorandum of association and articles of association of the company contain sufficient provision so as to enable it to operate in accordance with these Regulations, and in accordance with any condition or requirement, or both, as the Bank may impose,
- (c) it has the minimum level of capital which shall be specified by the Bank,
- (d) as to the probity and competence of each of its directors and managers,
- (e) as to the suitability of each of its qualifying shareholders,

- (f) as to the organisational structure and management skills of the company and that adequate levels of staff and expertise will be employed to carry out its proposed activities,
 - (g) that it has and will follow established procedures to enable the Bank to be supplied with all information necessary for the Bank to carry out its supervisory functions and to enable the public to be supplied with any information which the Bank may specify,
 - (h) that the organisation of its business structure is such that it and any of its associated or related undertakings, where appropriate and practicable, are capable of being supervised adequately by the Bank, and
 - (i) as to its conduct of business, its financial resources and any other matters as the Bank considers necessary in the interests of the proper and orderly regulation and supervision of authorised management companies or in the interests of the protection of investors.
- (3) The Bank may impose conditions or requirements, from time to time, in respect of the level of capital to be maintained by an authorised management company and shall have regard to the capital requirements set out in these Regulations and the MIFID Regulations.
- (4) The Bank may require that an appointment as a director of an authorised management company or proposed management company or to the post of chief executive or manager or post equivalent thereto, on or after the granting of an authorisation under these Regulations, shall be subject to the prior approval in writing of the Bank. Such approval shall not be given unless the authorised management company or proposed management company satisfies the Bank as to the probity and competence of the proposed appointee.
- (5) The Bank may direct an authorised management company to alter its memorandum or articles of association in the interest of the proper and orderly regulation and supervision of management companies, or the protection of investors, or both.
- (6) An authorisation granted by the Bank under these Regulations shall specify the classes of services which may be provided by an authorised management company.
- (7) (a) The Bank may authorise in writing such and so many persons to be authorised officers for the purposes of these Regulations and may revoke such authorisations.
- (b) The Bank may at any time prior to the grant or refusal of an authorisation request further information from the proposed management company or may instruct an authorised officer to make such inquiries or carry out such investigations as may be necessary for the purpose of evaluating properly an application under these Regulations and such inquiries or investigations shall be carried out in accordance with these Regulations.

(8) The Bank shall consult the competent authority of the other Member State involved before authorising a proposed management company which is—

- (a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State,
- (b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or
- (c) controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

(9) (a) In the case of a management company, the Bank shall apply these Regulations, having regard to the division of responsibilities between the management company's home Member State and the management company's host Member State, which are set out in the Directive, and the relevant provisions of these Regulations shall be construed accordingly.

(b) Subject to these Regulations, a management company shall comply with such conditions or requirements, or both, as may be imposed on it by the Bank in the interests of any or all of the following:

- (i) the proper and orderly regulation and supervision of a management company;
- (ii) the protection of investors or clients or both.

(10) The Bank may impose requirements on a proposed management company or an authorised management company to organise its business or corporate structure or control of any associated undertaking or related undertaking not supervised by the Bank such that the management company when authorised under these Regulations and, where appropriate and practicable, the business of any associated undertaking or related undertaking, either collectively or individually, is capable of being supervised to the satisfaction of the Bank under these Regulations.

Chapter 2

Relations with third countries

Relations with third countries

19. (1) The Bank shall inform the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

(2) The Bank shall cooperate with the Commission on matters relating to third countries pertaining to the Directive.

Chapter 3

*Operating conditions**Duty of Bank to ensure that management companies comply with Regulations 16 and 17*

20. (1) The Bank shall require that an authorised management company complies at all times with the conditions laid down in Regulations 16 and 17(1) to (9).

(2) (a) The own funds of a management company may not fall below the level required by Regulation 17.

(b) Where they do, however, the Bank may, where the circumstances justify it, allow such management company a limited time period in which to rectify the situation or cease its activities.

Qualifying holdings

21. (1) Qualifying holdings in management companies shall be subject to the same rules as set out in Article 10 of the MIFID on investment in the securities field.

(2) The relevant provisions shall, with all necessary modifications, apply to qualifying holdings in management companies as they apply to acquiring transactions in investment firms within the meaning of the MIFID Regulations.

(3) Part 15 of the MIFID Regulations shall, to the extent that it relates to the relevant provisions applied as specified in paragraph (2), apply, with all necessary modifications, to the relevant provisions as so applied.

(4) Part 16 of the MIFID Regulations shall, with all necessary modifications, to the extent that it relates to the relevant provisions applied as specified in paragraph (2), apply, with all necessary modifications, to the relevant provisions as so applied.

(5) For the purposes of this Regulation—

(a) the expressions “firm/investment firm” and “investment firms” contained in Article 10 of the MIFID, any of the relevant provisions, or Part 15 or 16 of the MIFID Regulations, shall be construed as “management company” and “management companies” respectively, and

(b) the term “the relevant provisions” means—

(i) Regulations 13 and 30 of the MIFID Regulations, and

(ii) Part 14 of the MIFID Regulations.

Prudential rules

22. (1) The Bank shall draw up prudential rules which management companies, with regard to the activity of management of UCITS authorised according to these Regulations, shall observe at all times.

(2) In particular, the Bank having regard also to the nature of the UCITS managed by a management company, shall require that each such company—

- (a) has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own funds and ensuring, inter alia, that each transaction involving the fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the unit trusts, common contractual funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force, and
- (b) is structured and organised in such a way as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between one of its clients and another, between one of its clients and a UCITS or between 2 UCITS.

(3) Each management company the authorisation of which also covers the discretionary portfolio management service referred to in Regulation 16(2)(a)(i)—

- (a) shall not invest all or a part of an investor's portfolio in units of unit trusts, common contractual funds or of investment companies it manages, unless it receives prior general approval from the client, and
- (b) shall be subject with regard to the services referred to in clauses (i) and (ii) of subparagraph (a) of Regulation 16(2) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997¹¹ on investor-compensation schemes and comply with the Investor Compensation Act 1998 (No. 37 of 1998).

(4) The requirements specified in Schedule 4 shall have effect for the purposes of this Regulation.

Delegations

23. (1) A management company may delegate activities to third parties for the purpose of the more efficient conduct of the company's business provided that—

¹¹O.J. No. L 84, 26.03.1997, p. 22

- (a) the management company has informed the Bank in an appropriate manner (whereupon the Bank shall, without delay, transmit the information to the competent authority of the home Member State of a UCITS managed by that management company),
- (b) the delegation mandate does not prevent the effectiveness of supervision over the management company, and in particular it shall not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors,
- (c) when the delegation concerns investment management, the mandate is only given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation shall be in accordance with investment-allocation criteria periodically laid down by a management company,
- (d) where the mandate concerns investment management and is given to a third country undertaking, cooperation between the Bank and the supervisory authorities of the third country concerned is ensured,
- (e) a mandate with regard to the core function of investment management is not given to the trustee or to any other undertaking whose interests may conflict with those of the management company or the unit-holders,
- (f) measures are put in place which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given,
- (g) the mandate does not prevent the persons who conduct the business of the management company either from giving at any time further instructions to the undertaking to which functions are delegated or from withdrawing the mandate or both with immediate effect when this is in the interest of investors,
- (h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated is qualified and capable of undertaking the functions in question, and
- (i) the prospectuses issued by a UCITS list the functions which a management company has been permitted to delegate in accordance with this Regulation.

(2) Neither the management company's nor the trustee's liability shall be affected by the fact that the management company delegated any functions to third parties, nor shall the management company delegate its functions to the extent that it becomes a letterbox entity.

Rules of conduct

24. (1) The Bank shall draw up rules of conduct which authorised management companies shall observe at all times. Such rules shall implement at least

the principles set out in this paragraph. Those principles shall ensure that a management company—

- (a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market,
- (b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market,
- (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,
- (d) tries to avoid conflicts of interest and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated, and
- (e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

(2) The requirements specified in Schedule 5 shall have effect for the purposes of this Regulation.

Investor complaints

25. (1) (a) Management companies or, where relevant, investment companies shall establish, implement and maintain transparent procedures and arrangements to ensure that they deal properly and promptly with investor complaints. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

(b) Management companies shall also establish appropriate procedures and arrangements to make information available at the request of the public or the Bank.

(2) Management companies shall ensure that each complaint and the measures taken for its resolution are recorded.

(3) Management companies shall ensure that investors shall be able to file complaints free of charge. The information regarding procedures referred to in paragraph (1) shall be made available to investors free of charge.

Chapter 2

Freedom of establishment and freedom to provide services

Establishment of branch and provision of services

26. (1) A management company, authorised by the competent authority of another Member State in accordance with the Directive, may carry on within the State the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

(2) Where a management company so authorised proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Schedule 1 in the State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Part 12.

(3) The establishment of a branch or the provision of the services shall not be subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

(4) Subject to the conditions set out in these Regulations, a UCITS shall be free to designate, or to be managed by a management company authorised in a Member State other than the State, provided that such a management company complies with—

(a) Regulation 27 or 28, and

(b) Regulations 29 to 30.

Establishment of branch in another Member State

27. (1) Every management company wishing to establish a branch within the territory of another Member State shall be required to notify the Bank and to provide the following information and documents when effecting the notification:

(a) the Member State within the territory of which the management company plans to establish a branch;

(b) a programme of operations setting out the activities and services envisaged and the proposed organisational structure of the branch;

(c) a description of the risk management process put in place by the management company, including a description of the procedures and arrangements taken in accordance with Regulation 25;

(d) the address of the management company in the management company's host Member State from which documents may be obtained; and

(e) the names of those responsible for the management of the branch.

(2) (a) Unless the Bank has reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, it shall, within 2 months of receiving all the information referred to in paragraph (1), communicate that information to the competent authority of the host Member State and shall inform the management company accordingly.

(b) The Bank shall also communicate to the competent authority of the host Member State details of any compensation scheme intended to protect investors.

(c) Where the Bank refuses to communicate the information referred to in paragraph (1) to the competent authority of the management company's host Member State, the Bank shall give reasons for its refusal to the management company concerned within 2 months of receiving all the information. The Bank's refusal or their failure to reply shall be subject to the right to apply to the court as provided for in Regulation 135.

(3) Where a management company wishes to pursue the activity of collective portfolio management referred to in Schedule 1, the Bank shall enclose with the documentation sent to the competent authority of the management company's host Member State an attestation that the management company has been authorised pursuant to these Regulations, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(4) A management company, authorised under these Regulations, which pursues activities by a branch within the territory of the management company's host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Regulation 24.

(5) The competent authority of the management company's host Member State shall be responsible for supervising compliance with paragraph (4).

(6) Before the branch of a management company authorised in another Member State starts business within the State, the Bank, acting as the competent authority of the management company's host Member State, shall within 2 months of receiving the information referred to in paragraph (1), prepare for supervising the compliance of the management company with the rules under its responsibility.

(7) On receipt of a communication from the Bank or on the expiry of the 2 month period provided for in paragraph (6) without receipt of any communication from the Bank, the branch may be established and start business.

(8) In the event of a change in any particulars communicated in accordance with paragraph (1)(b), (c), (d) or (e), a management company shall give notice in writing of the change to the Bank and the competent authority of the management company's host Member State at least one month before implementing the change so that the Bank, acting as either the competent authority of the management company's home Member State or management company's host Member State, may take a decision on the change under paragraph (2) or (6), as the case may be.

(9) In the event of a change in the particulars communicated in accordance with paragraph (2)(a) and (b), the Bank shall inform the competent authority of the management company's host Member State accordingly.

(10) The Bank shall update the information contained in the attestation referred to in paragraph (3) and inform the competent authority of the management company's host Member State whenever there is a change in the scope of

the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Provision of information

28. (1) When a management company wishes to pursue activities for which it has been authorised by the Bank within the territory of another Member State for the first time under the freedom to provide services, it shall notify the Bank and provide it with the following information:

- (a) the Member State within the territory of which the management company intends to operate; and
 - (b) a programme of operations stating the activities and services it will undertake, including a description of the risk management process put in place by the management company and a description of the procedures and arrangements taken in accordance with Regulation 24.
- (2) (a) The Bank shall, within one month of receiving the information referred to in paragraph (1), forward it to the competent authority of the management company's host Member State.
- (b) The Bank shall also communicate details of any applicable compensation scheme intended to protect investors.
- (c) Where a management company wishes to pursue the activity of collective portfolio management as referred to in Schedule 1, the Bank shall enclose with the documentation sent to the competent authority of the management company's host Member State an attestation that the management company has been authorised pursuant to these Regulations, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.
- (d) The management company may then start business in the host Member State in accordance with the Directive.
- (3) A management company, authorised under these Regulations, which pursues activities under the freedom to provide services shall comply with the rules drawn up by the Bank pursuant to Regulation 24.
- (4) Where the content of the information communicated in accordance with paragraph (1)(b) is amended, the management company shall give notice in writing of the amendment to the Bank and to the management company's host Member State before implementing the change. The Bank shall update the information contained in the attestation referred to in paragraph (2) and inform the competent authority of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Compliance with rules which relate to constitution and functioning of UCITS, etc

29. (1) A management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the fund rules or in the instruments of incorporation, and with the obligations set out in the prospectus.

(2) The Bank shall ensure that a management company authorised by it is not subject to any additional requirements established in the UCITS home Member State in respect of the subject matter of these Regulations and the Directive, except in the cases expressly referred to in these Regulations and the Directive.

Provision of documentation to competent authority

30. (1) (a) Without prejudice to Part 3, a management company which applies to manage a UCITS established in another Member State shall provide the competent authority in the UCITS home Member State with the following documentation:

- (i) the agreement in writing with the trustee referred to in Regulations 35(6) and 51(3); and
- (ii) information on delegation arrangements regarding functions of investment management and administration referred to in Schedule 1.

(b) Where a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

(2) Upon request and in so far as it is necessary to ensure compliance with the rules for which they are responsible, the Bank may provide clarification and information regarding the documentation referred to in paragraph (1) and, based on the attestations referred to in Regulations 27(3) and 28(2), as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's authorisation to the competent authority of the UCITS home Member State. Where applicable, the Bank shall provide its opinion within 10 working days of the initial request.

(3) Any subsequent material modifications of the documentation referred to in paragraph (1) shall be notified by the management company concerned to the competent authority of the UCITS home Member State.

Provision of documentation to Bank

31. (1) (a) Without prejudice to Part 3, a management company authorised in a Member State other than the State which applies to manage a UCITS established in the State shall provide the Bank with the following documentation:

- (i) the agreement in writing with the trustee referred to in Regulations 35(6) and 51(3); and
- (ii) information on delegation arrangements regarding functions of investment management and administration referred to in Schedule 1.

(b) Where a management company already manages other UCITS of the same type in the State, reference to the documentation already provided shall be sufficient.

(2) In so far as it is necessary to ensure compliance with the rules for which it is responsible, the Bank may ask the competent authority of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph (1) and, based on the attestations referred to in Regulations 27(3) and 28(2), as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's authorisation. The competent authority of the management company's home Member State shall provide their opinion within 10 working days of the initial request.

(3) (a) The Bank may refuse the application of the management company only where—

- (i) the management company does not comply with the rules falling under their responsibility pursuant to Regulation 29,
- (ii) the management company is not authorised by the competent authority of the management company's home Member State to manage the type of UCITS for which authorisation is requested, or
- (iii) the management company has not provided the documentation referred to in paragraph (1).

(b) Before refusing an application, the Bank shall consult the competent authority of the management company's home Member State.

(4) Any subsequent material modifications of the documentation referred to in paragraph (1) shall be notified by the management company concerned to the Bank.

Provisions applicable to management company authorised in another Member State

32. (1) The Bank may, for statistical purposes, require a management company authorised in another Member State, which has a branch in the State, to report periodically on its activities in the State.

(2) (a) The Bank may require a management company, authorised in another Member State which carries on business within the State, to provide

information necessary to monitor its compliance with these Regulations.

- (b) Management companies shall provide information on the procedures and arrangements in relation to investor complaints as required under Regulation 25 to the Bank upon request.

(3) Where the Bank ascertains that a management company that has a branch or provides services within the State is in breach of one of the rules under the Bank's responsibility, it shall require the company to put an end to that breach and inform the competent authority of the management company's home Member State of the breach.

(4) Where the management company concerned refuses to provide the Bank with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph (3), the Bank, acting as the competent authority of the host Member State, shall inform the competent authority of the management company's home Member State accordingly.

(5) Where the management company continues to refuse to provide the information requested by the Bank pursuant to paragraph (2), or persists in breaching the legal or regulatory provisions in force in the State, the Bank may, after informing the competent authority of the management company's home Member State, take appropriate measures, including under Regulations 126 and 127, to prevent or to penalise further irregularities and, in so far as is necessary, to prevent that management company from initiating any further transaction within the State. Where the service provided within the State is the management of a UCITS, the Bank may require the management company to cease managing the UCITS.

(6) Any measure adopted pursuant to paragraphs (4) or (5) involving measures or penalties shall be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the court as provided for in Regulation 135.

(7) Before following the procedure laid down in paragraph (3), (4) or (5), the Bank may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Bank shall inform the Commission and the competent authority of the other Member States concerned of such measures at the earliest opportunity.

(8) Having been consulted by the competent authority of the management company's home Member State before the withdrawal of that management company's authorisation, the Bank, as competent authority of the UCITS home Member State, shall take appropriate measures to safeguard investors' interests. Those measures may include decisions preventing the management company concerned from initiating any further transactions within the State.

(9) The Bank shall inform the Commission of the number and type of cases in which they refuse authorisation under Regulation 27 or an application under Regulation 30 and of any measures taken in accordance with paragraph (5).

PART 5

OBLIGATIONS REGARDING TRUSTEE

Safe-keeping of assets

33. (1) The assets of a unit trust and the assets of a common contractual fund shall be entrusted to a trustee for safe-keeping in accordance with these Regulations.

(2) A trustee's liability as referred to in Regulation 36 shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping.

Obligations of trustee

34. (1) The trustee shall—

- (a) ensure that the sale, issue, repurchase, redemption and cancellation of units effected on behalf of a unit trust, common contractual fund or by a management company are carried out in accordance with these Regulations and the trust deed or the deed of constitution, as the case may be,
- (b) ensure that the value of units is calculated in accordance with these Regulations and the trust deed in the case of a unit trust or the deed of constitution in the case of a common contractual fund,
- (c) carry out the instructions of the management company unless they conflict with these Regulations or the trust deed in the case of a unit trust or the deed of constitution in the case of a common contractual fund,
- (d) ensure that in transactions involving the assets of a unit trust or of a common contractual fund any consideration is remitted to it within the usual time limits, and
- (e) ensure that the income of a unit trust or of a common contractual fund is applied in accordance with these Regulations and, as the case may be, the trust deed or the deed of constitution.

(2) The trustee shall enquire into the conduct of the management company in the management of the unit trust or common contractual fund, as the case may be, in each annual accounting period and report thereon to the unit-holders. The trustee's report shall be delivered to the management company in good time to enable it to include a copy of the report in the annual report required under Regulation 88. The report shall state whether in the trustee's opinion the management has managed the unit trust or the common contractual fund, as the case may be, in that period—

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the manager and trustee by the trust deed or deed of constitution, as the case may be, and these Regulations, and
- (b) otherwise in accordance with the provisions of the trust deed or deed of constitution, as the case may be, and these Regulations,

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

Trustee

35. (1) A trustee shall have its registered office in the State or have established a place of business in the State if its registered office is in another Member State.

(2) A trustee shall—

- (a) be a credit institution authorised in the State with paid-up share capital which is not less than the limit specified in the Bank's Licensing Requirements, or
- (b) be a branch, established in the State, of a credit institution with a paid-up share capital which is not less than the limit specified in the Bank's Licensing Requirements,
- (c) be a company incorporated in the State which—
 - (i) is wholly owned by a credit institution, provided the liabilities of the trustee are guaranteed by the credit institution and the credit institution has a paid-up share capital which is not less than the limit specified in the Bank's Licensing Requirements,
 - (ii) is wholly owned by an institution in a third country which is deemed by the Bank to be the equivalent of a credit institution, provided the liabilities of the trustee are guaranteed by the credit institution and that credit institution has a paid-up share capital which is not less than the limit specified in the Bank's Licensing Requirements, or
 - (iii) is wholly owned by an institution or company either in a Member State or in a third country which is deemed by the Bank to be an institution or company which provides unit-holders with protection equivalent to that provided by a trustee under subparagraph (a), (b) or (c)(i) or (ii) and provided the liabilities of the company acting as trustee are guaranteed by the said institution or company and that institution or company has a paid-up share capital which is not less than the limit specified in the Bank's Licensing Requirements.

(3) A trustee shall satisfy the Bank that it has the appropriate expertise and experience to carry out its functions under these Regulations.

(4) In this Regulation, the Bank's Licensing Requirements means the Bank's Licensing and Supervision Requirements and Standards for Credit Institutions as issued by the Bank from time to time.

(5) The trustee shall enable the Bank to obtain, on request, all information that the trustee has obtained while discharging its duties and that is necessary for the Bank to supervise the UCITS compliance with these Regulations.

(6) Where the management company's home Member State is not the State, the trustee shall sign an agreement in writing with the management company regulating the flow of information deemed necessary to allow it to perform the functions set out in Regulation 34 and in other laws, regulations or administrative provisions which are relevant for trustees in the State.

(7) The requirements specified in Schedule 6 shall have effect for the purposes of this Regulation.

Liability of trustee

36. (1) A trustee shall be liable to the management company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

(2) Liability to unit-holders may be invoked either directly or indirectly through the management company, depending on the legal nature of the relationship between the trustee, the management company and the unit-holders.

Prohibition against single company acting as both management company and trustee

37. (1) No single company shall act as both management company and trustee in respect of the same UCITS and in the context of their respective roles the management company and the trustee must act independently and solely in the interest of the unit-holders.

(2) The assets of a UCITS established as either a unit trust or common contractual fund shall belong exclusively to the UCITS. The assets shall be segregated from the assets of the trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.

(3) Where a UCITS established as a unit trust or common contractual fund is constituted as an umbrella fund, the assets shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose.

(4) The liabilities of a unit-holder shall be limited to the amount agreed to be contributed by him or her for the subscription of units. The provisions of the trust deed or the deed of constitution shall be binding on the unit-holders and all persons claiming through the unit-holders as if such persons had been party to the trust deed or to the deed of constitution, as the case may be.

Trust deed, etc. to lay down conditions for replacement of management company, etc

38. In relation to unit trusts, the trust deed and, in relation to common contractual funds, the deed of constitution, shall lay down the conditions for the replacement of the management company and the trustee and rules to ensure the protection of unit-holders in the event of such replacement.

PART 6

OBLIGATIONS REGARDING INVESTMENT COMPANIES

Chapter 1

Conditions for taking up business

Investment companies with fixed capital

39. (1) This Regulation applies to an investment company with fixed capital authorised under these Regulations.

(2) A company to which this Regulation applies shall include the words “investment company” or “*cuideachta infheistíochta*” on all its deeds, announcements, publications, letters and other documents.

(3) (a) Subject to this Regulation, a company to which this Regulation applies may, if so authorised by its articles, issue redeemable preference shares which are liable at the option of the shareholder to be redeemed, and redeem them accordingly.

(b) The issue and redemption of shares by a company pursuant to subparagraph (a) shall be subject to the following conditions:

(i) no redeemable shares shall be redeemed unless they are fully paid;

(ii) no such shares shall be redeemed except out of profits available for distribution or out of the proceeds of a fresh issue of shares made for the purposes of redemption; and

(iii) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed.

(c) Shares redeemed under this paragraph shall be treated as cancelled on redemption and the amount of the company's issued share capital shall be reduced by the nominal value of those shares accordingly but no such cancellation shall be taken as reducing the amount of the company's authorised share capital.

(d) Where redeemable shares are—

(i) redeemed wholly out of profits available for distribution, or

- (ii) redeemed wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed (“the aggregable difference”)

then a sum equal to, in the case of clause (i) of this paragraph, the nominal amount of the shares redeemed and, in the case of clause (ii), the aggregable difference, shall be transferred to a reserve fund (“the capital redemption reserve fund”) and the provisions of the Companies Acts relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

- (e) Subject to this paragraph and Regulation 104, the redemption of shares may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) The following provisions of the Companies Acts shall, in so far as the redemption of shares is made in accordance with these Regulations, not apply to a company to which this Regulation applies:

- (a) the Companies Act 1963—

section 53 (minimum subscription and amount payable on application),

section 58 (return as to allotments),

section 60 (giving of financial assistance by a company for the purchase of its shares),

section 69 (notice to registrar of certain alterations in share capital),

section 70 (notice of increase in share capital),

section 72 (power of company to reduce its share capital),

section 119 (inspection of register and index),

section 125 (annual return to be made by a company having a share capital);

- (b) the Companies (Amendment) Act 1983 (No. 13 of 1983)—

section 5(2) (minimum amount of share capital),

section 6 (restriction on the commencement of business by a public limited company),

section 19 (meaning of “authorised minimum”),

sections 20(3) and 20(4) (duration of authority to allot securities),

section 22 (document containing offer to state whether shares will be allotted where issue not fully subscribed),

sections 23 to 25 (pre-emption rights),

sections 30 to 33 (experts' reports on non-cash consideration before allotment of shares),

section 40 (obligation to convene extraordinary general meeting in event of serious loss of capital),

section 41(1) (restriction on company acquiring its own shares),

Part IV (restrictions on distribution of profits and assets);

(c) the Companies (Amendment) Act 1986 (No. 25 of 1986)—

section 14 (information to be included in directors' report regarding acquisition by company of own shares);

(d) the Companies Act 1990—

chapters 2 to 4 of Part IV,

section 140 (company may be required to contribute to debt of related company, whether as regards a case in which the investment company is being wound up or a case in which it is a related company within the meaning of that section),

Part XI.

Investment companies with variable capital

40. (1) This Regulation applies to an investment company with variable capital authorised under these Regulations.

(2) A company to which this Regulation applies shall include the words “investment company with variable capital” or “cuideachta infheistíochta le caipiteal athraitheach” on all its deeds, announcements, publications, letters and other documents.

(3) (a) Subject to this Regulation, a company to which this Regulation applies may, if so authorised by its articles, repurchase its own shares provided that no such shares shall be repurchased unless they are fully paid.

(b) Subject to this Regulation, the repurchase of shares may be effected on such terms and in such a manner as may be provided for by the articles of the company.

- (4) (a) Subject to this paragraph and Regulation 104, a company to which this Regulation applies shall, if requested to do so by a shareholder, repurchase such of the shareholder's shares as may be requested by the shareholder.
- (b) Shares which have been repurchased under subparagraph (a) shall be treated as cancelled and the amount of the company's issued share capital shall be reduced accordingly.
- (5) (a) A company to which this Regulation applies and which is established as an umbrella fund may acquire by way of subscription or transfer for consideration shares in one sub-fund of the company for the account of another sub-fund of the company in accordance with Regulation 73.
- (b) Units acquired under Regulation 73 may be held for the account of the sub-fund for which they were acquired and need not be cancelled.
- (6) For the avoidance of doubt, nothing in the Companies Acts or in these Regulations shall require a company to which this Regulation applies to create a legal reserve.
- (7) (a) The following provisions of the Companies Acts shall not apply to a company to which this Regulation applies:
- (i) the Companies Act 1963—
- section 53 (minimum subscription and amount payable on application),
 - section 58 (return as to allotments),
 - section 60 (giving of financial assistance by a company for the purchase of its shares),
 - section 69 (notice to registrar of certain alterations in share capital),
 - section 70 (notice of increase in share capital),
 - section 72 (power of company to reduce its share capital),
 - section 119 (inspection of register and index),
 - section 125 (annual return to be made by a company having a share capital);
- (ii) the Companies (Amendment) Act 1983—
- section 5(2) (minimum amount of share capital),

section 6 (restriction on the commencement of business by a public limited company),

section 19 (meaning of “authorised minimum”),

section 20(3) and (4) (duration of authority to allot securities),

section 22 (document containing offer to state whether shares will be allotted where issue not fully subscribed),

sections 23 to 25 (pre-emption rights),

sections 30 to 33 (experts’ reports on non-cash consideration before allotment of shares),

section 40 (obligation to convene extraordinary general meeting in event of serious loss of capital),

section 41 (restriction on company acquiring its own shares),

section 43 (treatment of shares held by or on behalf of a public limited company,

section 43A (accounting for own shares)),

Part IV (restrictions on distribution of profits and assets);

(iii) the Companies (Amendment) Act 1986—

section 14 (information to be included on directors’ report regarding acquisition by company of own shares);

(iv) the Companies Act 1990—

chapters 2 to 4 of Part IV,

section 140 (company may be required to contribute to debt of related company, whether as regards a case in which the investment company is being wound up or a case in which it is a related company within the meaning of that section),

Part XI.

(b) Section 6(4)(a) of the Companies Act 1963 shall have effect in relation to a company to which this Regulation applies as if the words “and the division thereof into shares of a fixed amount” were omitted.

Provisions supplementary to Regulations 39 and 40

41. (1) Sections 5(1), 36, 213(d) and 215(a)(i) of the Companies Act 1963 shall apply in relation to a company to which Regulation 39 or 40 applies as if such a company were a private company.

(2) The registered office of an investment company to which Regulation 39 or 40 applies shall be situated in the State.

Authorisation of investment company

42. (1) (a) The Bank shall not authorise an investment company if the directors are not of sufficiently good repute and sufficiently experienced in relation to the type of business carried out by the investment company.

(b) The investment company shall communicate to the Bank the names of its directors and of every person succeeding them in office.

(2) An investment company may start business as soon as authorisation has been granted.

(3) An investment company shall only manage assets of its portfolio and shall not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

(4) (a) The Bank shall not authorise an investment company which has not appointed a management company unless—

(i) the investment company has an initial capital of at least €300,000,

(ii) the investment company has submitted a programme of activity to the Bank setting out at least its organisational structure in the application for authorisation, and

(iii) the conduct of the investment company's business is decided by at least 2 persons who meet the conditions laid down by the Bank in accordance with paragraph (a).

(b) Where close links exist between the investment company and other natural or legal persons, the Bank shall grant authorisation only if those close links do not prevent the effective exercise of its supervisory functions.

(c) The Bank shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with whom the investment company has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

(d) A proposed investment company shall be informed within 6 months of the date of receipt of a complete application whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

Chapter 2

*Operating conditions**Application of Regulations 23 and 24*

43. (1) Regulations 23 and 24 (except Regulation 24(2) to the extent that it relates to paragraphs 30 to 49 and 54 to 62 of Schedule 5) shall, with all necessary modifications, apply to investment companies that have not designated a management company authorised pursuant to these Regulations.

(2) For the purpose of paragraph (1), references in regulations 23 and 24 (including Schedule 5) to “management company” mean “investment company”.

Prudential rules for investment companies

44. (1) The Bank shall draw up prudential rules which shall be observed at all times by investment companies that have not designated a management company authorised pursuant to these Regulations.

(2) In particular, the Bank, having regard also to the nature of the investment company, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, at least, that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the investment company are invested according to the instruments of incorporation and the legal provisions in force.

Application of segregated liability to investment companies established as UCITS

45. Sections 256A to 256E of the Companies Act 1990 (No. 27 of 1990) shall apply to any investment company authorised pursuant to these Regulations and for this purpose the references to umbrella fund and sub-fund shall be interpreted in accordance with the provisions of these Regulations, the references to authorisation shall be read as referring to authorisation pursuant to these Regulations and the reference to the commencement date shall be read as referring to the commencement date of section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (No. 12 of 2005).

Chapter 3

*Obligations regarding trustee**Safe-keeping of assets*

46. (1) The assets of an investment company shall be entrusted to a trustee for safe-keeping in accordance with these Regulations.

(2) A trustee's liability as referred to in Regulation 52 shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its safekeeping.

(3) The assets of an investment company shall belong exclusively to the investment company. The assets shall be segregated from the assets of the trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.

Obligations of trustee

47. (1) A trustee shall—

- (a) ensure that the sale, issue, repurchase, redemption and cancellation of shares effected by or on behalf of an investment company are carried out in accordance with these Regulations and with its memorandum and articles,
- (b) ensure that the value of units is calculated in accordance with these Regulations and the investment company's memorandum and articles,
- (c) carry out the instructions of the investment company unless they conflict with these Regulations or its memorandum and articles,
- (d) ensure that in transactions involving an investment company's assets any consideration is remitted to it within the usual time limits, and
- (e) ensure that an investment company's income is applied in accordance with these Regulations and its memorandum and articles.

(2) A trustee shall enquire into the conduct of the investment company in each annual accounting period and report thereon to the shareholders. The trustee's report shall be delivered to the investment company in good time to enable it to include a copy of the report in the annual report required under Regulation 88. The report shall state whether in the trustee's opinion the investment company has been managed in that period—

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the investment company by the memorandum and articles and these Regulations, and
- (b) otherwise in accordance with the provisions of the memorandum and articles and these Regulations,

and, if it has not been so managed, in what respects it has not been so managed and the steps which the trustee has taken in respect thereof.

Exemption from requirement to have trustee

48. (1) Authorised investment companies which market their shares exclusively through one or more stock exchanges on which their shares are admitted to official listing may, at the discretion of the Bank, be exempted from the requirement to have trustees within the meaning of these Regulations.

(2) Regulations 96, 104 and 108 shall not apply to such companies. The rules for the valuation of such companies' assets shall be stated in their articles.

Further exemption

49. (1) The Bank may, at its discretion, exempt authorised investment companies which market at least 80% of their shares through one or more stock exchanges designated in their articles of association from the requirement to have trustees within the meaning of these Regulations provided that their shares are admitted to official listing on the stock exchanges of those Member States within the territories of which the shares are marketed and provided that any transactions which such a company may effect outside stock exchanges are effected at stock exchange prices only. A company's articles shall specify the stock exchange in the country of marketing, the prices on which shall determine the prices at which that company will effect any transactions outside stock exchanges in that country.

(2) In exercising this discretion, the Bank shall be satisfied that unit-holders in the investment companies referred to in paragraph (1) have equivalent protection to that of unit-holders of UCITS which have a trustee within the meaning of these Regulations. In particular, such investment companies and the companies referred to in Regulation 48 shall—

- (a) state in their articles the methods of calculation of the net asset value of their units,
- (b) intervene on the market to prevent the stock exchange value of their units from deviating by more than 5% from their net asset value, and
- (c) establish the net asset values of their units and communicate them to the Bank at least twice a week and publish them at least twice a month.

(3) At least twice a month, an independent auditor, being a person empowered to audit accounts in accordance with the Companies Acts, shall ensure that the calculation of the value of the units is effected in accordance with the investment company's articles. On such occasions, the auditor shall ensure that the company's assets are invested in accordance with the provisions in these Regulations and in the company's articles.

Requirement on Bank to inform EC Commission regarding exemptions

50. The Bank shall inform the Commission of the identities of the companies benefiting from the exemptions provided for in Regulations 48 and 49.

Application of Regulation 35(1) to (3) and (7)

51. (1) Regulation 35(1) to (3) and (7), in relation to a trustee of a unit trust or a common contractual fund, shall, with all necessary modifications, apply to a trustee to which this Part applies.

(2) The trustee shall enable the Bank to obtain, on request, all information that the trustee has obtained while discharging its duties and that is necessary for the Bank to supervise compliance of the UCITS with these Regulations.

(3) Where the management company's home Member State is not the State and the management company proposes to act as manager to a UCITS authorised by the Bank, the trustee shall sign an agreement in writing with the management company regulating the flow of information deemed necessary to allow it to perform the functions set out in Regulations 46 to 50 and in other laws, regulations or administrative provisions which are relevant for trustees in the State.

Liability of trustee

52. The trustee shall be liable to the investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.

Company shall not act as both investment company and trustee

53. (1) No company shall act as both an investment company and a trustee.

(2) In carrying out its role as trustee, the trustee shall act solely in the interests of the unit-holders.

Articles to lay down conditions for replacement of trustee

54. The articles of an investment company shall lay down the conditions for the replacement of the trustee and rules to ensure the protection of unit-holders in the event of such replacement.

PART 7

MERGERS OF UCITS

Interpretation — Part 7

55. For the purpose of this Part, a UCITS shall include sub-funds thereof.

Permitted mergers

56. Subject to the conditions set out in this Part and irrespective of the manner in which UCITS are constituted under Regulation 4(6), cross-border and domestic mergers are permitted provided they fall within the definition in Regulation 3(1) of "merger".

Authorisation by Bank of merger

57. (1) Where a merging UCITS is authorised by the Bank, mergers shall be subject to prior authorisation by the Bank.

(2) (a) The merging UCITS shall provide the following information (the "File") to the Bank:

- (i) the common draft terms of the proposed merger (the "Terms") duly approved by the management of the merging UCITS and the management of the receiving UCITS, as set out in Regulation 58;
- (ii) an up-to-date version of the prospectus and the key investor information, referred to in Regulation 98 of the receiving UCITS, if it is established in another Member State;

- (iii) a statement by each of the trustees of the merging UCITS and the receiving UCITS confirming that, in accordance with Regulation 59, they have verified compliance of the particulars set out in clauses (i), (vi) and (vii) of subparagraph (a) of Regulation 58(1) with the requirements of these Regulations and the trust deed, deed of constitution or articles of their respective UCITS; and
 - (iv) the information on the proposed merger that each of the merging UCITS and the receiving UCITS intend to provide to their respective unit-holders, referred to in Regulation 61.
- (b) The information required under clause (a) shall be provided in such a manner as to enable the Bank to read it in one of the State's languages or in a language acceptable to the Bank.
- (3) (a) Once the File is complete, the Bank shall immediately transmit copies of the File to the competent authority of the receiving UCITS home Member State. The Bank and the competent authority of the receiving UCITS home Member State shall consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information under clause (iv) of subparagraph (a) of paragraph (2) is being provided to unit-holders. If the Bank considers it necessary, it may require, in writing, that the information to unit-holders of the merging UCITS be clarified.
- (b) Where the competent authority of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than 15 working days of receipt of the copies of the File, that the receiving UCITS modify the information to be provided to its unit-holders.
- (c) In such a case, the competent authority of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the Bank and inform the Bank whether they are satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within 20 working days of being notified thereof.
- (4) The Bank shall authorise the proposed merger if the following conditions are met:
- (a) the proposed merger complies with all of the requirements of this Regulation and Regulations 58 to 60;
 - (b) the receiving UCITS has been notified, in accordance with Regulation 117, to market its units in the State and in all Member States where the merging UCITS has been notified to market its units in accordance with that Regulation; and

- (c) the Bank and the competent authority of the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under paragraph (3).
- (5) (a) Where the Bank considers that the File is not complete, it shall request additional information within 10 working days of receiving the File.
 - (b) The Bank shall inform the merging UCITS, within 20 working days of submission of the File, in accordance with paragraph (2), whether or not the merger has been authorised. The Bank shall also inform the competent authority of the receiving UCITS home Member State of its decision.
- (6) The Bank may allow recently authorised UCITS to derogate from Regulations 70 to 73 for 6 months following the date of their authorisation, provided they observe the principle of risk-spreading.

Terms of merger

- 58. (1) (a) The Bank shall require that the merging UCITS and the receiving UCITS draw up the Terms. The Terms shall set out the following particulars:
 - (i) an identification of the type of merger and of the UCITS involved;
 - (ii) the background to and rationale for the proposed merger;
 - (iii) the expected impact of the proposed merger on the unit-holders of both the merging UCITS and the receiving UCITS;
 - (iv) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Regulation 65(1);
 - (v) the calculation method of the exchange ratio;
 - (vi) the planned effective date of the merger;
 - (vii) the rules applicable, respectively, to the transfer of assets and the exchange of units; and
 - (viii) in the case of a merger pursuant to paragraph (b) of the definition in Regulation 3(1) of “merger” and, where applicable, paragraph (c) of that definition, the trust deed, deed of constitution or articles of the newly constituted receiving UCITS.
- (b) The Bank shall not require that any additional information is included in the Terms.

(2) The merging UCITS and the receiving UCITS may decide to include further items in the Terms.

Verification

59. The trustees of the merging UCITS and of the receiving UCITS shall verify the conformity of the particulars set out in clauses (i), (iv) and (vi) of subparagraph(a) of Regulation 58(1) with the requirements of these Regulations and the trust deed, deed of constitution or articles of their respective UCITS.

Validation of certain matters

60. (1) Where the merging UCITS is authorised by the Bank, the Bank shall require either a trustee or an independent auditor, approved in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006¹² on statutory audits of annual accounts and consolidated accounts, to validate the following:

- (a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio, as referred to in Regulation 65(1);
- (b) where applicable, the cash payment per unit; and
- (c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Regulation 65(1).

(2) The statutory auditor of the merging UCITS or the statutory auditor of the receiving UCITS shall be considered independent auditors for the purposes of paragraph (1).

(3) A copy of the reports of the independent auditor, or, where applicable, the trustee shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

Information on merger

61. (1) (a) The merging UCITS and the receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the proposal on their investment.

- (b) (i) The information to be provided to unit-holders pursuant to subparagraph (a) shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgement of the impact of the proposed merger on their investment. In the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other Member State.

¹²OJ No. L157, 09.06.2007, p. 87

- (ii) The information to be provided to the unit-holders of the merging UCITS shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading it.
 - (iii) The information to be provided to the unit-holders of the receiving UCITS shall focus on the operation of the merger and its potential impact on the receiving UCITS.
- (2) (a) That information shall be provided to unit-holders of the merging UCITS and of the receiving UCITS only after the Bank has authorised the proposed merger under Regulation 57.
- (b) It shall be provided at least 30 days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge as set out in Regulation 63(1).
- (3) (a) The information to be provided to unit-holders of the merging UCITS and of the receiving UCITS, shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact thereof on their investment and to exercise their rights under Regulations 62 and 63.
- (b) The information shall include the following:
- (i) the background to and the rationale for the proposed merger;
 - (ii) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;
 - (iii) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the trustee on request, and the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge as specified in Regulation 63(1) and the last date for exercising that right;
 - (iv) the relevant procedural aspects and the planned effective date of the merger, and
 - (v) a copy of the key investor information, referred to in Regulation 98, of the receiving UCITS.

(4) Where the merging UCITS or the receiving UCITS has been notified in accordance with Regulation 117, the information referred to in paragraph (3) shall be provided to unit holders in the State in one of the State's languages. Where notified in other Member States in accordance with Regulation 115, the information referred to in paragraph (3) shall be provided to unit-holders in each UCITS host Member State in the official language, or one of the official languages, of the relevant UCITS host Member State.

(5) The requirements specified in Schedules 7 and 8 shall have effect for the purposes of this Regulation.

Maximum percentage of votes cast to approve merger

62. In order to be approved, mergers between UCITS shall not require more than 75% of the votes actually cast by unit-holders present or represented at the general meeting of unit-holders. The Bank shall not impose more stringent presence quorum for cross-border mergers than for domestic mergers nor more stringent presence quorum for UCITS mergers than that which applies for mergers of Irish corporate entities.

Purchase or redemption of units

63. (1) Unit-holders of both the merging UCITS and the receiving UCITS shall have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policies and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. That right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with Regulation 61 and shall cease to exist 5 working days before the date for calculating the exchange ratio referred to in Regulation 65(1).

(2) Without prejudice to paragraph (1), for mergers between UCITS and by way of derogation from Regulation 104(1), the Bank may require or allow the temporary suspension of the subscription, repurchase or redemption of units provided that such suspension is justified for the protection of the unit-holders.

Legal, advisory and administrative costs of merger

64. Legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging UCITS or the receiving UCITS, or to any of their unit-holders, except in cases where the UCITS have not designated a management company.

Law applicable to merger

65. (1) (a) For domestic mergers, the laws of the State shall determine the date on which a merger takes effect as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments.

- (b) For cross-border mergers, the laws of the receiving UCITS home Member State shall determine those dates. Where the State is the receiving UCITS home Member States, the Bank shall ensure that, where applicable, those dates are after the approval of the merger by unit-holders of the receiving UCITS or the merging UCITS.

(2) The entry into effect of the merger shall be made public through all appropriate means in the manner prescribed by the laws of the receiving UCITS home Member State, and shall be notified to the competent authorities of the home Member States of the merging UCITS and the receiving UCITS.

(3) A merger which has taken effect as provided for in paragraph (1) shall not be declared void.

Consequences of different kinds of merger

66. (1) A merger effected in accordance with paragraph (a) of the definition in Regulation 3(1) of “merger” shall have the following consequences:

- (a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the trustee of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10 % of the net asset value of their units in the merging UCITS; and
- (c) the merging UCITS cease to exist on the entry into effect of the merger.

(2) A merger effected in accordance with paragraph (b) of the definition in Regulation 3(1) of “merger” shall have the following consequences:

- (a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, where applicable, to the trustee of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10 % of the net asset value of their units in the merging UCITS; and
- (c) the merging UCITS cease to exist on the entry into effect of the merger.

(3) A merger effected in accordance with paragraph (c) of the definition in Regulation 3(1) of “merger” shall have the following consequences:

- (a) the net assets of the merging UCITS are transferred to the receiving UCITS or, where applicable, the trustee of the receiving UCITS;

- (b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS; and
 - (c) the merging UCITS continues to exist until the liabilities have been discharged.
- (4) (a) The management company of the receiving UCITS shall confirm to the trustee of the receiving UCITS that transfer of assets and, where applicable, liabilities is complete.
- (b) Where the receiving UCITS has not designated a management company, it shall give that confirmation to the trustee of the receiving UCITS.

PART 8

OBLIGATIONS CONCERNING INVESTMENT POLICIES OF UCITS

Sub-funds of UCITS to be regarded as separate UCITS

67. Where a UCITS comprises 2 or more sub-funds, each sub-fund shall be regarded as a separate UCITS for the purposes of this Part.

Permitted investments

68. (1) The investments of a UCITS shall comprise only one or more of the following:

- (a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Regulation 3(1) of the MIFID Regulations;
- (b) transferable securities and money market instruments dealt in on another regulated market in a Member State, which operates regularly and is recognised and open to the public;
- (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company;
- (d) recently issued transferable securities, provided that—
 - (i) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company, and

- (ii) the admission referred to in clause (i) is secured within a year of issue;
- (e) units of UCITS authorised according to the Directive or other collective investment undertakings within the meaning of Regulation 4(3), whether or not established in a Member State, provided that—
 - (i) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the Bank to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured,
 - (ii) the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the Directive,
 - (iii) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period, and
 - (iv) not more than 10 % of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their trust deed, deed of constitution or articles, be invested in aggregate in units of other UCITS or other collective investment undertakings;
- (f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in not more than 12 months, provided that the credit institution has its registered office in a Member State or, if the credit institution has its registered office in a third country, provided that it is subject to prudential rules considered by the Bank as equivalent to those laid down in Community law;
- (g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in sub-paragraph (a), (b) or (c) or financial derivative instruments dealt in OTC derivatives, provided that—
 - (i) the underlying of the derivative consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in its trust deed, deed of constitution or articles,

- (ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the Bank, and
- (iii) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative;

or

- (h) money market instruments (other than those dealt in on a regulated market) where the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided that they are—
 - (i) issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the Community or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong,
 - (ii) issued by an undertaking any securities of which are dealt in on a regulated market referred to in subparagraph (a), (b) or (c),
 - (iii) issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the Bank to be at least as stringent as those laid down by Community law, or
 - (iv) issued by other bodies belonging to the categories approved by the Bank provided that investments in such instruments are subject to investor protection equivalent to that laid down in clause (i), (ii) or (iii) and provided that the issuer is a company the capital and reserves of which amount to at least €10,000,000 and which presents and publishes its annual accounts in accordance with the Fourth Council Directive 78/660/EEC of 25 July 1978¹³ based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A UCITS may hold ancillary liquid assets but shall not—

- (a) invest more than 10 % of its assets in transferable securities or money market instruments other than those referred to in paragraph (1), or

¹³OJ No. L222, 14.08.1978, p. 11.

(b) acquire either precious metals or certificates representing them.

(3) An investment company may acquire movable or immovable property which is essential for the direct pursuit of its business.

Risk-management

69. (1) (a) A management company or an investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the UCITS' positions and their contribution to the overall risk profile of the portfolio of assets of the UCITS.

(b) A management company or an investment company shall employ a process for accurate and independent assessment of the value of OTC derivatives.

(c) A management company or an investment company shall communicate to the Bank regularly and in accordance with particular requirements the Bank shall specify for that purpose the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

(2) (a) A UCITS may employ techniques and instruments relating to transferable securities and money market instruments under and in accordance with conditions or requirements imposed by the Bank for the purpose of this Regulation (whether generally or in relation to the particular UCITS) provided that such techniques and instruments are used for the purpose of efficient portfolio management. When those operations concern the use of derivative instruments, those conditions and requirements shall comply with these Regulations.

(b) Those operations shall not, in any case, cause the UCITS to diverge from its investment objectives as laid down in the trust deed, deed of constitution, memorandum and articles of incorporation or prospectus.

(3) The reference in paragraph (2)(a) to techniques and instruments which relate to transferable securities or money market instruments and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:

(a) they are economically appropriate in that they are realised in a cost-effective way;

(b) they are entered into for one or more of the following specific aims:

(i) reduction of risk;

(ii) reduction of costs;

- (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules set out in Regulations 70 and 71;

and

- (c) their risks are adequately captured by the risk management process of the UCITS.
- (4) (a) A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net asset value of its portfolio.
- (b) A UCITS may invest, as a part of its investment policy and within the limit specified in Regulation 70(6), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits specified in Regulation 70. Where a UCITS invests in index-based financial derivative instruments, these investments do not have to be combined with the limits specified in Regulation 70.
- (c) When a transferable security or money market instrument contains an embedded derivative, the latter shall be taken into account when complying with the requirements of this Regulation.
- (5) (a) A transferable security or money market instrument embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria for transferable securities or money market instruments set out in Schedule 3 and which contain a component which fulfils the following criteria:
- (i) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or money market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;
 - (ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
 - (iii) it has a significant impact on the risk profile and pricing of the transferable security or money market instrument.
- (b) A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

(6) For the purposes of paragraph (2), exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

(7) The requirements specified in Schedule 9—

(a) shall have effect for the purposes of this Regulation, and

(b) shall, in addition to applying to management companies, also apply to investment companies that have not designated a management company pursuant to these Regulations.

(8) Any reference in Schedule 9 to a management company or management companies shall, for the purposes of subparagraph (b) of paragraph (7), be construed to include a reference to investment company or investment companies respectively.

Investments in one issuer's securities

70. (1) (a) A UCITS shall invest not more than 10% of its assets in transferable securities or money market instruments issued by the same body provided that the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5% of its assets shall not then exceed 40% of the value of its assets. This limitation does not apply to deposits and OTC derivative transactions made with financial institutions.

(b) A UCITS shall not invest more than 20% of its assets in deposits made with the same body.

(c) The risk exposure to a counterparty of a UCITS in an OTC derivative transaction shall not exceed—

(i) in case the counterparty is a credit institution referred to in Regulation 68(1)(f), 10% of its assets,

(ii) in any other case, 5% of its assets.

(2) Notwithstanding subparagraphs (a), (b) and (c) of paragraph (1), a UCITS shall not, in excess of 20% of its assets, combine 2 or more of the following issued by, or made or undertaken with, the same body:

(a) investments in transferable securities or money market instruments,

(b) deposits;

(c) exposures arising from OTC derivative transactions.

(3) (a) Notwithstanding paragraphs (1)(a) and (2), a UCITS may invest up to 25% of its assets in bonds that are issued by a credit institution which has its registered office in a Member State and is subject by

law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested, in accordance with the law, in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, will be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

- (b) When a UCITS invests more than 5% of its assets in the bonds referred to in subparagraph (a) and issued by one issuer, the total value of those investments shall not exceed 80% of the value of the assets of the UCITS.
- (c) The Bank shall send to the Commission a list of categories of issuers authorised, in accordance with the laws and supervisory arrangements referred to in subparagraph (a) that are in force in the State, to issue bonds complying with the requirements of that subparagraph. A notice specifying the status of the guarantees offered shall be attached to those lists.

(4) Notwithstanding paragraphs (1)(a) and (2), a UCITS may invest up to 35% of its assets in transferable securities or money market instruments that are issued or guaranteed by a Member State, by its local authorities, by a third country or by public international bodies of which one or more Member States are members.

(5) The transferable securities and money market instruments referred to in paragraphs (3) and (4) shall not be taken into account for the purpose of applying the limit of 40% referred to in paragraph (1)(a).

(6) The limits provided for in paragraphs (1) to (4) shall not be combined, and thus exposure to the same body arising from investments in 2 or more of the following, namely—

- (a) transferable securities,
- (b) money market instruments,
- (c) deposits,
- (d) derivative instruments,

carried out in accordance with paragraphs (1) to (4) shall under no circumstances exceed in total 35% of the assets of the UCITS.

(7) Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Regulation. In this context, a UCITS may combine investment in transferable securities and money market instruments within the same group up to a limit of 20%

of its assets provided those investments comply with the other limits specified in this Regulation.

Index funds

71. (1) (a) Without prejudice to the limits specified in Regulations 74, the limit in Regulation 70(1)(a) is raised to 20% for investments in shares or debt securities or both issued by the same body when, according to the trust deed, deed of constitution or articles of incorporation, the aim of the UCITS investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the Bank, on the following basis:

- (i) the index's composition is sufficiently diversified, which shall be understood as a reference to an index which complies with the risk diversification rules set out in this paragraph and paragraph (2);
- (ii) the index represents an adequate benchmark for the market to which it refers, which shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers; and
- (iii) the index is published in an appropriate manner which shall be understood as a reference to an index which fulfils the following criteria:
 - (I) it is accessible to the public; and
 - (II) the index provider is independent from the index replicating UCITS.

(b) Subparagraph (a)(iii)(II) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

(2) The Bank may raise the limit in Regulation 70(1)(a) to a maximum of 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

(3) The reference in paragraph (1) to replication of the composition of a stock or debt securities index shall be understood as replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments as referred to in Regulation 69(2).

Securities issued or guaranteed by States, etc

72. (1) Provided the Bank is satisfied that unit-holders have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in

Regulation 70 it may authorise a UCITS to invest, in accordance with the principle of risk-spreading, up to 100% of its assets in different transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, a third country or public international bodies of which one or more Member States are members.

- (2) Such a UCITS shall be required to—
- (a) hold securities from at least 6 different issues, but securities from any one issue may not account for more than 30% of its total assets,
 - (b) specify in its trust deed, deed of constitution or in its articles the names of the States, local authorities or public international bodies issuing or guaranteeing securities in which it intends to invest more than 35% of its assets, and
 - (c) include a prominent statement in its prospectus and any marketing communications drawing attention to the Bank's authorisation and indicating the States, local authorities and public international bodies in the securities of which it intends to invest or has invested more than 35% of its assets.

Investments in UCITS and other collective investment undertakings

73. (1) A UCITS may acquire the units of either or both—

- (a) other UCITS,
- (b) other collective investment undertakings referred to in Regulation 68(1)(e),

provided that not more than 20% of its assets are invested in units of a single UCITS or other collective investment undertaking. Where the UCITS or other collective investment undertaking being invested in is established as an umbrella fund, each sub-fund of the umbrella fund may, subject to such conditions as may be imposed by the Bank, be regarded as if it were a separate UCITS or separate collective investment undertaking, for the purposes of applying this limit.

(2) Investments made by a UCITS in units of collective investment undertakings other than UCITS may not exceed, in aggregate, 30% of the assets of the UCITS.

(3) Where a UCITS has acquired units of UCITS or other collective investment undertakings or both, the assets of those underlying UCITS or other collective investment undertakings or both do not have to be combined for the purposes of the limits specified in Regulation 70.

(4) When a UCITS invests in the units of other UCITS or other collective investment undertakings or both and that UCITS and that or those other UCITS or undertakings are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect

holding, that management company or other company shall not charge subscription or redemption fees on account of the investment of the UCITS in the units of such other UCITS or collective investment undertakings or both, as the case may be.

(5) A UCITS that invests a substantial proportion of its assets in other UCITS or other collective investment undertakings or both shall disclose in its prospectus the maximum level of the management fees that may be charged to both the UCITS itself and to the other UCITS or collective investment undertakings or both, as the case may be, in which it intends to invest. The annual report of the UCITS shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS or other collective investment undertakings or both in which it invests.

(6) An umbrella fund may acquire the units of one sub-fund for the account of another sub-fund within that umbrella, subject to Regulation 67 and such conditions as may be imposed by the Bank.

Acquisitions of shares carrying voting rights

74. (1) An investment company or a management company acting in connection with all of the unit trusts or common contractual funds which it manages and which fall within the scope of these Regulations may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

(2) (a) A UCITS may acquire not more than—

(i) 10% of the non-voting shares of any single issuing body,

(ii) 10% of the debt securities of any single issuing body,

(iii) 25% of the units of any single UCITS or other collective investment undertaking within the meaning of subparagraphs (a) and (b) of Regulation 4(3),

(iv) 10% of the money market instruments of any single issuing body.

(b) The limits specified in clause (ii), (iii) or (iv) of subparagraph (a) may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.

(3) Paragraphs (1) and (2) do not apply to—

(a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities,

(b) transferable securities and money market instruments issued or guaranteed by a third country,

- (c) transferable securities and money market instruments issued by public international bodies of which one or more Member States are members,
- (d) shares held by a UCITS in the capital of a company incorporated in a third country investing its assets mainly in the securities of issuing bodies having their registered offices in that third country, where under the legislation of that third country such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that country. This derogation, however, shall apply only if in its investment policy the company from the third country complies with the limits laid down in Regulations 70, 73, 74(1) and (2) and 90. Where the limits set down in Regulations 70, 73 or 90 are exceeded, Regulations 75 to 77 shall apply with all necessary modifications; and
- (e) shares held by an investment company or investment companies in the capital of subsidiary companies carrying on only the business of management, advice or marketing in the country where the subsidiary is located, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.

Subscription rights

75. A UCITS need not comply with the limits laid down in this Part when exercising subscription rights attaching to transferable securities and money market instruments which form part of their assets.

Derogation for recently authorised UCITS

76. The Bank may allow recently authorised UCITS to derogate from Regulations 70 to 73 for 6 months following the date of their authorisation, provided they observe the principle of risk-spreading.

Breaches of limits

77. Where the limits in this Part are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, the UCITS shall adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

PART 9

MASTER — FEEDER STRUCTURES

Chapter 1

Scope and approval

Meaning of feeder UCITS and master UCITS, etc

78. (1) A feeder UCITS is a UCITS, or sub-fund thereof, which has been approved to invest, by way of derogation from Regulations 4(3)(a), 68, 70 and 74(2)(a)(iii), at least 85% of its assets in units of another UCITS or sub-fund thereof (the master UCITS).

- (2) (a) A feeder UCITS may hold up to 15 % of its assets in one or more of the following:
- (i) ancillary liquid assets in accordance with subparagraph 2 of Regulation 68;
 - (ii) financial derivative instruments, which may be used only for hedging purposes, in accordance with Regulations 68(1)(g) and 69(2) to (4);
 - (iii) movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.
- (b) For the purposes of compliance with Regulation 69(2) to (4), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under clause (ii) of paragraph (a) with either—
- (i) the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS, or
 - (ii) the master UCITS' potential maximum global exposure to financial derivative instruments provided for in the master UCITS' trust deed, deed of constitution or articles in proportion to the feeder UCITS investment into the master UCITS.
- (3) A master UCITS is a UCITS, or a sub-fund thereof, which—
- (a) has, among its unit-holders, at least one feeder UCITS,
 - (b) is not itself a feeder UCITS, and
 - (c) does not hold units of a feeder UCITS.
- (4) The following derogations for a master UCITS shall apply:
- (a) where a master UCITS has at least 2 feeder UCITS as unit-holders, Regulation 4(3)(a) and (9)(c) shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
 - (b) where a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Part 12 and the second subparagraph of Article 108(1) of Directive 2009/65/EC shall not apply.

Approval by Bank of investment of feeder UCITS

79. (1) The investment of a feeder UCITS authorised by the Bank into a given master UCITS which exceeds the limit applicable under Regulation 73(1) for investments into other UCITS shall be subject to prior approval by the Bank.

(2) The feeder UCITS shall be informed within 15 working days following the submission of a complete file of the documents referred to in paragraph (3), whether or not the Bank has approved the feeder UCITS investment into the master UCITS.

(3) (a) The Bank shall grant approval if the feeder UCITS, its trustee and its auditor, as well as the master UCITS, comply with all the requirements set out in this Part. For such purposes, the feeder UCITS shall provide the Bank with the following documents:

(i) where the master UCITS is not authorised by the Bank—

(I) the fund rules of the master UCITS, and

(II) the prospectus and key investor information of the master UCITS;

(ii) the agreement between the feeder UCITS and the master UCITS or the internal conduct of business rules referred to in Regulation 80(1);

(iii) where applicable, the information to be provided to unit-holders referred to in Regulation 80(1);

(iv) where the master UCITS and the feeder UCITS have different trustees, the information-sharing agreement referred to in Regulation 80(1) between their respective trustees; and

(v) where the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in Regulation 80(1) between their respective auditors.

(b) Where the master UCITS is established in a Member State other than the State, the feeder UCITS shall also provide an attestation by the competent authority of the master UCITS home Member State that the Master UCITS is a UCITS or a sub-fund thereof, which fulfils the conditions set out in Regulation 78(3)(b) and (c). Documents shall be provided by the feeder UCITS to the Bank in one of the State's official languages.

Common provisions for feeder UCITS and master UCITS

80. (1) (a) A master UCITS authorised by the Bank shall provide the feeder UCITS with all the documents and information necessary for the feeder UCITS to meet the requirements laid down in these Regulations or, in the case of feeder UCITS established in a Member State other than the State, laid down in the Directive. For this purpose,

both feeder UCITS and the master UCITS shall enter into an agreement.

- (b) A feeder UCITS authorised by the Bank shall not invest in excess of the limit applicable under Regulation 73(1) in units of the master UCITS until the agreement referred to in the subparagraph (a) has become effective. That agreement shall be made available, on request and free of charge, to all unit-holders.
- (c) In the event that both master UCITS and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

(2) The master UCITS and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

(3) Without prejudice to Regulation 104, where a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authority, each of its feeder UCITS authorised by the Bank is entitled to suspend the repurchase, redemption or subscription of its units notwithstanding the conditions laid down in Regulation 104(2) within the same period of time as the master UCITS.

- (4) (a) Where a master UCITS is liquidated, a feeder UCITS authorised by the Bank shall also be liquidated unless the Bank approves—
 - (i) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS, or
 - (ii) the amendment of its trust deed, deed of constitution or articles in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS.

(b) Without prejudice to any of the Bank's rules concerning compulsory liquidation, the liquidation of a master UCITS authorised by the Bank shall take place no sooner than 3 months after the master UCITS has informed all unit-holders and the competent authority of the feeder UCITS home Member State of the binding decision to liquidate.

- (5) (a) Where a master UCITS merges with another UCITS or is divided into 2 or more UCITS, a feeder UCITS authorised by the Bank shall be liquidated unless the Bank grants approval to the feeder UCITS to—
 - (i) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS,

- (ii) invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division, or
 - (iii) amend its trust deed, deed of constitution or articles in order to convert into a UCITS which is not a feeder UCITS.
- (b) No merger or division of a master UCITS authorised by the Bank shall become effective, unless the master UCITS has provided all of the unit-holders and the competent authority of its feeder UCITS home Member State including the Bank, if the feeder UCITS is authorised by the Bank, with the information referred to, or comparable with that referred to, in Regulation 61 by 60 days before the proposed effective date.
- (c) Unless the competent authority of the feeder UCITS home Member State (including the Bank), where a feeder UCITS is authorised by the Bank, has granted approval pursuant to subparagraph (a), the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

(6) The requirements specified in Parts 1 and 2 of Schedule 10 shall have effect for the purposes of this Regulation.

Provisions applicable where master UCITS and feeder UCITS have different trustees

81. (1) (a) Where a master UCITS and a feeder UCITS have different trustees, those trustees shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both trustees.
- (b) A feeder UCITS authorised by the Bank shall not invest in units of a master UCITS until such agreement has become effective.
- (c) Where it complies with the requirements laid down in this Part, a trustee of a master UCITS authorised by the Bank or of a feeder UCITS authorised by the Bank shall not be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in contract or in law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such trustee or any person acting on its behalf.
- (d) A feeder UCITS authorised by the Bank shall communicate to its trustee any information about the master UCITS which is required for the completion of the duties of the trustee.
- (2) The trustee of a master UCITS authorised by the Bank shall immediately inform the Bank, the feeder UCITS and, where applicable, the trustee of the feeder UCITS about any irregularities it detects with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

(3) The requirements specified in Part 3 of Schedule 10 shall have effect for the purposes of this Regulation.

Provisions applicable where master UCITS and feeder UCITS have different auditors

82. (1) (a) Where the master UCITS and the feeder UCITS have different auditors, those auditors shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirements of paragraph (2).

(b) A feeder UCITS authorised by the Bank shall not invest in units of a master UCITS until such agreement has become effective.

(2) (a) In its audit report, the auditor of a feeder UCITS authorised by the Bank shall take into account the audit report of the master UCITS. The auditor of a feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

(b) Where a master UCITS authorised by the Bank has a different accounting year to its feeder UCITS, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS.

(3) Where it complies with the requirements laid down in this Part, an auditor of a master UCITS authorised by the Bank or of a feeder UCITS authorised by the Bank shall not be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in contract or in law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such auditor or any person acting on its behalf.

(4) The requirements specified in Part 4 of Schedule 10 shall have effect for the purposes of this Regulation.

Additional information to be contained in prospectus of feeder UCITS

83. (1) In addition to the information provided for in Schedule 11, the prospectus of a feeder UCITS authorised by the Bank shall contain the following information:

(a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;

(b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Regulation 78(2);

- (c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;
 - (d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Regulation 80(1);
 - (e) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Regulation 80(1);
 - (f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and
 - (g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.
- (2) (a) In addition to the information provided for in Schedule 12, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS.
- (b) The annual and the half-yearly reports of the feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.
- (3) In addition to the requirements laid down in Regulations 94 and 102, the feeder UCITS shall send the prospectus, the key investor information referred to in Regulation 98 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the Bank.
- (4) A feeder UCITS shall disclose in any relevant marketing communications that it permanently invests 85% or more of its assets in units of such master UCITS.
- (5) A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS, shall be delivered by the feeder UCITS to investors on request and free of charge.

Information to be provided to unit-holders by certain feeder UCITS

84. (1) (a) A feeder UCITS authorised by the Bank which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide the following information to its unit-holders:
- (i) a statement that the Bank approved the investment of the feeder UCITS in units of such master UCITS;

- (ii) the key investor information referred to in Regulation 98 concerning the feeder and the master UCITS;
 - (iii) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Regulation 73(1); and
 - (iv) a statement that the unit-holders have the right to request within 30 days the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs. That right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.
- (b) That information shall be provided at least 30 days before the date referred to in clause (iii) of subparagraph (a).

(2) A feeder UCITS authorised by the Bank which has notified the Bank of its intention to market its units in a host Member State shall provide the information referred to in paragraph (1) in the official language, or one of the official languages, of that feeder UCITS host Member State or in a language approved by their competent authorities. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(3) A feeder UCITS authorised by the Bank shall not invest into the units of the given master UCITS in excess of the limit applicable under Regulation 73(1) before the period of 30 days referred to in paragraph (1)(b) has elapsed.

Feeder UCITS to monitor master UCITS, etc

85. (1) A feeder UCITS authorised by the Bank shall monitor effectively the activity of its master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its trustee and auditor, unless there is reason to doubt their accuracy.

(2) Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit, as the case may be, shall be paid into the assets of the feeder UCITS.

Information to be supplied to Bank by master UCITS authorised by Bank, etc

86. (1) A master UCITS authorised by the Bank shall immediately inform the Bank of the identity of each feeder UCITS which invests in its units. Where the feeder UCITS is not authorised by the Bank, the Bank shall immediately inform the competent authority of the feeder UCITS home Member State of such investment.

(2) The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

(3) The master UCITS shall ensure the timely availability of all information that is required in accordance with these Regulations, the Directive, other community law, Irish law, trust deed, deed of constitution or articles of the feeder UCITS and to the competent authority, the trustee and the auditor of the feeder UCITS.

Information to be given by Bank in relation to non-compliance, etc

87. (1) Where the master UCITS and the feeder UCITS are authorised by the Bank, the Bank shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Part or of any information reported pursuant to Regulation 135 with regard to the master UCITS or, where applicable, its trustee or auditor.

(2) Where the master UCITS is authorised by the Bank and the feeder UCITS is authorised in a different Member State, the Bank shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Part or information reported pursuant to Regulation 135 with regard to the master UCITS or, where applicable, its management company, trustee or auditor, to the competent authority of the feeder UCITS home Member State.

(3) Where the feeder UCITS is authorised by the Bank and the master UCITS is authorised in a different Member State and the Bank receives a communication from the competent authority of the master UCITS home Member State concerning any decision, measure, observation of non-compliance with the conditions of Chapter VIII of Directive 2009/65/EC or information reported pursuant to Article 106(1) of that Directive with regard to the master UCITS or, where applicable, its management company, depositary or auditor, it shall immediately inform the feeder UCITS.

PART 10

OBLIGATIONS CONCERNING INFORMATION TO BE PROVIDED TO INVESTORS

Chapter 1

Publication of prospectus and periodical reports

Information to be published by investment or management company

88. (1) An investment company and, for each of the common contractual funds and unit trusts it manages, a management company, shall publish the following:

- (a) a prospectus;
- (b) an annual report for each financial year; and
- (c) a half-yearly report covering the first 6 months of the financial year.

(2) The annual and half-yearly reports shall be published within the following time limits, with effect from the end of the period to which they relate:

- (a) 4 months in the case of the annual report;
- (b) 2 months in the case of the half-yearly report.

Information to be included in prospectus and periodic reports

89. (1) (a) The prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto.

(b) The prospectus shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

(2) The prospectus shall contain at least the information provided for in Schedule 11, in so far as that information does not already appear in the trust deed, deed of constitution or articles annexed to the prospectus in accordance with Regulation 91(1).

(3) The annual report shall include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule 12 as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

(4) (a) Notwithstanding section 148(2) of the Companies Act 1963, an investment company to which Chapter 1 or 2 of Part 6 applies may, in respect of its individual accounts, opt to prepare those accounts in accordance with—

(i) an alternative body of accounting standards, and

(ii) section 149A of the Companies Act 1963,

as if the references in that section 149A to international financial reporting standards were references to that alternative body of accounting standards.

(b) In the application of subsections (4), (5) and (6) of section 148 of the Companies Act 1963 to an investment company which has opted under subparagraph (a) to prepare its accounts in accordance with an alternative body of accounting standards—

(i) the reference in that subsection (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and

- (ii) there shall be substituted for “IFRS”, in each place where it occurs in those subsections (4), (5) and (6), “ABAS” (which shall be read as referring to that alternative body of accounting standards).
- (c) For the purposes of this Regulation, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would, were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.
- (d) In this Regulation—

“alternative body of accounting standards” means standards that accounts of companies or undertakings shall comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

- (i) United States of America,
- (ii) Canada,
- (iii) Japan, or
- (iv) any other state or territory prescribed for the purposes of the section hereafter mentioned in this paragraph,

as are prescribed under the Companies Act 1990 for the purposes of section 260A(4) of that Act;

“relevant jurisdiction” means the state or territory in which the alternative body of accounting standards concerned have effect.

(5) The half-yearly report shall include at least the information provided for in paragraphs 1 to 4 of Schedule 12. Where a UCITS has paid or proposes to pay an interim dividend, the figures shall indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

Provisions supplementary to Regulation 89

90. (1) The prospectus issued by a UCITS in accordance with Regulation 89 shall clearly disclose the categories of assets in which the UCITS is authorised to invest. Where a UCITS is authorised to engage in transactions in financial derivative instruments it shall include a prominent statement to this effect, indicating—

- (a) whether these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and
- (b) the expected effect of these transactions on the risk profile of the UCITS.

(2) A UCITS which—

(a) invests principally in—

(i) deposits,

(ii) UCITS or other collective investment undertakings or both, or

(iii) financial derivative instruments,

or

(b) aims to replicate a stock or debt securities index in accordance with Regulation 71,

shall include a prominent statement drawing attention to its investment policy in its prospectus and, where necessary, any other marketing communications.

(3) When the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, a prominent statement drawing attention to this characteristic shall be included in its prospectus and, where necessary, any other marketing communications.

(4) The UCITS management company or investment company shall supply to a unit-holder, on request by him or her, supplementary information in relation to—

(a) the quantitative risk management limits applied by it,

(b) the risk management methods used by it, and

(c) the recent evolution of risks and yields for the main instrument categories with which the UCITS is involved.

Annexation of trust deed, etc. to prospectus, etc

91. (1) Subject to paragraph (2), the trust deed, deed of constitution or articles of an investment company shall form an integral part of the prospectus and shall be annexed thereto.

(2) The documents referred to in paragraph (1) need not be annexed to the prospectus provided that the investor is informed that, on request, he or she will be sent those documents or be informed of the place where, in each Member State in which the units are marketed, he or she may consult them.

(3) (a) A preliminary prospectus or similar documentation published by an investment company shall clearly state in a prominent position that—

(i) it does not constitute an offer or invitation to subscribe for or purchase units,

(ii) the document has not been approved or reviewed by the Bank,

- (iii) it may not contain all relevant information and that the information contained therein is subject to change and should not be relied upon, and
 - (iv) the investment company to which it refers has not been authorised by the Bank.
- (b) In the case of umbrella funds, the prospectus shall clearly state the charges applicable to switching of investments from one sub-fund to another.

Prospectus to be kept up to date

92. The essential elements of the prospectus shall be kept up to date.

Auditing of accounting information

93. The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with the Companies Acts. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Prospectus, etc. to be sent to Bank, etc

94. A UCITS authorised by the Bank shall send its prospectus or any amendments thereto, as well as its annual and half-yearly reports, to the Bank. A UCITS shall provide that documentation to the competent authority of its management company's home Member State on request.

Provision of prospectus, etc. to investors

95. (1) The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

(2) The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to investors on request and free of charge.

(3) The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information referred to in Regulation 98. A paper copy of the annual and half-yearly reports shall be delivered to investors on request and free of charge.

Chapter 2

Publication of other information

Publication of price of units

96. (1) Subject to paragraph (2), a UCITS shall make public in an appropriate manner the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, and at least twice a month.

(2) The Bank may, however, permit a UCITS to reduce the frequency to once a month on condition that such derogation does not prejudice the interests of the unit-holders.

Marketing communications to investors

97. All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information referred to in Regulation 98. It shall indicate that a prospectus exists and that the key investor information referred to in Regulation 98 is available. It shall specify where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

Chapter 3

*Key investor information**Drawing up of key information for investors*

98. (1) An investment company and, for each of the common contractual funds and unit trusts it manages, a management company shall draw up a short document containing key information for investors. That document shall be referred to as “key investor information” in these Regulations. The words “key investor information” shall be clearly stated in that document.

(2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

(3) (a) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

- (i) identification of the UCITS;
- (ii) a short description of its investment objectives and investment policy;
- (iii) past-performance presentation or, where relevant, performance scenarios;
- (iv) costs and associated charges; and
- (v) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

(b) Those essential elements shall be comprehensible to the investor without any reference to other documents.

(4) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not

limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.

(5) Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

(6) Key investor information shall be used without alterations or supplements, except for translation, in all Member States where the UCITS is notified to market its units in accordance with Regulation 117.

Pre-contractual information, etc

99. (1) Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

(2) A person shall not incur civil liability solely on the basis of the key investor information, including any translation of such information, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect.

Timing of provision of key investor information

100. (1) An investment company and, for each of the common contractual funds and unit trusts it manages, a management company, which sells UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility shall provide investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.

(2) An investment company and, for each of the common contractual funds and unit trusts it manages, a management company, which does not sell UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility to investors shall provide key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request. The intermediaries selling or advising investors or potential investors in UCITS shall provide key investor information to their clients or potential clients and comply with Regulation 76 of the MIFID Regulations and, where applicable, Regulation 77 of the MIFID Regulations.

(3) Key investor information shall be provided to investors free of charge.

Medium of provision of key investor information

101. (1) Investment companies and, for each of the common contractual funds and unit trusts they manage, management companies, may provide key investor information in a durable medium or by means of a website. A paper copy shall be delivered to the investor on request and free of charge.

(2) In addition, an up-to-date version of the key investor information shall be made available on the website of the investment company or management company.

UCITS to send key investor information to Bank, etc

102. (1) A UCITS shall send its key investor information and any amendments thereto to the Bank.

(2) The essential elements of key investor information shall be kept up to date.

PART 11

GENERAL OBLIGATIONS OF UCITS

Borrowing of money by UCITS

103. (1) Subject to paragraphs (2) and (3), neither—

(a) an investment company, nor

(b) a management company or a trustee acting on behalf of a unit trust or a management company acting on behalf of a common contractual fund,

may borrow money.

(2) A UCITS may acquire foreign currency by means of a “back-to-back” loan.

(3) A UCITS may borrow—

(a) not more than 10% of its assets, in the case of an investment company, or not more than 10% of the value of the fund, in the case of a unit trust or a common contractual fund, provided that such borrowing is on a temporary basis, and

(b) not more than 10% of its assets, in the case of an investment company, provided that the borrowing is to make possible the acquisition of real property required for the purpose of its business; in this case, the borrowing and the borrowing referred to in subparagraph (a) shall not in total exceed 15% of the borrower’s assets.

(4) For the purpose of this Regulation, “assets” and “value of the fund”, in relation to a UCITS, means net assets of a UCITS.

Redemption, etc. at request of unit-holder

104. (1) Subject to Regulation 63(2), a UCITS shall redeem or repurchase units at the request of the unit-holder.

(2) (a) (i) Notwithstanding paragraph (1), a UCITS may in the cases and according to the procedure provided in its trust deed, deed of

constitution or articles, temporarily suspend the repurchase or redemption of its units.

- (ii) Suspension may be provided for only in exceptional cases where circumstances so require and suspension is justified having regard to the interest of the unit-holders.
- (b) The Bank may require the suspension of the repurchase or redemption of units in the interests of the unit-holders or the public.
- (c) A UCITS which acts in accordance with subparagraph (a)(i) shall without delay communicate its decision to the Bank and to the competent authorities of the Member States in which it markets its units.

Creation and cancellation of units of unit trust or common contractual fund

105. (1) The trustee of a unit trust shall create or cancel units in accordance with the conditions laid down in the trust deed and on receipt of a written instruction from the management company. The trustee may refuse to create or cancel some or all of such units if it is of the opinion that it is not in the interests of participants for such units to be created or cancelled, as the case may be. The management company of a common contractual fund shall create or cancel units in accordance with the conditions laid down in the deed of constitution of the common contractual fund.

(2) The trustee or, in the case of a common contractual fund, the management company shall not create or cancel units during any period in which redemption of units is suspended.

Issue of registered or bearer certificates

106. (1) The management company or the investment company or the trustee shall issue registered certificates or bearer securities representing one or more portions of the UCITS which it manages, or alternatively, in accordance with the provisions of the trust deed, deed of constitution or articles, shall issue written confirmations of entry in the register of units or fractions of units without limitation as to the splitting up of units.

(2) Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised by whole units.

(3) The certificates and bearer securities shall be signed by the management company or the investment company and by the trustee.

(4) Such signatures may be reproduced mechanically.

Winding up of investment company

107. (1) Without prejudice to any other powers of the Bank, the following conditions are prescribed for the purpose of subparagraph (ii) of paragraph (fa) of section 213 of the Companies Act 1963 (which relates to the power of the court to wind up an investment company on the grounds that it is just and equitable to do so):

- (a) the petition for such winding up has been presented by the trustee;
- (b) the trustee has notified the investment company of its intention to resign as such trustee and 6 or more months have elapsed since the giving of that notification without a trustee having been appointed to replace it;
- (c) the court, in considering the said petition, has regard to—
 - (i) any conditions imposed under Regulation 123 in relation to the resignation from office of such a trustee and the replacement by it of another trustee, and
 - (ii) whether a winding up would best serve the interests of unit-holders in the company;
 and
- (d) the petition for such winding up has been served on the company (if any) discharging, in relation to the investment company, functions of a company referred to in conditions imposed under Regulation 123 as a “management company”.

(2) The trustee of the investment company concerned is specified for the purpose of paragraph (g) of section 215 of the Companies Act 1963, in so far as that paragraph applies in relation to the presentation of a petition for the winding up of an investment company on the grounds mentioned in the paragraph.

Value of assets

108. (1) Unless otherwise provided for in the trust deed of a unit trust or the deed of constitution of a common contractual fund or in an investment company’s articles, the value of the assets of a UCITS shall be based, in the case of securities traded on a stock exchange or on a regulated market, on the last known stock exchange or market quotation unless such quotation is not representative. For securities not so quoted, and for securities which are so quoted but for which the latest quotation is not representative, the value shall be based on the probable realisation value which value shall be estimated with care and in good faith.

(2) The assets of a UCITS may only be purchased and sold at prices which are in conformity with the criteria set out in paragraph (1).

(3) The trust deed, the deed of constitution or the articles shall determine the frequency of the calculation of the issue and repurchase price.

Application of income

109. The trust deed, the deed of constitution or the articles shall lay down the conditions and manner of application of income.

Issue and redemption or repurchase of units

110. (1) Units shall be issued or sold at a price arrived at by dividing the net asset value of the UCITS by the number of units outstanding; such price may be increased by duties and charges.

(2) Units shall not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits. This shall not preclude the distribution of bonus units.

(3) Units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the UCITS by the number of units outstanding; such price may be decreased by duties and charges.

Loans or guarantees

111. (1) Without prejudice to Regulations 68 and 69, neither—

(a) an investment company, nor

(b) a management company or trustee acting on behalf of a unit trust or a management company of a common contractual fund,

may grant loans or act as a guarantor on behalf of third parties.

(2) Paragraph (1) shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Regulation 68(1)(e), (g) and (h) which are not fully paid.

Uncovered sales of transferable securities, etc

112. Neither—

(a) an investment company, nor

(b) a management company or trustee acting on behalf of a unit trust or a management company of a common contractual fund,

may carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Regulation 68(1)(e), (g) and (h).

Umbrella funds

113. Where a UCITS is constituted as an umbrella fund, each sub-fund of the UCITS shall comply with the regulations and conditions governing UCITS.

Remuneration and expenditure

114. (1) The trust deed or the deed of constitution shall prescribe the remuneration and the expenditure which the management company is empowered to charge to a unit trust or a common contractual fund and the method of calculation of such remuneration.

(2) The articles shall prescribe the nature of the cost to be borne by the investment company.

PART 12

SPECIAL PROVISIONS APPLICABLE TO UCITS WHICH MARKET THEIR UNITS IN
MEMBER STATES OTHER THAN THOSE IN WHICH THEY ARE ESTABLISHED

UCITS authorised in another Member State may market units in the State without imposition of additional requirements, etc

115. (1) UCITS that are authorised in another Member State shall be able to market their units within the State without the imposition of any additional requirements upon notification in accordance with Regulation 117 in respect of the scope of these Regulations.

(2) The Bank shall ensure that complete information on the laws, regulations and administrative provisions which do not fall within the scope of these Regulations and which are specifically relevant to the arrangements made for the marketing of units of UCITS, established in another Member State, within the State is easily accessible by electronic means. That information shall be made available in English and shall be provided in a clear and unambiguous manner and be kept up to date.

(3) For the purposes of this Part, a UCITS shall include sub-funds thereof.

(4) The requirements specified in Schedule 13 shall have effect for the purposes of this Regulation.

Provision of facilities in relation to unit-holders

116. A UCITS which markets its units in the State shall satisfy the Bank that adequate measures have been taken to ensure that facilities are available in the State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Notification requirements

117. (1) (a) Where a UCITS authorised by the Bank proposes to market its units in a Member State other than the State, it shall first submit a notification letter to the Bank.

(b) The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of share classes. In the context of Regulation 26(1), it shall include an indication that the UCITS is marketed by the management company that manages the UCITS.

(2) A UCITS shall enclose with the notification letter, as referred to in paragraph (1), the latest version of the following:

(a) its fund rules or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with Regulation 118(1)(b)(iii) and (iv); and

- (b) its key investor information referred to in Regulation 98, translated in accordance with Regulation 118(1)(b)(iii) and (iv).
- (3)
 - (a) The Bank shall verify whether the documentation submitted by the UCITS in accordance with paragraphs (1) and (2) is complete.
 - (b) The Bank shall transmit the complete documentation referred to in paragraphs (1) and (2) to the competent authority of the Member State in which the UCITS proposes to market its units, not later than 10 working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph (2). The Bank shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by these Regulations.
 - (c) Upon the transmission of the documentation, the Bank shall immediately notify the UCITS about the transmission. The UCITS may access the market of the UCITS host Member State as from the date of that notification.
- (4) The notification letter referred to in paragraph (1) and the attestation referred to in paragraph (3) shall be provided in the English language, unless the Bank and the host Member State concerned agree to that notification letter and that attestation being provided in an official language of both Member States.
- (5) Where the competent authority of another Member State is transmitting the documents referred to in Article 93 of Directive 2009/65/EC, the Bank shall accept the electronic transmission and filing of those documents.
- (6) For the purpose of the notification procedure set out in Article 93 of Directive 2009/65/EC and where a UCITS authorised in another Member State proposes to market its units in the State, the Bank shall not request any additional documents, certificates or information other than those provided for in that Article.
- (7) The Bank shall ensure that the competent authority of the UCITS host Member State have access, by electronic means, to the documents referred to in paragraph (2) and, if applicable, to any translations of such documents. The Bank shall ensure that the UCITS, authorised by the Bank, keeps those documents and translations up to date. The UCITS shall notify any amendments to the documents referred to in paragraph (2) to the competent authority of the UCITS host Member State and shall indicate where those documents can be obtained electronically.
- (8) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with paragraph (1), or a change regarding share classes to be marketed, the UCITS shall give notice in writing of such change to the competent authority of the host Member State before implementing the change.

(9) The requirements specified in Schedule 14 shall have effect for the purposes of this Regulation.

Information for investors in host Member State

118. (1) (a) Where a UCITS, authorised by the Bank, markets its units in a UCITS host Member State, it shall provide to investors within the territory of such Member State all information and documents which it is required pursuant to Part 10 to provide to investors in the State.

(b) Such information and documents shall be provided to investors in compliance with the following:

(i) without prejudice to Part 10, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host Member State;

(ii) key investor information referred to in Regulation 98 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authority of that Member State;

(iii) information or documents other than key investor information referred to in Regulation 98 shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authority of that Member State or into a language customary in the sphere of international finance; and

(iv) translations of information or documents under clauses (ii) and (iii) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(c) Where a UCITS authorised in another Member State markets its units in the State, it shall distribute within the State in at least one of the State's official languages all information and documents which are required to be published under these Regulations. Translations of information or documents shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph (1) shall also be applicable to any changes to the information and documents referred therein.

(3) The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS authorised by the Bank according to Regulation 96 shall be subject to the laws, regulations and administrative provisions of the State.

Legal form of designation of UCITS

119. For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form (such as investment company, unit trust or common contractual fund) in its designation in the State as it uses in the Member State where it is authorised.

Power of Bank to prohibit marketing

120. The Bank may prohibit the marketing in the State of the units of a UCITS authorised in another Member State if it fails to comply with the provisions of this Part. Any decision taken by the Bank in this regard shall be notified to the UCITS concerned and to the competent authority of the Member State in which the UCITS is authorised.

PART 13

PROVISIONS CONCERNING AUTHORITIES RESPONSIBLE FOR AUTHORISATION AND SUPERVISION

Establishment of Bank as competent authority

121. (1) The Bank is the competent authority in the State for the purposes of the Directive and these Regulations and shall have all the powers necessary for the performance of its functions.

(2) The Bank may arrange for its functions as a competent authority to be performed by any constituent part of the Bank or by any officer or employee of the Bank. Nothing in these Regulations precludes the Bank from being assisted in, or advised on, the discharge of those functions by any such constituent part, officer or employee.

Liability of Bank and the State

122. (1) (a) The authorisation of a UCITS by the Bank shall not constitute a warranty as to the performance of a UCITS and neither the Bank nor the State shall be liable for the performance or default of a UCITS.

(b) Neither the Bank nor any of its employees or officers or any member of its Board shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions under these Regulations unless it is shown that the act or omission was in bad faith.

(2) The authorisation, supervision, regulation or revocation of authorisation of a management company under these Regulations shall not constitute a warranty as to the solvency or performance of such management company and neither the Bank nor the State shall be liable in respect of any loss or losses incurred through the insolvency, default or performance of the management company.

Powers of Bank

123. (1) The Bank shall have all supervisory and investigatory powers that are necessary for the exercise of their functions. Such powers shall be exercised—

- (a) directly,
- (b) in collaboration with other authorities,
- (c) under the responsibility of the competent authorities, by delegation to entities to which tasks have been delegated, or
- (d) by application to the courts.

(2) Under paragraph (1), the Bank shall have the power, at least, to—

- (a) access any document in any form and receive a copy of such document,
- (b) require any person to provide information and, if necessary, to summon and question a person with a view to obtaining information,
- (c) carry out on-site inspections,
- (d) require existing telephone and existing data traffic records,
- (e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of these Regulations,
- (f) request the freezing or the sequestration of assets,
- (g) request the temporary prohibition of professional activity,
- (h) require authorised investment companies, management companies or trustees to provide information,
- (i) adopt any type of measure to ensure that investment companies, management companies or trustees continue to comply with the requirements of these Regulations or the Directive,
- (j) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public,
- (k) withdraw the authorisation granted to a UCITS, a management company or a trustee,
- (l) refer matters for criminal prosecution, and
- (m) allow auditors or experts to carry out verifications or investigations.

(3) The Bank may impose such supervisory and reporting requirements or conditions relating to the business of a management company, investment company or trustee to which these Regulations apply as the Bank considers appropriate and prudent from time to time for the purposes of the orderly and proper regulation of UCITS in accordance with these Regulations.

(4) Requirements or conditions imposed under paragraph (3) may be imposed generally or on a particular management company, investment company or trustee or by reference to particular groups or classes of management company, investment company or trustee as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of UCITS in accordance with these Regulations.

(5) Without prejudice to paragraphs (3) and (4), requirements or conditions imposed by the Bank on one or more UCITS may make provision for any or all of the following matters:

- (a) the prudential requirements of the investment policies of the UCITS;
- (b) prospectuses and other information disseminated by the UCITS;
- (c) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent to impose on the UCITS from time to time for the purposes of its or their orderly and proper regulation;
- (d) with respect to the collective portfolio management activity of management companies and investment companies that do not designate a management company:
 - (i) prudential rules and
 - (ii) a code of conduct.

(6) A UCITS shall comply with any requirements or conditions relating to its authorisation or business imposed by the Bank.

(7) Supervisory and reporting requirements and conditions imposed under paragraph (3), including conditions relating to the investment policies of UCITS, may be additional to or stricter than those contained in these Regulations.

Register of authorised UCITS

124. (1) The Bank shall, within 21 days after the date of the authorisation of a UCITS or management company, publish a notice to that effect in *Iris Oifigiúil*.

(2) The Bank shall maintain a register or registers of all UCITS and management companies which it has authorised under these Regulations and whose authorisation has not been revoked.

(3) The Bank shall also maintain a register or registers of management companies providing services or which have a branch in the State of which the

Bank has been informed by a competent authority in another member State in accordance with the Directive.

(4) The Bank shall revise these registers at such intervals as the Bank deems appropriate but not less frequently than once a year. The Bank shall publish these registers which may be held in electronic form.

(5) The registers of management companies shall include the names, addresses and contact details of all management companies and such other particulars as the Bank may decide from time to time.

(6) In the case of a management company these registers shall include details of the services which the management company has been authorised to provide.

(7) The Bank shall arrange that registers of all UCITS and management companies, or a copy or copies thereof, shall be open for inspection in a single location by any member of the public at all reasonable times on the payment of such fee as the Bank may specify or approve.

Keeping of books and records

125. (1) Every management company, investment company or trustee of a UCITS shall keep at an office or offices within the State such books and records (including accounts) as may be specified from time to time by the Bank in the due discharge by the Bank of its statutory functions and shall notify the Bank of the address of every office at which any such book or record is kept for the purposes of this Regulation.

(2) Different books and records may be specified by the Bank for the purposes of this Regulation in relation to different UCITS.

(3) A responsible authority may, in writing, appoint a qualified person to exercise the powers conferred by paragraph (4).

(4) (a) To enable the Bank to perform its statutory functions, an authorised person may, on producing the person's authorisation, at any reasonable time, inspect and take copies of, and make such enquiries as the person considers necessary in relation to—

(i) the records kept under this Regulation by the management company, investment company or trustee of an authorised UCITS, and

(ii) any accounting records relating to the management company, investment company or trustee and kept under the Companies Acts, and

(iii) any other documents relating to the business of the UCITS.

(b) For those purposes the authorised person may enter any office to which paragraph (1) relates and any other place where the person reasonably believes any such records are kept.

(5) A person who has possession of, or control over, records referred to in paragraph (4) shall, at the request of an authorised person—

- (a) produce the records to that person and permit that person to inspect and take copies of them,
- (b) give any information that that person reasonably requires with respect to the records, and
- (c) give such other assistance and information to that person as is reasonable in the circumstances.

(6) Paragraphs (4) and (5) apply to every management company, investment company and trustee of a UCITS. When an inspection of the management company, investment company or trustee of a UCITS is being or proposed to be undertaken, those paragraphs (other than paragraph (4)(a)) also apply to—

- (a) every associated enterprise of the management company, investment company and trustee, and
- (b) any other person,

if an inspection of the accounts or other records of that enterprise or other person is, in the opinion of the Bank, materially relevant to the proper appraisal of the business of the UCITS.

(7) Books and records kept pursuant to this Regulation shall—

- (a) be in addition to any books or other records to be kept by or under any other enactment, and
- (b) be retained for at least such period as the Bank may specify in respect of any such book or record.

(8) In this Regulation—

“associated enterprise”, in relation to the management company, investment company or trustee of a UCITS, means—

- (a) a holding company of the management company, investment company or trustee,
- (b) a subsidiary company of the management company or investment company or trustee,
- (c) a company that is a subsidiary of a body corporate, where the management company, investment company or trustee is also a subsidiary of the body corporate, but neither company is a subsidiary of the other,
- (d) any other body corporate that is not a subsidiary of the management company, investment company or trustee but in respect of which the management company, investment company or trustee is beneficially

entitled to more than 20% in nominal value of either the allotted share capital or of the shares carrying voting rights (other than voting rights that arise only in specified circumstances) in that other body corporate, or

- (e) a partnership in which the management company, investment company or trustee has an interest, and whose business is or, at the relevant time, was, in the opinion of the Bank, materially relevant to any inspection of the management company, investment company or trustee being carried out or proposed to be carried out under this Regulation;

“authorised person” means a person appointed under paragraph (3);

“holding company” has the meaning given to it by section 155 of the Companies Act 1963;

“qualified person” means—

- (a) a Director, officer or employee of the Bank, or
- (b) in relation to any particular inspection (including a proposed inspection), any other person who in the opinion of the responsible authority possesses appropriate qualifications or experience to carry out the inspection to which this Regulation relates, or any part of that inspection;

“records” includes books and any other documents and—

- (a) any information kept in a non-legible form (whether electronically or otherwise) that is capable of being reproduced in a legible form, and
- (b) the electronic or other means by which the information is capable of being reproduced;

“responsible authority” means the Governor of the Bank;

“statutory functions” means functions under these Regulations;

“subsidiary company” has the meaning given by section 155 of the Companies Act 1963.

Furnishing of information to Bank

126. (1) A management company, an investment company and a trustee shall each furnish the Bank—

- (a) at such times as the Bank may specify from time to time, such information and returns concerning the business to which the authorisation relates or the carrying on of a business as aforesaid by such person, as the case may be, as the Bank may specify from time to time, being

information and returns which the Bank considers it necessary to have for the due performance of its statutory functions; and

- (b) within such period as the Bank may specify, any information and returns (not being information or returns specified under paragraph (a) of this Regulation) concerning the business to which the authorisation relates or the carrying on of a business as aforesaid by such person, as the case may be, that the Bank may request in writing, being information and returns which the Bank considers it necessary to have for the due performance of its statutory functions.

(2) Paragraph (1) shall apply to the business of an associated enterprise to the extent only that the information and returns sought by the Bank are, in the opinion of the Bank, materially relevant to the proper appraisal of the business of the holder of the authorisation to which the associated enterprise relates.

Application by Bank to High Court

127. (1) Where, on an application made in a summary manner by the Bank, the court is of the opinion that there has occurred or is occurring a failure by an authorised UCITS to comply with a requirement or condition imposed by virtue of these Regulations the court may, by order, prohibit the continuance of the failure by the UCITS concerned.

(2) The court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) Where the court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of the proceedings under this Regulation may be heard otherwise than in public.

Replacement of management company or trustee

128. (1) Without prejudice to section 8 of the Unit Trusts Act 1990, the Bank may replace a management company or trustee with another management company or trustee where—

- (a) it is satisfied that the management company or trustee has failed to demonstrate the competence, probity or experience in the discharge of its functions reasonably required of it,
- (b) it is satisfied that the management company or trustee is not of sufficiently good repute,
- (c) it is satisfied that it is undesirable in the interests of the unit-holders that the management company or trustee remain as management company or trustee, or
- (d) without prejudice to subparagraph (c), it is satisfied that the management company or trustee—
 - (i) has contravened any provision of these Regulations,

- (ii) in purported compliance with any such provision, has furnished the Bank with false, inaccurate or misleading information, or
- (iii) has contravened any prohibition or requirement imposed under these Regulations.

(2) Upon replacement by the Bank under this Regulation of a management company or trustee, the management company or trustee shall cease to act for the UCITS, and the powers and duties of the management company or trustee shall be exercised and carried out by the new management company or trustee, as the case may be.

(3) The Bank may, by application to the court, seek such interim or interlocutory relief preventing a management company or trustee from acting as such or appointing a person to carry out their functions and the court on such application, having regard to the matters specified in paragraph (1) and the protection of the unit-holders, may make such order as it deems appropriate.

(4) Where the Bank proposes to replace the management company or trustee, it shall give the management company or trustee notice of its intention to do so, which notice shall contain a statement of the reasons for which the Bank proposes to act and of the right of the management company or trustee under paragraph (5) to make representations.

(5) A management company or trustee on whom a notice is given under paragraph (4) may, within 15 days from the date on which such notice is given, make representations in writing to the Bank.

(6) The Bank shall have regard to any representations made to it in accordance with paragraph (5) in determining whether or not to replace the management company or trustee.

Revocation of authorisation

129. (1) The Bank may revoke the authorisation of a UCITS if it appears to the Bank—

- (a) that any of the requirements for the authorisation of the UCITS are no longer satisfied,
- (b) that it is undesirable in the interests of the unit-holders or potential unit-holders that the UCITS should continue to be authorised,
- (c) without prejudice to subparagraph (b), that the management company or investment company or trustee of the UCITS has seriously or systematically contravened any provision of these Regulations or, in purported compliance with any such provision, has furnished the Bank with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under these Regulations, or

- (d) that the UCITS has not made use of the authorisation within 12 months of the date on which it was authorised under these Regulations, or has failed to operate as a UCITS for a period of more than 6 months.

(2) For the purposes of making a determination to revoke the authorisation of a UCITS pursuant to subparagraph (1)(b), the Bank may take into account any matter relating to—

- (a) the unit trust, common contractual fund, management company, investment company or trustee,
- (b) a director or controller of the management company, investment company or trustee, or
- (c) any person employed by or associated with the management company, investment company or trustee in connection with the UCITS.

(3) The Bank may revoke the authorisation of a UCITS at the request of the management company or investment company or trustee of the UCITS. However, it may refuse to do so if it considers that any matter concerning the UCITS should be investigated as a preliminary to a decision on the question of whether the authorisation should be revoked or that revocation would not be in the interests of the unit-holders.

Notice of intention to revoke

130. (1) Where the Bank proposes to revoke the authorisation of a UCITS otherwise than at the request of the management company, investment company or trustee of the UCITS, it shall give the applicants or, as the case may be, the management company, investment company or trustee of the UCITS, as the case may be, notice in writing of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by paragraph (2).

(2) A management company, investment company or trustee on whom a notice is served under paragraph (1) may, within 15 days of the date of service, make representations in writing to the Bank.

(3) The Bank shall have regard to any representations made in accordance with paragraph (2) in determining whether to refuse the application or revoke the authorisation, as the case may be.

Directions by Bank

131. (1) Where the Bank is of the opinion that—

- (a) it is in the public interest to do so,
- (b) it is in the interests of the orderly and proper regulation of UCITS,
- (c) any of the requirements for authorising a UCITS are no longer satisfied, or

- (d) the management company, investment company or trustee of such a UCITS—
 - (i) has become or is likely to become unable to meet its obligations to its creditors,
 - (ii) has contravened any provision of these Regulations, or has failed to comply with any condition or requirement imposed under these Regulations by the Bank, or in purported compliance with any such provision, has provided the Bank with information that it knows to be false, inaccurate or misleading,
 - (iii) is not maintaining adequate capital resources having regard to the volume and nature of its business, or
 - (iv) no longer complies with the capital or other financial requirements imposed by the Bank from time to time,

the Bank may give a direction in writing to the management company, investment company or trustee requiring it to take such steps (including the winding-up of the UCITS or the suspension of the issue or redemption of units of the UCITS, or both) from a date specified in that direction until such further date as is specified in that direction, or in another direction, as the Bank considers necessary in the interests of the orderly and proper regulation of UCITS or for the protection of unit-holders or creditors of the UCITS.

(2) Where a direction under paragraph (1) affects a particular UCITS, the UCITS shall immediately notify its unit-holders of the terms of the direction.

(3) The revocation of the authorisation of a UCITS does not affect the operation of a direction given under paragraph (1) that is then in force. A direction may be given under that paragraph in relation to a UCITS whose authorisation has been revoked so long as a direction under that paragraph was already in force at the time of revocation.

(4) For the purposes of paragraph (1), the Bank may take into account any matter relating to the UCITS, management company, investment company, trustee or any person employed by or associated with the management company, investment company or trustee in connection with the UCITS.

(5) The Bank may revoke a direction under paragraph (1) unless an order under paragraph (10) has been made in respect of that direction.

(6) A direction of the Bank given under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942) at the instance of—

- (a) a management company, investment company or trustee to which the direction relates, or
- (b) any creditor who is affected by the direction.

(7) A direction given under paragraph (1) ceases to have effect—

- (a) when the period specified in the direction expires,
- (b) if, on the hearing of an appeal against the direction by the Irish Financial Services Appeals Tribunal, the Tribunal confirms the direction but varies the period, when that period expires, or
- (c) on the making of a winding-up order in respect of the UCITS, or with the sanction of the court, the dissolution of the UCITS, whichever occurs first.

(8) Where the Bank is of the opinion that, even if the management company, investment company or trustee concerned appears to be able to meet its obligations to its creditors, the circumstances giving rise to the direction are likely to continue to exist after the giving of direction, it may give a further direction in writing to the UCITS or management company or trustee as the case may be requiring it—

- (a) to prepare, in consultation with the Bank, a scheme for the orderly termination of its business and the discharge of its liabilities, and
- (b) to submit the scheme to the Bank for its approval within 3 months after its preparation.

(9) Where a management company, investment company or trustee of a UCITS—

- (a) has failed, or is failing, to comply with a direction given by the Bank under paragraph (8), or
- (b) has failed, or is failing, to comply with a scheme approved by the Bank under that paragraph, the court may, on the application of the Bank, make such order as it considers appropriate (including an order of committal or a winding-up order on the grounds that it is just and equitable that the UCITS, management company or trustee be wound up).

(10) The court may, on application under paragraph (9) hear evidence from creditors, and the court may make such interim or interlocutory order, as it considers appropriate.

(11) While a direction under paragraph (1) is in force—

- (a) the UCITS to which it relates may not be dissolved, and
- (b) the court may, by order, restrain any disposal of the assets of the UCITS on the ground that such a disposal could have the effect of perpetrating a fraud on the UCITS, its creditors or unit-holders.

Penalties

132. (1) An investment company, proposed management company or management company which, or a trustee or any person who, contravenes any provision of these Regulations is guilty of an offence.

(2) An auditor who contravenes any provision of these Regulations is guilty of an offence.

(3) A person who contravenes the conditions of professional secrecy imposed by these Regulations is guilty of an offence.

(4) A person who, in purported compliance with a provision of these Regulations or a requirement under these Regulations—

(a) knowingly or recklessly provides an answer or explanation, makes a statement, or produces information, to the Bank that is false or misleading in a material particular, or

(b) knowingly omits or withholds material information from the Bank,

is guilty of an offence.

(5) A person who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, any record or document required under these Regulations, or makes or is privy to the making of a false entry therein, is guilty of an offence.

(6) It shall be a defence for a person prosecuted for an offence under paragraph (5) to prove that he or she had no intention to defeat the law.

(7) A person who fraudulently disposes of, alters or makes an omission in any record or document referred to in paragraph (5), or who is privy to such disposal of, altering or making of an omission in any such record or document, is guilty of an offence.

(8) A person guilty of an offence under paragraph (1), (2), (3), (4), (5) or (7) is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 year or both.

(9) Summary proceedings in relation to an offence under these Regulations may be brought and prosecuted by the Director of Public Prosecutions or the Bank.

(10) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 (14 & 15 Vict. c. 93), summary proceedings for an offence under these Regulations to which that provision applies may be instituted—

- (a) within 12 months from the date on which the offence was committed, or
- (b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify the proceedings comes to that person's knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(11) For the purposes of paragraph (10)(b), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that paragraph came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this paragraph and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(12) Where an offence under these Regulations is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the body, or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the body, or a person purporting to act in that capacity,

that person is taken to have also committed the offence and may be proceeded against and punished accordingly.

Collaboration with competent authorities in other Member States

133. (1) (a) The Bank shall cooperate with the competent authorities of other Member States whenever necessary for the purpose of carrying out their duties or of exercising their powers under these Regulations.

- (b) The Bank shall cooperate with other competent authorities even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in the State.

(2) The Bank shall immediately provide other competent authorities with the information required for the purposes of carrying out their duties under these Regulations or the Directive.

- (3) (a) Where the Bank has good reason to suspect that acts contrary to the provisions of these Regulations and the Directive, are being or have been carried out by entities not subject to the Bank's supervision on the territory of another Member State, it shall notify the competent

authority of the other Member State thereof in as specific a manner as possible.

- (b) Where the Bank receives notification of the nature described in subparagraph (a) from the competent authority of another Member State, it shall take appropriate action, shall inform the notifying competent authority of the outcome of that action and, to the extent possible, of significant interim developments.

(4) The Bank may request the cooperation of the competent authority of another Member State, or vice versa, in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter within the framework of their powers pursuant to these Regulations or the Directive. Where the Bank receives a request with respect to an on-the-spot verification or investigation, it shall—

- (a) carry out the verification or investigation itself,
 - (b) allow the requesting authority to carry out the verification or investigation, or
 - (c) allow auditors or experts to carry out the verification or investigation.
- (5) (a) Where the verification or investigation is carried out in the State by the Bank, the Bank may, upon request from the other competent authority, permit officials of the competent authority of the Member State which has requested cooperation to accompany the Bank's officials carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the Bank.
- (b) Where the verification or investigation is carried out in the State by a competent authority of another Member State, the Bank may request that its own officials accompany the officials carrying out the verification or investigation.

(6) The Bank may refuse to exchange information as provided for in paragraph (2) or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph (4), only where—

- (a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of the State,
- (b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of the State, or
- (c) final judgment in respect of the same persons and the same actions has already been delivered in the State.

(7) The Bank shall notify the requesting competent authority of any decision taken under paragraph (6). That notification shall contain information about the motives of the Bank's decision.

(8) The Bank may bring to the attention of the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/77/EC¹⁴, situations where a request—

- (a) to exchange information as provided for in Regulation 136 has been rejected or has not been acted upon within a reasonable time,
- (b) to carry out an investigation or on-the-spot verification as provided for in Regulation 137 has been rejected or has not been acted upon within a reasonable time, or
- (c) for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

Reports by auditor of UCITS

134. (1) Where the auditor of a UCITS which has been authorised by the Bank—

- (a) has reason to believe that the information provided to investors or to the Bank in the reports or other documents of the UCITS does not truly describe the financial situation and the assets and liabilities of the UCITS,
- (b) has reason to believe that the assets of the UCITS are not or have not been invested in accordance with these Regulations or the prospectus or the trust deed or the deed of constitution or the articles,
- (c) has reason to believe that there exist circumstances which are likely to affect materially the ability of the UCITS to fulfil its obligations to unit-holders or meet any of its financial obligations under these Regulations,
- (d) has reason to believe that there are material defects in the financial systems and controls or accounting records of the UCITS,
- (e) has reason to believe that any fact or decision concerning a UCITS is liable to—
 - (i) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of UCITS,

¹⁴OJ No. L331, 15.12.2010, p. 84

- (ii) affect the continuous functioning of the UCITS, or
- (iii) lead to a refusal by the auditor to certify the accounts of the UCITS or to the expression of qualifications by the auditor,
- (f) has reason to believe that there are material inaccuracies in or omissions from any returns of a financial nature made by the UCITS to the Bank, or
- (g) proposes to qualify any certificate which he or she is to provide in relation to financial statements or returns of the UCITS under the Companies Acts or these Regulations,

he or she shall report the matter to the Bank in writing without delay.

- (2) (a) The auditor of an authorised UCITS shall report to the Bank any facts or decisions referred to in paragraph (1)(e) of which the auditor becomes aware while conducting an audit of an undertaking which has close links resulting from a control relationship with the UCITS concerned.
- (b) For the purposes of this paragraph, “close links” includes, in addition to the definition in Regulation 3(1) of “close links”, an arrangement whereby 2 or more natural or legal persons are permanently linked to one and the same person by a control relationship.
- (3) Where the auditor of a UCITS which has been authorised by the Bank proposes to resign or not to seek re-election or re-appointment as auditor, he or she shall notify the Bank in writing to that effect without delay.
- (4) The auditor of an authorised UCITS shall, where requested by the Bank, furnish to the Bank a report stating whether in his or her opinion and to the best of his or her knowledge the UCITS has or has not complied with a specified obligation of a financial nature under these Regulations.
- (5) Where the auditor of an authorised UCITS so requests, the Bank shall provide to the auditor details in writing of such returns of a financial nature to the Bank by the UCITS as the auditor requests for the purpose of enabling him or her to exercise his or her functions under these Regulations.
- (6) The auditor of an authorised UCITS shall send to the UCITS a copy of any report made by him or her to the Bank under paragraph (1) or (4).
- (7) (a) Whenever the Bank is of the opinion that the exercise of its functions under these Regulations or the protection of the interests of unit-holders or shareholders so requires, it may require the auditor of an authorised UCITS to supply it with such information as it may specify in relation to the audit of the business of the UCITS and the auditor shall comply with the requirement.

- (b) The Bank may require that, in supplying information for the purposes of this paragraph, the auditor shall act independently of the authorised UCITS.

(8) No duty to which the auditor to an authorised UCITS may be subject shall be regarded as contravened and no liability to the UCITS, or its unit-holders, creditors or other interested parties, shall attach to the auditor by reason of his or her compliance with any obligation imposed on him or her or under these Regulations.

(9) Any communication made in good faith to the Bank by an auditor under paragraph (1)(e) or (2) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve the auditor in liability of any kind.

(10) The requirements of this Regulation shall apply, with all necessary modifications, to auditors of a management company.

Bank to give reasons for decisions, etc

135. (1) The Bank shall give reasons in writing for any decision to refuse authorisation, or any negative decision taken in the implementation of the general measures adopted in application of these Regulations or the Directive, and communicate them to applicants.

(2) Any decision taken under the laws, regulations or administrative provisions adopted in accordance with these Regulations shall be properly reasoned. The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) a decision refusing an application for authorisation under Regulation 10(1) or (2) or 17(2);
- (b) a failure to decide an application within the period prescribed by Regulation 11 or 17(11);
- (c) a decision revoking or refusing an application to revoke an authorisation;
- (d) a decision replacing or proposing to replace a management company or trustee under Regulation 128;
- (e) a failure to communicate information to the competent authority of a host Member State under Regulation 27(2).

(3) Any of the following bodies may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that the national provisions for the implementation of the Directive are applied:

- (a) public bodies or their representatives;

- (b) consumer organisations having a legitimate interest in protecting consumers;
- (c) professional organisations having a legitimate interest in protecting their members.

(4) A decision by the Bank to refuse an authorised UCITS situated in another Member State permission to market its units in the State or to prohibit further marketing in the State is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

(5) A decision by the Bank acting as the competent authority of the host Member State is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Exchange of information with other competent authorities

136. (1) In so far as it is necessary for the purpose of exercising their powers of supervision, the Bank shall exchange information with the other competent authorities regarding any measures taken pursuant to Regulation 32(5), which involves penalties imposed on a management company or restrictions on a management company's activities.

(2) The Bank shall, without delay, notify the competent authority of the UCITS home Member State of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Part 4.

(3) Where the Bank is the competent authority of the UCITS home Member State, the Bank shall, without delay, notify the competent authority of the management company's home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements of these Regulations.

(4) The Bank shall, without delay, notify the competent authority of a UCITS host Member State and, if the management company of a UCITS is established in another Member State, the competent authority of the management company's home Member State of any decision to withdraw authorisation, or any other serious measure taken against a UCITS authorised by the Bank, or any suspension of the issue, repurchase or redemption of units imposed upon it.

Investigation by competent authority in another Member State of management company authorised by Bank

137. (1) A competent authority in another Member State authorised in that Member State to supervise a management company may, having notified the Bank, inspect or investigate the business of a management company authorised by the Bank which has a place of business in the State at that place of business or otherwise for the purpose of verifying any information of the type referred to in Regulations 133 and 136(1) in any one of the following manners:

- (a) by inspection of the management company, at that place of business or otherwise, by the authority concerned;
- (b) by inspection of the management company, at that place of business or otherwise, by a person authorised in that capacity by the authority concerned;
- (c) by a request from the authority concerned to the Bank to carry out the inspection on its behalf at that place of business or otherwise.

(2) This Regulation shall not affect the right of the Bank, in discharging its responsibilities under these Regulations, to inspect or investigate the business of a management company's branch established within the State.

PART 14

DEROGATIONS, TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions applicable to existing investment firms and management companies

138. (1) Investment firms, as defined in Regulation 3(1) of the MIFID Regulations, authorised to carry out only the services provided for in Schedule 1, Part 1 (4) and (5) of those Regulations, may obtain authorisation under these Regulations to manage UCITS as management companies. In that case, such investment firms shall give up the authorisation obtained under the MIFID Regulations.

(2) A UCITS shall comply with Regulation 98, and the other provisions of these Regulations relating to key investor information referred to in that Regulation, before 1 July 2012.

(3) A UCITS authorised before 1 July 2011 shall, until it is in compliance with Regulation 98, and the other provisions of these Regulations relating to key investor information referred to in that Regulation, as required under paragraph (2), comply with the requirements specified in Schedule 15.

Revocations, etc

139. (1) The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003), the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2003 (S.I. No. 212 of 2003), the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No. 2) Regulations 2003 (S.I. No. 497 of 2003), the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No. 4) Regulations 2003 (S.I. No. 737 of 2003) and the European Communities (Undertaking for Collective Investment in Transferable Securities) (Amendment) Regulations 2007 (S.I. No. 832 of 2007) are revoked.

(2) A reference in any other enactment to a provision of the European Communities (Undertakings for Collective Investment in Transferable Securities)

Regulations (S.I. No. 211 of 2003) revoked by paragraph (1) shall be construed as a reference to the corresponding provision of these Regulations as shown in Schedule 16.

(3) A reference in any other enactment to any of the Regulations revoked by paragraph (1) shall be construed as a reference to these Regulations.

(4) Notwithstanding paragraph (1), the provisions of these Regulations shall not affect any act or thing done or commenced (but not yet completed), pursuant to any of the Regulations revoked by that paragraph, prior to the coming into effect of these Regulations, including, without limitation, the terms or conditions of Bank authorisations granted pursuant thereto and any such act or thing shall continue to have effect or may be completed and have effect as if done or commenced pursuant to these Regulations.

SCHEDULE 1

Regulation 3(1)

FUNCTIONS INCLUDED IN ACTIVITY OF COLLECTIVE PORTFOLIO MANAGEMENT

1. Investment management.
2. Administration:
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation and pricing (including tax returns);
 - (d) regulatory compliance monitoring;
 - (e) maintenance of unit-holder register;
 - (f) distribution of income;
 - (g) unit issues and redemptions;
 - (h) contract settlements (including certificate dispatch);
 - (i) record keeping.
3. Marketing.

SCHEDULE 2

TRANSFERABLE SECURITIES

Part 1

CRITERIA APPLICABLE TO TRANSFERABLE SECURITIES WHICH FALL WITHIN PARAGRAPH (a), (b) OR (c) OF DEFINITION IN REGULATION 3(1) OF “TRANSFERABLE SECURITIES”

1. (a) The potential loss which the UCITS may incur with respect to holding the instruments is limited to the amount paid for them.
- (b) The liquidity of the instruments does not compromise the ability of the UCITS to comply with Regulation 104(1);
- (c) Reliable valuation is available for the instruments as follows:
 - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in subparagraphs (a) to (d) of paragraph (1) of Regulation 68, in the form of accurate, reliable and regular prices which are market prices or prices made available by valuation systems independent from issuers;
 - (ii) in the case of other securities as referred to in subparagraph (a) of paragraph (2) of Regulation 68, in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research.
- (d) Appropriate information is available for the instruments as follows:
 - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in subparagraphs (a) to (d) of paragraph (1) of Regulation 68, in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;
 - (ii) in the case of other securities as referred to in subparagraph (a) of paragraph (2) of Regulation 68, in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security.
- (e) The instruments are negotiable.
- (f) The acquisition of the instruments is consistent with the investment objectives or the investment policy, or both, of the UCITS pursuant to these Regulations.
- (g) The instruments' risks are adequately captured by the risk management process of the UCITS.

- (h) For the purposes of subparagraphs (b) and (e), and unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market in accordance with subparagraph (a), (b) or (c) of paragraph (1) of Regulation 68 shall be presumed not to compromise the ability of the UCITS to comply with Regulation 104(1) and shall also be presumed to be negotiable.

Part 2

SECURITIES SPECIFIED FOR PURPOSES OF PARAGRAPH (d) OF DEFINITION IN
REGULATION 3(1) OF “TRANSFERABLE SECURITIES”

2. The following securities are specified for the purposes of paragraph (d) of the definition in Regulation 3(1) of “transferable securities”:

- (a) units in closed-ended funds constituted as investment companies or as unit trusts which fulfil the following criteria:
- (i) they fulfil the criteria set out in Part 1 which are applicable to them;
 - (ii) they are subject to corporate governance mechanisms applied to companies; and
 - (iii) where asset management activity is carried out by another entity on behalf of the closed-ended fund, that entity is subject to national regulation for the purpose of investor protection;
- (b) units in closed-ended funds constituted under the law of contract which fulfil the following criteria:
- (i) they fulfil the criteria set out in Part 1 which are applicable to them;
 - (ii) they are subject to corporate governance mechanisms equivalent to those applied to companies as referred to in subparagraph (a)(ii); and
 - (iii) they are managed by an entity which is subject to national regulation for the purpose of investor protection;
- (c) financial instruments which fulfil the following criteria:
- (i) they fulfil the criteria set out in Part 1 which are applicable to them; and
 - (ii) they are backed by, or linked to the performance of, other assets, which may differ from those referred to in Regulation 68(1); provided that where a financial instrument covered by this subparagraph contains an embedded derivative component as referred to

in Regulation 69(4)(c), the requirements of Regulation 69(1), (2), (4) and (6) and shall apply to that component.

SCHEDULE 3

Regulation 3(4)

INTERPRETATION OF REFERENCES IN THESE REGULATIONS TO MONEY MARKET INSTRUMENTS

1. The reference to money market instruments as instruments shall be understood as a reference to the following:
 - (a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with subparagraphs (a), (b) and (c) of paragraph (1) of Regulation 68;
 - (b) financial instruments which are not admitted to trading.
2. The reference to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria:
 - (a) they have a maturity at issuance of up to and including 397 days;
 - (b) they have a residual maturity of up to and including 397 days;
 - (c) they undergo regular yield adjustments in line with money market conditions at least every 397 days;
 - (d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in subparagraphs (a) or (b), or are subject to a yield adjustment as referred to in subparagraph (c).
3. The reference to money market instruments as instruments which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit-holder.
4. The reference to money market instruments as instruments which have a value which can be accurately determined at any time shall be understood as a reference to financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available:
 - (a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable, willing parties in an arm's length transaction; and
 - (b) they are based on market data or on valuation models including systems based on amortised costs.
5. The criteria referred to in paragraphs 3 and 4 shall be presumed to be fulfilled in the case of financial instruments which are normally dealt in on the money market and which are admitted to, or dealt in on, a regulated market in

accordance with subparagraphs (a), (b) or (c) of paragraph (1) of Regulation 68, unless there is information available to the UCITS that would lead to a different determination.

6. The reference in subparagraph (h) of paragraph (1) of Regulation 68 to money market instruments, other than those dealt in on a regulated market, provided that the issue or the issuer is regulated for the purpose of protecting investors and savings, shall be understood as a reference to financial instruments which fulfil the following criteria:

- (a) they fulfil one of the criteria set out in paragraph 2 and all the criteria set out in paragraphs 3 and 4;
- (b) appropriate information is available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account paragraphs 7, 8 and 9; and
- (c) they are freely transferable.

7. For money market instruments covered by subparagraphs (h)(ii) and (h)(iv) of paragraph (1) of Regulation 68 or for those which are issued by a local or regional authority of a Member State or by a public international body but are not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate information as referred to in paragraph 6(b) shall consist in the following:

- (a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;
- (b) updates of the information referred to in subparagraph (a) on a regular basis and whenever a significant event occurs;
- (c) the information referred to in subparagraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer; and
- (d) available and reliable statistics on the issue or the issuance programme.

8. For money market instruments covered by subparagraph (h)(iii) of paragraph (1) of Regulation 68, appropriate information as referred to in paragraph 6(b) shall consist in the following:

- (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;

- (b) updates of the information referred to in subparagraph (a) on a regular basis and whenever a significant event occurs; and
- (c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

9. For all money market instruments covered by subparagraph (h)(i) of paragraph (1) of Regulation 68, except those referred to in paragraph 7 and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in paragraph 6(b) shall consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

10. The reference in subparagraph (h)(iii) of paragraph (1) of Regulation 68 to an establishment which is subject to and complies with prudential rules considered by the Bank to be at least as stringent as those laid down in a Community act shall be understood as a reference to an issuer which is subject to and complies with prudential rules and fulfils one of the following criteria:

- (a) it is located in the European Economic Area;
- (b) it is located in the OECD countries belonging to the Group of Ten;
- (c) it has at least investment grade rating;
- (d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down in a Community act.

11. The reference in subparagraph (h)(iv) of paragraph (1) of Regulation 68 to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.

12. The reference in subparagraph (h)(iv) of paragraph (1) of Regulation 68 to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with subparagraph (h)(iii) of paragraph (1) of Regulation 68.

SCHEDULE 4

PRUDENTIAL REQUIREMENTS APPLICABLE TO MANAGEMENT COMPANIES

1. Management companies shall comply with the following requirements:
 - (a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
 - (b) ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
 - (c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;
 - (d) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved; and
 - (e) maintain adequate and orderly records of their business and internal organisation.
2. Management companies shall take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.
3. Management companies shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information concerned.
4. Management companies shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.
5. Management companies shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.
6. Management companies shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 5, and to take appropriate measures to address any deficiencies.

SCHEDULE 5

Regulation 24(2)

CONDUCT REQUIREMENTS APPLICABLE TO MANAGEMENT COMPANIES

Rules of Conduct: General principles — Duty to act in the best interests of UCITS and their unit-holders

1. Management companies shall ensure that unit-holders of a managed UCITS are treated fairly. Management companies shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.
2. Management companies shall apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.
3. Management companies shall ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders. Management companies must be able to demonstrate that the UCITS portfolios have been accurately valued.
4. Management companies shall act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

General principles — Due diligence requirements

5. Management companies shall ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.
6. Management companies shall ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested.
7. Management companies shall establish policies and procedures in writing on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.
8. (1) Management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, shall formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses shall only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

(2) Management companies shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, management companies shall take the necessary steps in

order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall establish methods for the on-going assessment of the standard of performance of the third party.

Handling of subscription and redemption orders — Reporting obligations in respect of execution of subscription and redemption orders

9. (1) Where management companies have carried out a subscription or redemption order from a unit-holder, they shall notify the unit-holder, by means of a durable medium, confirming execution of the order as soon as possible, and not later than the first working day following execution or, where the confirmation is received by the management company from a third party, not later than the business day following receipt of the confirmation from the third party.

(2) However, subparagraph (1) shall not apply where the notice would contain the same information as a confirmation that is to be promptly dispatched to the unit-holder by another person.

10. The notice referred to in paragraph 9 shall, where applicable, include the following information:

- (a) the management company identification;
- (b) the name or other designation of the unit-holder;
- (c) the date and time of receipt of the order and method of payment;
- (d) the date of execution;
- (e) the UCITS identification;
- (f) the nature of the order (subscription or redemption);
- (g) the number of units involved;
- (h) the unit value at which the units were subscribed or redeemed;
 - (i) the reference value date;
- (j) the gross value of the order including charges for subscription or net amount after charges for redemptions; and
- (k) a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

11. Where orders for a unit-holder are executed periodically, management companies shall take the action specified in paragraph 9 or provide the unit-holder, at least once every 6 months, with the information listed in paragraph 10 in respect of those transactions.

12. Management companies shall supply the unit-holder, upon request, with information about the status of his order.

Best execution — Execution of decisions to deal on behalf of managed UCITS

13. Management companies shall act in the best interests of the UCITS they manage when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios.

14. For the purposes of paragraph 13, management companies shall take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the following criteria:

- (a) the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or, as the case may be, in the trust deed, deed of constitution or articles of the UCITS;
- (b) the characteristics of the order;
- (c) the characteristics of the financial instruments that are the subject of that order;
- (d) the characteristics of the execution venues to which that order can be directed.

15. (1) Management companies shall establish and implement effective arrangements for complying with the obligation referred to in paragraph 14. In particular, management companies shall establish and implement a policy to allow them to obtain, for UCITS orders, the best possible result in accordance with paragraph 14.

(2) Management companies shall obtain the prior consent of the investment company on the execution policy. The management company shall make available appropriate information to unit-holders on the policy established in accordance with paragraphs 13 to 17 and on any material changes to their policy.

16. (1) Management companies shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies.

(2) In addition, management companies shall review the execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

17. Management companies shall be able to demonstrate that they have executed orders on behalf of the UCITS in accordance with the management company's execution policy.

Best execution — Placing of orders to deal on behalf of UCITS with other entities for execution

18. Management companies shall act in the best interests of the UCITS they manage when placing orders to deal on behalf of the managed UCITS with other entities for execution, in the context of the management of their portfolios.

19. (1) Management companies shall take all reasonable steps to obtain the best possible result for the UCITS taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to paragraph 14.

(2) For those purposes, management companies shall establish and implement a policy to enable them to comply with the obligation referred to in the previous subparagraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The management company shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Regulation. Management companies shall make available to unit-holders appropriate information on the policy established in accordance with this paragraph and on any material changes to this policy.

20. (1) Management companies shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 19 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

(2) In addition, management companies shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

21. Management companies shall be able to demonstrate that they have placed orders on behalf of the UCITS in accordance with the policy established in accordance with sub-paragraph 19.

Handling of orders — General principles

22. (1) Management companies shall establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS.

(2) The procedures and arrangements implemented by management companies shall satisfy the following conditions:

- (a) ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;
- (b) execute otherwise comparable UCITS orders sequentially and promptly unless the characteristics of the order or prevailing market

conditions make this impracticable, or the interests of the UCITS require otherwise.

(3) Financial instruments or sums of money, received in settlement of the executed orders shall be promptly and correctly delivered to the account of the appropriate UCITS.

23. A management company shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Handling of orders — Aggregation and allocation of trading orders

24. Management companies may not carry out a UCITS order in aggregate with an order of another UCITS or another client or with an order on their own account, unless the following conditions are met:

- (a) it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or clients whose order is to be aggregated;
- (b) an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

25. Where a management company aggregates a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

26. Management companies which have aggregated transactions for own account with one or more UCITS or other clients' orders shall not allocate the related trades in a way that is detrimental to the UCITS or another client.

27. (1) Where a management company aggregates an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the UCITS or other client in priority over those for own account.

(2) However, if the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in paragraph 24(b).

Inducements — Safeguarding best interests of UCITS

28. Management companies are not regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of investment management and administration to the UCITS,

they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

- (a) a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;
- (b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, shall be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;
- (c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

29. For the purposes of paragraph 28(b)(i), a management company may disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that the management company undertakes to disclose further details at the request of the unit-holder and provided that it honours that undertaking.

**Administrative procedures and control mechanism: General principles —
Resources**

30. Management companies shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

31. Management companies shall retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.

32. Management companies shall ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly, and professionally.

33. For the purposes laid down in paragraphs 30 to 32, management companies shall take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.

Administrative and accounting procedures — Electronic data processing

34. Management companies shall make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order in order to be able to comply with paragraphs 58 to 61.

35. Management companies shall ensure a high level of security during the electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

Administrative and accounting procedures — Accounting procedures

36. (1) Management companies shall ensure the employment of accounting policies and procedures as referred to in Regulation 22 so as to ensure the protection of unit-holders.

(2) UCITS accounting shall be maintained in such a way that all assets and liabilities of the UCITS can be directly identified at all times.

(3) Where a UCITS has different sub-funds, separate accounts shall be maintained for each sub-fund.

37. Management companies shall have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the State, so as to ensure that the calculation of the net asset value of each UCITS is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

38. Management companies shall establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the applicable rules referred to in Regulation 108 part of internal control mechanisms.

Internal control mechanisms — Control by senior management and supervisory function

39. When allocating functions internally, management companies shall ensure that senior management and, where appropriate, the supervisory function, are responsible for the management company's compliance with its obligations under these Regulations.

40. The management company shall ensure that its senior management—

- (a) is responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the instruments of incorporation of the investment company,
- (b) oversees the approval of investment strategies for each managed UCITS,
- (c) is responsible for ensuring that the management company has a permanent and effective compliance function, as referred to in paragraphs 45 to 47, even if this function is performed by a third party,
- (d) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties,
- (e) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies,
- (f) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in paragraphs 1 to 3 of Schedule 9, including the risk limit system for each managed UCITS.

41. The management company shall also ensure that its senior management and, where appropriate, its supervisory function shall—

- (a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations in these Regulations, and
- (b) take appropriate measures to address any deficiencies.

42. Management companies shall ensure that their senior management receives on a frequent basis, and at least annually, reports in writing on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

43. Management companies shall ensure that their senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in subparagraphs (b) to (e) of paragraph 40.

44. Management companies shall ensure that the supervisory function, if any, receives on a regular basis written reports on the matters referred to in paragraph 43.

Internal control mechanisms — Permanent compliance function

45. (1) Management companies shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under these Regulations, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the Bank to exercise its powers effectively.

(2) Management companies shall take into account the nature, scale and complexity of the business of the company, and the nature and range of services and activities undertaken in the course of that business.

46. Management companies shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

- (a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 45, and the actions taken to address any deficiencies in the management company's compliance with its obligations; and
- (b) to advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company's obligations under these Regulations.

47. (1) In order to enable the compliance function referred to in paragraph 46 to discharge its responsibilities properly and independently, management companies shall ensure that the following conditions are satisfied:

- (a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;
- (c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor; and
- (d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

(2) In situations where, in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, a management company is able to demonstrate that that requirement is not proportionate and

that its compliance function continues to be effective, it shall not be required to comply with clause (c) or (d) of subparagraph (1) of paragraph 46.

Internal control mechanisms — Permanent internal audit function

48. Management companies, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the management company.

49. The internal audit function referred to in paragraph 48 shall have the following responsibilities:

- (a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the management company's systems, internal control mechanisms and arrangements;
- (b) to issue recommendations based on the result of work carried out in accordance with subparagraph (a);
- (c) to verify compliance with the recommendations referred to in subparagraph (b);
- (d) to report in relation to internal audit matters in accordance with paragraph 42.

Internal control mechanisms — Permanent risk management function

50. Management companies shall establish and maintain a permanent risk management function.

51. (1) The permanent risk management function referred to in paragraph 50 shall be hierarchically and functionally independent from operating units.

(2) However, the Bank may allow management companies to derogate from that obligation where the derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's business and of the UCITS it manages.

(3) A management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of Regulation 69.

52. The permanent risk management function shall—

- (a) implement the risk management policy and procedures,

- (b) ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with paragraphs 11 to 24 of Schedule 9,
- (c) provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS,
- (d) provide regular reports to the board of directors and, where it exists, the supervisory function, on—
 - (i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS,
 - (ii) the compliance of each managed UCITS with relevant risk limit systems,
 - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies,
- (e) provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken, and
- (f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in paragraphs 25 to 28 of Schedule 9.

53. The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in paragraph 52.

Internal control mechanisms — Personal transactions

54. Management companies shall establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Regulation 2 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) or to other confidential information relating to UCITS or transactions with or for UCITS by virtue of an activity carried out by him on behalf of the management company:

- (a) entering into a personal transaction which fulfils at least one of the following criteria:
 - (i) that person is prohibited from entering into that personal transaction;

- (ii) it involves the misuse or improper disclosure of confidential information;
 - (iii) it conflicts or is likely to conflict with an obligation of the management company under these Regulations or the MIFID Regulations;
- (b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by subparagraph (a) or by points (a) or (b) of Article 25(2) of Commission Directive 2006/73/EC implementing Directive 2004/39/EC¹⁵ of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, or would otherwise constitute a misuse of information relating to pending orders;
- (c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Article 3(a) of Directive 2003/6/EC of the European Parliament and of the Council of 28

January 2003¹⁶ on insider dealing and market manipulation (market abuse), any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

- (i) to enter into a transaction in financial instruments which, where a personal transaction of the relevant person would be covered by subparagraph (a) or by point (a) or (b) of Article 25(2) of Directive 2006/73/EC, or would otherwise constitute a misuse of information relating to pending orders;
- (ii) to advise or procure another person to enter into such a transaction.

55. (1) The arrangements required under paragraph 54 shall in particular be designed to ensure that:

- (a) each relevant person covered by paragraph 54 is aware of the restrictions on personal transactions, and of the measures established by the management company in connection with personal transactions and disclosure, in accordance with that paragraph;
- (b) the management company is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the management company to identify such transactions;

¹⁵OJ No. L 241, 02.09.2006, p. 26

¹⁶OJ No. L96, 12.04.2003, p. 16

- (c) a record is kept of the personal transaction notified to the management company or identified by it, including any authorisation or prohibition in connection with such a transaction.

(2) For the purposes of clause (b) of subparagraph (1), where certain activities are performed by third parties, the management company shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the management company promptly on request.

56. Paragraphs 54 to 55 shall not apply to the following kinds of personal transactions:

- (a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed; and
- (b) personal transactions in UCITS or units in collective undertakings that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

57. For the purposes of paragraphs 54 to 56, “personal transaction” shall have the same meaning as in Article 11 of Directive 2006/73/EC.

Internal control mechanisms — Recording of portfolio transactions

58. Management companies shall ensure, for each portfolio transaction relating to UCITS, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

59. (1) The record referred to in paragraph 58 shall include—

- (a) the name or other designation of the UCITS and of the person acting on account of the UCITS,
- (b) the details necessary to identify the instrument concerned,
- (c) the quantity,
- (d) the type of the order or transaction,
- (e) the price,
- (f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was

transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction,

- (g) the name of the person transmitting the order or executing the transaction,
- (h) where applicable, the reasons for the revocation of an order, and
- (i) for executed transactions, the counterparty and execution venue identification.

(2) For the purposes of clause (i) of subparagraph (1), an “execution venue” shall mean a regulated market, a multilateral trading facility, a systematic internaliser as referred to under Regulation 3(1) of the MIFID Regulations, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

Internal control mechanisms — Recording of subscription and redemption orders

60. Management companies shall take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt of any such order.

61. That record shall include information on the following:

- (a) the relevant UCITS;
- (b) the person giving or transmitting the order;
- (c) the person receiving the order;
- (d) the date and time of the order;
- (e) the terms and means of payment;
- (f) the type of the order;
- (g) the date of execution of the order;
- (h) the number of units subscribed or redeemed;
- (i) the subscription or redemption price for each unit;
- (j) the total subscription or redemption value of the units;
- (k) the gross value of the order including charges for subscription or net amount after charges for redemption.

Internal control mechanisms — record-keeping requirements

62. (1) Management companies shall ensure the retention of the records referred to in paragraphs 58 to 61 for a period of at least 5 years.

(2) However, the Bank may, in exceptional circumstances, require management companies to retain any or all of those records for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the authority to exercise its supervisory functions under these Regulations.

63. (1) Following the termination of the authorisation of a management company, the management company shall retain records referred to in paragraph 62 for the outstanding term of the 5-year period.

(2) Where the management company transfers its responsibilities in relation to the UCITS to another management company, arrangements shall be made to ensure that such records for the past 5 years are accessible to that company.

64. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the Bank, and in such a form and manner that the following conditions are met:

- (a) the Bank must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
- (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and
- (c) it must not be possible for the records to be otherwise manipulated or altered.

Conflict of interests: Criteria for the identification of conflicts of interest

65. For the purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, management companies shall take into account, by way of minimum criteria, the question of whether the management company or a relevant person, or a person directly or indirectly linked by way of control to the management company, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

- (a) the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;
- (b) the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or

another client, which is distinct from the UCITS interest in that outcome;

- (c) the management company or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the UCITS;
- (d) the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;
- (e) the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.

66. Management companies shall, when identifying the types of conflict of interests, take into account:

- (a) the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS, and
- (b) the interests of 2 or more managed UCITS.

Conflicts of interest policy

67. (1) Management companies shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business.

(2) Where the management company is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

68. The conflicts of interest policy established in accordance with paragraph 67 shall include the following:

- (a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients; and
- (b) procedures to be followed and measures to be adopted in order to manage such conflicts.

Independence in conflicts management

69. The procedures and measures provided for in paragraph 68(b) shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

70. (1) The procedures to be followed and measures to be adopted in accordance with paragraph 68(b) shall include the following where necessary and appropriate for the management company to ensure the requisite degree of independence:

- (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
- (b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;
- (c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities; and
- (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

(2) Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, management companies shall adopt such alternative or additional measures and procedures which the Bank considers are necessary and appropriate for those purposes.

Management of activities giving rise to detrimental conflicts of interest

71. Management companies shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material

risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

72. Where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented, the senior management or other competent internal body of the management company shall be promptly informed in order for them to take any necessary decision to ensure that in any case the management company acts in the best interests of the UCITS and of its unit-holders.

73. The management company shall report situations referred to in paragraph 72 to investors by any appropriate durable medium and give reasons for its decision.

Strategies for exercise of voting rights

74. Management companies shall develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.

75. The strategies referred to in paragraph 74 shall determine measures and procedures for—

- (a) monitoring relevant corporate events,
- (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS, and
- (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

76. A summary description of the strategies referred to in paragraph 74 shall be made available to investors. Details of the actions taken on the basis of those strategies shall be made available to the unit-holders free of charge and on their request.

Schedule 6

Regulation 35(7)

PARTICULARS OF STANDARD AGREEMENT BETWEEN TRUSTEE AND MANAGEMENT
COMPANY

1. The trustee and the management company, referred to in this Schedule as the “parties to the agreement”, shall include in the agreement in writing referred to in Regulations 35(6) or 51(3) at least the following particulars related to the services provided by and procedures to be followed by the parties to the agreement:

- (a) a description of the procedures, including those related to the safe-keeping, to be adopted for each type of asset of the UCITS entrusted to the trustee;
- (b) a description of the procedures to be followed where the management company envisages a modification of the fund rules or prospectus of the UCITS, and identifying when the trustee should be informed, or where a prior agreement from the trustee is needed to proceed with the modification;
- (c) a description of the means and procedures by which the trustee will transmit to the management company all relevant information that the management company needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the management company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;
- (d) a description of the means and procedures by which the trustee will have access to all relevant information it needs to perform its duties;
- (e) a description of the procedures by which the trustee has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits; and
- (f) a description of the procedures by which the management company can review the performance of the trustee in respect of the trustee’s contractual obligations.

2. The parties to the agreement referred to in Regulations 35(6) or 51(3) shall include at least the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement:

- (a) a list of all the information that needs to be exchanged between the UCITS, its management company and the trustee related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;

- (b) the obligations for confidentiality applicable to the parties to the agreement; and
- (c) information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

3. The obligations referred to in paragraph 2(b) shall be drawn up so as not to impair the ability of the Bank in its capacity as the competent authority of the management company or as the competent authority of the UCITS in gaining access to relevant documents and information.

4. Where the trustee or the management company envisage appointing third parties to carry out their respective duties, both parties to the agreement referred to in Regulation 35(6) or 51(3) shall include at least the following particulars in that agreement:

- (a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the trustee or the management company to carry out their respective duties;
- (b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party; and
- (c) a statement that a trustee's liability as referred to in Regulation 36 or 52 shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

5. The parties to the agreement referred to in either Regulation 35(6) or 51(3) shall include at least the following particulars related to amendments and the termination of the agreement in that agreement:

- (a) the period of validity of the agreement;
- (b) the conditions under which the agreement may be amended or terminated; and
- (c) the conditions which are necessary to facilitate transition to another trustee and, in case of such transition the procedure by which the trustee shall send all relevant information to the other trustee.

6. The parties to the agreement referred to either in Regulation 35(6) or 51(3) shall specify that the law of the UCITS home Member State applies to that agreement.

7. In cases where the parties to the agreement referred to in either Regulation 35(6) or 51(3) agree to the use of electronic transmission for part or all of information that flows between them, such agreement shall contain provisions ensuring that a record is kept of such information.

8. The agreement referred to in either Regulation 35(6) or 51(3) may cover more than one UCITS managed by the management company. In such case, the agreement shall list the UCITS covered.

9. Parties to the agreement shall either include details of means and procedures referred to in paragraph 1(c) and (d)—

(a) in the agreement referred to in either Regulation 35(6) or 51(3), or

(b) in a separate agreement in writing.

DETAILED CONTENT, FORMAT AND METHOD BY WHICH TO PROVIDE INFORMATION
REFERRED TO IN REGULATION 61

1. The information to be provided in accordance with Regulation 61(3) to the unit-holders of the merging UCITS shall also include—

- (a) details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect,
- (b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences,
- (c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information,
- (d) if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective,
- (e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unit-holders who previously held units in the merging UCITS,
- (f) in cases where Regulation 64 permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unit-holders, details of how those costs are to be allocated, and
- (g) an explanation of whether the management or investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.

2. The information to be provided in accordance with Regulation 61(3) to the unit-holders of the receiving UCITS shall also include an explanation of whether the management or investment company of the receiving UCITS expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

3. The information to be provided in accordance with Regulation 61(3)(b)(iii) shall also include—

- (a) details of how any accrued income in the respective UCITS is to be treated;
- (b) an indication of how the report of the independent auditor or the trustee referred to in Regulation 60(3) may be obtained.

4. Where the terms of the proposed merger include provisions for a cash payment in accordance with paragraph (a) and (b) of the definition in Regulation 3(1) of “merger”, the information to be provided to the unit-holders of the merging UCITS shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment.

5. The merger proposal must be approved by unit-holders of the merging UCITS and may contain a recommended course of action by the respective management company or board of directors of the investment company.

6. The information to be provided to the unit-holders of the merging UCITS shall include—

- (a) the period during which the unit-holders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS,
- (b) the time when those unit-holders not making use of their rights granted pursuant to Regulation 63(1), within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS, and
- (c) an explanation that in cases where the proposal is approved by the necessary majority, those unit-holders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to Regulation 63(1) within the relevant time limit, shall become unit-holders of the receiving UCITS.

7. Where a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided. Key investor information shall be used without alterations or supplements, except for translation into one of the languages referred to in Regulation 118(1)(b)(ii), in all Member States where the UCITS is notified to market its units in accordance with Regulation 117.

8. An up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.

9. The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS where it has been amended for the purpose of the proposed merger.

10. Between the date when the information document pursuant to Regulation 61(1) is provided to unit-holders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS shall be provided to each person who purchases or subscribes units in the merging UCITS or the receiving UCITS or asks to receive copies of the trust deed, deed of constitution or articles, prospectus or key investor information of either UCITS.

11. The merging and the receiving UCITS shall provide the information pursuant to Regulation 61(1) to unit-holders on paper or in another durable medium.

12. Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions shall be fulfilled:

- (a) the provision of the information is appropriate to the context in which the business between the unit-holder and the merging UCITS or the receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;
- (b) the unit-holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.

13. For the purposes of paragraphs 11 and 12, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the merging UCITS and the receiving UCITS or their respective management companies and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

14. The information to be provided in accordance with clause (iv) of subparagraph (b) of paragraph (3) of Regulation 61 shall include—

- (a) the procedure by which unit-holders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome,
- (b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently, and
- (c) when the merger will take effect in accordance with Regulation 56.

SCHEDULE 8

Regulation 61(5)

PROVISION OF KEY INVESTOR INFORMATION

1. An up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.
2. The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS where it has been amended for the purpose of the proposed merger.

REQUIREMENTS APPLICABLE TO RISK MANAGEMENT

1. (a) Management companies shall establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.
 - (b) The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of the UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.
 - (c) Management companies shall address at least the following elements in the risk management policy:
 - (i) the techniques, tools and arrangements that enable them to comply with the obligations set out in paragraphs 7 to 10;
 - (ii) the allocation of responsibilities within the management company pertaining to risk management.
2. Management companies shall ensure that the risk management policy referred to in paragraph 1 states the terms, contents and frequency of reporting of the risk management function referred to in Regulation 69 to the board of directors and to senior management and, where appropriate, to the supervisory function.
3. For the purposes of paragraphs 1 and 2, management companies shall take into account the nature, scale and complexity of their business and of the UCITS they manage.
4. Management companies shall assess, monitor and periodically review:
 - (a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in paragraphs 7 to 14;
 - (b) the level of compliance by the management company with the risk management policy and with arrangements, processes and techniques referred to in paragraphs 7 to 14;
 - (c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.
5. Management companies shall notify the Bank of any material changes to the risk management process.

6. The requirements laid down in paragraph 4 shall be reviewed by the Bank on an on-going basis and accordingly when granting authorisation.
7. (1) Management companies shall adopt adequate and effective arrangements, processes and techniques in order to—
- (a) measure and manage at any time the risks which the UCITS they manage are or might be exposed to,
 - (b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with paragraphs 11 to 14 and 20 to 25.
- (2) Those arrangements, processes and techniques shall be proportionate to the nature, scale and complexity of the business of the management companies and of the UCITS they manage and be consistent with the UCITS risk profile.
8. For the purposes of paragraph 7, management companies shall take the following actions for each UCITS they manage:
- (a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
 - (b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
 - (c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;
 - (d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in paragraphs 1 to 3 and ensuring consistency with the UCITS risk-profile;
 - (e) ensure that the current level of risk complies with the risk limit system as set out in sub-paragraph (d) for each UCITS;
 - (f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unit-holders.
9. (1) Management companies shall employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with Regulation 104(1).

(2) Where appropriate, management companies shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.

10. Management companies shall ensure that for each UCITS they manage the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules or the instruments of incorporation or the prospectus.

11. On a daily basis management companies shall calculate the global exposure of a managed UCITS as referred to in Regulation 69(4) as either of the following:

- (a) the incremental exposure and leverage generated by the managed UCITS through the use of financial derivative instruments including embedded derivatives pursuant to Regulation 69(4)(c), which may not exceed the total of the UCITS net asset value;
- (b) the market risk of the UCITS portfolio.

12. (1) Management companies may calculate global exposure by using the commitment approach, the value at risk approach or other advanced risk measurement methodologies as may be appropriate. For the purposes of this provision, “value at risk” shall mean a measure of the maximum expected loss at a given confidence level over a specific time period.

(2) Management companies shall ensure that the method selected to measure global exposure is appropriate, taking into account the investment strategy pursued by the UCITS and the types and complexities of the financial derivative instruments used, and the proportion of the UCITS portfolio which comprises financial derivative instruments.

13. Where a UCITS in accordance with Regulation 69(2)(a) employs techniques and instruments including repurchase agreements or securities lending transactions in order to generate additional leverage or exposure to market risk, management companies shall take these transactions into consideration when calculating global exposure.

14. Where the commitment approach is used for the calculation of global exposure, management companies shall apply this approach to all financial derivative instrument positions including embedded derivatives as referred to in Regulation 69(4)(c), whether used as part of the UCITS general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management as referred to in Regulation 69(2) and (3).

15. (1) Where the commitment approach is used for the calculation of global exposure, management companies shall convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative (standard commitment approach).

- (2) The Bank may allow management companies to apply other calculation methods which are equivalent to the standard commitment approach.
16. A management company may take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.
17. Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure need not be included in the commitment calculation.
18. Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS in accordance with Regulation 103 need not be included in the global exposure calculation.
19. Management companies shall ensure that counterparty risk arising from an over-the-counter (OTC) financial derivative instrument is subject to the limits set out in Regulation 70.
20. (1) When calculating the UCITS exposure to a counterparty in accordance with the limits as referred to in Regulation 70(1), management companies shall use the positive mark-to-market value of the OTC derivative contract with that counterparty.
- (2) Management companies may net the derivative positions of a UCITS with the same counterparty, provided that they are able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting shall only be permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.
21. Management companies may reduce the UCITS exposure to a counterparty of an OTC derivative transaction through the receipt of collateral. Collateral received shall be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.
22. Management companies shall take collateral into account in calculating exposure to counterparty risk as referred to in Regulation 70(1) when the management company passes collateral to OTC counterparty on behalf of the UCITS. Collateral passed may be taken into account on a net basis only if the management company is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.
23. Management companies shall calculate issuer concentration limits as referred to in Regulation 70 on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach.

24. With respect to the exposure arising from OTC derivatives transactions as referred to in Regulation 70(2), management companies shall include in the calculation any exposure to OTC derivative counterparty risk.

25. Management companies shall verify that UCITS exposures to OTC derivatives are assigned fair values that do not rely only on market quotations by the counterparties of the OTC transactions and which fulfil the criteria set out in Regulation 68(1)(g)(iii).

26. For the purposes of paragraph 25, management companies shall establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS exposures to OTC derivatives. Management companies shall ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment. The valuation arrangements and procedures shall be adequate and proportionate to the nature and complexity of the OTC derivatives concerned. Management companies shall comply with the requirements set out in Regulations 23 and 73(4) and when arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties.

27. For the purposes of sub-paragraphs 16 and 17, the risk management function shall be appointed with specific duties and responsibilities.

28. The valuation arrangements and procedures referred to in paragraph 17 shall be adequately documented.

29. Management companies shall deliver to the Bank, at least on an annual basis, reports containing information which reflects a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions.

30. The Bank shall review the regularity and completeness of information referred to in paragraph 1 and may take any action that it deems necessary in that regard.

Schedule 10

*Regulations 80(6),
81(3) and 82(4)*

REQUIREMENTS APPLICABLE TO MASTER-FEEDER STRUCTURES

*PART 1*CONTENT OF INFORMATION SHARING AGREEMENT BETWEEN MASTER UCITS AND
FEEDER UCITS

1. The agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall include the following with regard to access to information:

- (a) how and when the master UCITS provides the feeder UCITS with a copy of its trust deed, deed of constitution or articles, prospectus and key investor information or any amendment thereof;
- (b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Regulation 24;
- (c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;
- (d) what details of breaches by the master UCITS of the law, the trust deed, deed of constitution or articles and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;
- (e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by Regulation 69(4);
- (f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

2. The agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall include the following with regard to the basis of investment and divestment by the feeder UCITS:

- (a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- (b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS; and

- (c) if applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

3. The agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall include the following with regard to standard dealing arrangements:

- (a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- (b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;
- (c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- (d) where necessary, other appropriate measures to ensure compliance with the requirements of Regulation 80(2);
- (e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Regulations 80(4) and (5);
- (g) procedures to ensure enquiries and complaints from unit-holders are handled appropriately; and
- (h) where the trust deed, deed of constitution or articles and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

4. The agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall include the following with regard to events affecting dealing arrangements:

- (a) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS; and

- (b) arrangements for notifying and resolving pricing errors in the master UCITS.

5. The agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall include the following with regard to standard arrangements for the audit report:

- (a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- (b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with Regulation 82(1)(a).

6. The agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall include the following with regard to changes to standing arrangements:

- (a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its trust deed, deed of constitution or articles, prospectus and key investor information, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;
- (b) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;
- (c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;
- (d) the manner and timing of notice by either UCITS that it intends to replace its management company, its trustee, its auditor or any third party which is mandated to carry out investment management or risk management functions;
- (e) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

7. Where the feeder UCITS and the master UCITS are established in the State, the agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall provide that the law of the State shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the courts of the State.

8. Where the feeder UCITS and the master UCITS are established in different Member States, the agreement between the master UCITS and the feeder UCITS referred to in Regulation 80(1) shall provide that the applicable law shall be either the law of the Member State in which the feeder UCITS is established or that it shall be that of the Member State in which the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

9. The management company's internal conduct of business rules referred to in Regulation 80(1)(c) shall include appropriate measures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet requirements of Regulations 22(2)(b), 23(1)(e), 24(1)(e) and 71(b).

10. The management company's internal conduct of business rules referred to in Regulation 80(1)(c) shall include at least the following with regard to the basis of investment and divestment by the feeder UCITS:

- (a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- (b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS; and
- (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

11. The management company's internal conduct of business rules referred to in Regulation 80(1)(c) shall include at least the following with regard to standard dealing arrangements:

- (a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- (b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;
- (c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- (d) appropriate measures to ensure compliance with the requirements of Regulation 80(2);

- (e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Regulation 80(4) and (5); and
- (g) where the trust deed, deed of constitution or articles and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

12. The management company's internal conduct of business rules referred to in Regulation 80(1)(c) shall include at least the following with regard to events affecting dealing arrangements:

- (a) the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS; and
- (b) arrangements for notifying and resolving pricing errors in the master UCITS.

13. The management company's internal conduct of business rules referred to in Regulation 80(1)(c) shall include at least the following with regard to standard arrangements for the audit report:

- (a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports; and
- (b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with the first subparagraph of Regulation 80(2).

14. Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Regulation 80(1), the agreement between the trustees of the master UCITS and the feeder UCITS shall provide that the law of the Member State applying to that agreement in accordance with Regulation 65(1)(b) shall also apply to the information-sharing agreement between both trustees and that both trustees agree to the exclusive jurisdiction of the courts of that Member State;

15. Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Regulation 80(1)(c), the agreement between the trustees of the master UCITS and the feeder UCITS shall provide that the law applying to the information-sharing agreement between both trustees shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both trustees agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

16. (1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Regulation 80(1), the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law of the Member State applying to that agreement in accordance with Regulation 82 shall also apply to the information-sharing agreement between both auditors and that both auditors agree to the exclusive jurisdiction of the courts of that Member State.

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Regulation 80(1)(c), the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both auditors shall be that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both auditors agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

PART 2

LIQUIDATION, MERGER OR DIVISION OF MASTER UCITS

17. A feeder UCITS authorised by the Bank shall submit to the Bank no later than 2 months after the date on which the master UCITS informed it of the binding decision to liquidate, the following:

- (a) where the feeder UCITS intends to invest at least 85 % of its assets in units of another master UCITS in accordance with Regulation 80(4)(a)—
 - (i) its application for approval for that investment,
 - (ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation,
 - (iii) the amendments to its prospectus and its key investor information in accordance with Regulations 92 and 102 respectively, and
 - (iv) the other documents required pursuant to Regulation 79(3);

- (b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Regulation 80(4)(b):
 - (i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation; and
 - (ii) the amendments to its prospectus and its key investor information in accordance with Regulations 92 and 102 respectively;
 and
- (c) where the feeder UCITS intends to be liquidated, a notification of that intention.

18. By way of derogation from paragraph 17, where the master UCITS informed the feeder UCITS of its binding decision to liquidate more than 5 months before the date at which the liquidation will start, the feeder UCITS shall submit to its competent authorities its application or notification in accordance with one of subparagraph (a), (b) or (c) of paragraph 17 at the latest 3 months before that date.

19. The feeder UCITS shall inform its unit-holders of its intention to be liquidated without undue delay.

20. (a) The Bank shall inform a UCITS within 15 working days following the complete submission of the documents referred to in Regulation 79(3), whether the required approvals have been granted.

- (b) On receiving the Bank's approval pursuant to subparagraph (a), the feeder UCITS shall duly inform the master UCITS.
- (c) The feeder UCITS shall take necessary measures to comply with the requirements of Regulation 80 as soon as possible after the competent authorities have granted the necessary approvals pursuant to Regulation 79.
- (d) Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in a different master UCITS pursuant to Regulation 80(4) or in accordance with its new investment objectives and policy pursuant to Regulation 80(5), the Bank shall grant approval subject to the following conditions:
 - (i) the feeder UCITS shall:
 - (I) receive the proceeds of the liquidation in cash; or
 - (II) receive some or all of the proceeds of the liquidation as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or

the internal conduct of business rules and the binding decision to liquidate provide for it;

(ii) any cash held or received in accordance with this subparagraph may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

(e) Where sub-paragraph (d)(i)(II) applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

21. A feeder UCITS authorised by the Bank shall submit to the Bank, not later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with the Regulation 80(5)(a), the following:

(a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:

(i) its application for approval thereof;

(ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation; and

(iii) where applicable, the amendments to its prospectus and its key investor information in accordance with Regulations 92 and 102 respectively;

(b) where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division—

(i) its application for approval of that investment,

(ii) its application for approval of the proposed amendments to its trust deed, deed of constitution or articles,

(iii) the amendments to its prospectus and its key investor information in accordance with Regulations 92 and 102 respectively, and

(iv) the other documents required pursuant to Regulation 79(3);

(c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Regulation 80(4)(b)—

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation, and

- (ii) the amendments to its prospectus and its key investor information in accordance with Regulations 92 and 102 respectively;
- (d) where the feeder UCITS intends to be liquidated, a notification of that intention.

22. For the purpose of the application of subparagraphs (a) and (b) of paragraph 21 the following should be taken into account:

- (a) the expression “continues to be a feeder UCITS of the same master UCITS” refers to cases where:
 - (i) the master UCITS is the receiving UCITS in a proposed merger, and
 - (ii) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division.
- (b) The expression “becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS” refers to cases where—
 - (i) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS, and
 - (ii) the feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different to the master UCITS.

23. By way of derogation from paragraph 21, in cases where the master UCITS provided the information referred to in or comparable with Regulation 61 to the feeder UCITS more than 4 months before the proposed effective date, the feeder UCITS shall submit to the Bank its application or notification in accordance with one of subparagraph (a), (b), (c) or (d) of paragraph 21 at the latest 3 months before the proposed effective date of the merger or division of the master UCITS.

24. The feeder UCITS shall inform its unit-holders and the master UCITS of its intention to be liquidated without undue delay.

25. (a) The feeder UCITS shall be informed within 15 working days following the complete submission of the documents referred to in Regulation 79(3), whether the competent authorities have granted the required approvals.

- (b) Upon receipt of the information that the competent authorities have granted approval according to subparagraph (a), the feeder UCITS shall inform the master UCITS of it.
- (c) After the feeder UCITS has been informed that the competent authorities have granted the necessary approvals pursuant to Regulation 79, the feeder UCITS shall take the necessary measures to comply

with the requirements of Article 64 of Directive 2009/65/EC without undue delay.

- (d) (i) In the cases of Regulation 80(5) and 84(1), the feeder UCITS shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with Article 45(1), and subparagraph 3 of Article 60(5), of Directive 2009/65/EC, where the competent authority of the UCITS has not granted the necessary approvals required pursuant to Article 22(1) of that Directive by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected.
 - (ii) The feeder UCITS shall also exercise this right in order to ensure that the right of its own unit-holders to request repurchase or redemption of their units in the feeder UCITS according to Article 64(1)(d) of Directive 2009/65/EC is not affected.
 - (iii) Before exercising the right referred to in clause (i), the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.
- (e) (i) Where the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive one of the following:
- (I) the repurchase or redemption proceeds in cash;
 - (II) some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.
- (ii) Where clause(i)(II) applies, the feeder UCITS may realise any part of the transferred assets for cash at any time.
- (f) The competent authorities of the feeder UCITS shall grant approval on the condition that any cash held or received in accordance with subparagraph (e) may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest in the new master UCITS or in accordance with its new investment objectives and policy.

PART 3

CONTENT OF INFORMATION SHARING AGREEMENT WHERE MASTER UCITS AND FEEDER UCITS HAVE DIFFERENT TRUSTEES

26. The information-sharing agreement between the trustee of the master UCITS and the trustee of the feeder UCITS referred to in Regulation 81(1)(a) shall include the following:

- (a) the identification of the documents and categories of information which are to be routinely shared between both trustees, and whether such information or documents are provided by one trustee to the other or made available on request;
- (b) the manner and timing, including any applicable deadlines, of the transmission of information by the trustee of the master UCITS to the trustee of the feeder UCITS;
- (c) the coordination of the involvement of both trustees, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
 - (i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with Regulation 80(2);
 - (ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;
- (d) the coordination of accounting year-end procedures;
- (e) what details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation the trustee of the master UCITS shall provide to the trustee of the feeder UCITS and the manner and timing of their provision;
- (f) the procedure for handling ad hoc requests for assistance from one trustee to the other; and
- (g) identification of particular contingent events which ought to be notified by one trustee to the other on an ad hoc basis, and the manner and timing in which this will be done.

27. The irregularities referred to in Regulation 81(2) which the trustee of the master UCITS detects in the course of carrying out its function under these Regulations and which may have a negative impact on the feeder UCITS shall include, but are not limited to:

- (a) errors in the net asset value calculation of the master UCITS;

- (b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;
- (c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;
- (d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information; and
- (e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information.

PART 4

CONTENT OF INFORMATION SHARING AGREEMENT WHERE MASTER UCITS AND FEEDER UCITS HAVE DIFFERENT AUDITORS

28. The information-sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS referred to in Regulation 82(1)(a) shall include the following:

- (a) the identification of the documents and categories of information which are to be routinely shared between both auditors;
- (b) whether the information or documents referred to in subparagraph (a) are to be provided by one auditor to the other or made available on request;
- (c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;
- (d) the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;
- (e) identification of matters that shall be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of Regulation 82(2);
- (f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS.

29. The agreement referred to in paragraph 1 shall include provisions on the preparation of the audit reports referred to in Regulations 82(2) and 93 and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

30. Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in paragraph 28 shall include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by Regulation 82(2)(b) and to provide it and drafts of it to the auditor of the feeder UCITS.

SCHEDULE 11

INFORMATION TO BE CONTAINED IN PROSPECTUS

1. Information concerning the common fund	1. Information concerning the management company including an indication whether the management company is domiciled in another Member State than in the UCITS home Member State	1. Information concerning the investment company
1.1. Name	1.1. Name or style, form in law, registered office and head office if different from the registered office.	1.1. Name or style, form in law, registered office and head office if different from the registered office.
1.2. Date of establishment of the common fund. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.	1.2. Date of the incorporation of the company. Indication of duration, if limited.
1.4. Statement of the place where the fund rules, if they are not annexed, and periodic reports may be obtained.	1.3. If the company manages other common contractual funds and unit trusts, indication of those other funds.	1.3. In the case of investment companies having different sub-funds sub-funds, the indication of the sub-funds.
1.5. Brief indications relevant to unit-holders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unit-holders.	1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.	1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.
1.6. Accounting and distribution dates	1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.	1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.
1.7. Names of the persons responsible for auditing the accounting information referred to in Regulation 88.	1.6. Accounting and distribution dates.	1.6. Accounting and distribution dates.
	1.7. Names of the persons responsible for auditing the accounting information referred to in Regulation 88.	1.7. Names of the persons responsible for auditing the accounting information referred to in Regulation 88.
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.

<p>1.10. Details of the types and main characteristics of the units and in particular: the nature of the right (real, personal or other) represented by the unit, original securities or certificates providing evidence of title; entry in a register or in an account, characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, indication of unit-holders' voting rights if these exist, circumstances in which winding-up of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</p> <p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.</p> <p>1.12. Procedures and conditions of issue and sale of units.</p> <p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended.</p> <p>1.14. Description of rules for determining and applying income.</p>	<p>1.9. Amount of the subscribed capital with an indication of the capital paid-up</p>	<p>1.9. Capital</p> <p>1.10. Details of the types and main characteristics of the units and in particular: original securities or certificates providing evidence of title; entry in a register or in an account, characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, indication of unit-holders' voting rights, circumstances in which winding-up of the investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</p> <p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.</p> <p>1.12. Procedures and conditions of issue and sale of units.</p> <p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended. In the case of investment companies having different sub-funds, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.</p> <p>1.14. Description of rules for determining and applying income.</p>
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<p>1.15. Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.</p> <p>1.16. Rules for the valuation of assets.</p> <p>1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular: the method and frequency of the calculation of those prices, information concerning the charges relating to the sale or issue and the re-purchase or redemption of units, the means, places and frequency of the publication of those prices.</p> <p>1.18. Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the trustee or third parties, and reimbursement of costs by the common fund to the management company, to the trustee or to third parties.</p>		<p>1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.</p> <p>1.16. Rules for the valuation of assets.</p> <p>1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular: the method and frequency of the calculation of those prices, information concerning the charges relating to the sale or issue and the re-purchase or redemption of units, the means, places and frequency of the publication of those prices. (Investment companies within the meaning of Regulation 48 shall also indicate the method and frequency of calculation of the net asset value of units, the means, place and frequency of the publication of that value, and the stock exchange in the country of marketing the price on which determines the price of transactions effected outwith stock exchanges in that country.)</p> <p>1.18. Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the trustee, or to third parties, and reimbursement of costs by the company to its directors, to the trustee or to third parties.</p>
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2. Information concerning the trustee:

2.1. Name or style, form in law, registered office and head office if different from the registered office;

2.2. Main activity.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

3.1. Name or style of the firm or name of the adviser;

3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration;

3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, re-purchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in the Member State in which the UCITS is established. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there.

5. Other investment information:

5.1. Historical performance of the common fund or of the investment company (where applicable) — such information may be either included in or attached to the prospectus;

5.2. Profile of the typical investor for whom the common fund or the investment company is designed.

6. Economic information:

6.1. Possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the common fund's or of the investment company's assets.

INFORMATION TO BE INCLUDED IN PERIODIC REPORTS

1. Statement of assets and liabilities

transferable securities,

bank balances,

other assets,

total assets,

liabilities,

net asset value.

2. Number of units in circulation**3. Net asset value per unit****4. Portfolio, distinguishing between:**

- (a) transferable securities admitted to official stock exchange listing;
- (b) transferable securities dealt in on another regulated market;
- (c) recently issued transferable securities of the type referred to in Regulation 68(1)(d);
- (d) other transferable securities of the type referred to in Regulation 68(1)(a), (b) and (c),

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS should be stated.

Statement of changes in the composition of the portfolio during the reference period.

5. Statement of the developments concerning the assets of the UCITS during the reference period including the following:

income from investments,

other income,

management charges,

trustee's charges,

other charges and taxes,

net income,

distributions and income reinvested,

changes in capital account,

appreciation or depreciation of investments,

any other changes affecting the assets and liabilities of the UCITS,

transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.

6. A comparative table covering the last 3 financial years and including, for each financial year, at the end of the financial year:

the total net asset value,

the net asset value per unit.

7. Details, by category of transaction within the meaning of Regulation 69(1)(c) carried out by the UCITS during the reference period, of the resulting amount of commitments.

INFORMATION TO BE MADE ACCESSIBLE BY BANK

1. The following categories of information on the relevant laws, regulations and administrative provisions shall be made accessible in accordance with Regulation 115(2):

- (a) the definition of the term “marketing of units of UCITS” or the equivalent legal term either as stated in national legislation or as developed in practice;
- (b) requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions on the use of certain words or phrases;
- (c) without prejudice to Chapter IX of Directive 2009/65/EC, details of any additional information required to be disclosed to investors;
- (d) details of any exemptions from rules or requirements governing arrangements made for marketing applicable in that Member State for certain UCITS, certain share classes of UCITS or certain categories of investors;
- (e) requirements for any reporting or transmission of information to the Bank, and the procedure for lodging updated versions of required documents;
- (f) requirements for any fees or other sums to be paid to the Bank, either when marketing commences or periodically thereafter;
- (g) requirements in relation to the facilities to be made available to unit-holders as required by Regulation 117;
- (h) conditions for the termination of marketing of units of UCITS in that Member State by a UCITS situated in another Member State;
- (i) detailed contents of the information required by the Bank to be included in Part B of the notification letter as referred to in Article 1 of Commission Regulation (EU) No. 584/2010 of 1 July 2010¹⁷ implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities;
- (j) the e-mail address designated for the purpose of Regulation 14.

¹⁷OJ No. L176, 10.07.2010, p. 16

2. The information listed in paragraph (1) shall be in the form of a narrative description, or a combination of a narrative description and a series of references or links to source documents.

SCHEDULE 14

NOTIFICATION REQUIREMENTS

1. UCITS shall ensure that an electronic copy of each document referred to in Regulation 117(2) is made available on a website of the UCITS, or a website of the management company that manages that UCITS, or on another website designated by the UCITS in the notification letter submitted in accordance with Regulation 117(1) or any updates of it. Any document made available on a website shall be provided in an electronic format in common use.
2. UCITS shall ensure that the UCITS host Member State has access to the website referred to in paragraph (1).
3. The Bank shall designate an e-mail address for the purpose of receiving notification of updates and amendments to the documents referred to in Regulation 117(2), pursuant to Regulation 117(5).
4. (1) UCITS may notify any update or amendment to the documents referred to in Regulation 117(2), pursuant to Regulation 117(5) by e-mail to be sent to the e-mail address referred to in paragraph (3).

(2) The e-mail notifying such an update or amendment may either describe the update or the amendment that has been made, or provide a new version of the document as an attachment.
5. Any document attached to the e-mail referred to in paragraph 4, shall be provided by UCITS in a commonly used electronic format.
6. In order to facilitate access by the competent authority of the UCITS host Member States to the information or documents referred to in Regulation 117(1),(2) and (3), for the purpose of Regulation 117(7), the Bank shall coordinate with other competent authorities with regard to the establishment of sophisticated electronic data processing and central storage systems common to all Member States.

SCHEDULE 15

Regulation 138(3)

REQUIREMENTS APPLICABLE TO SIMPLIFIED PROSPECTUS

1. An investment company and, for each of the unit trusts and common contractual funds it manages, a management company, shall publish a simplified prospectus which must be dated and its essential elements kept up to date.
2. The simplified prospectus shall contain in summary form the key information provided for in paragraph 11. It shall be structured and written in such a way that it can be easily understood by the average investor.
3. The Bank may permit that the simplified prospectus be attached to the prospectus as a removable part of it.
4. The simplified prospectus can be used as a marketing tool designed to be used in all Member States without alterations except translation. The Bank may therefore not require any further documents or additional information to be added.
5. The simplified prospectus may be incorporated in a document in writing, or in any durable medium having an equivalent legal status approved by the Bank.
6. A UCITS shall send its simplified prospectus and any amendments thereto to the Bank.
7. The simplified prospectus shall be offered to subscribers free of charge before the conclusion of the contract concerned.
8. The annual and half-yearly reports shall be available to the public and the places, or through other means approved by the Bank, specified in the simplified prospectus.
9. A UCITS situated in another Member State shall send to the Bank its simplified prospectus including any amendments thereto.
10. Where a UCITS markets its units in another Member State, it shall distribute its simplified prospectus in that other Member State, in accordance with the same procedures as those provided for by the Bank.
11. The simplified prospectus shall contain:
 - Brief presentation of the UCITS
 - when the unit trust, common contractual fund or the investment company was created and indication of the Member State where the unit trust, common contractual fund or the investment company has been registered/incorporated,
 - in the case of UCITS having different investment compartments, the indication of this circumstance,

- management company (when applicable),
- expected period of existence (when applicable),
- trustee,
- auditors,
- financial group (e.g. a bank) promoting the UCITS.

Investment information

- short definition of the UCITS objectives,
- the unit trust's, common contractual fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Regulations 57 and 72 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) revoked by Regulation 139(1) and by investment compartment),
- historical performance of the unit trust, common contractual fund or investment company (where applicable) and a warning that this is not an indicator of future performance — such information may be included in or attached to the prospectus,
- profile of the typical investor that the unit trust, common contractual fund or the investment company is designed for.

Economic information

- tax regime,
- entry and exit commissions,
- other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's common contractual fund's or the investment company's assets.

Commercial information

- how to buy the units,
- how to sell the units,
- in the case of UCITS having different investment compartments, how to pass from one investment compartment into another and the charges applicable in such cases,
- when and how dividends on units or shares of the UCITS (if applicable) are distributed,

- frequency and where/how prices are published or made available.

Additional information

- statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards,
- competent authority,
- indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed,
- publishing date of the prospectus.

TABLE OF CROSS-REFERENCES TO SPECIFIC UCITS
REGULATIONS IN LEGISLATION

PART 1

UNIT TRUSTS ACT 1990 (No. 37 OF 1990)

Item	Section of Act	Subsection or Table of Section	2003 UCITS Regulations references	2011 UCITS Regulations references
1	15	1	63	104(2)
2	15	1	75 to 85	88(1)(b), 88(1)(c), 88(2), 89(3), 89(5), 91, 93, 94, 95(1), 95(3), 134
3	15	1	98 to 105	125, 126, 127, 128, 129, 130, 131, 135(2)
4	15	1	80	89(5)
5	15	1	Schedule 2 79 to 80	Schedule 12 89(3) and 89(5)
6	15	1	105	135(2)
7	15	2	102	129
8	15	Table	14	17(11), 42(4)(d), 135(1)
9	15	Table	59	104(1)

PART 2

COMPANIES ACT 1990 (No. 33 OF 1990)

Item	Section of Act	2003 UCITS Regulations references	2011 UCITS Regulations references
1	258	14	17(11), 42(4)(d), 135(1)
2	258	31	40(2)
3	258	63	104(2)
4	258	74(3)	N/A
5	258	85(2) to (9)	134(1) to (8)
6	258	98, 99, 100, 102 to 105	125, 126, 127, 129, 130, 131, 135(2)

PART 3

INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS
PROVISIONS ACT 2005

(No. 12 of 2005)

Item	Section of Act	Subsection or Table of Section	2003 UCITS Regulations references	2011 UCITS Regulations references
1	18	1	63	104(2)
2	18	1	77 to 85	88(1)(b), 88(1)(c), 88(2), 89(3), 89(5), 93, 95(1), 95(3) and 134
3	18	1	98 to 105	125, 126, 127, 128, 129, 130, 131, 135(2)
4	18	Table	14	17(11), 42(4)(d), 135(1)
5	18	Table	59	104(1)



GIVEN under my Official Seal,
29 June 2011.

MICHAEL NOONAN,
Minister for Finance.

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