

**BERMUDA MONETARY AUTHORITY (COLLECTIVE
INVESTMENT SCHEME CLASSIFICATION) REGULATIONS
1998**

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BERMUDA MONETARY AUTHORITY ACT 1969

1969 : 57

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The Minister, after consultation with the Board of Directors of the Bermuda Monetary Authority, in exercise of the powers conferred upon him by section 29(1)(ca) of the Bermuda Monetary Authority Act 1969, makes the following Regulations:—

Citation

1 These Regulations may be cited as the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998.

Interpretation

2 In these Regulations, unless the context otherwise requires—

“Act” means the Companies Act 1981;

"administrator" means the person appointed in accordance with Parts B and C of the Schedule:

- (a) in relation to a unit trust scheme, by the trust deed and includes any successor;
- (b) in relation to a mutual fund scheme by the scheme and includes any successor;

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“approval” means an approval granted by the Authority in accordance with these Regulations;

“Authority” means the Bermuda Monetary Authority;

“Bermuda Institutional Scheme” means a scheme which has been approved by the Authority under regulation 6 and complies with Part C of the Schedule;

“Bermuda Recognised Scheme” means a Scheme which is approved by the Authority under regulation 6 and complies with Part A of the Schedule;

“Bermuda Standard Scheme” means a scheme which is approved by the Authority under regulation 6 and complies with Part B of the Schedule;

“custodian” means—

(a) the person appointed as custodian of a scheme pursuant to these Regulations; or

(b) the person appointed as trustee under a trust deed,

and includes any successor;

“manager” means the person appointed in accordance with Part A of the Schedule:

(a) in relation to a unit trust scheme, by the trust deed and includes any successor;

(b) in relation to a mutual fund scheme, by the management agreement and includes any successor;

“Minister” means the Minister of Finance;

“prudential meeting” means for the purposes of these Regulations a meeting held or to be held between the Authority and a Scheme for the purpose of discussing matters emanating from the Authority’s power to regulate, supervise and inspect the scheme in accordance with the Bermuda Monetary Authority Act, 1969;

“Schedule” means the Schedule to these Regulations;

“scheme” means a collective investment scheme as defined by the Bermuda Monetary Authority Act 1969;

“service provider” means any person in or from within Bermuda providing services to a scheme and includes a scheme’s custodian, manager, administrator, registrar, auditor,

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attorneys and any other person providing general management, administrative, or accounting and auditing services.

Application

3 (1) Subject to paragraph (2), these Regulations shall apply to all schemes.

(2) The Authority may, by notice in writing, exempt a scheme from having to comply with any provisions or requirements contained in these Regulations.

(3) In granting any such exemption, the Authority may by notice in writing served upon a scheme, attach to that exemption such terms or conditions, if any, as the Authority considers appropriate.

Classifications of schemes

4 (1) Unless otherwise exempted under these Regulations, schemes shall be classified as follows—

- (a) Bermuda Recognised schemes;
- (b) Bermuda Standard schemes; or
- (c) Bermuda Institutional schemes.

(2) The provisions of Parts A, B and C of the Schedule shall apply respectively to the schemes referred to in paragraphs (1)(a), (b) and (c).

(3) Application shall be made to the Authority for approval of a scheme in accordance with regulation 6.

Guidance Notes

5 The Authority may issue guidance notes from time to time, to assist schemes and their service providers in complying with the provisions of these Regulations.

Application for Approval

6 (1) An application for approval under these Regulations—

- (a) shall be in such form as the Authority may, from time to time, direct;
- (b) shall contain or be accompanied by such information as is required by Part A, B or C of the Schedule or otherwise as the Authority may require;

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(c) shall be accompanied by such fee as may be prescribed by the Authority;

(d) be verified in such manner as the Authority shall require.

(2) At any time after receiving the application and before making its determination, the Authority may require the applicant to provide it with additional information.

(3) The requirements of paragraphs (1) and (2) may differ as between different applications.

(4) The Authority may grant an approval under these Regulations if the Authority is satisfied that the requirements prescribed in Parts A, B or C of the Schedule have been met.

Approval may be subject to conditions

7 (1) Subject to regulation 9 the Authority may—

(a) at the time of granting approval of a scheme, or at any time thereafter, by notice in writing served upon a scheme, impose, in respect of that approval, such terms or conditions, if any, as the Authority considers appropriate; and

(b) at any time by notice in writing served upon a scheme;

(i) vary any such terms or conditions imposed pursuant to sub-paragraph (a); or

(ii) revoke any such terms or conditions.

(2) Where the Authority—

(a) refuses to grant approval or permission under these regulations;

(b) imposes any terms or conditions on an approval granted under these regulations; or

(c) varies any terms or conditions subject to which an approval is granted,

the Authority shall state the reason for such refusal, imposition or variation, as the case may be.

Revocation of approval

8 (1) Subject to paragraph (2) of this regulation, regulation 10 and Part A of the Schedule, the Authority may, at any time by notice

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served upon a scheme, revoke an approval granted under these Regulations.

(2) Before issuing a notice under paragraph(1), the Authority shall—

- (a) give a scheme notice in writing of its intention to revoke the approval and shall specify in such notice the grounds on which it proposes to revoke the approval; and
- (b) afford the scheme an opportunity of submitting to the Authority written statements of objections to the proposed revocation.

(3) The Authority shall advise the scheme of its decision in writing.

Right of appeal

9 (1) Where a scheme is aggrieved by—

- (a) the revocation of an approval under regulation 8(1);
- (b) any terms or conditions subject to which an approval is granted, or which are imposed after the grant of approval; or
- (c) any variation of such terms or conditions,

the scheme may, within seven days from the date of such revocation, imposition or variation, as the case may be, appeal in writing, to the Minister.

(2) Where an appeal is made to the Minister under paragraph (1), the Minister may make such decision, as he considers appropriate.

(3) The Minister shall not be required to give reasons for a decision under paragraph (2).

Furnishing information

10 The scheme shall—

- (a) in such form, manner and at such intervals as the Authority may specify, submit to the Authority such information as it may request; and
- (b) within such period and in such manner as the Authority may require, submit to the Authority such further information as the Authority—

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- (i) considers necessary for a proper understanding of the functions, operations or activities of the scheme, as the case may be; or
- (ii) may require to discharge its functions in respect of the supervision, regulation or inspection of the scheme.

Inspection of a scheme

11 (1) Where the scheme refuses to submit to the Authority any information required by the Authority pursuant to regulation 10, the Authority, or a person duly authorised by the Authority for the purpose, may carry out an inspection of the scheme.

(2) For the purpose of an inspection under paragraph(1), a scheme shall afford the Authority or a person duly authorised by the Authority carrying out the inspection access to—

- (a) the books and accounts of the scheme;
- (b) all documents, including documents of title to assets;
- (c) all securities held by the scheme or any of its representative offices;
- (d) such other information and facilities as may be required to carry out the inspection.

(3) The scheme and the person in charge of its representative office shall, at the premises at which the information is maintained, produce to the Authority or a person duly authorised by the Authority carrying out the inspection, such books, accounts, documents, securities, cash and information as may be required.

Additional requirements for schemes

12 (1) Unless otherwise specifically provided for or required in any Part of these Regulations, the Authority shall be immediately notified of—

- (a) a scheme's suspension of any subscriptions or redemption's and the reasons for such suspensions;
- (b) a scheme's intention to be liquidated and the reasons for such proposed liquidation.

(2) The Authority may request that a scheme or its service providers have prudential meetings with the Authority and, if so requested, the scheme or service providers shall comply with such a request.

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(3) A material change shall not be made to a scheme's prospectus or offering document without the prior approval of the Authority.

(4) A scheme shall not issue or subsequently transfer any of its units as defined in Part A of the Schedule, or securities as defined in Parts B and C of the Schedule without receiving the specific or general permission in writing of the Authority.

Statements of compliance

13 A scheme shall submit to the Authority—

(a) within six months of its financial year end, a statement signed by—

- (i) a director of a mutual fund scheme or a director of the manager; or
- (ii) the trustee of a unit trust scheme, (in the case of a unit trust),

confirming that the scheme has at all times during the preceding financial year been in compliance with these Regulations, or, in the circumstances where the scheme has not been in compliance, the statement shall specify the areas of such non-compliance; and

(b) on an annual basis, a certificate signed by the director or trustee, confirming that the investment guidelines, restrictions and bye-laws have been complied with.

Offence

14 (1) A person who knowingly contravenes any term or condition subject to which approval is granted, under these Regulations is guilty of an offence.

(2) Every person who knowingly—

(a) contravenes regulation 10,11(2),12(1)(a) or 13;

(b) produces to the Authority or a person duly authorised by the Authority carrying out an inspection, any books, accounts, documents, securities or any information, whatsoever, which is false or misleading,

is guilty of an offence.

(3) Any person who signs any document submitted to the Authority pursuant to regulation 10 which he knows, or ought

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reasonably to have known, to be false in a material particular, is guilty of an offence.

(4) Where it is proved that an offence under these Regulations was committed with the consent or connivance of, or was attributable to any willful neglect on the part of any director, manager, secretary or similar officer of a body corporate, then such director, manager, secretary or similar officer shall, without prejudice to any proceedings which may be taken against any other person, be guilty of an offence against these Regulations.

Savings and transitional

15 (1) Subject to paragraphs (2) and (3), a scheme lawfully formed or established in Bermuda prior to the coming into operation of these Regulations, shall continue under these Regulations as a Bermuda Recognised Scheme, a Bermuda Standard Scheme or a Bermuda Institutional Scheme, as the case may require, and everything lawfully done by such scheme shall be of full force and effect.

(2) A scheme referred to in paragraph (1) shall, within twelve months of the date of commencement of these Regulations, comply with the provisions of these Regulations.

(3) A United Kingdom class scheme which is in existence at the commencement of these Regulations or is formed after the coming into force of the Regulations shall—

(a) continue to be operated as such in accordance with the relevant regulations under the Act until such date as shall be specified by the Minister by order published in the Gazette; and

(b) within twelve months after the date so specified, take such steps as are necessary to ensure that the scheme complies with the provisions of these Regulations.

(4) For the purposes of this regulation "United Kingdom class scheme" means a scheme which has been certified by Minister in accordance with section 156H of the Act to be a United Kingdom class scheme.

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**PART I
INTRODUCTION**

Categories of schemes

1 (1) A Bermuda Recognised Scheme shall belong to one of the
following categories:

- (a) a Securities Fund;
- (b) a Money Market Fund;
- (c) a Fund of Funds;
- (d) a Warrant Fund;
- (e) a Property Fund;
- (f) a Feeder Fund;
- (g) an Umbrella Fund;
- (h) a Futures and Options Fund;
- (i) a Geared Futures and Options Fund.

Interpretation

2 (1) In this Part and in the Appendices—

"accounting reference date" means the date stated in the most
recently published prospectus as the date on which the
scheme's annual accounting period is to end;

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

"accrual interval" in relation to the manager's periodic charge
means the interval specified in the constitutional documents
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"accumulation unit" means a unit in a scheme in which the income is not distributed to the investor but instead a sum equivalent to the income is transferred to the capital property attributable to the holder's units;

"Act" means the Companies Act 1981;

"affected person" has the meaning given in regulation 51;

"amalgamation" in relation to a scheme, has the meaning given in regulation 239;

"annual accounting period" has the meaning given in regulation 111;

"annual income allocation date" means the date in the calendar year specified in the constitutional documents as the date on or before which allocations of income in respect of each annual accounting period are to be made;

"Appendix" means an Appendix to these Regulations;

"approved derivative" means a derivative dealt in on an eligible derivatives market;

"approved mortgage" means a mortgage in respect of which the custodian reasonably believes that the mortgage can be discharged on demand or within twenty eight days by repayment of all the money secured by the mortgage (including where appropriate, any additional sum provided for under the mortgage) and that the mortgage is a "non-recourse" mortgage, that is to say that there is no property on which the mortgage is secured, whether immediately or contingently, other than the immovable in question;

"approved securities" means transferable securities which are:

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

and for the purposes of paragraph (c) transferable securities are recently issued if—

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- (i) they were issued, within the last twelve months, on terms that an application for listing would be made to an exchange or market;
- (ii) the application referred to in sub-paragraph (i) has not been refused;
- (iii) the manager is not aware of any reason why the application might be refused; and
- (iv) acceptance of the application referred to in sub-paragraph (i) would bring the securities within paragraph (i) or (ii);

"associate" in relation to a body corporate means—

- (a) a controller of that body corporate or any subsidiary of that controller; or
- (b) an officer or employee of that body corporate; or
- (c) any subsidiary of that body corporate and any officer or employee of that subsidiary;

"auditor" means the person or firm for the time being appointed as auditor of the scheme;

"authorised person" means a person who is regulated by a self-regulatory organisation under the Financial Services Act 1986, (or by the Securities and Investments Board) and includes a European institution carrying on home-regulated investment business in the United Kingdom, or any equivalent body recognised by the Authority in any other jurisdiction in respect of investment business of a kind which includes the writing or purchasing of off-exchange futures or options as principal;

"Authority" means the Bermuda Monetary Authority;

"bank" means a company carrying on banking business under the Banks Act 1969 or which is authorised by its incorporating act to carry on banking business in Bermuda;

"base currency" means the currency specified in the constitutional documents as the base currency of the scheme;

"BMA Act" means the Bermuda Monetary Authority Act 1969;

"borrowing" includes to obtain by synthetic borrowing;

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"business day" in relation to anything done or to be done in any part of Bermuda, means any day other than a Saturday, a Sunday or a public holiday in Bermuda and, in relation to anything done or to be done by reference to a market outside Bermuda means any day on which that market is normally open for business;

"cancellation" in relation to a unit in a scheme, means the redemption thereof by the custodian;

"cancellation price" means the price for each unit payable by the custodian to the manager on the cancellation of units, calculated in accordance with regulation 88;

"capital account" means an account relating to the capital property of the scheme;

"capital property" means:

(a) in the case of a unit trust scheme, all the property for the time being held on trust on behalf of the scheme excluding income property and any amount for the time being standing to the credit of the distribution account; and

(b) in the case of a mutual fund scheme, all the property of the scheme other than any part of such property which is attributable to units which are not units excluding income property and any amount for the time being to the credit of the distribution account;

"cash" includes foreign currency;

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

"collective investment scheme" means any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;

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

"commencement date" means the date on which these regulations come into operation;

"company" means a company in accordance with section 4(1) of the Act;

"compensation arrangement" means an arrangement, approved by the Minister, in which the custodian and manager of a scheme are participants, providing for compensation to any investor or former investor of the scheme who has suffered loss as a result of any material breach by the custodian or manager—

- (a) of the bye-laws or constitutional documents of the scheme;
- (b) of these Regulations; or
- (c) of any provision of the Act,

and where the custodian or manager, as the case may be, is or is likely to be unable otherwise to satisfy any judgment against it for such breach;

"connected person" in relation to the manager, any investment adviser appointed by the manager or to the custodian means—

- (a) any person beneficially owning directly or indirectly 20 per cent or more of the capital property of the scheme or able to exercise, directly or indirectly, 20 per cent or more of the total votes in that scheme;
- (b) any person controlled by a person who meets one or both of the requirements set out in paragraph (a);
- (c) any company—
 - (i) 20 per cent or more of whose ordinary share capital is beneficially owned, directly or indirectly, by the manager and any such investment adviser taken together or, as the case may be, by the custodian; and
 - (ii) 20 per cent or more of the total votes in which can be exercised directly or indirectly by the

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manager and any such investment adviser taken together or, as the case may be, the custodian; and

- (d) any director or officer of the manager or any such investment adviser or, as the case may be, the custodian of any connected person of that company or scheme as defined in paragraph (a), (b) or (c);

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

"constitutional documents", means:

- (a) in relation to a unit trust scheme, the trust deed and, where so designated, the prospectus;
- (b) in relation to a mutual fund scheme, the instrument of incorporation, the custodian agreement, the memorandum and articles of association, the management agreements and, where so designated, the prospectus;

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

"controller" means:

- (a) in relation to a body corporate, a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the body corporate or another body corporate of which it is a subsidiary; and
- (b) in relation to any unincorporated association—
 - (i) any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity); and

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- (ii) any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the association,

and for the purpose of these regulations "associate", in relation to any person, means that person's wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary;

"cover" means any or all of the property or the expected property of the scheme which is used to discharge the obligations of a particular transaction;

"creation" in relation to a unit in a scheme, means the allotment thereof by the custodian;

"creation price" means the price for each unit payable by the manager to the custodian on the creation of units calculated in accordance with regulation 86;

"currency" includes, where appropriate, the aggregate of currencies underlying a European Currency Unit;

"custodian" means—

- (a) in relation to a unit trust scheme, the trustee appointed under the trust deed pursuant to these Regulations;
- (b) in relation to a mutual fund scheme, the custodian of the scheme appointed by the directors of the scheme pursuant to these Regulations,

and includes any successor;

"custodian agreement" means—

- (a) in relation to a unit trust scheme, an agreement between the manager and the trustee and which only contains those matters provided in regulation 9;
- (b) in relation to a mutual fund scheme, an agreement between the manager, the company and the custodian which contains only those matters provided for in regulation 10;

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"dealing day" means the period in each business day (or in each day when the manager is open for business) during which the manager keeps his premises open to the public or otherwise publicly available for business of any kind;

"dealing period" means the period between one valuation point and the next;

"debenture" means any debenture, debenture stock, loan stock, bonds, certificates of deposit and other instrument creating or acknowledging indebtedness;

"dedicated", in the context of a scheme, means that the scheme has as its sole objective the enablement of investors to participate in or receive:

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

"deposit" means, subject to any specific provisions of the United Kingdom Banking Act 1987 and any equivalent provisions in any other jurisdiction, a sum of money paid on terms —

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or the giving of security;

and reference to money deposited and to the making of a deposit shall be construed accordingly;

"derivative" means an option, or a future or a contract for differences but does not include an investment that is a transferable security;

"directors" means the directors of the company which constitutes the scheme;

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"distribution account" means the account known by that name and opened and maintained in accordance with regulation 118;

"efficient portfolio management" has the meaning given in Part XII;

"eligible institution" means a bank or undertaking, or equivalent in another jurisdiction, whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

"eligible investment trust" means an investment trust—

- (a) which, at the date of the approval of the feeder fund under regulation 4, the property of the investment trust included net assets worth at least BD\$50 million (or, if the base currency of the feeder fund is not BD dollars, the equivalent in that base currency); and
- (b) in relation to which the custodian of the feeder fund is reasonably satisfied that at least 70% of the income of the investment trust received during either or both of:
 - (i) the last completed accounting period;
 - (ii) the first half of the current accounting period;consisted of income derived from eligible securities;
- (c) (apart from transactions for efficient portfolio management purposes) the property of which cannot be invested in derivatives;
- (d) not more than 5% of the property of which consists of warrants;
- (e) not more than 5% of the property of which consists of transferable securities issued by any one issuer, except that the figure of 5% may be regarded as 15% in respect of up to 30% in value of the investment trust;
- (f) in relation to which the feeder fund owns not more than 20% of the units (or of any class of units) in or of the debentures (or of any class of debentures) of the investment trust;
- (g) the borrowing of which does not exceed 50% of the market value of the units of the trust at the mid value unit price for the time being;

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(h) the units in (or debentures of) which are regularly offered for purchase and sale by at least three market makers who are recognised or registered as members of an eligible securities market; and

(i) which has no limit on its duration;

"eligible securities and derivatives market" means:

(a) a securities market which is the principal or only market established in a member State on which transferable securities admitted to official listing in the member State are dealt in or traded; or

(b) a securities market or a derivative market which—

(i) the manager, after consultation with the custodian, has decided to choose and which is, in accordance with paragraph (c), appropriate for the purpose of investment of or dealing in the property of the scheme; and

(ii) that decision is recorded in writing and has not been revoked; and

(iii) the market is included in a list in the prospectus or constitutional documents;

(c) may, for the purposes of paragraph (b), be considered to be appropriate if it—

(i) is regulated;

(ii) operates regularly;

(iii) is recognised; and

(iv) is open to the public;

(d) is chosen by the manager in accordance with paragraphs (b) and (c) having regard in particular to—

(i) the need for adequate liquidity in the market;

(ii) the need for unimpeded transmission of income and capital to or to the order of investors; and

(iii) any relevant guidance of the Authority issued on or before the commencement date;

"existing scheme" means a collective investment scheme which is a scheme on the commencement date;

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"extraordinary resolution" means a resolution:

- (a) proposed and passed at a meeting of investors duly convened and held in accordance with Part XVIII of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given; and
- (b) carried, whether on a show of hands or on a poll, by a majority consisting of 75% (or any larger proportion specified for this purpose in the constitutional documents) of the total number of votes cast for and against such resolution;

"feeder fund" means a scheme which is dedicated to a single scheme or a single UK scheme or a single eligible investment trust;

"Financial Services Act 1986" means the Financial Services Act 1986, an Act of the UK Parliament;

"forward price" means a price calculated by reference to the valuation point next following the manager's agreement to sell or, as the case may be, to re-issue the units in question;

"fund of funds" means a scheme which is dedicated to:

- (a) a number of schemes;
- (b) a number of UK schemes; or
- (c) a number of UCITS schemes;

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

"futures and options fund" means a scheme which is dedicated to futures and options funds assets;

"futures and options fund assets" means, subject to any restrictions contained in Part XI, any of the following—

- (a) derivatives;
- (b) forward transactions in currencies or gold;
- (c) transferable securities;
- (d) cash or near cash;

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(e) units in collective investment schemes;

(f) gold;

"geared futures and options funds" means a scheme which is dedicated to investment in futures and options fund assets and where most or all of the extent of investment in such assets is limited by the amount of property available as initial outlay;

"generally accepted accounting principles" means the accounting principles generally accepted in Bermuda or a country or jurisdiction other than Bermuda. The choice of jurisdiction shall be recommended to the scheme by the manager having regard to the appropriateness of the generally accepted accounting principles to be selected in relation to:

(a) the requirements of the securities agencies or regulatory bodies to which the scheme is subject;

(b) the country or countries in which the majority of the investors, or potential investors in the scheme reside;

(c) the countries in which the sponsor, promoter and investment advisor are located;

(d) the proposed business of the scheme and the nature of its investments;

"government and other public securities" means transferable securities which are issued by or on behalf of:

(a) the Government of Bermuda, or government of a member State;

(b) a public body in Bermuda or a public body or local authority in any member State;

(c) the government of any country or territory which is specified in Appendix 6; or

(d) an international organisation the members of which include a member State,

and includes investments which would have been such an investment had it been issued, as opposed to merely guaranteed, by a government public body or local authority specified in paragraphs (a), (b) or (c);

"half-yearly accounting period" has the meaning given by regulation 114;

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

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

"income equalisation" means a capital sum which shall be included in an annual or interim allocation of income in respect of each unit created, issued or sold during the accounting period which is the manager's best estimate of the amount of income in the creation price or the creation price by reference to which the issue or selling price of that unit was determined;

"income property" means all sums, including income equalisation, deemed by the manager, after consultation with the auditor, to be in the nature of income received or receivable by the custodian in respect of the property of the scheme but excluding any amount for the time being standing to the credit of the distribution account;

"income unit" means a unit in a scheme in which the income is distributed to the investor;

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

"initial offer" means an offer for issue of units in a scheme, otherwise than on a unitisation, where all or part of the consideration paid to the custodian for the units is to be used to acquire the initial capital property (other than that consideration) to be held by the scheme;

"initial price" means such amount as may be determined in accordance with regulation 14, as being the maximum amount, inclusive of the manager's preliminary charge, if any, which may be paid by a potential investor to the manager for units on an initial offer;

"interim accounting period" has the meaning given to it in regulation 122;

"interim income allocation date", in relation to an interim accounting period, means the date in the calendar year specified in the constitutional documents as the date on or

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before which allocations of income in respect of that interim accounting period are required or authorised to be made or, if the constitutional documents allow, the date determined for that purpose by the manager;

"investment adviser" in relation to a manager, means a person who is engaged by the manager under a commercial arrangement not being a mere contract of employment to either:

- (a) exercise for the manager the latter's discretionary powers of investment; or
- (b) supply the manager with advice as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities;

"investor" in relation to a unit in a scheme, means the person who is entered in the register as the holder of that unit;

"issue" means in relation to units, the issue of units by the manager as a principal;

"issue price" means the manager's price for the issue of units under regulation 92;

"large deal" means a transaction or series of transactions in any one dealing period by any person as principal to buy, sell or exchange units at a total value of BD\$30,000 or such greater sum as may be specified in the prospectus;

"management agreement" means an agreement between the manager, the custodian and the company which, subject to regulation 29, contains only the matters specified in regulation 10;

"manager", means a Bermuda incorporated company which is—

- (a) in relation to a unit trust scheme, the manager of the scheme appointed by the trust deed and includes any successor;
- (b) in relation to a mutual fund scheme, the manager of the scheme appointed by the management agreement and includes any successor;

"margined contract" means any contract for a derivative;

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"marketing" in relation to units in a scheme and a particular country, means—

- (a) issuing or causing to be issued in that country advertisements inviting persons to become or offer to become investors in that scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become investors of units in that scheme; or
- (b) advising or procuring any person in that country to become an investor of units in that scheme;

"member State" means a member State of the European Union or the European Economic Area;

"minimum holding of units", in relation to any units (whether income or accumulation units), means—

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

as the manager may, with the approval of the custodian, from time to time prescribe as the minimum holding a person must have in order to qualify to be an investor of units of that type in the scheme;

"minimum redeemable number of units", in relation to any units (whether income or accumulation units), means—

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

as the manager may, with the approval of the custodian, from time to time prescribe as the minimum in any one transaction to redeem units of that type;

"Minister" means the Minister of Finance of Bermuda;

"money market fund" means a scheme which is dedicated to money market fund assets;

"money market fund assets" means any of the following:

- (a) cash and near cash;
- (b) bills of exchange accepted by an eligible institution, if repayable within twelve months;

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- (c) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, not being government and public securities, which are—
 - (i) repayable within twelve months;
 - (ii) not subordinated; and
 - (iii) either approved securities (on-exchange), or else are issued by an eligible institution otherwise than in return for a deposit in paragraph (a) ;
- (d) securities which may include transferable securities;
- (e) a deposit which would be within paragraph (a) (near cash) except that it is repayable within six months (instead of immediately and without payment of a penalty exceeding seven days' interest calculated at ordinary commercial rates);

"mutual fund" has the meaning in Section 156A of the Act;

"mutual fund scheme" is a scheme which is a mutual fund;

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

- (a) money deposited with an eligible institution in:
 - (i) a current account; or
 - (ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding seven days' interest calculated at ordinary commercial rates;
- (b) certificates of deposit issued by an eligible institution if immediately redeemable at the option of the investor;
- (c) government and other public securities, if redeemable at the option of the investor or bound to be redeemed within two years;
- (d) a bill of exchange issued by any government or body which is the issuer of government and other public securities; and
- (e) deposits with a public body of a kind which fall within Section 9 of Part II of the First Schedule to the Trustee Investments Act 1961, an Act of the UK Parliament, and

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equivalent deposits with any local authority in a member State, if the money can be withdrawn immediately and without payment of a penalty as described in paragraph (a);

- (f) investments of a kind described in paragraphs 1 and 2 of Schedule 1 to the Trustee Investments Act 1961, an Act of Parliament, and equivalent investments which are issued or generated by the government of a country or territory specified in Appendix 6;

"net asset value" means the net value of the scheme after deducting—

- (a) any outstanding borrowings whether immediately due or repaid or not; and
- (b) (in the case of a property fund) any capital sum outstanding on a mortgage on an immovable;

"notified point" means a time within two hours of a valuation point;

"option" means an option to acquire or dispose of shares, debentures, government and public securities, instruments entitling to shares or securities, certificates representing securities, units in collective investment schemes, futures and contracts for differences;

"period of the initial offer" has the meaning given in regulation 15;

"periodic valuation" has the meaning given in regulation 67;

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

"property company" means a body corporate a substantial activity of which relates to permitted immovables whether by way of investing in, dealing in, developing, redeveloping or refurbishing them and whether directly or indirectly;

"property fund" means a scheme which is dedicated to property fund assets;

"property fund assets" means, subject to any restrictions contained in Part XI, any of the following—

- (a) approved immovables;

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- (b) property related assets;
- (c) government and other public securities;
- (d) units in collective investment schemes;
- (e) deposits with eligible institutions;

"property of the scheme" means the capital property and the income property;

"property related assets" means:

- (a) debentures, not being government and public securities, which are issued by a property company;
- (b) warrants or other instruments entitling the investor to subscribe for investments falling within:
 - (i) shares and stock in the share capital of a company;
 - (ii) debentures, not being government and public securities; and
 - (iii) government and public securities;
- (c) certificates or other instruments which confer—
 - (i) property rights in respect of any investment, including shares and stock in the share capital of a company, debentures and government and public securities;
 - (ii) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the investor would be entitled if he held any such investment to which the certificate or instrument relates; or
 - (iii) a contractual right (other than an option) to acquire any such investment otherwise than by subscription;
 - (iv) rights in respect of an investment falling within paragraph (a) ;

"prospectus" means particulars of a scheme prepared and produced in accordance with section 27 of the Act and Appendix 3;

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"purchase" in relation to an option means acquiring the right to exercise the option;

"recently issued transferable securities" means transferable securities—

- (a) which have been issued, within the last twelve months, on terms that an application for listing would be made to an exchange or market;
- (b) for which the application referred to in paragraph (a) has not been refused and—
 - (i) the manager is not aware of any reason why the application might be refused; and
 - (ii) acceptance of the application would mean the security would be an eligible security;

"register" has the meaning given in regulation 54;

"registrar" means the person appointed to establish and maintain the register;

"redemption" means the purchase of units from a investor by the manager as a principal;

"redemption price" means the manager's price for redemption under regulation 96;

"relevant change" in relation to a scheme means an alteration to the constitutional documents under which the scheme is constituted which—

- (a) is required to be approved by a resolution at a meeting of investors called for the purpose; and
- (b) is not an alteration which concerns:
 - (i) the amount of the remuneration of the manager; or
 - (ii) the amount of the remuneration or the expenses of the custodian; or
 - (iii) the amount of the remuneration or the expenses of the auditor of the scheme; or
 - (iv) the method of charging the remuneration or the expenses of the custodian or the auditor or any other consequential changes to the other arrangements for remuneration; or

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- (v) in the case of a mutual fund company, an increase in the authorised share capital of the company;

"scheme" means a mutual fund or a unit trust which has been approved by the Authority under regulation 4 as a Bermuda Recognised Scheme;

"securities fund" means a scheme which is dedicated to transferable securities excluding a scheme which is a money market fund, a feeder fund, a fund of funds or a warrant fund;

"service provider" means any company or firm carrying on business in Bermuda and providing services to schemes and includes a scheme's custodian, registrar, auditors, attorneys and other companies or businesses providing general management, administrative or accounting services;

"share" has the meaning given in the Act;

"subsidiary" means a subsidiary within the meaning of section 86 of the Act;

"synthetic borrowing" means any arrangement designed to achieve a temporary injection of money into the property of the scheme in the expectation that the sum will be repaid whether by way of a combination of derivatives which produces an effect similar to borrowing;

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

"transferable security" means:

- (a) shares and stock in the share capital of a company;
- (b) debentures;
- (c) government and public securities;
- (d) warrants;
- (e) certificates or other instruments which confer—
 - (i) property rights in respect of any investment, including shares and stock in the share capital of a company, debentures and government and public securities;

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- (ii) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the investor would be entitled if he held any such investment to which the certificate or instrument relates; or
- (iii) a contractual right (other than an option) to acquire any such investment otherwise than by subscription;
- (f) units in a collective investment scheme, including shares in or securities of an open-ended investment company, other than an investment the title to which either cannot be transferred or can be transferred only with the consent of a third party or, in the case of an investment falling within paragraphs (a) and (b), may be transferred without the consent of the issuer and for the purposes of these Regulations, a security is not a transferable security if the liability of the investor to the debts of the issuer is not limited to any amount for the time being unpaid by the investor in respect of the security;

"UCITS" means a collective investment scheme which has fulfilled the conditions imposed by the EC Council Directive 85/611/EEC as amended by 88/220/EEC;

"UK scheme" means a collective investment company authorised under Section 78 of the Financial Services Act 1986 or recognised under Section 86, 87 or 88 of that Act;

"umbrella fund" means a scheme which provides that the contributions of the investors and the profits or income out of which payments are to be made to them are pooled in relation to separate constituent parts of the property of the scheme and investors of which are entitled to exchange rights in one constituent part of the scheme for rights in another part of the scheme;

"unit" means subject to regulation 12—

- (a) in relation to a unit trust scheme, an undivided part of the property of the scheme;
- (b) in relation to a mutual fund scheme, a share in the company;

"unit trust" has the meaning given in the Stamp Duties Act 1976;

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“unit trust scheme” is a scheme which is a unit trust;

"unitisation" in relation to a scheme, means arrangements under which:

- (a) the whole or part of the property of a body corporate or a collective investment scheme is transferred so as to become part of the property of the scheme; and
- (b) the investors of shares in that body corporate or units in that collective investment scheme become investors of units in the scheme;

"valuation point" means the time by reference to which a valuation is carried out for the purposes of regulation 67;

"warrant" means any warrant or other instrument entitling the investor to subscribe for any of the following investments—

- (a) shares;
- (b) debentures;
- (c) government and public securities;

"warrant fund" means a scheme which is dedicated to warrants;

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

(2) In these Regulations any reference to a written notice or to written instructions shall be taken to be a reference to a notice or instructions given in any legible form provided that a printed copy of the notice or instructions can be made.

(3) Where an amount in BD dollars is referred to in these Regulations reference to that amount shall, in an appropriate case, be taken to be a reference to its equivalent in a foreign currency, at a rate determined by the custodian to be fair (unless the rate is otherwise fixed at a specific amount in law).

(4) The Appendices to these Regulations shall have the same effect as if contained in the body of the Regulations, and any references to the Regulations shall include the Appendices.

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**PART II
APPLICATION FOR APPROVAL**

Application for approval

3 (1) Any application for approval of a scheme as a Bermuda Recognised Scheme shall be made to the Authority.

(2) Any such application—

- (a) shall be in such form as the Authority may, from time to time, direct;
- (b) shall contain or be accompanied by such information as it may require;
- (c) shall be accompanied by such fee as may be prescribed by the Authority;
- (d) be verified in such manner as the Authority shall require.

(3) At any time after receiving the application and before making its determination, the Authority may require the applicant to provide it with additional information.

(4) The requirements of paragraphs.(2) and (3) may differ as between different applications.

Approval

4 (1) The Authority may, in accordance with these Regulations, approve a scheme as a Bermuda Recognised Scheme if the Authority is satisfied that—

- (a) the applicant is a mutual fund or unit trust;
- (b) the applicant is in compliance with these Regulations and the Act;
- (c) the custodian of the scheme is a bank incorporated in Bermuda or such other financial institution approved by the Authority;
- (d) the manager of the scheme is a company incorporated in Bermuda which is separate from and independent of the custodian and is in compliance with the Act;
- (e) the scheme is fit and proper to be approved as a Bermuda Recognised Scheme;

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- (f) the bye-laws or constitutional documents of the scheme comply with such requirements as are prescribed;
- (g) the investors of the mutual fund or unit trust are entitled to have their units redeemed or purchased by the scheme in accordance with the bye-laws or constitutional documents of the scheme;
- (h) the officers, directors, trustees, manager or custodian of the mutual fund or unit trust are of good standing and repute, financially sound and have sufficient qualifications and experience to fulfill properly their respective roles; and
- (i) the custodian and manager of the scheme are or will, upon approval, be participants in a compensation arrangement.

(2) The Authority shall notify the scheme of any approval granted under this regulation.

Revocation of approval

5 (1) Subject to this regulation and regulation 6, the Authority may, at any time, by notice in writing to the manager, revoke the approval of a scheme as a Bermuda Recognised Scheme if it appears to it that—

- (a) any of the conditions for approval as a Bermuda Recognised Scheme, specified in regulation 4(1), are no longer satisfied;
- (b) it is undesirable in the interests of the investors or potential investors that the scheme should continue to be approved as a Bermuda Recognised Scheme;
- (c) without prejudice to sub-paragraph (b) that—
 - (i) in the case of a mutual fund, the company, the manager or the custodian; or
 - (ii) in the case of a unit trust, the manager, the trustee or the custodian,

has contravened any provision of the Act or of these Regulations or, in purported compliance with any such provision, has provided the Authority with false, inaccurate or misleading information or has contravened any condition, prohibition or requirement imposed under the Act or these Regulations.

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(2) For the purpose of paragraph (1)(b) the Authority may take into account any matter relating to the scheme, the manager, the custodian or any person employed by or associated with the manager or custodian in connection with the scheme.

(3) The manager or the custodian may request the Authority to revoke the approval of the scheme as a Bermuda Recognised Scheme.

(4) Where a request is made under paragraph (3) the Authority may either—

- (a) revoke the approval unconditionally from a specified date;
- (b) revoke the approval conditionally from a specific date; or
- (c) refuse to revoke the approval if it considers either that any matter concerning the scheme should be investigated before a decision is made on the question of whether the approval should be revoked or that it would not be in the interests of the investors to revoke the approval.

Representation against revocation

6 (1) Where the Authority proposes to revoke the approval granted under regulation 4, otherwise than in accordance with a request made by the manager or the custodian under regulation 5(3), it shall give the manager and custodian written notice of its intention to revoke the approval, stating the reasons for the proposed revocation and giving details of the right to make oral or written representations to the Authority conferred by paragraph (2).

(2) A person on whom notice is served under paragraph (1) may within 21 days of the date of the notice, make written representations to the Authority, and if desired, oral representations to the Authority.

(3) The Authority shall have regard to any representations made in accordance with paragraph (2) in determining whether to revoke the approval of the scheme as a Bermuda Recognised Scheme.

Revocation of authorisation to offer units

7 On revocation of the approval of a scheme as a Bermuda Recognised Scheme, the manager shall notify—

- (a) the Financial Services Authority, or any successor or replacement regulatory authority, in the United Kingdom that the scheme is no longer approved as a Bermuda

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Recognised Scheme and, therefore, no longer authorised to offer its units in the United Kingdom; and

- (b) any other regulatory authority, in a jurisdiction in which the scheme is authorised that the scheme is no longer approved as a Bermuda Recognised Scheme and, therefore, no longer authorised to offer its units in Part III.

**PART III
CONSTITUTION OF A BERMUDA RECOGNISED SCHEME**

Constitution of unit trust and mutual fund scheme

8 (1) Each unit trust scheme shall be constituted by a trust deed—

- (a) which shall be made between the manager and the trustee;
- (b) which sets out the types of units that may be issued, whether income, accumulation, or both; and
- (c) a copy of which is made available on request for inspection by the public.

(2) Each mutual fund shall be constituted by a memorandum of association and bye-laws which contain provisions including—

- (a) the investment objectives of the scheme;
- (b) the base currency of the scheme; and
- (c) a statement indicating the categories of scheme, in which the fund will fall.

Qualification of a Bermuda Recognised Unit Trust Scheme for approval

9 A unit trust scheme shall qualify for approval as a Bermuda Recognised Scheme if—

- (a) the trust deed
 - (i) complies with regulation 8(1);
 - (ii) contains the matters specified in Part A of Appendix 2 and otherwise complies with the requirements of Part B of that Appendix; and

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- (iii) makes no provision concerning matters which are the subject of these Regulations other than a provision which—
 - (aa) is required by Part A of Appendix 2 or is authorised by Part B of that Appendix; or
 - (bb) repeats or in all material respects has the same effect as a provision of these Regulations; and
- (b) the unit trust scheme has a name which is consistent with the objectives of the scheme stated in the constitutional documents of the scheme.

Qualification of a Bermuda Recognised Mutual Fund Scheme for approval

10 A mutual fund scheme shall qualify for approval as a Bermuda Recognised Scheme if—

- (a) it has a name which is consistent with the objectives of the scheme stated in the constitutional documents of the scheme;
- (b) its memorandum of association contains no provision which would conflict with any provision of these Regulations; and
- (c) the constitutional documents of the scheme include—
 - (i) a management agreement between the manager, the custodian and the company which, subject to regulation 44, contains a provision that the manager agrees to become the manager of the scheme, subject to these Regulations, and the terms of the constitutional documents; and
 - (ii) a custodian agreement between the custodian, the manager and the company which, subject to regulation 42(4), contains a provision that the custodian agrees to become the custodian of the scheme subject to these Regulations and on the terms of the constitutional documents and a declaration that the custodian will hold the property of the scheme for the company; and

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- (iii) bye-laws of the company which contain the matters specified in Part A of Appendix 1 and otherwise comply with the requirements of Part B of Appendix 1 and make no provision concerning matters which are the subject of these Regulations other than a provision which—
 - (aa) is required by Part A of Appendix 1 or is authorised by Part B of that Appendix; or
 - (bb) repeats or in all material respects has the same effect as a provision of these Regulations.

Share structure of a Bermuda Recognised Mutual Fund Scheme

11 A mutual fund shall have an issued and authorised share capital as required by the Act.

Units

12 (2) Subject to regulation 13, the interests of the investors in a scheme shall consist of units (including fractions of a unit) and each unit shall be treated as representing one undivided part in the capital property of the scheme.

Types of units

13 (2) Units may be of two types—

- (a) income units, in which the income is allocated periodically to investors, under regulation 121; and
- (b) accumulation units, in which the income is credited periodically to capital, under regulation 120,

and the scheme shall consist of income units only unless—

- (i) the directors or trustee decide; or,
 - (ii) the manager decides pursuant to a power contained in the constitutional documents,
- that the scheme will consist of accumulation units or of both.

(3) Where both income and accumulation units are in existence—

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- (a) any accumulation units issued otherwise than in pursuance of the initial offer shall, when issued, each represent the same number (including fractions) of undivided units in the capital property of the scheme as each other accumulation unit then in existence; and
- (b) with effect from—
 - (i) the income allocation date for each annual accounting period; and
 - (ii) the income allocation date for each interim accounting period in respect of which an amount is available for allocation of income in accordance with regulation 122,

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

Initial capital property

14 Where the initial capital property of a scheme is to be acquired by the making of an offer of units to the public, that offer shall be at a price stated in the constitutional documents or, if no such price is so stated, such as shall be agreed between the manager and the trustee (in the case of a unit trust scheme) or the directors (in the case of a mutual fund scheme).

Duration of initial offer

15 The initial offer shall be kept open for such period (hereinafter referred to as the period of the initial offer") not exceeding twenty one days as is specified in the constitutional documents or, if no such period is so stated, such period not exceeding twenty one days as shall be agreed between the manager and the trustee (in the case of a unit trust scheme), or the directors (in the case of a mutual fund scheme).

Instances where the constitutional documents take precedence over the regulations

16 (1) Notwithstanding that they are not imposed by these regulations for schemes of the category to which the scheme belongs, the

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following restrictions shall be observed if so provided in the constitutional documents, being restrictions—

- (a) on the descriptions of assets which may be comprised in the capital property of the scheme; or
- (b) on the proportion of the capital property of the scheme which may consist of an asset of any description; or
- (c) on the descriptions of efficient portfolio management which may be effected on behalf of the scheme; or
- (d) on borrowings which may be made on behalf of the scheme.

(4) If a statement is made in the prospectus that the manager will or may in relation to any matter referred to in paragraphs (1)(a) to (d), adopt, in the management of the scheme, a policy more restrictive than the restrictions imposed in relation to that matter by these Regulations or by the constitutional documents, no significant departure may be made in the management of the scheme from that stated policy unless and until:

- (a) the departure has been approved by an extraordinary resolution at a meeting of investors called for the purpose; and
- (b) the prospectus as amended accordingly has been published.

**PART IV
DIRECTORS, TRUSTEES, MANAGER AND CUSTODIAN**

**SECTION A
POWERS AND DUTIES OF DIRECTORS AND TRUSTEES**

Duty of directors of a mutual fund and trustees of a unit trust

17 (1) If a mutual fund or unit trust has, at any time, a right of action against the custodian, manager or investment adviser for breach of duty or otherwise, it shall be the duty of the directors or trustees to prosecute and enforce that right for the benefit of the scheme.

(2) Nothing in these Regulations shall be construed as preventing the directors or trustees from compromising any claim to any such right if, acting in good faith, they believe it to be in the interests of the scheme to do so.

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SECTION B
APPOINTMENT, POWERS AND DUTIES OF MANAGER

Appointment of manager

18 (1) Subject to paragraph (2), the directors of a mutual fund scheme and the trustee of a unit trust scheme shall appoint a corporate body which is incorporated in Bermuda and is totally independent of the trustee, custodian or the directors to be the manager of the scheme and as such to carry out and be responsible for—

(a) such matters as are specified in these Regulations to be the responsibility of the manager; and

(a) such other matters as may be set out in the management agreement.

(2) A body corporate shall not be appointed as manager of the scheme unless such body corporate has agreed to be bound by the provisions of these Regulations relating to the manager.

(3) For the purposes of these Regulations, the manager of a mutual fund scheme shall be deemed to be an officer of such scheme whether or not such manager would otherwise be treated as an officer of the scheme for the purposes of the Act.

Management of scheme

19 (1) It shall be the duty of the manager to manage the scheme in accordance with—

(a) the constitutional documents;

(b) these Regulations;

(c) the most recently published prospectus; and

(d) in the case of a mutual fund scheme, any directions given from time to time by the directors—

(i) pursuant to a power conferred on the directors by the constitutional documents with regard to the constituents of the property of the scheme; and

(ii) consistent with the provisions of the documents referred to in sub-paragraphs (a), (b) and (c).

(2) Subject to paragraph (1), it shall be the duty of the manager to make decisions as to the constituents of the property of the scheme in such a way as appears to him likely to ensure that the objectives of the

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scheme are attained and that any particular objectives specified in the prospectus are achieved.

(3) The manager shall instruct the custodian from time to time in writing as to how rights attaching to the ownership of property of the scheme are to be exercised except in the case where, the custodian has the right to decide after consultation with the manager.

Duty of manager to avoid breaching investment and borrowing powers

20 (1) Subject to regulation 49(1), it shall be the duty of the manager—

- (a) to take all reasonable steps; and
- (b) to exercise all due diligence,

to avoid the property of the scheme being used or invested contrary to any provision in Part XI.

Pricing errors

21 (1) In the performance of his duties under regulation 19, the manager shall take all reasonable steps, and exercise due diligence, to avoid the property of the scheme being incorrectly priced, contrary to any provision of Part VI.

(2) Where there is a breach of any provision of Part VI, the manager shall forthwith take such action as is necessary to rectify that breach but any such action need not extend to the reimbursement of money to investors or former investors if—

- (a) the consequential effect of any incorrect pricing of units is only of minimal significance to the scheme and to a typical investor of units in the scheme; and
- (b) the error and an estimate of its consequential effect have been reported in writing by the manager to the custodian.

Manager's appointment of investment adviser

22 (1) The manager shall have the right to appoint an investment adviser, to terminate the appointment and to replace an investment adviser who, for any reason, ceases to be an investment adviser.

(2) The investors shall be notified in writing of the removal of the investment adviser and the name of the new investment adviser.

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(3) The remuneration and expenses of the investment adviser shall be borne by the manager and the manager shall remain responsible for the discharge of all the investment adviser's duties under these Regulations notwithstanding any such appointment.

Manager's records

23 (1) The manager shall keep such accounting and other records as are necessary—

(a) to enable it to comply with these regulations; and

(b) to demonstrate at any time that such compliance by it has been achieved.

(2) The manager shall keep a daily record of units held by it, including the type of such units, which have been acquired or disposed of, and of the balance of any acquisitions and disposals.

(3) The manager shall make the daily record available for inspection by the custodian in Bermuda, in the United Kingdom, or, as required, in any other jurisdiction, free of charge at all times during ordinary office hours and shall supply the custodian with a copy of the record or any part of it on request free of charge.

Manager's review of schemes constitution

24 The manager shall keep under regular review the constitutional documents in order to ensure that they are in compliance with the law, including these Regulations, and shall from time to time make or propose the making of such changes therein as are necessary or desirable in the interests of investors.

Supply of information to custodian

25 The manager, any investment adviser, and, in the case of a mutual fund scheme, the company and the directors shall, on the request of the custodian, forthwith supply the custodian with such information concerning the management and administration of the scheme as the custodian may reasonably require.

Compliance with instructions from custodian

26 (3) The manager, any investment adviser, and in the case of a mutual fund scheme, the company and the directors, shall comply with any directions from time to time given by the custodian, being directions designed to secure that the scheme is properly managed and administered in accordance with the constitutional documents and these Regulations and the most recently published prospectus.

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Manager not to advertise the scheme without prior approval

27 (3) Neither the manager nor, in the case of a mutual fund scheme, the directors, shall issue or cause to be issued an advertisement for or in connection with the scheme unless its contents have been approved by the custodian.

(4) For the purposes of this regulation "advertisement" shall not include publication of the matters required by regulation 100(1) (publication of prices).

Replacement of the manager

28 (1) The manager shall not be replaced without the prior written approval of the Authority.

(2) The directors of a mutual fund, may not terminate the appointment of the manager—

(a) except with the prior approval of the investors by special resolution in general meeting; or

(i) required to do so by law or by the Authority; or

(ii) required to do so by the custodian acting in accordance with paragraph (4).

(3) In relation to a unit trust, the manager shall be removed by the trustee on the occurrence of any of the events specified in paragraphs (4)(a) to (c), after giving written notice to the manager.

(4) The custodian may require the directors of a mutual fund to terminate the appointment of the manager and if the directors fail to do so within seven days of being so required, the custodian may terminate the manager's appointment by giving notice in writing to the manager, on the occurrence of any of the following events—

(a) the manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the custodian); or

(b) a receiver is appointed in respect of the undertaking of the manager or any part thereof; or

(c) for good and sufficient reason the custodian is of opinion and so states in writing to the investors, with reasons, that a change of manager is desirable in the interest of the investors; or

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- (d) an extraordinary resolution is passed by the investors in general meeting removing the manager or to determine that he be removed as soon as permitted by law; or
 - (e) the investors of three quarters' majority in value of the units in existence (excluding units held or deemed to be held by the manager or any associate of the manager) make a request in writing to the custodian that the manager be removed.
- (5) On receipt of such notice from the custodian as aforesaid, the manager shall cease to be the manager.
- (6) Upon the manager ceasing to be the manager, the custodian shall appoint some other person eligible to be the manager of the scheme upon and subject to that person's entering into such deed or agreement as the custodian may require.
- (7) Investors shall be advised in writing of the removal of the manager and the name of the new manager.
- (8) If the name of the scheme contains a reference to the name of the former manager, the former manager shall be entitled to require the new manager and the custodian forthwith to propose a change in the name of the scheme.

Retirement of the manager

- 29 (1) Subject to paragraph (2), the manager—
- (a) shall have the right to retire in favour of some other person approved by the Authority;
 - (b) shall not be entitled to retire except upon the appointment by the trustee or, in the case of a mutual fund scheme, the directors, as successor manager, a person duly qualified to be appointed as such under these Regulations.
- (2) The appointment of a new manager of—
- (a) a unit trust shall be made by the trustee by way of deed supplemental to the trust deed between the trustee and the new manager;
 - (b) in the case of a mutual fund scheme, shall be made by a new management agreement containing such provisions as the directors are advised are necessary or desirable in order to secure the due performance by the new manager of its duties as manager.

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- (3) Upon the appointment of a new manager—
 - (a) the retiring manager shall be absolved and be released from all further obligations under these Regulations and under the constitutional documents and shall cease to have any rights thereunder but without prejudice to the rights of any trustee, or any investor or other person in respect of any act or omission on the part of the retiring manager prior to such retirement; and
 - (b) the retiring manager may retain for its own benefit, and without having to account therefor to the investors or any of them, any consideration paid to it in connection with the change of manager.
- (4) Upon the retirement of a manager—
 - (a) the new manager shall thereafter exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the manager under these Regulations and under the constitutional documents as fully as though such new manager had been originally a party to the constitutional documents; and
 - (b) the new manager of a mutual fund, may, in accordance with regulation 223, call a meeting of investors to remove any director from office and appoint one or more directors (subject to any general limit on the number of directors contained in the bye-laws) in replacement of the director or directors so removed or in addition to the existing directors.
- (5) In the case of a mutual fund scheme upon the replacement or retirement of the manager, the investor of any management shares and any nominal shares shall transfer the management shares and any nominal shares held by such investor to the new manager (or to an associate of the new manager designated by the new manager) at nominal value.
- (6) If such investor fails to transfer the shares in accordance with paragraph (5) within a period of one month after the retirement of the manager—
 - (a) the custodian may receive the purchase money on behalf of the retiring manager and execute such a transfer on behalf of such investor;
 - (b) such transfer shall be effective and shall be registered by the scheme;

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- (c) the custodian shall, on request, account to the retiring manager for the purchase money received by the custodian, without interest.

**SECTION C
POWERS AND DUTIES OF CUSTODIAN**

Appointment of custodian

30 (1) Subject to paragraphs (3) and (4), the directors of a mutual fund scheme shall appoint a custodian of the scheme to carry out and be responsible for—

- (a) such matters as are specified in these Regulations; and
- (b) such other matters as may be set out in the custodian agreement.

(2) Subject to paragraphs (3) and (4), the trustee of a unit trust scheme shall be the custodian of the scheme to carry out and be responsible for such matters as are specified in these Regulations.

(3) No person may act as custodian under these Regulations unless that person is—

- (a) a bank incorporated in Bermuda; or
- (b) a financial institution approved by the Authority.

(4) A bank or a financial institution shall not be appointed as custodian of a scheme unless such bank or financial institution has agreed to be bound by the provisions of these Regulations relating to the custodian.

Appointment of sub-custodian

31 (1) The custodian shall be entitled to appoint such persons, as it considers fit, to be sub-custodians of the scheme, to carry out on its behalf any or all of the custodian's obligations.

(2) The custodian shall be responsible for the acts and omissions of any sub-custodian as if they were the acts and omissions of the custodian.

(3) The custodian shall give prior written notice to the following persons of the delegation of any of its functions—

- (a) the Authority;
- (b) the scheme;

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- (c) the service providers;
- (d) the manager.

Appointment of a co-custodian

32 (1) Schemes investing in futures and options fund assets may, with the prior written approval of the Authority, appoint one or more persons as co-custodians (otherwise called prime brokers) to the custodian.

(2) Where a co-custodian is appointed under paragraph (1), the custodian—

- (a) shall hold any uninvested cash belonging to the scheme, other than that which is required to pay margin calls on margined contracts;
- (b) the custodian shall not be responsible for the acts or omissions of any co-custodian.

Supervision of manager by custodian

33 (1) It shall be the duty of the custodian to take reasonable care to ensure that:—

- (a) the scheme is managed and administered by the manager in accordance with regulation 19;
- (b) in relation to Part XI, that decisions about the constituents of the property of the scheme do not exceed the powers conferred on the manager.

(2) If the custodian is at any time not satisfied of any matter specified in paragraph (1) it shall inform the Authority.

(3) It shall be the duty of the custodian to—

- (a) to take all reasonable steps;
- (b) exercise all due diligence; and
- (c) exercise such degree of supervision of the manager's operation of the scheme as is appropriate,

with a view to ensuring that the manager avoids the property of the scheme being used or invested contrary to any provision of regulation 20(1).

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Control by custodian over property of scheme

34 (1) The custodian shall take into its custody or under its control all the property of the scheme and hold it in accordance with the provisions of the constitutional documents and these Regulations.

(2) The custodian shall take all reasonable steps and execute all necessary documents to secure that acquisitions and disposals properly made by the manager in accordance with Part IV are completed.

(3) The custodian shall—

- (a) collect any income due to be paid to the scheme; and
- (b) claim any repayment of tax; and
- (c) hold any income received in trust for the investors in accordance with these Regulations and the constitutional documents.

(4) The custodian shall keep such records as are necessary—

- (a) to enable it to comply with these Regulations; and
- (b) to demonstrate that such compliance by it has been achieved.

**Custodian's duty to ensure the manager is properly pricing units
and maintaining adequate records**

35 (1) The custodian shall—

- (a) take reasonable care to ensure that the methods used by the manager in calculating prices at which units are issued and redeemed are adequate to ensure that those prices are within any limits prescribed by these Regulations; and
- (b) from time to time and at any time when requested by an investor or former investor to do so within one year after completion of the transaction, carry out checks which are adequate to show whether the manager has determined prices within those limits; and
- (c) satisfy itself that the manager is adopting such procedures and methods for the calculation of prices at which units are issued and redeemed to ensure that those prices are within the limits for the time being prescribed by Part VIII.

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(2) The custodian shall satisfy itself on reasonable grounds and on a continuing basis that the manager has maintained and is maintaining sufficient records.

Exercise of rights in respect of property of the scheme

36 (1) The custodian shall take all steps and execute all such documents as are necessary to secure that instructions properly given to it by the manager as to the exercise of rights (including voting rights) attaching to the ownership of property are carried out.

(2) The custodian may, after consultation with the manager, exercise (or not exercise) any right of voting conferred by any of the property of the scheme which is in units or units in other collective investment schemes managed or otherwise operated by the manager or by an associate of the manager.

(3) In this regulation—

'voting' includes giving any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the property of the scheme; and

'right' includes a requisition or joining in a requisition to, convene any meeting, to give notice of any resolution, circulate any statement or to consent to any short notice of any meeting.

Custodian to provide powers of attorney or proxies

37 The custodian shall upon the written request of the manager from time to time execute and deliver or cause to be executed or delivered to the manager or its nominees such powers of attorney or proxies as the manager may reasonably require, in such name or names as the manager may request, authorising such attorneys and proxies to vote consent or otherwise act in respect of all or any part of the property of the scheme not included in regulation 36(2).

Custodian to pass on documents to manager

38 The custodian shall, without undue delay forward to the manager all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it as registered member of any investment.

Power of custodian to refuse to accept a transfer of property

39 The custodian shall be entitled to—

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- (a) give notice to the manager that it is not prepared to accept the transfer of any property which, in the opinion of the custodian, infringes the terms of these Regulations or of the constitutional documents;
- (b) require the manager to secure the transfer of other property acceptable to the custodian in place of property described in paragraph (a).

Report by the custodian to the Authority

40 The custodian shall, within 20 business days after the end of each month, or at such other intervals as may be requested by the Authority, report to the Authority on the activities of a scheme and such reports shall contain—

- (a) the name of the scheme;
- (b) the net asset value per unit;
- (c) the percentage change in the net asset value of the scheme and per unit from the previous annual accounting period;
- (d) the total value of net assets of the scheme;
- (e) the amount of new subscriptions in the relevant annual accounting period;
- (f) the amount of redemptions in the relevant annual accounting period;
- (g) the number of units in circulation at the end of the annual accounting period;
- (h) such other information as the Authority may request.

Notification of breach by the custodian

41 The custodian shall notify the Authority, in writing, of any breach of these Regulations in relation to any scheme of which it is custodian, forthwith upon the custodian becoming aware of such breach.

Retirement and removal of the custodian

42 (3) The custodian may not retire or be removed—

- (a) without the prior written approval of the Authority; and
- (b) except upon the appointment of a new custodian.

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(2) In the event of the custodian desiring to retire, ceasing to be eligible to act as a custodian or being removed, another person eligible under these Regulations shall be appointed to be the custodian in the place of the retiring custodian.

(3) Subject to paragraph (2), the custodian for the time being shall be subject to removal by notice in writing given by the manager to the custodian if an extraordinary resolution in general meeting is passed for the removal of the custodian.

(4) Any appointment of a new custodian of a mutual fund scheme shall be made by a new custodian agreement containing such provisions as the manager is advised are necessary or desirable in order to secure the due performance by the new custodian of its duties as custodian.

(5) Investors shall be advised in writing of the retirement or removal of the custodian and the name of the new custodian.

**SECTION D
MANAGER AND CUSTODIAN**

**Duties of trustee, scheme, director, manager and custodian under
general law**

43 (1) The duties imposed by these Regulations on the manager and the custodian, the scheme, the directors and the trustee, shall be in addition to and not in derogation from the duties which are otherwise imposed on them by law.

(2) The custodian and manager of a mutual fund or unit trust shall, in fulfilling their respective duties, act independently of one another.

Powers and discretions

44 (1) Where these Regulations permit an act of any description to be done, or a decision of any description to be made, such act or decision shall, subject to paragraph (2), be treated as authorised by the constitutional documents of the scheme, unless the context otherwise requires.

(2) Where these Regulations confer on the manager, custodian, trustee, company, scheme, the directors or on any two or more of them together, a discretion to do or refrain from doing an act of any description or to make a decision of any description, none of them may so act, so refrain from acting or make such a decision if expressly forbidden to do so by the constitutional documents.

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Dealings in property of the scheme

45 (1) The manager may without the specific authority of the custodian give instructions to agents as to the acquisition or disposal of property of the scheme.

(2) Where the custodian is of the opinion that—

(a) an acquisition of property by the manager necessarily involves documents of title or documents evidencing title being kept in the custody of a person other than the custodian; and

(b) the custodian cannot reasonably be expected to accept the responsibility which would otherwise be placed upon him as a delegator,

the custodian may require the manager to cancel the transaction or make a corresponding disposal.

Public inspection and opportunity to obtain copies of constitutional documents

46 (1) The manager and the custodian shall make a copy of the constitutional documents available in English, or in any other language required by another jurisdiction for inspection by the public free of charge at all times during ordinary office hours at its principal place of business in Bermuda.

(2) The manager shall make a copy of the constitutional documents available at its principal place of business in the UK or in any other location required by another jurisdiction.

(3) The directors, manager and the custodian shall allow any person to obtain a copy of the constitutional documents in English or in any other language required by another jurisdiction, on payment of a reasonable fee.

Timely performance of duties

47 The directors, trustee, manager and the custodian shall perform the functions and fulfill the duties conferred upon them by these Regulations with dispatch unless delay is both lawful and in the interests of the investors.

Report by service provider to manager

48 (3) A service provider shall make a report in writing to the manager if it becomes aware that the assets of the scheme have not been invested in accordance with its constitutional documents.

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(2) The manager shall include details of the service provider's report, in the next annual or half yearly report in accordance with Appendix 4.

(3) A service provider shall, on making a report under this regulation, advise the Authority of the circumstances which have required it to make the report.

Rectification

49 (3) Where the custodian is of the opinion that a particular acquisition or disposal of property by the manager exceeds the powers conferred on the manager, it shall be the duty of the manager at his own expense to cancel the transaction or make a corresponding acquisition or disposal to secure restoration of the status quo ante.

(4) The manager's duty in paragraph (1) shall extend to action forthwith to be taken by the manager to rectify any breach of any provision in Part XI to which paragraph (3) does not apply.

(5) Where—

- (a) the property of the scheme at any time is used or invested contrary to any provision of Part XI (other than a provision excusing a failure to comply on a temporary basis); and
- (b) the reason for the contravention is beyond the control of both manager and custodian; or
- (c) it was not possible for the manager or custodian to know at the time of the transaction whether that would be a breach,

the manager shall take such steps as are necessary to ensure a restoration of compliance as soon as is reasonably practicable having regard to the interests of the investors and, in any event, within the period specified in paragraph (5).

(6) Forthwith upon the custodian becoming aware of any circumstance described in paragraph (1) or (3), it shall take such steps as are necessary to ensure that the manager complies with paragraph (3).

(7) Subject to paragraph (6), the maximum period for restoration of compliance under paragraph (3) shall start at the date of discovery of the relevant circumstance and shall last for six months except—

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- (a) where the transaction in question was entered into under Part XII (efficient portfolio management) in which case the maximum period for restoration of compliance shall be until the close of business five business days later; or
 - (b) where the transaction in question was a derivatives pursuant to Section H (futures and options funds) or Section I (geared futures and options funds) of Part XI, in which case the maximum period for restoration of compliance shall be until the close of business five business days later; or
 - (c) where the scheme is a property fund and the property is an immovable, in which case the maximum period for restoration of compliance shall be 2 years.
- (8) The periods of five business days referred to in paragraph (5) (a) and (b) shall be extended—
- (a) if the transaction involved a delivery of a commodity (whether perishable or not), from five to twenty business days;
 - (b) if the reason for the contravention is the inability of the manager to close out a transaction because of a limit in the number or value of transactions imposed by an approved derivatives exchange, until five business days after—
 - (i) the inability resulting for any such limit is removed; or
 - (ii) it becomes, to the knowledge of the manager, reasonably practicable and reasonably prudent for the transaction to be closed out in some other way.

Delegation by the manager and the custodian

50 (1) Subject to any restriction in the constitutional documents, the manager may delegate any of its functions to any person, including the custodian.

(2) The manager shall give prior written notice to the following persons of the delegation of any of its functions—

- (a) the Authority;
- (b) the scheme;

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(c) the service providers;

(d) the investors.

(3) Subject to paragraphs (4) and (5), the custodian may delegate any of its functions to any person, including the manager.

(4) Subject to any restrictions in the constitutional documents, the custodian shall not delegate—

(a) to the manager—

(i) any function of oversight in respect of the manager; or

(ii) any function of custody or control of the property of the scheme;

(b) to an associate of the manager, any functions referred to in paragraph (a) (i).

(5) The custodian shall not delegate to any person the function of being a custodian of documents of title or documents evidencing title to property of the scheme unless the arrangements with such a person prevent that person from releasing the documents into the possession of a third party without the consent of the custodian.

(6) If—

(a) the manager delegates any function concerning the management of the property of the scheme; or

(b) the manager delegates any function to the custodian or to an associate of its own or of the custodian; or

(c) the custodian delegates any function to the manager or to an associate of its own or of the manager,

the manager or, as the case may be, the custodian, shall remain responsible, (even though it could have satisfied the conditions in paragraph (7)) for the acts or omissions of the delegate as if they were the acts or omissions of the manager, or as the case may be, of the custodian.

(7) In the case of any delegation by the manager or the custodian to which paragraph (6) does not apply, the manager or, as the case may be, the custodian, shall not be responsible for any act or omission of the delegate if the manager or custodian can show that—

(a) it was reasonable for an agent to be employed for the function in question; and

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- (b) the agent was and remained competent to undertake the function in question; and
- (c) the manager or custodian had taken reasonable care to ensure that the function in question was undertaken by the agent in a competent manner.

Duties of manager and custodian in respect of conflicts of interest

51 (1) The manager and the custodian shall take all reasonable steps to ensure that there is no breach of any of the following requirements of this regulation by any person (in this regulation referred to as an 'affected person'), that is to say—

- (a) the directors;
- (b) the manager;
- (c) an associate of the manager;
- (d) the custodian;
- (e) an associate of the custodian;
- (f) any investment adviser;
- (g) any associate of any investment adviser;
- (h) any third party administrator.

(2) Cash forming part of the property of the scheme or standing to the credit of the distribution account may be placed in any current, deposit or loan account with an affected person only if it is an eligible institution and the arm's length requirement in paragraph (9) is satisfied.

(3) An affected person may lend money to the scheme only if it is an eligible institution, and the arm's length requirement in paragraph (9) is satisfied.

(4) An affected person may not sell or deal in the sale of property to the custodian for the account of the scheme unless paragraph (10), (11) or (12) applies.

(5) An affected person may not vest property in the custodian against the issue of units in the scheme, except upon a unitisation or unless paragraph (10), (11) or (12) applies.

(6) An affected person may not purchase property from the custodian acting for the account of the scheme unless regulation 110 applies (in specie redemption) or unless paragraph (10), (11) or (12) of this regulation applies.

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(7) An affected person may not enter into transactions within Part XIV (stocklending) in relation to the scheme unless the arm's length requirement in paragraph (9) is satisfied.

(8) An affected person referred to in paragraphs (1)(c), (1)(e) and (1)(g) may not provide services for the scheme unless the custodian has reliable evidence that the services are provided on terms which satisfy the arm's length requirement described in paragraph (9).

(9) The arm's length requirement is that the arrangements are at least as favourable to the scheme as would be those of any comparable arrangement effected on normal commercial terms negotiated at arm's length between two independent parties.

(10) There is best execution on exchange for the purposes of paragraphs (4) to (6) if—

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

(11) A valuation shall be regarded as an independent valuation for the purposes of paragraphs (4) to (6) if—

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

(12) A transaction shall be regarded as an arm's length transaction for the purposes of paragraphs (4) to (6) if the property is an

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approved security or an approved derivative and it is not reasonably practicable to obtain an independent valuation under paragraph (11) and the custodian has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in paragraph (9).

(13) Paragraphs (2) to (8) shall be subject to any provision in the constitutional documents forbidding the taking of advantage of all or any of them.

**PART V
TITLE AND TRANSFER OF UNITS**

Title and transfer of units

52 The custodian shall issue or cause to be issued, certificates of ownership in registered form where the scheme requires certificates representing units to be issued.

Application of Part V to mutual fund schemes

53 (13) In relation to units, this Part shall apply to the company constituting a mutual fund scheme without prejudice to sections 63 to 71 of the Act, and the register maintained under this Part in respect of such a scheme shall be treated as if it is the register of members for all purposes.

(14) In the case of a mutual fund scheme, the obligations of the custodian and the manager under this Part shall be discharged if performed by the company.

The register

54 (1) The custodian shall establish and maintain in Bermuda, in a legible form or in a form capable of being reproduced in a legible form a register of the investors of units in the scheme in accordance with this regulation.

(2) The custodian may appoint some other person (including the manager) to establish and maintain the register on the custodian's behalf and, where such an appointment is made—

- (a) the custodian shall remain responsible for the discharge of all the custodian's duties in relation to the register under these Regulations; and
- (b) anything required or authorised under these Regulations to be done in relation to the register by, to or before the custodian may be done by, to or before the registrar; and

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- (c) the registrar shall not be removed or replaced without the prior written approval of the Authority; and
- (d) the investors shall be notified in writing of the removal of the registrar and the name of the new registrar;
- (e) the registrar may appoint such person as it considers fit to be a sub-registrar or branch registrar to carry out on its behalf any or all of its obligations but the registrar shall remain responsible for the acts and omissions of any such sub-registrar or branch registrar;
- (f) the custodian shall give prior written notice to the following persons of the delegation of any functions by the registrar—
 - (i) the scheme;
 - (ii) the manager;
 - (iii) the service providers.

(3) There shall be entered in the register:

- (a) the name and address of each investor;
- (b) the number of units (including fractions of a unit) of each type held by each such investor; and
- (c) the date on which the investor was registered in the register in respect of the units standing in his name,

but the custodian shall not be obliged to register more than four persons as the joint investors of any units.

(4) The Manager and the custodian shall—

- (a) take all reasonable steps; and
- (b) exercise all due diligence,

to ensure that the information contained in the register is, at all times, accurate, complete and up to date.

(5) In pursuance of paragraph (4), the manager shall, in particular:

- (a) take such steps as are necessary to obtain and supply information from or concerning any new investor to enable the entry in the register to be made; and

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- (b) forthwith notify to the custodian any information which the manager receives relating to the accuracy of or any change to any entry in the register.

Identification procedures

55 Nothing in these Regulations shall be construed as requiring the manager or custodian to make or alter any entry in the register or any certificate or other document to accept any transfer or conversion in any case where either of them considers it necessary or appropriate to carry out or complete identification procedures in relation to the investor or another person pursuant to any statutory or regulatory obligation.

The register as evidence of title

56 (2) Subject to regulation 62, the register shall be conclusive evidence as to the persons respectively entitled to the units entered therein.

(3) No notice of any trust, expressly implied or constructive, which may be entered in the register in respect of any unit shall be binding on the manager or the custodian.

Inspection of register and copies of entries

57 (1) Notwithstanding any provision in the Act, the custodian shall make the register available for inspection by or on behalf of the investors or the manager in Bermuda free of charge at all times during ordinary office hours but the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the custodian may from time to time determine.

(2) The custodian shall supply the manager with a copy of the register or any part thereof on payment of a reasonable fee.

(3) The custodian shall supply an investor or his authorised representative at such reasonable charge, if any, as the custodian shall determine, with a copy in print of the entries on the register relating to that investor.

The manager as investor

58 (1) The manager may be an investor, unless expressly forbidden by the constitutional documents.

(2) The manager shall be deemed to hold each unit which is in issue if no person is entered in the register as the investor thereof.

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(3) Where units are transferred by an investor to the manager, it shall not be necessary to cancel them, or to enter the name of the manager on the register as the new investor.

Certificates

59 (1) This regulation shall not apply if the constitutional documents contain a provision prohibiting the issue of certificates.

(2) This regulation shall be construed as not requiring the scheme to issue certificates in respect of units issued under an arrangement for the issue of units at regular intervals unless the investor has requested the issue of certificates in respect of them.

(3) On or following the issue of units or, subject to regulation 60, at any other time, a certificate or other document recording title to the units may be issued to the investor if and in such form as the manager and the custodian agree.

(4) The manager and the custodian shall agree on the procedures to be followed in redeeming units.

(5) Where the procedures agreed under paragraph (4) require the investor to surrender any document (or provide any information) as a condition precedent to obtaining the proceeds of redemption, they shall also oblige the custodian to issue the document or provide any relevant information relating to an entry on the register in a timely manner once he is in a position to do so under those procedures.

(6) The steps required to be taken by an investor in relation to the issue and redemption of units shall be specified in the prospectus.

Payment of fees on issue of certificate

60 (1) If authorised by the custodian agreement or constitutional documents, the custodian or the registrar, on the custodian's behalf, may make—

(a) the issue of a certificate; and

(b) the registration of any grant of probate, letters of administration or any other document relating to or affecting the title to any unit,

conditional upon the payment to the scheme of such reasonable fee therefor as the manager and custodian may agree.

Transfer of units by act of parties

61 (1) Subject to paragraph (2), every investor shall be entitled to transfer units held by him in respect of which he is entered in the

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register by an instrument of transfer in any usual or common form or in such other lawful form as the custodian may from time to time approve.

(2) The custodian shall not be under any duty to accept a transfer—

- (a) if the number or value of the units sought to be transferred would result in the investor, or the transferee, holding less than any number or value stated in the prospectus as the minimum number to be held, or
- (b) if the constitutional documents contain a limitation upon the categories of persons who may be investors and the transferee is not within one of those categories.

(3) Every instrument of transfer of units shall be signed by or on behalf of the investor transferring the units (or, in the case of a body corporate, sealed by that body or signed by one of its officers authorised so to sign) and, unless the transferee is the manager, the transferor shall be deemed to remain the investor until the name of the transferee has been entered in the register.

(4) Every instrument of transfer, duly stamped if it is required to be stamped, shall be left with the custodian for registration accompanied by—

- (a) any necessary declarations or other documents that may be required in consequence of any law for the time being in force, and
- (b) such other evidence as the custodian may require to prove the right of the transferor to transfer the units or in the case of a body corporate the authority of the signatory on its behalf.

(5) All instruments of transfer which are registered shall be retained by the custodian for a period of twelve years either in original copy or non-documentary form.

(6) Upon registration of an instrument of transfer, a reference shall be made on the register enabling the name of the transferor and the transferee and the date of transfer to be identified.

(7) If only some of the units represented by a certificate are transferred, the transferor shall be entitled free of charge to a new certificate in respect of the balance.

Default by investors of units

62 (1) Where—

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- (a) the investor defaults in making any payment in money or a transfer of property due to the manager or the custodian under these Regulations, or the custodian agreement or constitutional documents, in respect of the creation and issue or the re-issue of units to that investor; and
- (b) on such evidence as the custodian shall require, the custodian is satisfied that there has been such a default,

the custodian shall cancel or make any necessary amendments to that certificate and make any necessary deletion or alteration in the register; and thereafter the manager shall be entitled to the units in respect of which the defaulting investor's name has been removed from the register until those units are either cancelled or re-issued and paid for.

Conversion of income and accumulation units

63 (1) This regulation shall apply to any scheme in which there are units of more than one type (that is to say, income units and accumulation units), and shall govern the conditions of conversion of units of one type into units of another.

(2) Conversion may be carried out under this regulation only if both types of units are in existence and are offered for issue at the time of the request for conversion.

(3) If an investor requests the manager to convert units—

- (a) the manager shall make a request in writing to the custodian;
- (b) the custodian shall comply with that request,

except in cases where the conversion would result in the investor holding less than the number or value of units in either type stated in the prospectus as the minimum number to be held.

(4) If the manager makes a request under paragraph (3), the custodian shall, unless excused by that paragraph, convert them into the appropriate number of units of the other type, and that number shall be determined by the manager, after consulting the custodian, on terms that are considered fair to the investor requesting conversion, and to other investors.

Transfer of units by operation of law

64 (1) On the death of any one of joint investors the survivor or survivors shall be the only persons recognised by the custodian and the

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manager as having any title to or any interest in the shares held by such joint investors.

(2) The executors or administrators of a deceased investor (not being one of two or more joint investors) shall be the only persons recognised by the custodian and the manager as having title to the units held by him.

(3) Where any person becomes entitled to a unit in consequence of the death or bankruptcy of any sole investor or of the survivor of the joint investors—

- (a) he may, subject to sub-paragraph (b) upon producing such evidence as to his title as the custodian may properly require, either be registered as the investor of units in the scheme (upon giving notice in writing to the custodian that he so desire) or transfer the units to some other person—
- (b) the provisions concerning transfer of units shall be applicable to any notice or transfer as if the death or bankruptcy had not occurred and as if the notice or transfer were a transfer signed by the investor;
- (c) subject to sub-paragraph (d), the new owner may give a discharge for all monies payable in respect of the unit, but shall not, until registered as an investor, be entitled to receive notices or attend or vote at any meeting of members; and
- (d) the custodian may at its discretion retain any monies payable in respect of the unit until the new owner is registered as the investor of such unit or duly transfers the same.

Change of name and address of investor

65 The custodian shall alter the register and, subject to regulation 59, either amend the existing certificate or issue a new certificate—

- (a) upon receipt of notice in writing of a change of name or change of address of any investor; and
- (b) upon being satisfied thereof; and
- (c) on compliance with such formalities, as the custodian may require.

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Subdivision and consolidation of units

66 (3) The manager may, unless expressly forbidden to do so by the custodian agreement or constitutional documents, with the approval of the custodian determine—

- (a) that each unit shall be subdivided into two or more units (whereupon each unit shall stand subdivided accordingly); or
- (b) that two or more units shall be consolidated (whereupon those units shall stand consolidated).

(4) Upon a subdivision or consolidation of units the custodian shall (unless it has done so before the subdivision or consolidation become effective) forthwith give notice of the subdivision or consolidation to each investor (or to the first named of joint investors) whose name is entered in the register.

**PART VI
VALUATION OF PROPERTY OF SCHEME**

Frequency of valuation

67 (4) For the purposes of determining in accordance with these Regulations, the prices at which units in a scheme may be created, cancelled, issued or redeemed, the manager shall regularly carry out a periodic valuation of the property of the scheme in the base currency at such intervals as are specified in these Regulations, and without prejudice to the generality of the foregoing—

- (a) there shall be at least two valuation periods in each month; and
- (b) where there are only two valuation points in any month, they shall be at least two weeks apart.

(5) Subject to regulation 80, (compulsory termination of initial offer) it shall not be necessary to carry out a valuation during the initial period.

(6) The frequency of such valuation points shall be specified in the prospectus.

Additional valuations

68 (1) The manager may, in accordance with this regulation, carry out additional valuations of the property of the scheme if it considers it desirable to do so.

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(2) Additional valuations may be carried out at any time during a dealing day (or otherwise as permitted by these Regulations) and the time when such a valuation is carried out shall be regarded as a further valuation point.

Special valuation

69 (1) Where a manager has elected, in the prospectus, to value the price of units on an historic basis, if at any time during a dealing day he knows or has reason to believe that there would be a difference of 2% or more between the value of the scheme and the last calculated value, he shall carry out a special valuation of the property of the scheme in accordance with these Regulations.

(2) Special valuations may take place at any time during a dealing day (or otherwise as provided by these Regulations) and the time of such a valuation shall be regarded as a further valuation point.

(3) A valuation under paragraph (1) shall be conducted—

- (a) in accordance with regulation 73; or
- (b) if the manager reasonably believes, and the custodian agrees, that an adequate valuation may be obtained in that way, by reference to fluctuations in an index of property reflecting in the composition of the property of the scheme.

Valuation on amalgamation or reconstruction

70 The manager may, at any time, carry out a valuation of the property of the scheme for the purpose of effecting a scheme of amalgamation or reconstruction, and such a valuation—

- (a) shall be conducted in accordance with these Regulations either on a creation basis or cancellation basis only if the manager so decides; and
- (b) shall not create a valuation point for the purposes of dealings.

Valuation at end of annual or half-yearly accounting period

71 The manager may, in accordance with regulation 73, carry out a valuation of the property of the scheme, on the day on which the annual or half-yearly accounting period ends, and—

- (a) if that day is not a dealing day; or

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- (b) if the accounting period ends on a day before or after the period of that day which is the dealing day,

that valuation shall not create a valuation point for the purposes of dealings.

Manager to notify custodian

72 The manager shall inform the custodian of any decision to carry out a valuation referred to in regulations 68, 69, and 73(6).

Basis of valuation

73 (3) The valuation shall take place as at a valuation point fixed by the manager in accordance with regulation 67.

(4) Prices shall be the most recent prices that can reasonably be obtained after the valuation point with a view to giving an accurate valuation as at that point.

(5) A valuation shall be in two parts—

(a) on a creation basis; and

(b) on a cancellation basis.

(6) The valuation shall be in base currency.

(7) In order to convert to base currency the value of the property which would otherwise be valued in another currency the manager shall either—

(a) select a rate of exchange which represents the average of the highest and lowest rates quoted at the relevant time for conversion of that currency into base currency on the market on which the manager would normally deal if he wished to make such a conversion; or

(b) invite the custodian to agree that it is in the interests of investors to select a different rate, and, if the custodian so agrees, use that other rate.

(8) This regulation shall apply to a valuation under regulation 80 (compulsory termination of initial offer).

Assumptions regarding property to be valued

74 (1) All property of the scheme (including receivables) shall be included in a valuation subject to adjustments arising from these Regulations.

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(2) If the custodian has been instructed to create or cancel units, it shall be assumed (unless the contrary is shown) that—

- (a) he has done so;
- (b) he has paid or been paid for them; and
- (c) all consequential action required by these Regulations or by the custodian agreement or constitutional documents has been taken.

(3) Subject to paragraph (4), if agreements for the unconditional issue or redemption of property are in existence but uncompleted, it shall be assumed that—

- (a) they were completed at the valuation point; and
- (b) all consequential action required by their terms has been taken.

(4) Paragraph (3) shall—

- (a) apply to any agreement the existence of which is, or could reasonably be expected to be, known to the person valuing the property, (assuming that all other persons in the manager's employment take all reasonable steps to inform him forthwith of the making of any agreement);
- (b) not apply to an agreement which is—
 - (i) a future or contract for differences which is not yet due to be performed; or
 - (ii) an unexpired option written or purchased for the scheme which has not yet been exercised.

Tax and other adjustments

75 (1) The following shall be deducted from the property of the scheme to be valued—

- (a) an estimated amount for anticipated tax liabilities, if applicable, on income where the liabilities have accrued;
- (b) a reasonable estimate by the manager of the amount of any liabilities payable out of the property of the scheme and any tax thereon, if applicable, (treating any periodic items as accruing from day to day);
- (c) the principal amount of any outstanding borrowings whenever payable;

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- (d) any accrued but unpaid interest on borrowings;
- (e) the value of any option written for the scheme (if the premium for writing the option has become part of the property of the scheme); and
- (f) in the case of a margined contract, any amount reasonably anticipated to be paid by way of variation margin (that is to say, the difference in price between the last settlement price, whether or not variation margin was then payable, and the price of the contract at the valuation point).

(2) The following shall be added to the property of the scheme to be valued—

- (a) a reasonable estimate by the manager of the amount for accrued claims for repayment of taxation, if applicable, levied on capital or income;
- (b) any other credit due to be paid into the property of the scheme; and
- (c) in the case of a margined contract, any amount reasonably anticipated to be received by way of variation margin (that is to say, the difference in price between the last settlement price, whether or not variation margin was then receivable, and the price of the contract at the valuation point).

Notification of prices to custodian

76 (1) Forthwith upon completion of a valuation (whether periodic or otherwise) the manager shall notify the custodian of:

- (a) the creation price;
- (b) the cancellation price;
- (c) the maximum issue price;
- (d) the minimum redemption price;
- (e) the maximum issue price for units in any part on an exchange of units.
- (f) in the case of an umbrella fund, the prices referred to in sub-paragraphs (d) and (e).

(2) The prices to be notified under paragraph (1) shall be those relevant to deals based on prices determined at the valuation point.

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(3) Any notification under paragraph (1) shall include a statement of the number of units owned by the manager at that valuation point (or notified point if any).

Suspension and resumption of valuation

77 (1) The manager—

- (a) may, with the prior agreement of the custodian; or
- (b) shall, if the custodian so requires,

suspend the valuation of the property of the scheme at any time for a period not exceeding one month if the manager, or the custodian, as the case may be, is of the opinion that there is good and sufficient reason to do so having regard to the interests of the investors.

(2) At the time of suspension of the valuation of the property of the scheme under paragraph(1), the manager, or the custodian, as the case may require,

- (a) shall inform the Authority of the suspension, and the reasons therefor, and shall forthwith confirm the suspension by giving notice in writing to the Authority;
- (b) if the Authority requires, give notice to any investor who has an outstanding request for the redemption of units, stating the reasons for the suspension and offering the investor the opportunity to cancel his request for redemption.

(3) Before the resumption of the valuation of the property of the scheme, the manager shall inform the Authority of the proposed resumption and, forthwith, after the resumption, confirm it by giving notice in writing to the Authority.

(4) No units shall be exchanged or transferred, created or cancelled or issued or redeemed by the manager during any period during which the valuation of the property of the scheme is suspended in accordance with this regulation.

**PART VII
CREATION AND CANCELLATION OF UNITS**

Creation of units: initial offer

78 (4) The period of the initial offer shall not exceed 21 business days; and an initial offer shall, subject to regulation 80, be kept open for the period of the initial offer.

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(5) During the period of the initial offer and on the business day after it, units in the scheme may be created by the custodian under paragraph (3) or (5).

(6) The manager may instruct the custodian to create units in the scheme at the beginning of the first business day of the period of the initial offer.

(7) At, or before, the beginning of that first business day, the manager shall irrevocably choose, in respect of that initial offer, to proceed either under paragraph (5)(a) ('up and running') or under paragraph (5)(b) ('pay over and wait') and shall notify his choice to the custodian.

(8) Where on any business day during the period of the initial offer the manager assumes any obligation to issue units, he shall, depending on his choice under paragraph (4), either—

(a) instruct the custodian, at the beginning of the next business day, to create units in the scheme in such number at least as will enable the manager immediately to fulfill that obligation, whether from the units so created or from other units; or

(b) proceed as follows—

(i) pay to the custodian (in any case where the purchaser has sent a remittance) on the day of receipt of the remittance or on the next business day, the total amount (or the total amount less the total of the manager's preliminary charge, if any, in respect of those units); and

(ii) as soon as the period of the initial offer has come to an end, instruct the custodian to create units in the scheme in such number at least as will enable the manager to fulfill his obligations to issue units whether from the units so created or from other units.

(9) The instructions given by the manager shall state, in relation to each type of unit to be created, the number to be created, expressed either as a number of units or as an amount in value (or as a combination of both).

(10) The custodian shall (subject to regulation 89) create units on receipt of instructions by the manager given under this regulation, and shall not, during the period of an initial offer, create units otherwise.

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Calculation of initial price

79 (1) The price for each unit created during the period of the initial offer payable by the manager to the custodian shall be the initial price of that unit less the amount of any preliminary charge made in respect of that unit.

(2) The amount which may be retained by the manager by way of preliminary charge shall not exceed the amount stated in the prospectus as the current charge.

(3) A unit shall be treated as created during the period of the initial offer if the manager had agreed to issue it or received an order for it to be issued before the close of the offer, and it was created only afterwards.

(4) During the period of the initial offer, the manager shall not agree to sell units as agent for the custodian (as provided in regulation 99) at a price which is greater than the initial price.

(5) The initial price of units shall be expressed in the base currency of the scheme: but, during the period of the initial offer, the manager may agree to issue units in any other currency so long as the custodian is satisfied that the price in that other currency, compared with the initial price, is not at the time of the agreement likely to result in any material prejudice to the interests of investors or potential investors.

(6) Where the initial offer is made in a country outside Bermuda, there may be added to the initial price of units offered in that country an amount sufficient to cover additional duty or taxation leviable in that country and the cost of the remittance of money to Bermuda.

Compulsory termination of initial offer

80 (1) For the purposes of these Regulations, an initial offer assumes a reasonably close correlation between the value of the property of the scheme (whether or not wholly or partly invested in investments) and the initial price of units: and, accordingly, if the manager becomes aware or has reason to believe that the 2% tolerance has been exceeded, he shall forthwith—

- (a) carry out a valuation of the property of the scheme for the purpose of determining new prices at which units in the scheme are to be created, cancelled, issued and redeemed; and
- (b) refrain from agreeing to issue units at the initial price; and

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(c) refrain from instructing the custodian to create units except to fulfill an obligation or an order to issue units at that price which he has already assumed or received.

(2) Where the manager carries out a valuation under paragraph (1)(a), the period of the initial offer shall be terminated even if the outcome of the valuation shows that the 2% tolerance has not been exceeded.

(3) In these Regulations the '2% tolerance' shall be regarded as exceeded if there is a 2% or greater difference between the initial price (taking that as 100% for this purpose) and what would be the issue price of units if the property of the scheme were valued in accordance with Part VI (excluding any preliminary charge in each case).

Creation of units: unitisation

81 (1) This regulation shall apply in the case of a unitisation.

(2) The custodian alone shall have power, not dependent on an instruction by the manager, to determine to create units, having regard to the terms of any arrangements relating to the unitisation to which he is a party.

(3) In exercising the power conferred by this regulation, the custodian may create any particular number of units in exchange for assets other than money only if he is satisfied that such creation is not likely to result in any material prejudice to the interests of investors or potential investors.

(4) Upon making such a determination, the custodian shall create units in favour only of the investors.

Valuation point

82 In this regulation—

(a) a 'valuation point' means the valuation point fixed by the manager under Part VI, whether on a periodic basis or for a particular valuation; and

(b) a 'notified point' means a subsequent moment, within two hours of a valuation point, and arrived at under regulation 83.

Notified point

83 (1) If the manager wishes regularly to have a notified point, he may notify the custodian of his intention, indicating the period of time

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not exceeding two hours after the valuation point at which he wishes the notified point to occur.

(2) Any change in the period referred to in paragraph (1) shall be ineffective unless agreed upon by the manager and the custodian.

Creation of units: manager's instructions

84 (2) Where the manager wishes new units to be created, and complies with regulation 67—

- (a) the manager may give written instructions to the custodian to create them stating, in relation to each type of unit to be created, the number to be created, expressed either as a number of units or as an amount in value (or as a combination of both); and
- (b) the new units shall not be issued without the consent of the custodian and shall be paid in full.

(3) Where at any valuation point (or notified point, if any) the manager has any outstanding obligation to issue units, he shall—

- (a) within two hours after the valuation point; or
- (b) before the next valuation point (if it is to occur within two hours of the last valuation point),

instruct the custodian to create units in the scheme in such number at least as will enable the manager immediately to fulfill that obligation, (whether from the units so created or from other units owned by him immediately before the valuation point (or notified point if any)).

(4) No units may be created in a mutual fund otherwise than as fully paid.

Creation of units by custodian

85 (1) Subject to paragraph (2) and to regulation 89, the custodian shall create units only on receipt of and in accordance with written instructions given by the manager under regulation 84, and shall not, after an initial offer, create units otherwise.

(2) The custodian may create units in exchange for assets other than money, but its obligation to comply with an instruction to create units in such a case shall arise only—

- (a) if it is satisfied that acquisition of the assets in exchange for the number of units to be created is not likely to result in any material prejudice to the interests of investors or potential investors; and

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(b) in a case governed by regulation 232 (amalgamation) or regulation 228 (reconstruction) if it is satisfied that the resolution concerned in relation to the scheme of which it is custodian has been duly carried or else is not required.

(3) On the creation of units, the manager shall, within the period specified in paragraph (4)—

(a) pay the creation price of the units (if it remains unpaid) to the custodian in cash or in cleared funds; or

(b) in the case of an exchange under paragraph (2), ensure the transfer to the custodian of the assets to be taken in exchange.

(4) The period referred to in paragraph (3) shall expire at the close of business on the fourth business day next after the relevant instructions were given by the manager (or, in the case of a securities fund which is for the time being invested as to more than 50% in government and other public securities or of a money market fund, at the close of business on the business day next after the day on which those instructions were given).

(5) In a case to which paragraph (2) applies (exchange) the manager shall ensure that the beneficial interest in the assets is transferred to the custodian with effect from the date of creation of the units, even if the legal ownership is not then transferred.

(6) Paragraphs (2) to (5) shall apply to an initial offer, but shall not apply to a unitisation.

Creation price

86 (1) The creation price payable for each unit to the custodian shall, subject to paragraph (3), be calculated as follows—

(a) take the most recent valuations, on the creation basis, of the capital and of the income elements of that property;

(b) add the value of the capital element and the value of the income element together;

(c) compute the value of the property which is attributable to units of the type in question;

(d) compute the number of units of the relevant type in existence immediately before the valuations referred to in sub-paragraph (a);

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- (e) divide the total referred to in sub-paragraph (c) by the number of units referred to in sub-paragraph (d);
- (f) either express the result in base currency, or comply with regulation 85(2);
- (g) express the price in a form that is accurate to at least four significant figures;
- (h) if the result for the total value of units to be created on any day in any particular currency is a fraction of the smallest unit in the currency, round up or down to the nearest such unit.

(2) The manager may use a currency other than base currency for the purposes of paragraph (1)(f) if he is satisfied that the rate of exchange between the two currencies is not likely to result in any material prejudice to the interests of investors or potential investors.

(3) A method of calculation other than that specified in paragraph (1) may be used as long as the manager is sure that it is bound to produce the same result.

Cancellation of units

87 (1) Where the manager wishes units to be cancelled, and complies with regulation 90, he may give written instructions to the custodian to cancel them stating, in relation to each type of unit to be cancelled, the number to be cancelled, expressed either as a number of units or as an amount in value (or as a combination of both).

(2) Where, at any moment of instruction, the manager has any outstanding obligation to issue units, he shall not instruct the custodian to cancel any units if or to the extent that such instruction would prevent it immediately from fulfilling any such obligation which had been assumed before the valuation point (or notified point if any).

(3) The custodian shall, subject to regulation 89, cancel units only on receipt of instructions given by the manager, and not otherwise.

(4) Where instructions are given at a time which is less than two hours after the last valuation point, and the custodian has received but not yet executed instructions previously given under paragraph (3), the later instructions shall enable the custodian to execute both or all sets of instructions simultaneously.

(5) On the cancellation of units and on delivery to the custodian of such evidence of the title to those units as he may reasonably require, the custodian shall, within the period specified in

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paragraph (3), pay the cancellation price of the units to the person who was the owner of those units.

(6) The period referred to in paragraph (5) shall expire at the close of business on the fourth business day next after the cancellation of the units (or, in the case of a securities fund which is for the time being invested as to more than 50% in government and other public securities or of a money market fund, at the close of business on the business day next after the cancellation); but, where the manager has not ensured that the property of the scheme includes or will include sufficient cash in the appropriate currency within that period, the period shall be extended, for any relevant currency, until the shortage is rectified by the manager.

(7) Paragraph (5) shall not apply where units are cancelled following a redemption for property transferred or sold under regulation 110.

(8) No units in a mutual fund scheme may be cancelled without the consent of the custodian.

(9) The normal amounts paid up on units in a mutual fund scheme shall be redeemed out of the proceeds arising from the issue of an equal number of nominal units (which the manager shall arrange) and any premium on such units may, at the discretion of the directors, be paid from profits available for dividend as at the date of their cancellation or from the share premium account or both.

Cancellation price

88 (1) The cancellation price payable for each unit by the custodian under regulation 87 shall be calculated as follows—

- (a) subject to the following sub-paragraphs, apply the provisions of regulation 86(1)(a) to (h) or 86(2), whichever is more appropriate;
- (b) take the most recent valuation, on a cancellation basis, instead of the creation basis;
- (c) in applying regulation 86(1)(h), substitute 'cancelled' for 'created'; and
- (d) where regulation 86(2) is applied, ignore potential investors.

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Custodian's refusal to create or cancel units

89 (1) Where, on receipt of instructions to create or cancel units, the custodian is of the opinion that it is not in the interests of investors in the scheme that units should be—

- (a) created; or
- (b) cancelled; or
- (c) created or cancelled in the number requested by the manager,

the custodian shall give notice to the manager stating that the custodian refuses to create or, as the case may be, cancel, all, or a specified number of, the units so requested.

(2) On the giving of such a notice the custodian shall be relieved of the obligation to create or cancel the number of units to which the notice relates.

(3) This regulation shall apply to an initial offer.

Timing of instructions to create or cancel units

90 (1) A manager may at any time give instructions to the custodian to create or to cancel units.

(2) Where instructions are given at a time which is less than two hours after the last valuation point and before the next valuation point the instructions shall be given by reference to the price calculated (or being calculated) for the last valuation point.

(3) Where instructions are given at a time which is more than two hours after the last valuation point—

- (a) the instructions shall be given by reference to the price next to be calculated; and
- (b) the custodian shall create or cancel the units only after the next valuation point has been reached.

**PART VIII
ISSUE AND REDEMPTION OF UNITS**

Manager's obligation to issue

91 (3) The manager shall—

- (a) at all times during the dealing day be willing to issue units in the scheme; and

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(b) at the request in writing of any person, agree to issue units to that person at a price arrived at under these Regulations.

(4) Paragraph (1) shall not apply—

(a) if the manager has reasonable grounds, relating to the circumstances of the person concerned, for refusing to issue units to him;

(b) if the number or value of the units sought to be sold is less than any number or value of units stated in the prospectus as the minimum number or value to be purchased or held; or

(c) (in the case of a property fund) if the manager believes on reasonable grounds that the number or value of units sought to be issued would lead to the holding by any one person (or by any one person and any other person appearing to the manager to be acting in concert with that person) of more units than any number stated in the prospectus as the maximum number to be purchased or held.

(5) Units shall be sold in the base currency, unless the investor requests and the manager agrees that the units should be sold in another currency.

(4) If, in response to a request by an investor under paragraph (3), the manager deals under these Regulations in a currency other than the base currency, the rates of exchange as between the two currencies shall be determined by the manager, after consulting the custodian, at a rate which is considered to be fair to that investor.

(5) This regulation shall apply during an initial offer, but shall not apply during a unitisation.

(6) This regulation shall be subject to Part XIX (suspension and termination).

Issue price parameters

92 (1) Except in the case of a large deal—

(a) the manager's price for the issue of units shall not exceed the maximum issue price, that is to say, a price fixed by the manager and notified (or, for an issue at a forward price, next to be notified) to the custodian; and

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(b) that maximum issue price shall not exceed the total (expressed to at least four significant figures) of—

- (i) the relevant creation price; and
- (ii) the current preliminary charge.

(2) In the case of an initial offer, the manager's price for the issue of units shall not exceed the initial price.

(3) In the case of a large deal, the manager's price for the issue of units may exceed the maximum issue price but shall not exceed the limit above which the maximum issue price could not have been fixed.

(4) The manager's price for issue shall not be less than the minimum redemption price under regulation 96(1).

(5) In applying this regulation to dealings after a valuation point but before the price relating to that point has been fixed and notified, the maximum issue price shall be the one next to be notified in respect of that point, or, where relevant, the next point.

Charges on issue

93 (1) If the constitutional documents so permit, the issue price may include a preliminary charge, and that charge may be expressed either as a fixed amount, or calculated as a percentage of the creation price.

(2) The manager shall not make any charge in connection with the issue of units except that referred to paragraph (1).

(3) Where paragraph (1) permits the manager to include a preliminary charge, the amount which it may include shall not exceed the amount stated in the prospectus as the current charge.

(4) The manager may not rely on any increase in the current charge (within the maximum stated in the constitutional documents) for the purposes of paragraph (1) or (3), (or of regulation 99 (4)(b)) unless—

- (a) it has given notice in writing of that increase and of the date of its commencement to the custodian and to all the persons who ought reasonably to be known to it to have made an arrangement for the purchase of units at regular intervals; and
- (b) it has revised the prospectus to reflect the new current preliminary charge and the date of its commencement; and

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(c) 90 days have elapsed since the revised prospectus became available.

(5) Paragraph (1) of this regulation and regulation 92 shall not apply on an exchange of units within an umbrella fund.

Manager's obligation to redeem

94 (1) This regulation shall be subject to Part XIX (suspension and termination).

(2) The manager shall—

(a) at all times during the dealing day be willing to redeem units in the scheme; and

(b) at the request in writing of any investor, agree to redeem units owned by that investor at a price arrived at under these Regulations.

(3) Paragraph (2) shall not apply—

(a) if the number or value of the units sought to be redeemed is—

(i) less than the entirety of the holder's holding; and

(ii) less than any number or value stated in the prospectus as the minimum number to be redeemed; or

(b) if the number or value of the units sought to be redeemed would result in the investor holding less than any number or value stated in the prospectus as the minimum number to be held; or

(c) if the manager ensures that the investor is able to sell his units on an investment exchange at a price not significantly different from the price at which they would have been redeemed; or

(d) to the extent that the power to refuse to redeem the units in paragraph (4) applies; or

(e) in the case of an initial offer or unitisation.

(4) Units shall be redeemed in the base currency or, at the request of the investor, in any other currency in which the manager has previously issued units; but, if the manager can establish from its records that units have been issued to a particular investor in certain

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currencies only, the manager may refuse to agree to redeem units at its request except in the base currency or one of those currencies.

(5) If the manager deals under these Regulations in a currency other than the base currency, the rate of exchange as between the two currencies shall be determined by him after consulting the custodian, at a rate which is considered fair to the relevant person or investor.

(6) Paragraph (2) shall not apply where units are redeemed in return for property transferred or sold under regulation 110 (in specie redemption).

Payment on redemption

95 (1) On agreeing to redeem units, the manager shall, within the period specified in paragraph (2), pay to the investor the appropriate proceeds of redemption (less, where applicable, the cost of remitting the sum abroad).

(2) The period referred to in paragraph (1) shall expire at the close of business on the fourth business day (or, in the case of a securities fund which is for the time being invested as to more than 50% in government and other public securities or of a money market fund, at the close of business on the business day) next after whichever is the later of—

- (a) the valuation point immediately following receipt by the manager of the request to redeem; or
- (b) the time when the manager has all duly executed instruments and authorisations as effect (or enable the manager to effect) transfer of title to the units.

(3) This regulation shall not apply where the manager is not redeeming units in the usual sense but is buying them as principal on an eligible market in accordance with a power in the constitutional documents, which envisages that settlement will be in accordance with the rules of that market.

(4) Nothing in this regulation shall be construed as requiring a manager to part with money in respect of a redemption of units where he has not yet received the money due on the earlier issue of those units, or where he considers it necessary or appropriate to carry out or complete identification procedures in relation to the investor or another person pursuant to any statutory, regulatory or other legal obligation.

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Redemption price parameters

96 (1) Except in the case of a large deal, the manager's price for redemption of units shall not be less than the relevant minimum redemption price already notified (or, for a redemption at a forward price, next to be notified) to the custodian.

(2) The minimum redemption price shall not be less than the relevant cancellation price.

(3) In the case of a large deal, the manager's price for redemption may be less than the minimum redemption price but shall not be less than the relevant cancellation price.

(4) In the case of an umbrella fund—

(a) the maximum price at which units in one constituent part may be had in exchange for units in another such part shall not exceed the relevant maximum issue price (less any preliminary charge) of the new units; and

(b) the minimum price at which the new units may be taken in exchange shall not be less than the equivalent minimum redemption price.

(5) The manager's price for redemption of units shall not exceed the relevant creation price under regulation 92(1)(a).

(6) In applying this regulation to dealings after a valuation point but before the price relating to that point has been notified, the minimum redemption price shall be the one next to be notified in respect of that point, or where relevant, the next point.

Charges on redemption

97 (1) If the constitutional documents so permit, the amount payable as proceeds of redemption may be arrived at after deduction of a charge for the benefit of the manager, and that charge may be expressed either as a fixed amount, or calculated as a percentage of the proceeds of redemption which would otherwise have been payable.

(2) The amount, or percentage, may be expressed as diminishing over the time during which the investor has held the units, but may not be expressed as liable to vary in any other respect.

(3) Where, the manager is permitted under paragraph (1) to make a deduction the amount shall not exceed the amount that would be derived by applying the rate or method currently prescribed in the constitutional documents at the date on which the relevant units were issued.

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(4) Where the constitutional documents have been modified so as to include the provision enabled by paragraph (2) the modification shall apply only to units issued after the date on which the modification takes effect.

(5) The manager shall not rely on any modification of the rate or method which is adverse to the redeeming investor, unless:

- (a) the modification is approved by an extraordinary resolution;
- (b) the modification is limited so as to apply only to units which have originally been issued (whether at the request of the current investor or otherwise) after the date on which the extraordinary resolution is approved; and
- (c) the new rate and method are stated in the constitutional documents.

(6) Where the constitutional documents are modified so as to include the levy of a manager's charge on redemption the modification shall be expressed so as to apply only to units issued after the date on which the modification to the constitutional documents and prospectus take place.

(7) In deciding whether and to what extent a charge is deductible for the purposes of this regulation, units held by an investor shall be taken to be redeemed in the order in which they were issued (whether at the request of the current investor or otherwise) unless—

- (a) the manager has the holder's instructions to the contrary; or
- (b) the manager selects as the units first to be redeemed units which are not subject to the deduction; or
- (c) the manager and the custodian have agreed on another way of deciding the order in which units are redeemed which appears to them unlikely to materially prejudice the investor concerned.

(8) In paragraphs (6) and (7), 'issued', in the case of units in a scheme which has absorbed the whole or part of the property of an earlier scheme, is a reference to the issue in the earlier scheme so far as it is practicable for the manager to ascertain the timing of that issue in relation to the issue of other units held by that investor.

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(9) Nothing in this regulation shall enable the manager to reduce the proceeds of redemption to an extent which might reasonably be regarded as fettering the holder's right of redemption.

Charges on exchange of units in umbrella funds

98 In the case of an umbrella fund, the manager shall not make any charge on an exchange of units—

- (a) if the exchange is the first to be made by the investor during any annual accounting period; and
- (b) in the case of a second or subsequent exchange, unless—
 - (i) such a charge is authorised to be made by the constitutional documents; and
 - (ii) the amount of the charge is within the maximum for charging on such an exchange stated in the most recently published prospectus.

Sale and purchase by custodian through manager as agent

99 (9) This regulation shall apply where the custodian has appointed the manager (with the manager's consent) to act as agent for the custodian in connection with the issue or redemption by the custodian of units, either generally or in relation to any particular person or class of persons.

(10) At the request of any person to whom the appointment relates, the manager shall be obliged to sell units under this regulation in any case where he is obliged to issue them under regulation 91.

(11) At the request of any person to whom the appointment relates, the manager shall be obliged to buy units under this regulation in any case where he is obliged to redeem them under regulation 94.

(12) The selling price shall be the total of—

- (a) the creation price next to be notified to the custodian; and
- (b) if the manager wishes, a preliminary charge not exceeding the current charge.

(13) The buying price shall be the cancellation price next to be notified to the custodian, and the manager may deduct from the proceeds payable to the investor a charge for the manager's benefit if and

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to the extent that he would have been entitled to make such a deduction on redeeming the units in question.

(14) The manager shall not make any charge in connection with the sale or purchase of units under this regulation which is not contemplated by it.

(15) Where the manager buys or sells any units for the custodian or the scheme he shall, at the start of the next business day, supply a report of his transactions to the custodian, who shall then treat that report as if it were an instruction to create or cancel the relevant number of units.

(16) Where the manager buys units for the custodian, the manager shall pay the purchase price as if regulation 95 applies to the transaction, and as if the units to be cancelled following the purchase by the custodian were being transferred to the manager.

Publication of prices

100 (1) This regulation shall apply unless the manager is excused from dealing with the public under these Regulations.

(2) Where the manager holds himself out as willing to issue or redeem units, he shall publish (on the business day following any valuation) maximum issue and minimum redemption prices of those units and the current preliminary charge (if any).

(3) Where the manager holds himself out as acting as agent for the custodian in relation to the sale and purchase of units (but not as willing himself to issue or redeem units), he shall publish (on the business day following any valuation) the buying price under regulation 99(5), and the maximum selling price under regulation 99(4) and (if any) the current preliminary charge.

(4) The prices required to be published under paragraph (2) and the prices underlying those required to be published under paragraph (3) shall be the relevant prices last notified to the custodian under regulation 76 before the relevant newspaper ceased to accept material for publication in the relevant edition.

(5) Where the manager is authorised to make a charge by way of deduction from the proceeds of redemption, he shall include in any publication required by paragraphs (2) and (3), a note to indicate that fact.

(6) Publication required by paragraphs (2) and (3) shall be in at least one leading newspaper circulated in the UK or any other newspaper required by another jurisdiction.

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(7) Prices published under this regulation shall be—

- (a) accurate to at least four significant figures; and
- (b) shown in base currency (or, in another member state, in the currency of that State) or in any other foreign currency as may be required by a jurisdiction.

(8) This regulation shall not apply to prices on exchange of units within an umbrella fund.

Disclosure of cancellation price

101 The manager shall—

- (a) disclose the cancellation price, orally or in writing, to any person who requests it in person at, or by any communication addressed to the manager's principal place of business in Bermuda; and
- (b) make such arrangements as will enable it accordingly to disclose, free of charge, at all times during the dealing day, the price last notified to the custodian.

Instructions by manager to custodian

102 (8) Any instruction or notification given (or report supplied) under this Part by the manager to the custodian—

- (a) shall be recorded by the manager, at the time when it is given or supplied;
- (b) shall be sent in a form which enables the custodian to know or record the time of receipt; and
- (c) may be communicated in any form other than orally.

(9) Instructions shall be regarded as given within any period under this regulation if they are received by the custodian within that period, and instructions received by the custodian after the expiry of any period shall be treated as given after that expiry.

(10) This regulation shall apply, with the necessary modifications, to any notice or notification given by the custodian to the manager.

Issue and redemption of units at forward and historic pricing

103 (1) A manager may issue and redeem units, at forward or historic prices.

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(2) A forward price shall be fixed at the next valuation point, and an historic price shall be fixed on the basis of the last valuation.

Forward and historic pricing

104 (1) Subject to paragraph (2), in relation to the issue and redemption of units, the manager—

- (a) may, in accordance with regulation 105, operate on the basis of forward pricing or historic pricing;
- (b) shall, in accordance with regulations 106 and 107, operate on the basis of forward pricing.

(2) The choice referred to in paragraph (1) (a), shall not apply in the case of geared futures and options funds, property funds and warrant funds.

Choice by manager of whether to price units on historic basis or on forward basis

105 (1) The manager shall express in the prospectus a choice for either historic pricing or forward pricing.

(2) If the manager's current choice under paragraph (1) is forward pricing only, all deals shall be at a forward price.

(3) A manager shall not choose historic pricing if the manager's normal arrangements for valuation envisage valuation more than one business day apart.

(4) A manager who has chosen to price the units on an historic basis—

- (a) may at any time elect for forward pricing only in respect of the rest of the current dealing period, and such election shall, thereafter, lapse; and
- (b) may make provision in the prospectus, to enable it to switch from historic pricing to forward pricing once in each dealing period.

(5) Redemptions shall, generally, be on the same basis as issues.

General duty to adopt forward pricing

106 (1) Forward pricing shall be adopted once the manager knows or has reason to believe that the property of the scheme, if valued under these Regulations, would exceed the 2% tolerance but decides not to carry out a special valuation under regulation 69.

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(2) Forward pricing shall be adopted if new prices have not been notified to the custodian after 2 hours from the valuation point.

(3) Paragraph (2) shall not apply if, within two hours of the valuation point, the manager has notified the custodian of the basis (creation or cancellation) on which the next prices will be fixed, and of the spread (calculated in percentage or money terms) between the maximum issue price and the minimum redemption price.

(4) Forward pricing adopted under paragraphs (1) and (2) shall last until the end of the dealing period and shall then lapse.

Individual deviations

107 (1) Paragraphs (2) to (5) shall apply in relation to an individual transaction without affecting the general position arrived at under regulations 105 and 106.

(2) Forward pricing shall apply—

- (a) if the applicant for issue and redemption so requests;
- (b) if the manager so decides, in the case of a large deal (or the later transactions which are part of a large deal);
- (c) if the order or offer is communicated to the manager by post or any other form of one-way communication; or
- (d) in the case of a sale or a purchase under regulation 99.

Notification to custodian

108 The manager shall notify the custodian of the fact and time of any adoption of forward pricing under regulations 105(4) and 106.

Income equalisation on reissue

109 (2) Where the manager issues a unit that he has already redeemed, he shall pay to the custodian an income equalisation amount.

(3) The income equalisation amount referred to in paragraph (1) is the element which represents income included in the creation price of such a unit which is the relevant creation price for the purposes of the issue price in question.

(4) The amount to be paid under paragraph (1) shall—

- (a) be paid to the custodian not later than the next date on which sums are distributed to investors; and

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- (b) be allocated for distribution, unless the unit issued was an accumulation share, in which case the amount shall be treated as part of the capital property of the scheme.

In specie redemption

110 (1) This regulation shall have effect where—

- (a) an investor requests redemption of a number of units representing in value not less than 5% (or any lower percentage stated in the prospectus) of the value of the scheme as a whole; and
- (b) transfer to that investor of property of the scheme, instead of the proceeds of redemption, is either—
 - (i) chosen by the manager by his serving a notice of election on the investor; or
 - (ii) requested by the investor (in a case where he is permitted to do so by the terms of the constitutional documents) at the same time as his request under sub-paragraph (a).

(2) Where a notice of election is served under paragraph (1)(b)(i) on an investor, he may by a further notice served on the manager require the manager, instead of arranging for a transfer of property to arrange—

- (a) for a sale of the property; and
- (b) for payment to the investor of the net proceeds of sale.

(3) For the purposes of this regulation—

- (a) a notice of election under paragraph (1)(b)(i) is invalid if served later than the close of business on the second business day following the day of receipt of the request under paragraph (1)(a); and
- (b) a notice under paragraph (2) is invalid if served later than the close of business on the fourth business day following the day of receipt of the notice of election.

(4) Where there is to be transfer of property, whether by election or by request—

- (a) the manager shall forthwith notify the custodian that redemption of the units is to be effected by transfer of property; and

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(b) the custodian shall, on receipt of such evidence of title as he may require—

- (i) cancel the units; and
- (ii) transfer to the investor his proportionate share of the property of the scheme.

(5) In paragraph (4), 'proportionate share' means—

- (a) such part of each description of asset in the property of the scheme as is proportionate to or as nearly as practicable proportionate to the holder's share in the property of the scheme; or
- (b) such selection from the property of the scheme as the custodian shall, after consultation with the manager, decide is reasonable,

having regard to the need to be fair both to the investor and to continuing investors.

(6) Where there is to be a sale of property under paragraph (2)—

- (a) the manager shall forthwith notify the custodian of that fact, and shall arrange for a sale of the assets that would otherwise have been transferred under paragraph (4) (other than any assets which are in cash in the relevant currency for the purposes of the redemption); and
- (b) the custodian shall, on receipt of such evidence of title as it may require—
 - (i) cancel the units; and
 - (ii) pay to the investor the net proceeds of the sale and any relevant amount in cash.

**PART IX
DISTRIBUTION OF SCHEME INCOME**

Accounting periods

111 (6) A scheme shall have an annual and half-yearly accounting period which shall end on such date as may be chosen—

- (a) in the case of a mutual fund, by the manager with the agreement of the custodian; and
- (b) by the trustee in the case of a unit trust,

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being a day that is not more than seven days after nor more than seven days before, the day on which that accounting period would otherwise end.

(7) Subject to regulations 113(1), and(2) and 116, annual accounting periods shall be successive periods of twelve months and the first six months of an annual accounting period shall be a half-yearly accounting period.

Accounting reference date

112 (1) A scheme shall have an accounting reference date, which is the date in any year stated in the most recently published prospectus as the date on which the scheme's accounting period is to end.

(2) The accounting reference date shall be on the last regular valuation point in the accounting reference period in question.

First annual accounting period

113 (1) The first annual accounting period shall begin—

- (a) where the scheme is the subject of an initial offer, on the first day of the period of the initial offer; or
- (b) in any other case, when a scheme is an approved scheme.

(2) The first annual accounting period shall end—

- (a) on the first accounting reference date after the beginning of the first annual accounting period; or
- (b) if that accounting reference date is less than six months after the beginning of the first annual accounting period and the manager after consulting with the auditor so determines, on the date which is twelve months following the first accounting reference date.

Half-yearly accounting period

114 (1) The half-yearly accounting period shall begin on the first day of the relevant annual accounting period and shall end not later than six months before the next accounting reference date.

(2) If the next accounting reference date is less than six months after the first day of an annual accounting period, the half yearly accounting period shall end six months before the next but one accounting reference date.

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Subsequent accounting periods

115 Each subsequent accounting period, after the first annual accounting period, shall begin immediately after the end of the previous accounting period.

Change of accounting reference date

116 The annual accounting period after the making of a change in the date of the annual accounting reference date shall begin on the day following the end of the preceding annual accounting period and shall end—

- (a) on the accounting reference date on which the new annual accounting period ends; or
- (b) if that accounting reference date is less than six months after the beginning of the first annual accounting period to be completed after the making of the change and the manager after consulting with the auditor so determines, on the following accounting reference date.

Annual income allocation date

117 (2) A scheme shall have an annual income allocation date, which shall be the date stated in the most recently published prospectus as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made.

(3) The annual income allocation date shall be within two months after the accounting reference date.

Amount available for income allocation

118 (1) At the end of each annual accounting period, the custodian shall transfer the income property of the scheme to an account to be known as "the distribution account".

(2) The custodian shall not be obliged to comply with paragraph (1) if it appears to him, having consulted the manager, that the average payment to the investor (disregarding investors of accumulation units, and investor of units who are the manager or the custodian or associates of either of them) by way of income would be less than two BD dollars (or the equivalent amount in the base currency).

(3) Where the custodian decides under paragraph (2) not to distribute income, he shall so inform the manager who shall then immediately instruct the custodian either—

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- (a) to carry the income forward to the next annual accounting period (and to regard it as received at the start of that period), or
- (b) to credit the income to the capital account.

Calculation of amount available for allocation as income

119 (1) On or before each annual income allocation date, the manager shall calculate under paragraph (2) the amount available for income allocation in respect of the immediately preceding annual accounting period, and he shall inform the custodian of that amount.

- (2) The calculation of available income shall be as follows:
 - (a) take the aggregate of the income property received or receivable by the custodian in respect of the period;
 - (b) include in sub-paragraph (a) any income equalisation amount received by the custodian on units created during the period, including any resulting from the final valuation under regulation 112(2);
 - (c) deduct the aggregate of all the manager's, and the custodian's remuneration properly paid or payable in respect of the period;
 - (d) deduct the aggregate of the payments properly paid or payable in respect of the period in accordance with regulation 131(1) (allocation of payments to capital or income);
 - (e) deduct such provision for taxation as the manager after consulting the auditor considers appropriate;
 - (f) deduct the aggregate of those parts of the cancellation prices of units cancelled during that period (including any cancelled in relation to the final valuation referred to in regulation 112(2)) as were attributable to the addition of income property to the calculation under regulation 88 (cancellation price) including any income equalisation amount paid by the custodian on cancellation;
 - (g) deduct (or disregard) and carry forward any potential income, if the custodian and the manager agree that income is not likely to be received by the custodian until 12 months after the income allocation date and if the auditor is satisfied that the custodian has made and

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intends to continue to make all proper efforts to obtain its receipt; and

- (h) adjust for any transfer to or from the capital account under regulation 131(1) (allocation of payments to capital or income).

Annual allocation to investors of accumulation units

120 (1) Where a scheme has in existence both accumulation units and income units, the custodian shall allocate the amount available for allocation of income between accumulation units and income units according to the respective units in the property of the scheme represented by the accumulation units and income units in existence at the end of the relevant annual accounting period.

(2) The amount allocated to accumulation units (whether under paragraph (1) or because all the units are accumulation units) shall, with effect from the end of the annual accounting period, become part of the capital property and the interests of the investors in that amount shall be satisfied by an increase, as at the end of the period, in the number of undivided parts in the property of the scheme which an accumulation unit represents.

(3) The increase in undivided parts under paragraph (2) shall be of such number (which may be a fraction but shall be calculated to at least five significant figures) as will ensure that the creation price of an accumulation unit remains unchanged notwithstanding the transfer of the income to the capital property or the relevant part of it.

Annual distribution to investors of income units

121 (1) Subject to paragraph (2), where the units in existence in a scheme are or include income units, on or before each annual income allocation date the custodian shall distribute the income allocated to those units among the investors and the manager in accordance with the number of such units held or deemed to be held by them respectively at the end of the relevant annual accounting period.

(2) Before distributing income under paragraph (1), the custodian shall—

- (a) deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period; and
- (b) deduct and carry forward in the income account such amount as shall be necessary to adjust that allocation of income to the nearest one-hundredth of a cent (or the

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equivalent amount in the base currency) per income share or such lesser fraction as the manager may from time to time determine.

(3) Nothing in this regulation shall be construed as requiring the custodian to distribute income allocated to any units in any case where the manager or the custodian considers it necessary or appropriate to carry out or complete identification procedures in relation to the investor or another person pursuant to a statutory or regulatory obligation.

Interim allocations of income

122 (1) This regulation shall apply if at any time the most recently published prospectus—

- (a) states that an allocation of income will be made before the annual income allocation date in any year in respect of a period (hereinafter referred to as 'an interim accounting period') within the annual accounting period; and
- (b) specifies a date as the interim income allocation date in relation to that interim accounting period.

(2) In such a case, regulations 118 to 120 shall apply so as to secure the making of an interim allocation of income as if—

- (a) the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;
- (b) the interim income allocation date were the annual income allocation date; and
- (c) the manager were to treat as the available amount of income for the interim allocation a sum in his opinion not exceeding the amount which would be available for allocation of income if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

Income equalisation

123 (1) An allocation of income (whether annual or interim) to be made in respect of each unit created or issued or sold during the accounting period in respect of which that income allocation is made

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shall include a capital sum representing the manager's best estimate of the amount of income equalisation included in the creation price by reference to which the issue or selling price of that unit was determined.

(2) The amount of the income equalisation to which this regulation applies may be the actual amount of income equalisation in question or if the constitutional documents permit, it may be an amount arrived at by taking the aggregate of the amounts of income equalisation included in the creation price in respect of units of the type in question issued or re-issued in the accounting period in question (or such lesser period as is specified for this purpose in the constitutional documents) and dividing that aggregate by the number of those units and applying the resultant average to each of the units in question.

(3) Income equalisation in the case of a unit re-issued by the manager in the accounting period in question shall be financed out of the income equalisation amounts paid by the manager to the custodian in accordance with regulation 109 in respect of that unit and accordingly the manager shall be paid by the custodian out of the distribution account (in the case of income units) and out of the capital property (in the case of accumulation units) a sum equal to the income equalisation applicable to that unit when allocations of income are next made for an interim or for an annual accounting period.

How distributions of income may be made

124 (1) Any monies payable by the custodian to the manager or to a registered investor in respect of any unit shall be paid by crossed cheque or warrant made payable to the order of and sent through the post to the usual business address of the manager or the registered address of such investor, as the case may be, or, in the case of joint investors, made payable to and sent to the registered address of that one of the joint investors who is first named on the register.

(2) The payment of any cheque or warrant to the first named of joint investors shall be as effective a discharge as if such first named joint investor had been a sole investor.

(3) Every such cheque or warrant which is so sent shall be a satisfaction of the monies payable and shall be a good discharge to the custodian.

(4) Where an authority in writing has been given to the custodian by the investor (or, in the case of joint investors, by all of the investors) in such form as the custodian considers sufficient, the custodian shall pay the amount payable in accordance with that authority.

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(5) Any distribution payment which shall remain unclaimed after a period of twelve years from the date of payment of the same shall be transferred to and become part of the capital property and henceforth neither the payee nor the investor nor any successor in title of his shall have any right thereto or therein except as part of the capital property.

Distribution statements

125 (1) On or before each interim income allocation date and on or before each annual income allocation date, the custodian shall send to each investor (or to the first named of joint investors) entered in the register as at the income allocation date a statement prepared by the manager showing the calculation of the amount to which he is entitled, whether or not the income is distributed to him or allocated to accumulation units and, where applicable, a statement of how much of the amount to which he is entitled represents income equalisation.

(2) In the case of any distribution on liquidation of the scheme, each statement shall show what proportion of the distribution represents capital and what proportion represents income.

(3) If in any year an interim allocation of income is made in respect of a period of less than six months it shall, subject to paragraph (4), be sufficient to be in compliance with this regulation in relation to that interim allocation period if instead of sending or giving a distribution statement for that period in accordance with paragraph (1), the information which would have been given in such a statement is included in the next distribution statement for a half-year or for a full year to be sent or given.

(4) Paragraph (3) shall not be construed as exempting the custodian from complying with paragraph (1) in respect of any person who was entitled to any part of the interim allocation but who ceased to be an investor of any or all of his units before the end of the period to be covered in the next distribution statement; but in such a case the custodian shall comply with paragraph (1) on or before the next ensuing annual (or half-yearly) income allocation date.

Income derived from stocklending

126 Where the property of the scheme is used in stocklending transactions under Part XIV (stocklending), any income derived from the transaction shall form part of the property of the scheme, after deduction of—

- (a) any income payable, forthwith or otherwise, to the counterparty or for his account pursuant to the transaction; and

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- (b) any reasonable expenses of the custodian or manager (or reasonable charge of any custodian or manager) associated with the transaction.

**PART X
PAYMENTS AND BENEFITS TO MANAGER AND CUSTODIAN**

Manager's periodic charge

127 (1) The only payment which may be made to the manager out of the property of the scheme by way of remuneration for the manager's services shall be a periodic charge (and tax if any thereon) arrived at and accruing under this regulation.

(2) A periodic charge shall be payable only where its payment is authorised by the custodian agreement or constitutional documents.

(3) The amount of periodic charge shall be calculated by the manager as follows—

- (a) take the property at the valuation point coinciding with or immediately before the start of the relevant accrual interval;
- (b) take the average of the creation and cancellation valuations of that property as at the point referred to in sub-paragraph (a);
- (c) multiply the average referred to in sub-paragraph (b) by a fraction (or "rate") not exceeding the maximum percentage arrived at under paragraph (4);
- (d) divide the resulting figure by 365; and
- (e) multiply by the number of days (including fractions of a day) in the accrual interval.

(4) The maximum percentage in paragraph (3)(c) shall be—

- (a) if the accrual interval is the first since inception, the annual percentage stated in the prospectus as the rate of the manager's periodic charge;
- (b) in any other case, a higher rate (but not exceeding the maximum rate stated in the constitutional documents) which the manager is permitted to use if he complies with paragraph (5).

(5) The manager may not increase the maximum percentage unless—

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- (a) he has given notice in writing to the custodian and to the investors of his intention to increase the amount currently charged by way of periodic charge; and
 - (b) he has revised the prospectus to reflect the proposed increase in that amount; and
 - (c) 90 days have elapsed since the revised prospectus became available.
- (6) The manager shall adapt the calculations in paragraph (3), where the relevant period includes 29 February, so that his remuneration is the same as it would be if the year were not a leap year.

Custodian's remuneration

128 (1) No payment may be made to the custodian out of the property of the scheme unless authorised by the custodian agreement or constitutional documents and, whether by way of reimbursement of expenses or otherwise, shall only include—

- (a) remuneration for the custodian in respect of its services and in respect of which the following have been stated in the prospectus—
 - (i) the actual amount or rate of the remuneration;
 - (ii) the periods in respect of which the remuneration is to be paid;
 - (iii) how the remuneration is to accrue;
 - (iv) when the remuneration is to be paid; and
 - (b) reimbursement of expenses properly incurred by the custodian in performing or arranging for the performance of the functions conferred on the custodian by these Regulations.
- (2) Paragraph (1)(a)(i) may be taken to be complied with if the prospectus contains:
- (a) the maximum amount or rate of the remuneration which may become payable to the custodian; and
 - (b) an explanation as to how the actual amount or rate is to be determined, including the mathematical basis and the relevant factors involved.

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Other payments out of property of scheme

129 (1) No payments may be made out of the property of the scheme other than payments under regulations 127 and 128 and sums due by virtue of any other provision of these Regulations (including cancellation proceeds and reasonable stocklending expenses) and the following—

- (a) broker's commission, fiscal charges and other disbursements which are—
 - (i) necessary to be incurred in effecting transactions for the scheme; and
 - (ii) normally shown in contract notes, confirmation notes and difference accounts as appropriate;
- (b) interest on borrowings permitted under the scheme and charges incurred in effecting or terminating such borrowings or in negotiating or varying the terms of such borrowings;
- (c) the costs and expenses incurred in obtaining and maintaining a listing for the units of the scheme on any Stock Exchange;
- (d) taxation and duties payable in respect of the property of the scheme, the constitutional documents or the issue of units;
- (e) payments properly required in the case of a property fund for the maintenance, repair, refurbishment, management, preservation, protection, development or redevelopment of an immovable owned or leased by the scheme;
- (f) any costs incurred in modifying the constitutional documents including costs incurred in respect of meeting of investors convened for purposes which include the purpose of modifying the constitutional documents, where the modification is—
 - (i) necessary to implement, or necessary as a direct consequence of, any change in the law (including changes in these Regulations);
 - (ii) expedient having regard to any change in the law made by or under any fiscal enactment and which the manager and the custodian agree is in the interest of investors; or

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- (iii) to remove from any constitutional documents any obsolete provisions;
- (g) the costs incurred in the preparation and publication of any prospectus and any substituted or supplementary prospectus;
- (h) any costs incurred in respect of meetings of investors convened on a requisition by investors not including the manager or an associate of the manager;
- (i) the costs incurred by the manager in administering the scheme, including the remuneration of the directors of a mutual fund scheme, the expenses incurred by the directors in exercising their powers and discharging their duties under these Regulations; and
- (j) such amount in respect of the expenses of the establishment of the scheme as is stated in the prospectus, amortised over such period not exceeding five years, as may be specified in the prospectus;
- (k) liabilities on unitisation, amalgamation or reconstruction arising under paragraph (2);
- (l) the audit fees properly payable to the auditor and any proper expenses of the auditor;
- (m) the costs incurred in publishing annual and interim reports;
- (n) the fees of the Authority or fees of any government or regulatory authority in Bermuda or in a country or territory outside Bermuda in which units in the scheme are or may be marketed; and
- (o) the fees properly payable to the standing independent valuer of a property fund and any proper expenses of the valuer.

(2) Where the property of a body corporate (such as an investment trust) or of another collective investment scheme is transferred to the custodian in consideration of the issue of units in the scheme, to investors in that body or to participants in that other scheme, the custodian (as the successor in title to the other property) may pay out of the property of the scheme any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of that other property, but it may pay only if—

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

Exemption from liability to account for profits

130 (1) The manager shall not be liable to account to the custodian, the investors (in the case of a unit trust scheme) or the company (in the case of a mutual fund scheme) for the amount of any charge properly taken in accordance with these Regulations.

(2) The custodian shall not be liable to account to the manager, the investors or the company for the amount of any remuneration (or expenses) properly paid to the custodian in pursuant of these Regulations.

(3) Where the manager has disclosed prominently in the prospectus a statement that he or another specified affected person is under no obligation to account to the custodian or to the investors or any of them for any profit he makes on the sale of units, or on the re-issue or cancellation of shares which he has redeemed, that person shall not be liable to account to the custodian or to the investor or any of them for any such profit made since the disclosure.

(4) A person who is an affected person under regulation 51(1) shall not be liable to account either to another such affected person or to the investors or any of them for any benefits or profits made or derived from or in connection with—

- (a) his acting as agent for either or both of the custodian and the manager in the sale or purchase of property to or from the custodian for the account of the scheme; or
- (b) his part in any transaction or the supply of services permitted by regulation 51; or
- (c) his dealing in property equivalent to any owned by (or dealt in for the account of) the scheme.

Allocation of payments to capital or income

131 (1) Any payments under this Part (except under regulations 129(1)(a), (1)(b), and (1)(d)) shall be made from the income account in the first instance.

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(2) Any payment under regulation 129(1)(a) shall be made from the capital account.

(3) Any payment under regulation 129(1)(b) or (1)(d) shall be made from the capital account or the income account as the custodian reasonably believes appropriate in accordance with the governing law of trusts and company law.

(4) Following a payment made from the income account under paragraph (1) or (3), a transfer of the debit item from the income account to the capital account may be made—

- (a) if the manager and the custodian agree that the payment is for an item of expense which is capital in nature; and
- (b) if the governing law of trusts and company law so allow.

(5) Where it is clear from the prospectus, or can be deduced from the name of the scheme, that the scheme is designed to concentrate on the generation of income as a higher priority than on capital growth, or to place an equal emphasis on the generation of income and on capital growth the manager and the custodian may agree that all or any part of the charge permitted by regulation 127 (manager's periodic charge) shall be treated as a capital charge and a transfer of the relevant debit item may be made from the income account to the capital account.

(6) Following (or if in the view of the custodian it is necessary to do so in advance to enable) a payment made (or to be made) from the income account under paragraph (1) or (3), a transfer of credit to the income account from the capital account may be made if it appears to the custodian that there is insufficient income in the income account to meet payments made (or to be made), provided that the credit is re-transferred as soon as sufficient funds are available in the income account in respect of the same annual accounting period.

(7) Where, in respect of any annual accounting period, taken as a whole, the amount of income received or receivable is less than the net amount of payments made from the income account, the shortfall shall, as from the end of that period, be charged to the capital account and shall not thereafter be transferred to the income account.

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**PART XI
INVESTMENT LIMITS**

**SECTION A
INTRODUCTION TO INVESTMENT LIMITS**

Investment powers general

- 132 (1) The constitutional documents may restrict—
- (a) the descriptions of asset in which the property of the scheme may be invested; or
 - (b) the proportion of the capital property of the scheme to be invested in assets of any description; or
 - (c) the descriptions of transactions permitted; or
 - (d) the borrowing powers of the scheme,

and any such restrictions shall be observed as if they were included in this Section.

- (2) Restrictions from time to time included in the prospectus pursuant to Appendix 3 shall be observed as if they were included in this Section.

Basis for calculating concentration

- 133 (1) For the purposes of calculating concentration limits under any part of these Regulations, account shall be taken of—
- (a) the maximum possible liability to the scheme under any present or future transaction; and
 - (b) the fact that the property is valued in accordance with Part VI of these Regulations.

Requirement to cover purchases of property

- 134 (1) In relation to any provision in this Section where cover is required:
- (a) the scheme shall also simultaneously satisfy any other obligation relating to cover arising under another regulation;
 - (b) no element of cover may be used more than once;
 - (c) the property of the scheme should be adequate to cover the liabilities arising from individual transactions entered into by the manager; and

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- (d) the scheme shall have property or rights to acquire property sufficient to meet all individual cover obligations.

Investment in other group schemes

135 (1) No scheme may invest in or dispose of units in another collective investment scheme managed or operated by the manager or an associate of the manager of the scheme unless the manager is under a duty to pay into the property of the scheme, within the period specified in paragraph (2):

- (a) where any charge is made by the issuer on issue of the units in the second scheme, the maximum permitted amount of any such charge; and
- (b) if the manager pays more for the units in the second scheme issued to him than the then prevailing creation price (in a case where that price could reasonably be known by him) the full amount of the difference; and
- (c) any amount charged by the issuer on redemption of units in the second scheme.

(2) The period referred to in paragraph (1) shall expire at the close of business on the fourth business day next after the agreement to buy or to sell (or, in the case of a securities fund which for the time being is invested as to more than 50% in government and other public securities or of a money market fund, at the close of business on the business day next after that agreement).

**SECTION B
SECURITIES FUNDS**

General

136 (2) Subject to this Section, to Section A (introduction investment limits), and Part XII (efficient portfolio management) and to the subsequent provisions of this Section, a securities fund shall primarily be dedicated to investment in transferable securities.

(3) Up to 10% in value of the property of the scheme may consist of transferable securities which are not approved securities but there shall be no limit on the value of the property which may consist of approved securities.

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(4) Up to 10% in value may consist of transferable securities which are units in collective investment schemes but only if they fall within regulation 139.

(5) Investment under paragraph (3) shall count towards the limit in paragraph (2) (except where the units are approved securities).

(6) Regulations 137 and 138 (spread) shall not apply until—

(a) the expiry of a period of 6 months after the date on which the collective investment scheme becomes a Bermuda Recognised Scheme; or

(b) the date when the value of the scheme first exceeds BD\$2 million (or the equivalent in the base currency of the scheme) (or on which the initial offer ends, if later),

whichever is the earlier, but the manager and the custodian shall ensure, so far as practicable, during that period that the property of the scheme is invested with the aim of spreading risk.

Spread: securities other than government and other public securities

137 (1) Up to 5% in value of the property of the scheme may consist of transferable securities issued by any one issuer but the restriction of 5% may be regarded as 10% in respect of up to 40% of the value of the property of the scheme.

(2) In applying paragraph (1), certificates representing securities shall be treated as equivalent to the underlying security.

(3) The limits set out in paragraph (1) shall not apply where the transferable securities are property based assets of the kind set out in regulation 178(2).

Spread: government and other public securities

138 (1) This regulation shall apply to government and other public securities only and in this regulation they are described as 'such securities'.

(2) Where the scheme's investment in such securities does not exceed 35% of the value of the property of the scheme then it may invest that amount in such securities issued by one issuer.

(3) Where, a scheme invests more than 35% of the value of the property of the fund in such securities issued by one issuer, then—

(a) up to 30% of the property of the scheme may consist of such securities issued by one issuer;

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- (b) the property of the scheme shall include such securities of at least six different issues; and
- (c) the disclosures in paragraph (4) shall be duly made.
- (4) Where it is intended or anticipated that paragraph (3) may apply, the constitutional documents, and the most recently published prospectus shall clearly state:
 - (a) the fact that more than 35% of the property is or may be invested in government and other public securities issued by one issuer; and
 - (b) the identity of the issuer.
- (5) In paragraphs (2), (3) and (4)—
 - (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
 - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other terms of the issue.

Investment in collective investment schemes

139 (1) A securities fund may invest in units in a collective investment scheme only if the second scheme is also a securities fund or warrant fund or if paragraph (2) applies.

(2) A securities fund may invest in units in a collective investment scheme if the second scheme—

- (a) entitles the investors to have their units redeemed in accordance with the constitutional documents at a price related to the net value of the property of the scheme to which the units relate and determined in accordance with the constitutional documents;
- (b) requires the manager to ensure that an investor is able to sell his units on an investment exchange at a price not significantly different from the price calculated in accordance with paragraph (2)(a);
- (c) is a recognised scheme or, being constituted in a country or territory outside the United Kingdom, consists of units which are approved securities;
- (d) is dedicated to investing funds raised from the public in transferable securities;

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- (e) operates on the principle of risk spreading; and
- (f) has terms which—
 - (i) prohibit more than 5% in value of the property of the scheme consisting of units in collective investment schemes; and
 - (ii) have the effect that the only units in which the scheme may invest are units in schemes which fall within this regulation.

Investment in warrants and in nil paid or partly paid securities

140 (1) Up to 5% of the value of the property of a securities fund may consist of warrants but there shall be no similar limit in respect of securities on which any sum is unpaid.

(2) A warrant "may" fall within any power of investment only if it is reasonably foreseeable that the right to subscribe conferred by the warrant could be exercised by the scheme without contravening these Regulations.

(3) A transferable security on which any sum is unpaid may fall within any power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the scheme, at the time when payment is required, without contravening these regulations.

(4) A warrant may not be included in the property of a scheme unless it is listed on an eligible securities market.

Deposits with eligible institutions

141 (1) A securities fund may make deposits with eligible institutions but not more than 40% of the value of the property of the fund may be placed in such deposits.

(2) Regulation 147 (spread: deposits) shall apply to a securities fund in the same way it applies to a money market fund.

Concentration

- 142 (1) A scheme shall not hold more than 10% of—
- (a) the voting share capital of a body corporate (being shares which carry more than 10% of the rights to vote in all circumstances at general meetings of the body corporate);

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- (b) the share capital of a body corporate with partial or occasional voting rights;
- (c) the other share capital of a body corporate (being shares, not falling within sub-paragraph (a) or (b), of a body corporate other than a mutual fund scheme);
- (d) the units of a collective investment scheme (excluding units falling within sub-paragraph (a));
- (e) the non-convertible debentures of a private issuer (being investments falling within paragraph 2 of Schedule I of the Financial Services Act, 1986 which are not government and other public securities and are not convertible into investments falling within paragraph 1 of that Schedule); or
- (f) the convertible debentures of a private issuer (being investments which would have fallen within sub-paragraph(e) except that they are convertible).

Investment in collective investment schemes managed by manager

143 None of the property of a securities fund shall consist of units in another scheme which is managed or operated by the manager or an associate of the manager of the investing scheme, unless—

- (a) the constitutional documents state that its investment will be restricted to a particular geographic area or economic sector;
- (b) the instrument constituting the investing scheme and its prospectus clearly state that the property of the investing scheme may include such units; and
- (c) regulation 135 (investment in other group schemes) is complied with.

SECTION C
MONEY MARKET FUNDS

Money market funds: general

144 Subject to this Section, to Section A (introduction to investment limits) and Part XII (efficient portfolio management), the property of a money market fund shall consist primarily of money market fund assets.

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Investment limits

145 (1) At least 50% in value of the property of a money market fund shall consist of instruments or deposits which are—

- (a) redeemable or repayable within two weeks; or
- (b) capable of being transferred without the consent of a third party (any issuer being regarded as a third party for that purpose).

(2) Up to 80% in value of a money market fund may consist of transferable securities which fall within the definition of money market fund assets.

Spread: money market funds

146 (1) This regulation shall not apply until:

- (a) the expiry of a period of 6 months after the date on which the scheme is approved (or on which the initial offer commenced if later); or
- (b) the date when the value of the property first exceeds BD\$ 2 million (or the equivalent in the base currency of the scheme) (or on which the initial offer ends, if later),

whichever is the earlier.

(2) Up to 5% in value of the property of a money market fund may consist of instruments issued by any one issuer; but this limit shall not apply to instruments which are government and other public securities.

(3) Up to 30% in value may consist of government and other public securities of the same issue.

(4) If more than 35% in value consists of government and other public securities, it shall include such securities of at least six different issues.

Spread: deposits

147 (1) Up to 10% in value of a money market fund may be kept on deposit with any one person.

(2) For the purposes of paragraph (1), the custodian and its associates are regarded as one person, and the manager and its associates as another.

(3) The figure of 10% in paragraph (1) may be regarded as 20% if the person is an eligible institution which is not included in paragraph

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(2), provided that the amount of the deposit does not exceed 10% of the eligible institution's issued capital and reserves as shown in its most recently published annual accounts.

(4) Paragraphs (1), (2) and (3) shall not apply to a scheme if the total value of the property of the money market fund which is held on deposit is less than BD\$1 million.

Other provisions

148 (1) The following regulations shall apply to money market funds—

- (a) regulation 140(1) (investment in nil paid or partly paid securities);
- (b) regulation 142(1)(concentration) (excluding paragraphs (1)(a), (1)(b) and (1)(c).

SECTION D
FEEDER FUNDS

Feeder funds: general

149 (1) Subject to Section A and to Part XIII, the property of a feeder fund shall consist solely of—

- (a) units in a single scheme;
- (b) a UK scheme; or
- (c) shares in or debentures of a single eligible investment trust.

(2) A feeder fund referred to in paragraph (1)(a) may not invest in:

- (a) a geared futures and options fund;
- (b) a property fund;
- (c) a warrant fund;
- (d) another feeder fund;
- (e) a fund of funds, unless the fund of funds is prevented by the constitutional documents from investing in any fund referred to in sub-paragraphs (a), (b) and c);
- (f) any part of an umbrella fund which is invested as if it were a scheme referred to in sub-paragraphs (a) to (e).

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Ability to hold cash and near cash

150 Notwithstanding the provisions of these Regulations, the property of a feeder fund may include cash and money in a current or deposit account which is near cash provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be redeemed or for the efficient management of the scheme in accordance with its object or for other purposes which may reasonably be regarded as ancillary to the object of the scheme.

Pricing and valuation

151 (2) The manager of a feeder fund shall deal on the same basis (forward or historic) as the scheme or UK scheme into which the feeder fund feeds.

(3) The normal valuation point for a feeder fund shall be within two hours after each normal valuation point for the scheme or UK scheme into which the feeder fund feeds.

(4) Paragraphs (1) and (2) shall not apply to a feeder fund dedicated to a single eligible investment trust.

Notification of risk of loss of eligibility of an eligible investment trust, a scheme or a U.K. scheme

152 Where the custodian is no longer satisfied of the eligibility of the investment trust, a scheme or a UK scheme, it shall forthwith notify that circumstance and its immediate observations as to the resolution of the problem to—

- (a) the manager; and
- (b) the Authority.

Feeder funds investing in eligible investment trusts

153 (4) An investment trust is an eligible investment trust for the purposes of regulation 149(1)(c)—

- (a) if it fulfills the initial condition specified in paragraph (2); and
- (b) as long as the custodian of the feeder fund has, at any time in the last six months, been reasonably satisfied as to the matters referred to in paragraph (3).

(5) The initial condition is that, at the date the scheme became a Bermuda Recognised Scheme, the property of the investment trust included net assets worth at least BD\$50 million (or the equivalent in the scheme's base currency).

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(6) The matters of which the custodian shall be or have been reasonably satisfied are—

- (a) at least 70% of the income of the investment trust received during either or both of—
 - (i) the last completed accounting period, and
 - (ii) the first half of the current accounting period, consisted of income derived from eligible securities;
- (b) apart from transactions for efficient portfolio management purposes the property of the investment trust either cannot be invested in derivatives or can be invested in derivatives only on the basis of cover required for a futures and options fund referred to in regulation 164;
- (c) not more than 5% the value of the property of the investment trust consists of warrants;
- (d) not more than 5% of the property of the investment trust consists of transferable securities issued by any one issuer, except that the figure of 5% may be regarded as 15% in respect of up to 30% in value of the investment trust;
- (e) the feeder fund owns not more than 20% of the units (or of any class of units) in or of the debentures (or of any class of debentures) of the investment trust;
- (f) the borrowing of the investment trust does not exceed 50% of the market value of the units of the investment trust at the mid value share price for the time being;
- (g) the units in (or debentures of) the investment trust are regularly offered for purchase and sale by at least three market makers who are recognised or registered as members of an eligible securities market, and
- (h) the investment trust has no limit on its duration.

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SECTION E
FUND OF FUNDS

Fund of funds: General

154 (6) Subject to this Section, to Section A (introduction to investment limits) and Part XII (efficient portfolio management) the property of a fund of funds shall consist of units in schemes, UCITS and U.K. schemes.

(7) A fund of funds may not invest in:

(a) a feeder fund;

(b) another fund of funds;

(c) any part of an umbrella fund which is invested as if it were a fund referred to in sub-paragraph (b).

(8) Up to 20% in value of the property of a fund or funds may consist of units in any one scheme.

Eligible combinations of schemes

155 (1) A fund of funds may invest in units in any one or more schemes within any one of Sections B (securities funds), C (money market funds), G (warrant funds), H (futures and options funds), I (geared futures and options funds) and J (property funds).

(2) A fund of funds may invest in units in one or more money market funds (Section C) and in units in any one or more schemes within any of the other Sections mentioned in paragraph (1).

(3) A separate part of an umbrella fund may be treated for the purposes of this regulation as if it were a scheme falling within the part of this Section which would be the relevant part if that separate part was a scheme.

Ability to hold cash and near cash

156 Notwithstanding the provisions of these Regulations, the property of a fund of funds may include cash and money in a current or deposit account which is near cash provided that the holding of such cash or near cash may reasonably be regarded as necessary—

(a) in order to enable units to be redeemed; or

(b) for the efficient management of the scheme in accordance with its object; or

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- (c) for other purposes which may reasonably be regarded as ancillary to the object of the scheme.

Valuation

157 (3) A fund of funds shall be valued on the same basis (forward or historic) and at the same frequency as would be applicable if the fund of funds were itself a scheme within the relevant Sections B (securities funds), C (money market funds) F (umbrella funds), G (warrant funds), H (futures and options funds), I (geared futures and option funds) and J (property funds) which is appropriate for the choice of investment by the scheme under regulation 155(1).

(4) Where a fund of funds invests in money market funds (Section C) or in any combination of schemes, the manager in consultation with the custodian shall decide the basis for the frequency of valuation.

**SECTION F
UMBRELLA FUNDS**

Umbrella funds: General

158 (4) Subject to paragraph (3), each of the separate parts of an umbrella fund shall be invested as if it was a single scheme within one only of either a securities fund, money market fund, feeder fund, warrant fund or fund of funds, futures and options fund, geared futures and options fund and property fund.

(5) A scheme shall not qualify to be an umbrella fund unless each constituent part would qualify as a scheme in its own right.

(6) No part of an umbrella fund may invest in units in another part of the umbrella fund, nor may any part invest in units in another umbrella fund.

**SECTION G
WARRANT FUNDS**

Warrant funds: General

159 (6) Subject to Section A (introduction to investment limits) and Part XII (efficient portfolio management), the property of a warrant fund shall consist of property which could be the property of a securities fund, except that up to 100% in value of the property may consist of warrants, which are listed on an eligible securities market.

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(7) The provisions of Section B (securities funds) (excluding regulation 140) shall apply to a warrant fund as they apply to a securities fund.

**SECTION H
FUTURES AND OPTIONS FUNDS**

Futures and options funds: General

160 (7) Subject to this Section, to Section A (introduction to investment limits) and Part XII (efficient portfolio management), the property of a futures and options fund shall consist of futures and options fund assets.

(8) In respect of a futures and options fund's investment in transferable securities, Section B (securities funds) shall apply as if the scheme were a securities fund, but subject to any specific modification in this Section.

(9) In respect of a futures and options fund investment, in derivatives and forward transactions in currencies or gold, a derivatives or forward transaction may be effected under this Section only if—

- (a) the transaction is a permitted transaction under regulation 162; and
- (b) the transaction is fully covered, as required by regulation 164, or else is the subject of deposit arrangements, as required by regulation 161.

(10) Up to 10% in value of the property of a futures and options fund may be used for derivatives transactions in the form of uncovered purchased options (taking the current market value of the option as its value for this purpose), but the manager shall deduct from that figure of 10% any percentage of the value of the scheme invested in transferable securities in the form of warrants.

(11) Up to 10% in value of the property of a futures and options fund may be held in the form of gold.

Deposits with eligible institutions

161 (1) A futures and options fund may make deposits with eligible institutions without limit.

(2) Up to 10% in value of a futures and options fund may be kept as cash on deposit with any one eligible institution.

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(3) For the purposes of paragraph (2), the custodian and his associates are regarded as one person, and the manager and his associates as another.

(4) The figure of 10% in paragraph (2) may be regarded as 20% if the person is an eligible institution which is not included in paragraph (3), provided that the amount of the deposit does not exceed 10% of that eligible institution's issued capital and reserves as shown in its most recently published annual accounts.

(5) Paragraphs (2), (3) and (4) shall not apply to a scheme if the total value of the property of the scheme which is held on deposit is less than BD\$1 million.

Permitted transactions (derivatives and forwards)

162 (1) A derivatives transaction under this Section shall be:

- (a) in an approved derivative; or
- (b) one which complies with paragraphs (4) to (6) (off-exchange); or
- (c) a 'synthetic future' which complies with paragraphs (7) and (8).

(2) Any derivatives transaction referred to in paragraph (1)(b) (off-exchange) shall be—

- (a) a future or an option or a contract for differences resembling an option;
- (b) with a counterparty described in paragraph (3);
- (c) on approved terms under paragraph (5); and
- (d) capable of valuation under paragraph (5).

(3) A counterparty to a derivatives transaction referred to in paragraph (2)(b) shall be—

- (a) an eligible institution;
- (b) a person exempted by section 43 of the Financial Services Act 1986 (listed money market institutions); or
- (c) an authorised person.

(4) No more than 5% of the value of the property of the scheme may be directed to initial outlay in respect of off-exchange transactions with any one counterparty.

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(5) The terms of a derivatives transaction shall be approved for the purposes of paragraph (2)(c) only if, before the transaction is entered into, the custodian is satisfied that the counterparty has agreed with the manager:

- (a) to provide a valuation in respect of that transaction, on a buying and selling basis—
 - (i) at least once a week; and
 - (ii) at any other time at the request of the manager; and
- (b) that he will, at the request of the manager, enter into a further transaction to close out that transaction at a price which is reasonably related to the 'fair value' price (being a price corresponding with the value at which the derivative would be valued on the creation or cancellation basis (as appropriate) under Part VII.

(6) A derivatives transaction is capable of valuation for the purposes of paragraph (2)(d) only if the manager reasonably believes that, throughout the time of the life of the derivative (if the transaction is entered into), he will be able to value the investment concerned with reasonable accuracy on the basis of a pricing model which has been agreed between him and the custodian, or on some other reliable basis reflecting an up-to-date market value which has been so agreed.

(7) For the purposes of this Section, the manager may create out of two options something in the nature of a composite derivative in the following two ways—

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

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(8) A derivatives or forward transaction which will or could lead to delivery of property to the custodian may be entered into only if:

- (a) such property can be held by the scheme (or else the transaction is a bought future or bought call option); and
- (b) the manager reasonably believes that delivery of the property pursuant to the transaction will not occur or will not lead to a breach of these Regulations.

(9) A transaction permitted under this regulation may at any time be closed out.

Investment in collective investment schemes

163 (1) Up to 5% in value of the property of the scheme may consist of units in collective investment schemes which are—

- (a) securities funds, money market funds, funds of funds, warrant funds, property funds or futures and options funds; or
- (b) of the type described in sub-paragraph (a) and fall within regulation 139(2).

(2) Units in a collective investment scheme shall not fall within paragraph (1) if the scheme is managed or operated by the manager or an associate of the manager of the investing scheme unless—

- (a) the instrument constituting the investing scheme and its prospectus clearly state that the property of the investing scheme may include such units; and
- (b) regulation 135(1)(investment in other group schemes) is complied with.

Cover for derivatives and forward transactions

164 (1) Except where regulation 166(1) applies, no derivative or forward transaction may be entered into under this Section unless the maximum potential exposure created by the transaction, in terms of the principal or notional principal of the derivative or forward contract is:

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

and for this purpose regard may be had to the examples in paragraph (9).

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(2) Subject to paragraph (3), exposure shall be regarded as covered individually if there is, in the property of the scheme—

- (a) (in the case of an exposure in terms of property) a transferable security or other property which is of the right kind, and sufficient in amount, to match the exposure; and
- (b) (in the case of an exposure in terms of money), cash or near cash (or borrowing pursuant to regulation 199) or transferable securities which is or are, or, on being turned into money in the right currency, will be, sufficient in amount to match the exposure.

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

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

(5) Whether or not a derivative or forward transaction is available under regulation 165 to provide cover for another derivative or forward transaction under this section—

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

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

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

(8) Property is not available for cover if it is the subject of a transaction under Part XIV (stocklending), unless the manager reasonably believes that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

(9) Examples of the cover requirements are as follows—

- (a) A bought put option (or a written call option) on 1,000 ordinary US\$1 shares (fully paid) of ABC plc has to be covered by an existing holding in the scheme of 1,000 ordinary US\$1 shares (fully paid) of ABC plc (paragraph (2)(a)).
- (b) A bought call option (or written put option) on 1,000 ordinary US\$1 shares (fully paid) of ABC plc has to be covered by cover (in the form of cash or an allowable substitute for cash or transferable securities) which is sufficient in amount to meet the purchase of the shares on exercise of the option (paragraph (2)(b)).
- (c) A sold contract for differences on short-dated US dollars has to be covered by cash or near cash or transferable securities, the values of which together at least match the notional principal of the contract (e.g. a short US dollar contract, or a successive series of such contracts, is covered by BD\$1 million) (paragraphs (2)(b) and (7)).
- (d) A sold future on the S+P500 Index Future Index may be covered by holdings of equities, (or a combination of cash (or near cash) and call options on that future) which satisfy the test of appropriateness for cover in paragraph (3) in relation to that future, and the values of which together at least match the current mark to market valuation of the future (e.g. if the multiplier per full index point is US\$25, and if the eventual obligation under the future is currently at 2,800, the valuation of the futures position is $2,800 \times \text{US\$}25 = \text{US\$}70,000$) (paragraph (2)(b) and regulation 165).

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- (e) Where the manager of a scheme, which has holdings in US shares, wishes to switch exposure to the UK market, and decides to sell a S+P500 Index Future to the value of those shares (this transaction satisfying the test of appropriateness for cover in paragraph (3)), then the US dollar 'synthetic cash' position created may thereupon be used as cover for a FT-SE Index future provided that the manager ensures that the cover remains sufficient (e.g. by reference to the US dollar sterling exchange rate) (paragraphs (3) and (5)).

Derivatives covering derivatives

165 (1) Where the manager proposes to use a position resulting from a derivatives transaction as cover (whether in whole or in part) for the exposure of another derivatives transaction, regulation 164 shall have effect as modified by this regulation.

(2) In this regulation 'countervailing' means that one of the two derivatives has an exposure which, in terms of risk, is equal and opposite to the exposure of the other, and 'offset' means that there is an equal and opposite coverage in terms of risk.

(3) On the basis that the requirements of regulation 164 about the amount and right kind of assets used as cover are satisfied, the rules for derivatives covering derivatives shall be as follows—

- (a) a derivative of one type shall provide cover for a countervailing derivative of the same type (e.g. a bought future covers a sold future, and a bought call option covers a written call option);
- (b) a derivative of one type shall provide cover for a countervailing derivative of a different type only if—
 - (i) the right under one offsets and is offset by the obligation under the other; or
 - (ii) sub-paragraph (f) applies;
- (c) in applying sub-paragraphs (a) and (b), differences between the derivatives in terms of price, maturity and exercise price may be ignored, except where sub-paragraph (d) applies;
- (d) sub-paragraph (a) shall not apply if an opportunity to exercise the right under the one derivative will become available to the scheme only after the first date on which

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the potential obligation under the other may become an actual obligation;

- (e) where, under sub-paragraph (a), the manager decides that a written option and a purchased option should provide mutual cover, the manager shall arrange for the custodian to deposit and set aside with an eligible institution (which the manager may not use for the purposes of providing cover under these Regulations) the whole amount of the difference between the exercise value of the two options (that is the amount which would be payable by or to the scheme on exercise of the options) inclusive of any margin requirements of the exchange;
- (f) a written option shall provide cover for, and shall be covered by, a countervailing future only if the option is in the money to the purchaser of the option; but if the written option is out of the money to the purchaser, then both it and the future shall each be separately covered under regulation 164(3);
- (g) a contract for differences may be included in these rules if and to the extent that it has the characteristics of a future or an option.

Deposit arrangements for purchased options and borrowing

166 (1) Where the manager proposes to purchase an uncovered option under regulation 160, he shall arrange for the custodian to deposit and set aside with an eligible institution (which the manager shall not use for the purposes of providing cover under these Regulations) an amount by which 5% of the exercise value of the option (being the amount which would be payable by the scheme on exercise of the option) exceeds the amount paid by way of premium.

(2) The amount to be deposited and set aside may be in cash or else in government and other public securities (which are to be valued for this purpose at the current mark to market valuation).

(3) Cash obtained by borrowing, and borrowings which the manager reasonably regards an eligible institution to be committed to provide, shall be available for cover under regulation 164(3), as long as the normal limits on borrowing (regulations 202(1) and 203 are observed).

(4) Where, for the purposes of this Section, the manager—

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- (a) borrows for the scheme an amount of currency from an eligible institution; and
- (b) keeps an amount in another currency, at least equal to the borrowing referred to in paragraph (a), on deposit with the lender (or his agent or nominee),

then this section shall apply as if the borrowed currency, and not the deposited currency, were part of the property of the scheme, and the normal limits on borrowing under regulations 202(1) and 203 shall not apply to that borrowing.

Continuing nature of cover requirements

167 (1) The manager shall, at each valuation point (and more frequently if necessary), re-calculate the amount of cover required in respect of derivatives and forward positions already in existence under this Section, and derivatives and rights under forward transactions under this Section may be retained in the property of the scheme only so long as they remain covered both individually and globally under regulation 164 (or, where relevant, the deposit requirements in regulation 166 are complied with).

- (2) If at any time—
 - (a) any fact or matter relating to the scheme or its economic environment; or
 - (b) the aggregate of all outstanding derivatives or forward positions under this section,

is such that at least one of the relevant transactions could not properly be effected, either in that size or at all, the manager shall forthwith on becoming aware of that fact, take such steps as are necessary to rectify the situation, whether by closing out or providing additional cover or otherwise.

Off-exchange derivatives: Discrepancy in valuation

168 If at any time it appears to the manager that the latest valuation provided to him under regulation 162(5)(a) (valuation by the counterparty) and the latest valuation under regulation 162(6) (valuation of off-exchange derivatives transactions) are not reasonably similar in amount then the manager shall—

- (a) take, after consulting the custodian, whatever action relating to the transaction which appears to be in the best interests of the investors; and

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- (b) consider with the custodian whether the discrepancy requires them to consider the validity of the pricing model relevant to further off-exchange transactions under regulation 162(6).

Special rules for issues and redemptions

169 (2) This regulation modifies Part VIII for futures and options funds.

(3) Regulations 91 (obligation to issue units) and 94 (obligation to redeem units) shall not apply in the 15 minutes immediately before a regular valuation point, or, if the regular valuation points are less than one hour apart, in the last quarter of the interval between them, if the manager has stated in the constitutional documents that it is not obliged to issue or redeem in the 15 minutes (or lesser period) immediately preceding a regular valuation point.

(4) Where the manager has so stated in the constitutional documents, then it may not, during the period, agree or decide to issue or redeem units for itself as principal, or as agent for the custodian.

**SECTION I
GEARED FUTURES AND OPTIONS FUNDS**

Geared futures and options funds: General

170 (4) Subject to this Section, to section A (introduction to investment limits) and Part XII (efficient portfolio management), the property of a geared futures and options fund shall consist of futures and options fund assets.

(5) In respect of a geared futures and options fund's investment in transferable securities, section B (securities funds) shall, subject to any special modification in this Section, apply as if the scheme were a securities fund.

(6) In respect of a geared futures and options fund's investment in derivatives and forward transactions section H (futures and options funds), except regulation 163, shall, subject to any special modifications in this Section, apply as if the scheme were a futures and options fund.

(7) In respect of a geared futures and options fund's investment in derivatives—

- (a) any derivatives transaction shall be in an eligible derivative, or else one which complies with regulations 162(2) to (6) (off-exchange), and

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(b) any transaction in an eligible derivative shall be effected on or under the rules of an eligible derivatives market.

(8) In respect of a geared futures and options fund's investment in a forward transaction in currencies or gold—

(a) this Section, except paragraph (4) of this regulation and regulation 171(3), shall apply as if any forward transaction were a derivatives transaction; and

(b) the transaction shall be with a counterparty referred to in regulation 162(3) (eligible institutions), or listed market institutions exempt under section 43 of the Financial Services Act 1986.

(9) Up to 10% in value of the property of a geared futures and options fund may be held in the form of gold.

(10) The custodian of a geared futures and options fund shall not have power to borrow whether by virtue of this Section or Part XII or otherwise.

Limits on investment in initial outlay

171 (1) Subject to paragraph (3), up to 20% in value of the property of the scheme at any time may be devoted to initial outlay in any derivative transactions which are at any time outstanding.

(2) In these Regulations, "initial outlay" means the amount which the scheme is required to pay, transfer or deposit as a fidelity deposit or otherwise in order to obtain rights under a derivatives transaction, and, for these purposes:

(a) regard shall be had to the rules of any relevant approved derivatives market relating to margin, initial margin, premium, etc.;

(b) any increase in margin or initial margin, if required by such a market, shall be regarded as initial outlay from then on;

(c) any decrease in margin or initial margin, if allowed by such a market, shall cease to be initial outlay from then on;

(d) variation margin (that is to say an additional sum required to be paid to retain the rights following a movement in prices etc.) shall not be regarded as initial outlay;

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- (e) premium which may become payable in the future pursuant to the transaction in respect of an option shall be regarded as initial outlay from the outset;
- (f) in the case of a purchased option, the amount mentioned in paragraph (4) shall be regarded as initial outlay;
- (g) in the case of a written off-exchange option, the amount mentioned in paragraph (5) shall be regarded as initial outlay;
- (h) in the case of an off-exchange future, the amount mentioned in paragraph (6) shall be regarded as initial outlay; and
- (i) in the case of a forward transaction, the amount mentioned in paragraph (7) shall be regarded as initial outlay.

(3) Up to 10% in value of the property of the scheme may be used for initial outlay on derivatives transactions in the form of purchased options without it counting towards the 20% referred to in paragraph (1), but the manager shall deduct from the figure of 10% any percentage of the value of the scheme invested in transferable securities in the form of warrants.

(4) Where an option is purchased for the scheme, the manager shall ascertain the amount, if any, by which 5% of the exercise value of the option (being the amount which would be payable by the scheme on exercise of the option) exceeds the amount paid by way of premium.

(5) Where an off-exchange option is written for the scheme the manager shall ascertain at the outset and at each valuation the sum of—

- (a) 5% of the exercise value of the option;
- (b) the amount, if any, by which the option is 'in the money' to the purchaser of the option.

(6) Where a transaction in an off-exchange future is entered into for the scheme, the manager shall ascertain at the outset and at each valuation the amount which is the sum of—

- (a) 5% of the value of the amount of property to be bought or sold pursuant to the contract; and
- (b) the amount, if any, by which the future would cause a loss to the scheme if it were to be closed out.

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(7) Where a forward transaction is entered into for the scheme, the manager shall ascertain at the outset and at each valuation the amount which is 5% of the value of the forward contract (being the amount of currency or of gold to be purchased or sold pursuant to the transaction at the current valuation in the currency or one of the currencies relevant for the purposes of the transaction) for each period of three months (or part thereof) between the date of the latest valuation and the date of maturity.

(8) The manager shall arrange for the custodian to deposit and set aside with an eligible institution (and the manager shall not use for the purposes of providing cover under these Regulations) the amounts for the time being required by paragraphs (4), (5), (6) and (7).

(9) The amounts to be deposited and set aside may be in cash or else in government and other public securities (which are to be valued for this purchase at the current mark to market valuation),

Spread

172 (1) There shall be no limit on the value of the property of the scheme which may be devoted to initial outlay in respect of derivatives on or related to any one category of underlying security, commodity or factor.

(2) Notwithstanding paragraph (1), the manager shall exercise reasonable prudence in relation to the diversification of the property of the scheme so far as it is devoted to derivatives, account being taken of the extent to which diversification is already achieved by use of derivatives which by their nature are broadly diversified (such as, derivatives related to a broadly based index).

(3) Up to 5% in value may be devoted to initial outlay in respect of off-exchange transactions with any one counterparty.

(4) In paragraph (2), "diversification" relates to diversification in terms of geographical sectors, economic sectors, currencies, commodities, maturity of instruments, exercise price under instruments and any other form of spreading of risk undertaken by a reasonably prudent manager.

(5) Up to 10% in value may be kept as cash on deposit with any one person.

(6) For the purposes of paragraph (5), the custodian and his associates shall be regarded as one person, and the manager and his associates as another.

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(7) The figure of 10% referred to in paragraph (5) may be regarded as 20% if the person is an eligible institution which is not included within paragraph (6), if the amount of the deposit does not exceed 10% of that person's issued capital and reserves as shown in its most recently published annual accounts.

(8) Paragraphs (5), (6) and (7) shall not apply to a scheme if the total value of the property of the scheme which is held on deposit is less than BD\$1 million.

Investment in collective investment schemes

173 (1) Up to 5% in value of the property may consist of units in collective investment schemes which—

- (a) are securities funds, or warrant funds, or futures and options funds, or geared futures and options funds, or
- (b) of the type described in regulation 163(1)(a) and fall within regulations 139(2)(c), (d), (e) and (f).

(2) Units in a collective investment scheme shall not fall within paragraph (1) if the scheme is managed or operated by the manager or an associate of the manager of the investing scheme, unless—

- (a) the instrument constituting the investing scheme and its prospectus clearly state that the property of the investing scheme may include such units; and
- (b) regulation 135 (investment in other group schemes) is complied with.

Delivery of property pursuant to a derivatives transaction

174 (1) When entering into any derivatives transaction as a result of which any investment or asset may become part of the property of the scheme, the manager shall comply with paragraph (2) (where the investment or asset is one of which the property of the scheme could in some measure consist) or with paragraph (3) (in any other case).

(2) Where this regulation applies, the manager shall reasonably believe that the transaction will not result in any breach of any other of these Regulations—

- (a) either because it can readily be closed out; or
- (b) because the investment or asset concerned will at the expected time be included within the property of the scheme in a manner which conforms with these Regulations.

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(3) Where this regulation applies, the manager shall reasonably believe that the transaction can readily be closed out.

(4) Where, in the event, the belief in paragraphs (2) and (3) proves unjustified, and the manager decides with the consent of the custodian pursuant to regulation 20, that it is in the interests of the investors that the property should temporarily be acquired, then the property concerned may, notwithstanding any other provision of these Regulations, form part of the property of the scheme until the position can be rectified.

Special rules for geared futures and options funds

175 (1) This regulation modifies Parts VI and VIII (valuation and issue and redemption of units) for geared futures and options funds.

(2) Prices for issue and redemption shall be on a forward basis only, and regulation 105 shall not apply.

(3) Valuation of the property of the scheme shall be carried out at least once on every business day, and regulation 67 shall not apply.

(4) Regulation 169 (special rules for issues and redemptions) shall apply to such schemes.

**SECTION J
PROPERTY FUNDS**

Property funds: General

176 (4) Subject to this section, to section A (introduction to investment limits) and Part XII (efficient portfolio management), the property of a property fund shall consist of property fund assets.

(5) Subject to paragraph (6), up to 80% in value of the property may consist of approved immovables.

(6) Up to 80% in value of the property may consist of transferable securities, that are property related assets which are approved securities or else separately permitted under paragraphs (4) to (6).

(7) Up to 35% in value may consist of government and other public securities.

(8) Up to 10% in value may consist of shares in collective investment schemes under regulation 179.

(9) Up to 10% in value may consist of units which are property related assets under paragraph (1) but are not approved securities

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under regulation 178, and any units included pursuant to this paragraph shall be included within the 80% limit referred to in paragraph (2), which may therefore on occasion produce a limit of 70% for approved immovables.

(10) Up to 5% in value may consist of transferable securities referred to in paragraph (3) which are warrants: but these must be property related assets which are approved securities.

Approved immovables

177 (1) In these Regulations an approved immovable is any interest in land or a building which meets the conditions in paragraphs (2) to (7).

(2) The conditions referred to in paragraph (1) are that the approved immovable should—

- (a) be transferable and shall be so regarded if the manager has received a report from an appropriate valuer (as defined in paragraph (3))—
 - (i) valuing the immovable (with and without any relevant subsisting mortgage); and
 - (ii) stating that, in his opinion, the immovable would, if acquired for the scheme, be capable of being disposed of reasonably expeditiously at that valuation;
- (b) have a marriage value and shall be so regarded if the manager has received a report from an appropriate valuer valuing the immovable and stating that—
 - (i) it is adjacent to or contiguous with an immovable included in the property of the scheme; and
 - (ii) in his opinion, the total value of the immovable, if acquired for the scheme, and of the other immovable referred to in sub-paragraph (i), would be at least equal to the sum of the price payable for the immovable and the existing value of that other immovable ;
- (c) be accessible and shall be so regarded if the manager (after consulting the custodian in any case of substantial doubt) is satisfied that reasonable access to it is assured;

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- (d) have good root of title and shall be so regarded if the manager (after consulting the custodian in any case of substantial doubt and taking such advice as appears to him (or in such a case of both of them) appropriate) reasonably believes that the title to the immovable is a good marketable title;
 - (e) be—
 - (i) unencumbered and shall be so regarded if there is no subsisting mortgage over or on it; or
 - (ii) adequately unencumbered and shall be so regarded if the only mortgages over or on it are one or more approved mortgages as described in regulation 182 ;
 - (f) be bought promptly and at a reasonable price and shall be regarded as having been so bought if—
 - (i) it is bought or agreed to be bought, by enforceable contract within 6 months after receipt by the manager of a report referred to in sub-paragraphs (a) and (b);
 - (ii) at the time of the purchase or agreement it would not reasonably have been apparent to the manager that the report could no longer reasonably be relied upon; and
 - (iii) it is bought at no more than 105% of the valuation in the report.
- (3) For the purposes of these Regulations, a person shall be regarded as an appropriate valuer if—
- (a) he has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) he is or is qualified to be the standing independent valuer of a property fund or is reasonably considered by the scheme's standing independent valuer to hold equivalent qualifications;
 - (c) he is independent of the manager and custodian, in accordance with the requirements for a standing independent valuer under regulation 187; and
 - (d) neither he nor any partner (if any) nor fellow director (if any) of his has been engaged, whether as principal or as

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agent, in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

Property related assets

178 (1) Property related assets may, even if not approved securities, qualify for investment purposes (under regulation 176(6)) if—

- (a) they are investments;
- (b) they are transferable securities; and
- (c) they are shares in a body corporate at least 75% of whose total assets (before deduction of liabilities and as shown in the most recently published accounts) consist of approved immovables.

(2) Up to 5% in the value of the property of the scheme may consist of investments issued by any one issuer; but that figure may be regarded as 10% if—

- (a) the scheme owns at least 90% of the rights to vote which are exercisable in all circumstances at general meetings of the body corporate; and
- (b) the shares are or were bought within 6 months after receipt by the manager of—
 - (i) a report from an appropriate valuer relating to permitted immovables owned by the body corporate, indicating that they are transferable under regulation 177(2)(a) or have a marriage value under regulation 177(2)(b); and
 - (ii) a report on the value of any assets other than permitted immovables, from a person then qualified to be an auditor of a company under the relevant legislation;
- (c) at the time of the purchase it would not have been reasonably apparent to the manager that the report referred to in sub-paragraph (b) (i) and (ii) could no longer reasonably be relied on; and
- (d) the shares were bought at no more than 105% of the total of the values in the reports under sub-paragraph (b)(i) or (ii).

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Investment in collective investment schemes

179 (1) A property fund may invest in units in a collective investment scheme only if the second collective investment scheme—

- (a) is a scheme, or a UK scheme; and
- (b) is dedicated to approved immovables, with or without transferable securities which are property related assets or government and other public securities.

(2) Units in a collective investment scheme shall not fall within paragraph (1) if the scheme is managed or operated by the manager or an associate of the manager of the investing scheme, unless—

- (a) the instrument constituting the investing scheme and its constitutional documents clearly state that the property of the investing scheme may include such units; and
- (b) regulation 135 (investment in other group schemes) is complied with.

Deposits with eligible institutions

180 (1) A property fund may make deposits with eligible institutions but not more than 40% of the value of the property of the fund may be placed on deposit.

(2) Regulation 147 (spread of deposits) shall apply to a property fund in the same way as it applies to a money market fund.

Property related limits

181 (1) Up to 10% in value of the property may consist of approved immovables which are leasehold interests or the equivalent having an unexpired term of less than 60 years.

(2) Up to 25% in value may consist of approved immovables which are unoccupied and non-income producing or in course of substantial development, redevelopment or refurbishment.

Mortgaged property

182 (1) Up to 15% of that part of the property which for the time being consists of immovables may consist of mortgaged immovables.

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

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Spread

183 (1) Up to 15% in value of the property may consist of any one immovable.

(2) In paragraph (1) 'one immovable' includes adjacent or contiguous immovables.

(3) The figure of 15% specified in paragraph (1) may be regarded as 25% once the immovable has been included in the property of the scheme in compliance with paragraph (1).

(4) Up to 5% in value may consist of property related assets issued (or conferring rights to investments issued) by any one issuer.

(5) The figure of 5% referred to in paragraph (4) may be regarded as 10% in respect of up to 40% of the value of the property.

(6) Up to 20% of the income receivable in any accounting period may derive from members of any one group; but there shall be no restriction on the income receivable from any government or body specified in paragraphs (a) to (d) of the definition of government and other public securities.

Initial periods

184 (1) During the period of the initial offer, no immovable may be—

(a) bought or leased; or

(b) agreed, by enforceable contract, to be bought or leased,

unless it appears to the manager and to the custodian that more than BD\$10 million (or the equivalent amount in the base currency of the scheme) has been paid or agreed to be paid for units to be issued or sold.

(2) Subject to paragraph (3), during the first two years starting with the date on which the scheme is approved (or on which the period of the initial offer commenced, if later)—

(a) regulations 181(1) and 183 shall not apply; and

(b) the obligation, specified in regulation 176, that (unless properly held or invested elsewhere) at least 20% in value of the property of the scheme shall consist of approved immovables, shall not apply.

(3) Paragraph (2) shall cease to apply if, at any time during the two year period, six months have elapsed from the first date on which the property of the scheme exceeds BD\$30 million in value (or the equivalent amount in the base currency of the scheme).

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(4) Paragraph (2) shall be construed as postponing the application of regulation 183(4) (spread of property related assets) for a maximum of six months only from the date mentioned in paragraph (2), instead of two years.

(5) This regulation shall apply, where there is no initial offer, as if—

(a) the period of the process of unitisation; or

(b) the period of 21 days after the date on which persons are first invited to become participants,

were the period of the initial offer.

Grant of options and mortgages

185 (1) No option may be granted to buy any immovable comprised in the property of the scheme, whether under Part XII (efficient portfolio management) or otherwise.

(2) No mortgage other than an approved mortgage may be created on or over any such immovable.

Other provisions

186 The following regulations shall apply to property funds as they apply to other types of funds—

(a) regulation 140 (investment in warrants and in nil or partly paid securities);

(b) (subject to regulation 178), regulation 142 (concentration);

Standing independent valuer

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

(3) A person shall be qualified to be the standing independent valuer if he is—

(a) a fellow or professional associate of the Royal Institution of Chartered Surveyors;

(b) a fellow or associate of the Incorporated Society of Valuers and Auctioneers;

(c) a fellow or associate of the Institute of Revenues, Rating and Valuation;

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- (d) a member of any other equivalent international association of surveyors or valuers, by whatever named called.
- (4) A person shall be eligible to be appointed, or to retain appointment, as the standing independent valuer only if he is independent of the manager and trustee, as follows:—
 - (a) neither he nor any partner (if any) or fellow director (if any) of his—
 - (i) is an officer, servant or controller of; or
 - (ii) has a financial interest which it is reasonable to regard as significant in,
the custodian or manager or any body corporate in the same group as the custodian or manager; and
 - (b) neither the custodian nor the manager or any body corporate in the same group as the custodian or manager has a financial interest which it is reasonable to regard as significant in any partnership of which the person is a member or in any body corporate of which he is a director or controller.
- (5) The standing independent valuer may be removed from office by notice in writing given by—
 - (a) the manager, with the agreement of the custodian; or
 - (b) the custodian, who shall inform the manager of any notice given by him.
- (6) Any partner of the person appointed to be the standing independent valuer who would himself be eligible for appointment may act on his behalf and, if the standing independent valuer considers it expedient that another person who is an appropriate valuer should act on his behalf, he may appoint that other person as his delegate for the purpose of any specific valuation.
- (7) Details of the standing independent valuer shall be given in the prospectus and in the constitutional documents.

Functions of the standing independent valuer

188 (1) The standing independent valuer shall, at least once a year, value all the immovables held within the property of the scheme, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection).

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(2) The standing independent valuer shall also value the immovables, on the basis of a review of the last full valuation, at least once a month.

(3) The custodian may at any time require the manager to procure an additional valuation under paragraph (1) or (2), as the custodian may specify.

(4) Where, since the last valuation under paragraph (1), any new immovable has been purchased for the scheme, and any appropriate valuer under regulation 177 was not the standing independent valuer, the standing independent valuer shall—

(a) if the report of the appropriate valuer was on the basis of full valuation with internal inspection, review that valuation as part of any valuation under paragraph (2) until the next full valuation under paragraph (1); and

(b) if the report of the appropriate valuer was not on the basis specified in sub-paragraph (a), value the immovable on that basis as part of his next valuation under paragraph (2).

(5) The manager and custodian shall each inform the standing independent valuer forthwith upon its becoming aware of any matter appearing likely to—

(a) affect the outcome of a valuation of an immovable;

(b) cause the valuer to decide to value under paragraph (1) instead of under paragraph (2); or

(c) cause the valuer to recommend to the custodian that it should make a requirement under paragraph (3).

(6) The manager and custodian shall each use their best endeavours to ensure that any affected person reports to the valuer forthwith upon that person becoming aware of any matter referred to in paragraph (5).

(7) Any valuation by the standing independent valuer (except one under paragraph (4)(a)) shall be on the basis of "open market value" in internationally recognised standards.

Special rules for pricing

189 (1) This regulation modifies Part VI, Part VII and Part VIII for property funds.

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(2) Any valuation under regulation 188 shall have effect, until the next valuation under that regulation, for the purposes of ascertaining the value of immovables under Part VI, Part VII and Part VIII.

(3) Prices for the issue and redemption shall be on a forward basis only.

(4) An agreement to transfer an immovable or an interest in an immovable shall be disregarded for the purpose of the valuation of the property of the scheme unless it appears to be legally enforceable.

(5) Dealing costs shall be those estimated by the standing independent valuer, and in so doing he shall have regard to any special reduction which he believes should be available to the manager in the amount or rate of charges or commission payable.

(6) The following provisions shall not apply to property funds—

(a) in relation to the scheme—

- (i) regulation 78(4);
- (ii) regulation 78(5)(a);
- (iii) regulation 80;
- (iv) regulation 104; and
- (v) regulations 105, 106, 107 and 108;

(b) in relation to the valuation of immovables, regulation 73(2).

Failure to obtain minimum subscriptions

190 (1) Where, immediately upon the expiry of the period of the initial offer, it appears to the manager and to the custodian that the aggregate of monies paid or agreed to be paid for units to be issued or sold is less than BD\$10 million (or the equivalent in the base currency)—

- (a) the manager may not deduct any preliminary or periodic charge in respect of any units to be issued on or after that expiry;
- (b) the manager shall credit back to the account of the investor any preliminary or periodic charge deducted on issuing units during the initial period; and
- (c) the manager and the custodian shall advise the Authority accordingly.

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(2) Paragraph (1) shall apply, where there is no initial offer, as if—

- (a) the period of the process of unitisation; or
 - (b) the period of 21 days after the date on which persons are first invited to become participants,
- were the period of the initial offer.

Notification of breaches

191 (1) If the manager of a property fund is at any time of the opinion that there has been—

- (a) a breach of any provision of Part XI; or
- (b) a circumstance within the meaning of regulation 49;

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

- (i) the custodian; and
- (ii) the Authority.

Suspension of dealings

192 (1) This regulation shall apply, without prejudice to regulation 240 (suspension and resumption of issue and redemption of units), if at any time it appears to the custodian that there is insufficient property in the scheme by way of:

- (a) cash or near cash;
- (b) property related assets; or
- (c) other assets capable of early liquidation,

to enable the custodian to cancel units as necessary to enable the manager to meet the demand or likely demand for redemption of units.

(2) In such a case, the custodian—

- (a) shall require the manager to suspend dealings in units (whether by way of issue, redemption, purchase or sale);
- (b) shall not, while the suspension remains in force, create or cancel units;
- (c) shall forthwith inform the Authority of the suspension, stating the reasons for its action; and

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(d) shall thereupon confirm the suspension by giving notice in writing:

- (i) to the manager; and
- (ii) to the Authority.

(3) Following the suspension, the manager shall report to the Authority with such frequency as the Authority shall require (and in writing if so required) giving particulars of the action being taken to enable dealings in units to be resumed.

(4) The suspension shall expire on the close of business on the 28th day after the date of the suspension, unless extended under paragraph (5).

(5) If it appears to the manager, or to the custodian, that it is desirable in the interests of the participants that the suspension should be extended (or further extended) it may, not less than 5 business days before the date or expiry of the suspension, apply to the Authority for an extension of the suspension under regulation 240.

(6) Regulations 91 and 94 (obligation to issue and redeem) shall be subject to this regulation.

**PART XII
EFFICIENT PORTFOLIO MANAGEMENT**

Three requirements for a transaction to be categorised as efficient portfolio management

193 (6) A transaction shall be regarded as eligible for the purposes of efficient portfolio management if—

- (a) the transaction is economically appropriate under regulation 195;
- (b) the exposure is fully covered under regulation 198; and
- (c) the transactions are entered into for one or more of the following reasons—
 - (i) the reduction of risk;
 - (ii) the reduction of cost;
 - (iii) the generation of additional capital or income for the scheme with no, or an acceptably low level of, risk.

(7) The provisions of paragraph (1) relate to:

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- (a) property of the scheme;
- (b) property (whether precisely identified or not) which is to be or is proposed to be acquired for the scheme; and
- (c) anticipated cash receipts of the scheme, if due to be received at some time and likely to be received within one month.

Efficient portfolio management: General

194 (1) This Part—

- (a) shall apply to any scheme, other than a feeder fund; and
- (b) shall have effect subject to any restriction in the constitutional documents.

(2) In the application of this regulation to a fund of funds, regulations 193(1)(c)(iii) and 195(2)(b) shall not apply.

Economic appropriateness

195 (1) This regulation shall apply to a transaction which (alone or in combination with one or more others) is reasonably believed by the manager to be economically appropriate to the efficient portfolio management of the scheme.

(2) For the purposes of paragraph (1), the manager is required to reasonably believe that—

- (a) for transactions undertaken to reduce risk or cost (or both), the transaction (alone or in combination) will diminish a risk or cost to a kind or level which is sensible to reduce; and
- (b) for transactions undertaken to generate additional capital or income, the scheme is certain (or certain barring events which are not reasonably foreseeable) to derive a benefit from the transaction.

(3) Where the manager wishes to achieve a switch in exposure, he may do so by use of derivatives rather than through the sale and purchase of scheme property, (otherwise called 'tactical asset allocation') if the transactions concerned reasonably appear to him to satisfy paragraphs (1) and (2)(a).

(4) A transaction may not be entered into under this Part if its purpose could reasonably be regarded as speculative.

(5) Where—

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- (a) the transaction relates to the actual or potential acquisition of transferable securities; and
- (b) the scheme fulfils the conditions imposed by the UCITS Directive,

then the manager shall—

- (i) intend that the scheme should invest in transferable securities within a reasonable time; and
- (ii) thereafter ensure that, unless the position has itself been closed out, that intention is realised within that reasonable time.

Generation of additional capital or income

196 (1) For the purposes of regulation 193(1)(c)(iii), a transaction shall be regarded as having an acceptably low level of risk, in any case where the manager reasonably believes that the scheme is certain (or certain barring events which are not reasonably foreseeable) to derive a benefit:

- (a) on a basis set out in paragraph (2); or
 - (b) pursuant to Part XIV (stocklending).
- (2) The basis mentioned in paragraph (1) is—
- (a) firstly that the scheme takes advantage of pricing imperfections in relation to the acquisition and disposal (or disposal and acquisition) of rights in relation to the same or equivalent property, being property which the scheme holds or may properly hold; or
 - (b) secondly, that the scheme receives a premium for the writing of a covered call option or a covered put option, even if that benefit is obtained at the expense of surrendering the chance of yet greater benefit.

Permitted transactions

- 197 (1) This regulation shall apply to—
- (a) an approved derivatives transaction;
 - (b) a forward transaction in a currency with an approved counterparty under regulation 162(3);

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(c) an off-exchange derivative which complies with regulation 162(3) to (6);

(d) a synthetic future which complies with regulation 162(7).

(2) No more than 5% of the value of the property of the scheme may be directed to initial outlay in respect of off-exchange transactions with any one counterparty.

(3) A derivatives or forward transaction which would or could lead to delivery of property to the custodian may be entered into only if:

(a) such property can be held by the scheme under these Regulations; and

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

(4) A transaction permitted under this regulation may at any time be closed out.

Cover for transactions under this Part

198 (1) No transaction may be entered into under this Part unless the maximum potential exposure created by the transaction, in terms of the principal or notional principal of the derivative or forward contract, is—

(a) covered individually under paragraphs (2) and (3); and

(b) covered globally under paragraph (4),

and for the purposes of this regulation, regard may be had to the examples set out in paragraph (10).

(2) Subject to paragraph (3), exposure shall be regarded as covered individually if there is, in the property of the scheme—

(a) (in the case of an exposure in terms of property) a transferable security or other property which is of the right kind, and sufficient in amount, to match the exposure; and

(b) (in the case of an exposure in terms of money), cash or near cash (or borrowing pursuant to regulation 199) or transferable securities which is or are, or, on being turned into money in the right currency, will be, sufficient in amount to match the exposure.

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

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

(5) A derivative or forward transaction shall not be available to provide cover for another derivative or forward transaction under this Part, but:

- (a) the two transactions involved in a 'synthetic future' shall be treated as if they were a single derivative, and the net exposure from the combination is to be covered on the basis of the higher of the cover requirements of the options which make up the synthetic future;
- (b) 'synthetic cash' (as defined in paragraph (11)) shall be available to provide cover for a transaction as if it were cash; and
- (c) a covered currency forward or a covered currency derivative may provide cover for a derivative.

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

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

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

(9) Property shall not be available for cover if it is the subject of a transaction under Part XIV (stocklending), unless the manager reasonably believes that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

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(10) The examples of the cover requirements mentioned in paragraph (1) are as follows:

- (a) A bought put option (or a written call option) on 800 ordinary US\$1 shares (fully paid) of ABC plc has to be covered by an existing holding in the scheme of 800 ordinary US\$1 shares (fully paid) of ABC plc (paragraph (2)(a)).
- (b) A bought call option (or written put option) on 800 ordinary US\$1 shares (fully paid) of ABC plc has to be covered by cover (in the form of cash or an allowable substitute for cash or transferable securities) which is sufficient in amount to meet the purchase price of the shares on exercise of the option (paragraph (2)(b)).
- (c) A sold contract for differences on short-dated US dollars has to be covered by cash or near cash or transferable securities, the values of which together at least match the notional principal of the contract (eg. a short US dollar contract, or a successive series of such contracts, is covered by BD\$1 million) (paragraphs (2)(b) and (7)).
- (d) A sold future on the S+P500 Index has to be covered by holdings of equities, which satisfy the test of appropriateness for cover in paragraph (3) in relation to that future, and the values of which together at least match the current mark to market valuation of the future (e.g. if the multiplier per full index point is US\$25, and if the eventual obligation under the future is currently at 2800, the valuation of the futures position is $2800 \times \text{US\$}25 = \text{US\$}70,000$) (paragraph (3)).
- (e) Where the manager of a scheme, which has holdings in US shares, wishes to switch exposure to the UK market, and decides to sell a S+P 500 Index future to the value of those shares (this transaction satisfying the test of appropriateness for cover in paragraph (3)), then the US dollar 'synthetic cash' position created may thereupon be used as cover for a FT-SE Index future provided that the manager ensures that the cover remains sufficient (e.g. by reference to the US dollar/sterling exchange rate) (paragraphs (10)(c) and (3)).

(11) In this regulation, "synthetic cash" means a situation whereby a position in a derivative offsets an exposure in property to the point where that exposure has effectively been neutralised, and the effect

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of the combined holding of both property and the position in the derivative is the same as if the scheme had received or stood to receive the value of the property in cash.

Borrowing in the context of efficient portfolio management

199 (1) Cash obtained by borrowing, and borrowings which the manager reasonably regards an eligible institution to be committed to provide, shall be available for cover under regulation 198 as long as the normal limits on borrowing under regulations 202 and 203 are observed.

(2) Where, for the purposes of this Part, the manager:

- (a) borrows for the scheme an amount of currency from an eligible institution; and
- (b) keeps an amount in another currency, at least equal to such borrowing, on deposit with the lender (or his agent or nominee) (hereinafter referred to as "back to back" borrowing),

then this Part shall apply as if the borrowed currency, and not the deposited currency, were part of the property of the scheme, and the normal limits on borrowing under regulations 202 and 203 shall not apply to that borrowing.

Continuing nature of limits and requirements

200 (1) The manager shall, at each valuation point (and more frequently if necessary), re-calculate the amount of cover required in respect of positions already in existence under this regulation, and derivatives and rights under forward transactions under this regulation may be retained in the property of the scheme only so long as they remain covered both individually and globally under regulation 198.

(2) If at any time:

- (a) any fact or matter relating to the scheme or its economic environment; or
- (b) the aggregate of all outstanding positions under this Part,

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

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**PART XIII
CASH, BORROWING AND LENDING**

Cash and near cash

201 (1) The property of a scheme may consist of cash and near cash, where this may reasonably be regarded as necessary in order to enable:

- (a) redemption of units;
- (b) efficient management of the scheme in accordance with its objectives; or
- (c) other purposes which may reasonably be regarded as ancillary to the objectives of the scheme.

(2) Paragraph (1) shall not apply to:

- (a) a money market fund;
- (b) a futures and options fund;
- (c) a geared futures and options fund,

but the property of any such scheme may consist of cash and near cash without limitation.

(3) Paragraph (1) shall not apply during the period of the initial offer, during which the property of the scheme may consist of cash and near cash without limitation.

General power to borrow

202 (1) Subject to any restriction in the constitutional documents, the custodian may, in accordance with these Regulations and with the instructions of the manager, borrow money for the use of the scheme on terms that the borrowing is to be repayable out of the property of the scheme.

(2) The custodian may borrow under this regulation only from an eligible institution.

(3) The manager of the scheme shall ensure that the borrowing of the scheme is on a temporary basis, and, for that purpose:

- (a) the manager shall have regard in particular to:
 - (i) the duration of any period of borrowing; and
 - (ii) the number of occasions on which resort is had to borrowing in any period; and

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(b) the manager shall ensure that no period of borrowing exceeds 3 months whether in respect of any specific sum or at all, without the prior consent of the custodian, which may be given only on such conditions as appear to the custodian appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

(4) This regulation shall not apply to back to back borrowing under regulation 199.

Borrowing limits

203 (1) The manager shall ensure that the borrowing of a scheme shall not, on any business day, exceed 10% of the value of the property of the scheme.

(2) In the case of a property fund, the manager shall ensure that the borrowing shall not, on any business day, exceed 10% of the value of that part of the property of the scheme which for the time being does not consist of immovables.

(3) In relation to a property fund, an approved mortgage under regulations 182 and 184 shall not count as borrowing under paragraph (2).

(4) This regulation shall not apply to back to back borrowing under regulation 199.

(5) In this regulation "borrowing" includes as well as borrowing in a conventional manner, any other arrangement designed to achieve a temporary injection of money into the property of the fund, in the expectation that the sum will be repaid, for example by way of a combination of derivatives which produces an effect similar to borrowing.

Restriction on lending of money

204 (1) Money forming a part of the property of any scheme shall not be lent.

(2) The following shall not be regarded as lending for the purpose of paragraph (1)—

(a) purchasing a debenture;

(b) the placing of money on deposit or in a current account.

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Restriction on lending of property other than money

205 (1) Property of the scheme other than money shall not be lent by way of deposit or otherwise.

(2) Transactions falling within Part XIV (stocklending) shall not be regarded as lending for the purposes of paragraph (1).

(3) Nothing in this regulation shall be construed as preventing the custodian, at the request of the manager, from lending, depositing, pledging or charging property of the scheme for margin requirements where the scheme is using derivatives or forward transactions pursuant to any other provision of these regulations.

General power to underwrite or accept placings

206 (1) Subject to any restriction in the constitutional documents, any power in this regulation to invest in transferable securities may be used for the purpose of entering into transactions to which this regulation applies.

(2) Subject to paragraph (3), this regulation shall apply to any agreement or understanding {whereby transferable securities will or may become part of the property of the scheme):

(a) which is an underwriting or sub-writing agreement; or

(b) which contemplates that securities will or may be issued to or subscribed for or acquired by the custodian.

(3) Paragraph (2) shall not apply to:

(a) any option; or

(b) any purchase of a transferable security which confers a right:

(i) to subscribe for or acquire a transferable security; or

(ii) to convert one transferable security into another.

(4) No agreement or undertaking referred to in paragraph (2), may be entered into if it relates to units in a collective investment scheme.

(5) The exposure of a scheme to agreements and undertakings referred to in paragraph (2) shall, on any business day:

(a) be covered under regulation 199 as if the exposure had been incurred in the context of Part XII (efficient portfolio

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management) by means of transactions in approved derivatives; and

- (b) be such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in these Regulations.

Guarantees and indemnities

207 (1) None of the property of any scheme may be used to discharge any obligation arising under a guarantee or indemnity given by the custodian or manager with respect to the obligations of any third party.

(2) Paragraph (1) shall not apply to an indemnity given to a person winding up a body corporate or other scheme in circumstances to which regulation 81 (unitisation) applies.

**PART XIV
STOCKLENDING**

Stocklending: General

208 (1) This Part shall apply to any scheme to which Part XII (efficient portfolio management) applies, but not to a fund of funds.

(2) The powers conferred by this Part may be exercised by such a scheme for the purpose of efficient portfolio management, where it reasonably appears to the manager to be economically appropriate to do so with a view to generating additional income for the scheme with no, or an acceptable degree of, risk.

(3) Paragraphs (1) and (2) shall be subject to any restrictions in the constitutional documents.

Permitted stocklending

209 (1) The custodian, if he is an approved lender for the purpose of section 129 of the United Kingdom Income and Corporation Taxes Act 1988, or equivalent in any other jurisdiction may, at the request of the manager, enter into a transaction of disposal of property in the scheme and re acquisition of equivalent property, but only if:

- (a) the property transferred by the custodian comprises transferable securities;
- (b) all the terms of the agreement under which in return such securities are to be reacquired by the custodian in a form which is:

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- (i) acceptable to the custodian;
 - (ii) approved for the purposes of any local laws which may be relevant; and
 - (c) the counterparty is acceptable as described in paragraph (2); and
 - (d) the collateral obtained is:
 - (i) acceptable to the custodian;
 - (ii) adequate as described in paragraph(3);
 - (iii) sufficiently immediate as described in paragraph (4).
- (2) For the purpose of paragraph (1)(c),the counterparty—
- (a) is the person who is obliged pursuant to the transaction to transfer to the custodian securities of the same kind and amount as the securities transferred by the custodian; and
 - (b) may be regarded as acceptable only if he is for the time being an authorised person or a person exempted pursuant to Section 43 of the Financial Services Act 1986.
- (3) Collateral shall be regarded as adequate only if it:
- (d) exceeds in value, at the time of the transfer to the custodian, the value of the securities transferred by the custodian;
 - (e) is transferred to the custodian or its agent;
 - (f) is the subject of an agreement for transfer of the collateral, or of assets equivalent to the collateral, by the custodian as soon as the need for it has disappeared; and
 - (g) is in the form of one or more of the following:
 - (i) cash;
 - (ii) near cash;
 - (iii) government and other public securities;
 - (iv) a certificate of deposit;
 - (v) a letter of credit;

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- (vi) an endorsable short term certificate issued by TALISMAN system or any recognised substitute system; or
 - (vii) securities transferred in CREST.
- (4) Collateral is sufficiently immediate if:
 - (a) it is transferred before or at the time of the transfer of the securities by the custodian; or
 - (b) the custodian reasonably believes at that time that it will be transferred at the latest by the close of business on the day of the transfer.

Limitation by value

210 There shall be no limit on the value of the property of a scheme which may be the subject of transactions within this Part.

Treatment of collateral

211 (2) The custodian shall take such steps as are necessary to ensure that the value of the collateral received by the custodian at all times exceeds the value of the securities lent by the custodian.

(3) Any agreement for the transfer of securities or of collateral (or of the equivalent of either) under this Part at a future date may be regarded, for the purposes of valuation under Part VI or this Part, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the scheme.

(4) Collateral transferred to the custodian shall be regarded as part of the property of the scheme for the purposes of these regulations except in the following respects:

- (a) it shall not be included in any valuation for the purposes of Part VI or this Part, because it is offset under paragraph (2) by an obligation to transfer;
- (b) it shall not count as property for any purpose of Parts XI, XII and XIII.

(5) Paragraphs (2) and (3) (a) shall not apply to any valuation of collateral itself for the purposes of this Part.

(6) The duty of the custodian under paragraph (1) may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired, where the custodian reasonably believes that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.

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**PART XV
PROSPECTUS**

Preparation of the prospectus

212 (6) The prospectus shall—

- (a) be prepared by the manager of a scheme for the purpose of marketing any units in that scheme in the United Kingdom or in any other jurisdiction;
- (b) state prominently at the head of the first page or on the cover page that the document is a prospectus prepared in accordance with these regulations.

(7) The prospectus shall be revised—

- (a) at least once in every twelve months to take account of any change or any new matter, other than one which reasonably appears to the manager to be insignificant;
- (b) immediately on—
 - (i) the occurrence of any significant change in the matters stated therein; or
 - (ii) the emergence of any significant new matter,

which in the manager's opinion ought to be stated therein before the prospectus is due for such annual revision.

(8) A revision of the prospectus may take the form of a complete substitution for the previous prospectus or of a supplement to the prospectus and, in any case, the date at which the revision was made shall be prominently displayed.

(9) References in these Regulations to the prospectus prepared in accordance with this regulation shall be construed as references to the prospectus revised (where revision is required) in accordance with this regulation.

Publication of the prospectus

213 (1) The manager shall not market units in a scheme in the United Kingdom or in any other jurisdiction unless:

- (a) a prospectus has been prepared in accordance with regulation 212, in English or as otherwise required by another jurisdiction; and

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- (b) arrangements have been made for a printed document containing those particulars to be available in what the manager reasonably considers to be sufficient numbers to enable it to satisfy those who accept the offer referred to in paragraph (2); and
- (c) a copy of that document has been sent:
 - (i) to the Authority; and
 - (ii) to the custodian.

(2) The manager shall not effect any sale of units in the scheme to any person in the United Kingdom or in any other jurisdiction until it has offered that person free of charge a copy of the prospectus in English or as otherwise required by another jurisdiction.

Inspection of the prospectus

214 The manager who markets or has marketed units in a scheme in the United Kingdom or in any other jurisdiction shall make a copy of the prospectus in English or as otherwise required by another jurisdiction available for inspection by any member of the public free of charge at all times during ordinary office hours:

- (a) at its principal place of business in the United Kingdom and as otherwise required by another jurisdiction; or
- (b) in the case of such a manager who has no place of business in the UK or as otherwise required in another jurisdiction, at an address in the UK or in that other jurisdiction notified to the Authority in writing.

Compensation for false or misleading prospectus

215 (9) The following persons shall be treated as being responsible for the accuracy of the prospectus—

- (a) the manager and each person who was—
 - (i) a director or trustee of the scheme when the prospectus was approved by the directors or trustees, whether or not such person personally approved the prospectus; or
 - (ii) named in the prospectus as a director or trustee or as having agreed to become a director or trustee of the scheme either immediately or at a future time; or

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(b) anyone stated in the prospectus as having accepted responsibility for, or for any part of the prospectus.

(10) A person who is responsible under paragraph (1) for the accuracy of the prospectus shall ensure that the prospectus does not contain any untrue or misleading statement or omit any matter required by these Regulations to be included.

(11) A person referred to in paragraph (2) shall be liable to pay compensation to any person who has purchased or agreed to purchase units in a scheme and suffered loss as a result of any untrue or misleading statement in the prospectus or the omission from them of any matter required by these Regulations to be included therein.

(12) Where these Regulations require the prospectus to include information as to any particular matter on the basis that the prospectus shall include a statement either as to that matter or, where applicable, that there is no such matter, the omission from the prospectus of the information shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.

Exemption from liability to pay compensation

216 (1) A person shall not incur any liability under regulation 215 for any loss in respect of units in a scheme caused by any such statement or omission mentioned in that regulation if when the prospectus was prepared or ought to have been revised in accordance with regulation 212 he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter the omission which caused the loss was properly omitted and that:

- (a) he continued in that belief until the time when the units were acquired or an agreement was entered into to acquire the units; or
- (b) the units were acquired or an agreement for their acquisition was entered into before it was reasonably practicable to bring a correction to the attention of persons likely to acquire units in the scheme; or
- (c) before the units were acquired or an agreement for their acquisition was entered into he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of persons likely to acquire units in the scheme; or

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(d) the person who acquired, or the person agreeing to acquire the units was not influenced, or not influenced to any material extent, by that statement or would not have been influenced, or influenced to any material extent, by the inclusion of the matter omitted in making his decision to acquire the units.

(2) Without prejudice to paragraph (1), a person shall not incur any liability under regulation 215 for any loss in respect of any units in a scheme caused by any such statement or omission mentioned in that regulation if:

(a) before the units were acquired, or an agreement for their acquisition was entered into, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the units; or

(b) he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the units were acquired.

(3) A person shall not incur any liability under regulation if the person suffering the loss acquired the units in question with knowledge that the statement was false or misleading or of the omitted matter, as the case may be.

(4) A person shall not incur any liability under regulation 215 as a result of failure to prepare a revised prospectus in accordance with regulation 212(2) if he reasonably believed that the change or new matter in question was not such as to call for a revision of the prospectus under regulation 212(2).

Feeder funds

217 (1) In the case of a scheme which is a feeder fund, the matters required to be stated in the prospectus shall be stated both in respect of the feeder fund and in respect of the scheme into which it is to feed.

(2) The requirements of paragraph (1) shall be satisfied if, on each occasion on which the prospectus is required to be made available, sent or offered under regulation 213 there is made available, sent or offered together with the prospectus prepared in accordance with Appendix 4 in respect of the feeder fund, the prospectus in respect of the scheme into which it is to feed prepared in accordance with these regulations or, in the case of a UK scheme, in accordance with regulations made under the Financial Services Act 1986.

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**PART XVI
REPORTS TO INVESTORS**

Manager's annual and half-yearly reports

218 (2) Subject to paragraph (2), the manager shall, in relation to each annual and each half-yearly accounting period, prepare a report stating the matters set out in Part A of Appendix 4 and otherwise complying with the requirements of this regulation.

(2) A half-yearly report need not be prepared in relation to the first half-yearly accounting period if the first annual accounting period is a period of less than one year.

(3) A report which relates to an annual accounting period shall contain:

- (a) a statement of commissions paid on dealings as required by Part B of Appendix 4;
- (b) a portfolio statement relating to that period stating the matters set out in Part C of Appendix 4;
- (c) a comparative table relating to that period stating the matters set out in Part D of Appendix 4;
- (d) a copy of a report of the auditor to the investors on the accounts contained in the report stating the matters set out in Part E of Appendix 4; and
- (e) a copy of a report of the custodian to the investors stating the matters set out in Part F of Appendix 4 and supplied to the manager by the custodian in accordance with regulation 219.

(4) A report which relates to any accounting period shall contain the accounts of the scheme for the period to which the report relates which shall consist of:

- (a) a statement of assets and liabilities stating the matters set out in Part A of Appendix 5;
- (b) if a distribution or allocation of income is to be made for that period, an income and distribution account stating the matters set out in Part B of Appendix 5; and
- (c) if that period is an annual accounting period:
 - (i) a capital account stating the matters set out in Part C of Appendix 5; and

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- (ii) notes to the accounts stating the matters set out in Part D of Appendix 5,

and shall be prepared in accordance with internationally accepted accounting principles and shall give a true and fair view of the financial position of the scheme as at the end of the period to which the accounts relate.

(5) A report which relates to any accounting period shall be signed by two directors of the manager.

Annual report by the custodian

219 (1) It shall be the duty of the custodian to enquire into the conduct of the manager in the management of the scheme in each annual accounting period and to report thereon to the investors.

(2) The custodian's report shall contain the matters set out in Part F of Appendix 4 and shall be delivered to the manager in sufficient time to enable it to be included in the manager's annual report to investors on or before the annual income allocation date.

Publication of the manager's reports

220 (1) The manager shall, on or before the annual income allocation date and no later than two months after the end of the half-yearly accounting period, publish the manager's annual and half-yearly report, respectively, in accordance with paragraphs (2) and (3).

(2) The manager shall send to each investor (or to the first named of joint investors) entered in the register a copy of the report on the accounting reference date or, if the report relates to a half-yearly accounting period for which no interim allocation of income is made, as at the last day of that period.

(3) The manager and the custodian shall make the most recent annual report and the most recent half-yearly report (unless it has been superseded by an annual report) available in English or in any other language as required by any jurisdiction for inspection by the public free of charge at each place specified for the purpose in the most recently published prospectus during ordinary office hours.

(4) The manager shall send a copy of the annual and half-yearly reports to the Authority when they are published.

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**Manager's annual and half-yearly reports to be offered to purchasers
of units**

221 (1) The manager shall not effect any sale of units in the scheme to any person in the United Kingdom or in any other jurisdiction until it has offered that person free of charge a copy of the manager's most recent annual report and most recent half-yearly report (unless it has been superseded by an annual report) in English or in any other language as required by any jurisdiction.

(2) Paragraph (1) shall not apply where the sale is effected otherwise than in the course of a conversation conducted face to face or by telephone, but the manager shall send free of charge a copy of the document mentioned in paragraph (1) to the purchaser if so requested.

**PART XVII
AUDIT**

Audit

222 (1) At the Annual General Meeting or at a subsequent Special General Meeting in each year the investors shall appoint an independent representative in Bermuda (who shall be a member of the Institute of Chartered Accountants of Bermuda) as auditor of the accounts of the scheme and such auditor—

(a) shall hold office until the investors appoint another auditor;

(b) may not be an investor,

and no director, officer or employee of the scheme, the custodian or the manager or any connected person shall be eligible for appointment as auditor.

(2) An auditor of a Bermuda Recognised Scheme shall be approved by the Authority and shall not be removed or replaced without the prior written approval of the Authority.

(3) The investors shall be notified in writing of the removal of the auditor and the name of the new auditor.

(4) The remuneration of the auditor shall be determined by the investors or by the directors in the case of a mutual fund scheme as so authorised by the investors.

(5) If the auditor's office becomes vacant by the resignation or death of the auditor or by his becoming incapable of acting by reason of illness or absence from Bermuda at a time when his services are required,—

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- (a) in the case of a mutual fund scheme, the directors shall as early as practicable, convene a special General Meeting to appoint an auditor to fill the vacancy;
 - (b) in the case of a unit trust scheme, the trustee shall as early as practicable, convene a special General Meeting to appoint an auditor to fill the vacancy.
- (6) The auditor shall examine such books, accounts and vouchers as may be necessary for the performance of his duties.
- (7) The auditor shall make a report to the investors of the accounts examined by him and on every Balance Sheet and Profit and Loss Statement laid before the scheme in a General Meeting during his tenure of office, and the report of the auditor to the investors for any accounting period shall state:
- (i) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Regulations and the prospectus; and
 - (ii) without prejudice to the foregoing whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period; and
 - (iii) if the auditor is of the opinion that proper accounting records have not been kept, or that the accounts are not in agreement with the scheme's accounting records, that fact; and
 - (iv) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact; and
 - (v) if the auditor is of the opinion that the information given in the report of the manager for that period is inconsistent with the accounts, that fact.
- (8) The auditor shall be furnished with a list of all books kept by the scheme, the custodian and the manager and shall at all times have the right of access to the books and accounts and vouchers of the scheme, the custodian and the manager, and shall be entitled to require from the directors and officers of the company, the custodian and

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manager such information and explanations as may be necessary for the performance of his duties.

(9) The auditor shall be entitled to attend any General Meeting of the scheme at which any accounts which have been examined or reported on by him are to be laid before the scheme and to make any statement or explanations he may desire with respect to the accounts, and notice of every such meeting shall be given to the auditor in the manner prescribed for investors.

(10) The scheme shall not publish or distribute any report produced by the auditor in respect of the scheme unless it has obtained the prior written consent of the auditor.

**PART XVIII
MEETINGS OF INVESTORS AND POWERS
TO MODIFY THE SCHEME**

Convening of meetings and attendance and voting thereat

223 (5) The custodian, the manager, trustee or the directors, in the case of a mutual fund scheme, may at any time convene a meeting of investors at such time and place as may be considered fit.

(6) The custodian shall, on the request in writing of investors registered as holding not less than one-tenth (or any proportion less than one-tenth specified for that purpose in the constitutional documents) in value of the units in issue, convene a meeting of investors at such time and place as may be considered fit.

(7) The manager shall be entitled to receive notice of and attend at any such meeting but subject to paragraph (4)):

(a) neither the manager nor any associate of the manager shall be entitled to vote or be counted in the quorum therefor; and

(b) for the purposes of this regulation, the units held or deemed to be held by the manager or any associate of the manager shall not be regarded as being in issue.

(8) Paragraphs (3)(a) and (b) shall not apply in respect of any units which the manager holds on behalf of or jointly with a person who, if himself the sole registered investor would be entitled to vote, and from whom the manager has received voting instructions.

(9) Paragraph (3) shall not apply in respect of units held by the manager or any associate of the manager as a bare trustee, custodian or

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nominee on behalf of a person from whom the investor has received voting instructions.

(10) The custodian and its advocates shall be entitled to attend every such meeting.

(11) For the purpose of this regulation, and in regulations 224 and 233—

- (a) "investors" means the persons who were investors on the date seven days before the notice under regulation 225 is sent or delivered, whichever is the earlier, but excluding any persons who are known not to be investors at the time of the meeting or at any other relevant time;
- (b) where a meeting is adjourned, this paragraph shall apply as if the references to regulation 225 were references to regulation 226(4).

Powers of a meeting of investors

224 A meeting of investors duly convened and held in accordance with this regulation shall be competent by extraordinary resolution to require, authorise or approve any act, matter or document in respect of which any resolution is required or expressly contemplated by these regulations, but shall have not other powers.

Notices of meetings of investors

225 (11) Fourteen days' notice (or any longer period of notice specified for the purpose in the constitutional documents), inclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given, of every meeting shall be given to the members in the manner provided for in regulation 244.

(12) The notice shall specify the place, day and hour of meeting and the items of the resolutions to be proposed.

(13) A copy of the notice shall be sent by post to the custodian unless the meeting has been convened by the custodian.

(14) The accidental omission to give notice to or the non-receipt of notice by any of the investors shall not invalidate the proceedings at any meeting.

(15) This regulation shall be subject to any provision of the Act which requires a longer period of notice.

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Quorum

226 (1) The quorum at a meeting of investors shall be the investors present in person or by proxy of one-tenth in value (or any proportion more than one-tenth in value specified for that purpose in the constitutional documents) of all the units for the time being in issue.

(2) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

(3) If, within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to such day and time not being less than fourteen days thereafter and to such place as may be appointed by the chairman and at such adjourned meeting the investors present in person or by proxy shall be a quorum.

(4) Notice of any adjourned meeting of investors shall be given in the same manner as for an original meeting and such notice shall state that the investors present at the adjourned meeting whatever their number and the number of units held by them will form a quorum.

The Chairman

227 A person, who need not be an investor, nominated in writing by the custodian shall preside at every meeting of investors and, if no such person is nominated or if at any meeting the person nominated shall not be present within fifteen minutes after the time appointed for holding the meeting, the investors present shall choose one of their number to be chairman.

Adjournment

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

Votes at meetings

229 (4) At any meeting of investors every resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, by the custodian or by one or more investors present in person or by proxy and holding or representing one-twentieth (or any proportion less than one-twentieth specified for that purpose in the constitutional documents) in value of all the units for the time being in issue on the date specified in regulation 223(7).

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(5) Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against such resolution.

(6) If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(7) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such time and place as the chairman directs.

(8) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

(9) On a show of hands every investor, who (being an individual) is present in person or being a corporation is present by one of its officers properly authorised as its representative, shall have one vote.

(10) On a poll every investor who is present, in person or by proxy, shall have one vote for every undivided part of the property of the scheme represented by the units of which he is the investor and an investor entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(11) A corporation being an investor may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of investors and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual investor.

(12) In the case of joint investors the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint investors and for that purpose seniority shall be determined by the order in which the names stand in the register of investors.

(13) On a poll votes may be given either personally or by proxy.

Proxies

230 (1) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or,

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if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorised.

(2) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at such place as the custodian or the manager with the approval of the custodian may, in the notice convening the meeting, direct or if no such place is appointed then at the registered office of the manager not less than forty eight hours before the time appointed for holding the meeting or adjourned meeting (or, in the case of a poll, before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

(3) No instrument for appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution.

(4) A person appointed to act as a proxy need not be an investor.

(5) An instrument of proxy may be in the usual common form or in any other form which the custodian shall approve.

(6) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding—

- (a) the previous death or insanity of the principal;
- (b) the revocation of the proxy or of the authority under which the proxy was executed; or
- (c) the transfer of the units in respect of which the proxy is given ,

provided that no intimation in writing of such death, insanity, revocation or transfer has been received at the place appointed for the deposit of proxies or, if no such place is appointed, at the registered office of the manager before the commencement of the meeting or adjourned meeting at which the proxy is used.

Minutes

231 Minutes of all resolutions and proceedings at every meeting of the investors shall be made and duly entered in books to be from time to time provided for the purpose at the expense of the manager and any such minute as aforesaid if purporting to be signed by the chairman of the meeting shall be conclusive evidence of the matters therein stated

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and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

Class meetings

232 (1) If the custodian is of opinion that any extraordinary resolution to be proposed is one in relation to which there is or might be a conflict of interest—

- (a) between the investors of accumulation units and the investors of income units; or
- (b) in the case of an umbrella fund, between the investors of units in one constituent part and the investors of units in another part,

such resolution shall be deemed to have been duly passed only if in lieu of being passed at a single meeting of all investors it shall be duly passed at separate meetings respectively of the investors of accumulation units and income units or of the investors of units in the one constituent part and of investors of units in the other, as the case may be.

(7) This part shall apply to each separate meeting of the investors of accumulation units or of investors of income units as though references in this Part to units and to investors were references respectively to units of the type in question and to the investors of such units.

Restrictions on the putting of composite resolutions to meetings of investors

233 (1) Modifications to the constitutional documents and departures from policies or a set of investment objectives stated in the prospectus of the descriptions set out in paragraph (2) shall not be taken to have been authorised by an extraordinary resolution at a meeting of investors unless each such modification or departure has been the subject of a separate motion for its approval which has been separately approved by an extraordinary resolution at that meeting.

(2) The modifications to the constitutional documents and departures from policy referred to in paragraph (1) are as follows—

- (a) an increase in the maximum of any periodic charge payable to the manager;
- (b) an increase in the maximum of any preliminary charge payable to the manager;

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- (c) a modification to any provision in the constitutional documents restricting:
 - (i) the descriptions of asset in which the property of the scheme may be invested;
 - (ii) the proportion of property to be invested in assets of any description;
 - (iii) the description of transactions permitted; or
 - (iv) the borrowing powers of the scheme;
- (d) any statement made in the prospectus that the manager will or may in relation to any matter referred to in paragraph (2)(c) adopt, in the management of the scheme, a policy or set of investment objectives more restrictive than the restrictions imposed in relation to that matter by Parts XI, XII, XIII and XIV or by the constitutional documents.

Reconstruction

234 (1) For the purposes of these Regulations, a reconstruction of a scheme is a scheme of arrangement which requires prior approval from the Authority whereby:

- (a) part of the property of a scheme becomes the property of another scheme; or
- (b) the whole of the property becomes the property of two or more schemes,

and investors of units in the scheme being reconstructed receive units in the other scheme in exchange for the property received into that scheme.

(2) A proposal for reconstruction shall require, in respect of the scheme being reconstructed, the approval of the investors in the scheme.

(3) Where it is proposed that property of the scheme being reconstructed should become property of another scheme the proposals shall (irrespective of any other approval and subject to regulation 85(2)) require the approval of the investors unless that approval would not have been required on an amalgamation by virtue of regulation 239(4) (on the assumption that the property to be included were treated as a discontinuing scheme).

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Restriction on modification of constitutional documents

235 No modification may be made to the constitutional documents of a scheme if the effect thereof would be that the constitutional documents no longer comply with the requirements of these Regulations.

Modification of the constitutional documents: with meeting

236 (1) A modification may be made to the constitutional documents only by an agreement, expressed to be supplemental to the constitutional documents entered into by the manager and the custodian following:

- (a) the calling of a meeting of investors by notice (if required under paragraph (2)), and
- (b) the approval of the investors (if required under paragraph (3)).

(2) The meeting shall be called unless the manager and the custodian have agreed that the modification is one which may, in accordance with regulation 237 be made without the approval of a resolution.

(3) The approval of the investors (signified by the passing at the meeting of an extraordinary resolution authorising the modification) is required in any case where a meeting of investors has to be called.

(4) If a meeting is required under paragraph (2), the notice calling the meeting shall state that the custodian has reviewed the circumstances leading to the proposed resolution and considers that the information accompanying the notice contains sufficient information to enable investors to make an informed decision.

Modification of the constitutional documents: without meeting

237 (1) Subject to paragraph (2) and to any restriction on the powers to modify which may be contained in the constitutional documents, a modification to the constitutional documents may be made without the approval of a resolution of the investors if it is required solely:

- (a) to implement any change in the law, including a change brought about by an amendment of these Regulations;
or
- (b) as a direct consequence of any such change in the law;
or
- (c) to change the name of the scheme; or

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- (d) to include a provision to enable the manager to deduct a charge on redemption, where the circumstance envisaged by regulation 97(5) does not apply; or
 - (e) to remove from the constitutional documents obsolete provisions; or
 - (f) to replace the manager or the custodian when he has been removed or wishes to retire or has retired; or
 - (g) to remove references to a constituent part of an umbrella fund, following prior approval from the Authority to a proposal to alter the scheme by removing that part; or
 - (h) to make any other modification which the custodian and the manager have agreed in writing does not involve any investors or potential investors in any material prejudice;
 - (i) in the case of a feeder fund, to specify, in relation to the scheme or eligible investment trust into which the scheme is to invest, a scheme or investment trust which has replaced the previous scheme or investment trust as a result of the amalgamation.
- (2) Paragraph (1) shall not apply to a modification which—
- (a) would affect any express restriction imposed by the constitutional documents on the powers which the manager and custodian or either of them would otherwise be able to exercise within these Regulations; or
 - (b) would increase the maximum of any preliminary or periodic charge authorised by the constitutional documents to be made by the manager; or
 - (c) would relate to the authority for payments to be made out of the property of the scheme to the custodian by way of remuneration for the custodian's services.

Resolution to change the prospectus

238 (1) Subject to regulation 237(1)(h) any statement of policy or set of investment objectives in the prospectus of the kind referred to in regulation 233(2)(d) shall not be changed without an extraordinary resolution, and no significant departure from that stated policy shall be made in the management of the scheme or set of investment objectives unless and until the departure has been approved by an extraordinary resolution at a meeting of the investors called for the purpose, and the prospectus as amended accordingly have been published.

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(2) Except where approved by an extraordinary resolution at a meeting of investors called for the purpose, a change to the prospectus relating to a proposal to treat all or any part of the manager's periodic charge as a capital charge, shall not be made except where:

- (a) the scheme concerned already has clear investment objectives indicating:
 - (i) a greater preference for the generation of income than for capital growth; or
 - (ii) equal emphasis on the generation of income and on capital growth; and
- (b) Ninety days have elapsed since the members were notified in writing by the manager of the change to the prospectus and of the date when it is to come into effect.

(3) Any amendment to the prospectus to introduce therein a list, or to add thereto an eligible market to the list required by paragraph 11 of Appendix 3 shall require approval of an extraordinary resolution at a meeting of investors unless:

- (a) the amendment is, in the context of the investment strategy of the scheme of minimal significance only, and the custodian and the manager have so agreed writing; or
- (b) the list introduced goes no wider than the regime in force immediately preceding the commencement date relating to eligible securities markets and eligible derivatives markets; or
- (c) the manager has:
 - (i) given notice in writing of the intended amendment to the custodian and the investors; and
 - (ii) included in the prospectus the proposed date of commencement of the amendment, and
 - (iii) before the amendment is relied upon, waited for ninety days to elapse since the amended prospectus became available.

Amalgamation

239 (1) For the purposes of these Regulations, an amalgamation, which requires the prior approval of the Authority, is a scheme of

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arrangement whereby the whole of the property of a collective investment scheme becomes the property (but not the first property) of a scheme, and whereby the investors in the collective investment scheme receive units in the scheme.

(2) An amalgamation shall not result in the investors of units in a scheme becoming investors of a collective investment scheme which is not a scheme.

(3) Where it is proposed that two or more schemes should be amalgamated, the proposals shall require:

- (a) the approval of the investors of the scheme or any scheme which would cease to exist if carried through (the discounting scheme or schemes); and
- (b) unless paragraph (5) applies, the approval of the investors of the scheme or a scheme which would not so cease to exist (hereinafter referred to as 'the continuing scheme').

(4) Where it is proposed that a collective investment scheme, not being a Bermuda Recognised Scheme, should be discontinued and amalgamated with a scheme (hereinafter referred to as 'the absorbing scheme'), the proposals shall (irrespective of any other approval and subject to regulation 85(2)) require the approval of the investors of units in the scheme unless paragraph (3) of this regulation applies.

(5) Paragraph (3)(b) (or, as the case may be, paragraph (4)) shall not apply if the custodian of the continuing or absorbing scheme is reasonably satisfied that the inclusion of the property concerned:

- (a) is not likely to result in any material prejudice to the interests of the investors of the scheme; and
- (b) is consistent and is regarded by the manager as consistent with the objectives of the scheme, and
- (c) could be effected without any breach, inadvertent or not, of Parts XI, XII, XIII and XIV.

**PART XIX
SUSPENSION OF DEALING AND TERMINATION OF SCHEME**

Suspension and resumption of issue and redemption of units

240 (5) The manager may, with the prior agreement of the custodian, or shall, if the custodian so requires, suspend the issue and the redemption of units at any time for a period not exceeding twenty

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eight days if he, or the custodian as the case may require, is of the opinion that there is good and sufficient reason to do so having regard to the interests of investors or potential investors.

(6) At the time of suspension under paragraph (1) the manager, or the custodian as the case may require, shall:

- (a) inform the Authority of the suspension, stating the reasons for his action, and
- (b) forthwith confirm the suspension by giving notice in writing, stating the reasons for his action, to—
 - (i) the Authority; and
 - (ii) any recognised self-regulatory organisation of which the manager or the custodian is a member; and
 - (iii) the proper authorities in each jurisdiction in which the manager holds himself out as willing to issue or redeem (or buy or sell) units, who are responsible for the authorisation of schemes.

(7) If the issue and redemption are suspended:

- (a) the custodian shall not create or cancel units; and
- (b) the manager shall not buy or sell units as agent for the custodian.

(8) Before a resumption of issue and redemption of units, the manager shall inform the Authority of the proposed resumption and forthwith after the resumption confirm the resumption by giving notice in writing to the Authority and bodies and authorities specified in paragraph (2)(b).

(9) Nothing in this regulation shall prevent the manager from agreeing, during the period of the suspension, to issue or to redeem units (or to buy or sell them as agent for the custodian) at a price calculated by reference to the first valuation point after resumption of issue and redemption.

(10) During the period of a suspension, none of the obligations in Parts VI, VII, and VIII relating to the creation, cancellation, issue or redemption of units or to the valuation of units shall apply.

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When the scheme is to be wound-up

241 (1) Without prejudice to regulation 240 and to any order or direction made under the Act, a scheme shall be wound up upon the happening of any of the following events:

- (a) the approval of the scheme as a Bermuda Recognised Scheme is revoked; or
- (b) in response to a request to the Authority by the manager or the custodian for the revocation of that approval, the Authority has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the scheme, the approval will be revoked; or
- (c) in the case of a mutual fund scheme, the expiration of any period specified in the instrument of incorporation as the period at the end of which the scheme is to terminate; or
- (d) a duly approved scheme of amalgamation has come into effect; or
- (e) a duly approved scheme of reconstruction has come into effect whereby all the property of the reconstructed scheme become the property of two or more Bermuda Recognised Schemes.

(2) Upon the happening of any of the events specified in paragraph (1)—

- (a) the custodian shall cease to create and cancel units in the scheme; and
- (b) the manager shall cease to issue and redeem units in the scheme; and
- (c) the manager shall cease to buy and sell units as agent for the custodian; and
- (d) the directors shall convene an extraordinary general meeting of the scheme for a date not later than one month after the revocation for the purposes of considering a resolution to wind up the scheme; and
- (e) the custodian shall proceed to wind up the scheme in accordance with regulation 242.

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Manner of winding-up

242 (1) In a case falling within regulation 241(1)(d) or (1)(e), the custodian shall wind up the scheme in accordance with the approved scheme of amalgamation or reconstruction.

(2) In any other case falling within regulation 241:

(a) the custodian shall, as soon as practicable after the scheme falls to be wound up, realise the property of the scheme and, after—

(i) paying thereout or retaining adequate provision for all liabilities properly so payable; and

(ii) retaining provision for the costs of the winding up,

distribute the proceeds of that realisation to the investors and the manager (upon production by them of such evidence, if any, as to their entitlement thereto as the custodian may reasonably require) proportionately to their respective interests in the scheme as at the date of the relevant event referred to in regulation 241(1); and

(b) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the custodian after the expiration of twelve months from the date on which the same became payable shall be paid by the custodian into court subject to the custodian having a right to retain thereout any expenses incurred by him in making and relating to that payment.

(3) Where the custodian and one or more investors agree, the requirement in paragraph (2) to realise the property of the scheme shall not apply to that part of the property proportionate to the entitlement of that or those investors, and the custodian may distribute that part in the form of property, after making such adjustments or retaining such provision as appears to the custodian appropriate for ensuring that or those investors bear a proportional share of the liabilities and costs.

(4) Nothing in this Part shall be construed as requiring the custodian to distribute proceeds of a realisation to any investor in any case where the manager or the custodian considers it necessary or appropriate to carry out or complete identification procedures in relation to the investor or another person pursuant to a statutory, regulatory or European Community obligation.

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(5) On completion of the winding up in respect of the events referred to in regulations 241(1)(b), (1)(c), (1)(d) or (1)(e), the custodian shall notify the Authority in writing of that fact and at the same time the manager or custodian shall request the Financial Services Authority to revoke the approval granted under section 79(4) of the Financial Services Act 1986.

Accounting and reporting during winding-up

243 (1) Subject to any order of the Supreme Court, and to paragraphs (2) and (3), while a scheme is being wound up:

- (a) the annual and half-yearly accounting periods shall continue to run;
- (b) the provisions about annual and interim allocation of income shall continue to apply; and
- (c) annual and half-yearly reports shall continue to be required.

(2) Where, in respect of any annual or half-yearly accounting period, the custodian (after consulting the manager (if appropriate) and the Authority) is satisfied that timely production of an annual or half-yearly report is not required in the interests of the investors and the Authority has no objections, it may direct that immediate production of the report may be dispensed with, and thereupon the period in question shall be reported on together with the ensuing period in the next report prepared under paragraph (1) or (3).

(3) At the conclusion of the winding up, the accounting period then running shall be regarded as the final annual accounting period, and the annual reports of the manager and custodian, in respect of that final period, shall be published and sent to each person who was an investor immediately before the end of the final annual accounting period within two months after the end of the period.

**PART XX
SERVICE OF NOTICES AND DOCUMENTS**

Service of notices and documents

244 (1) Any notice required to be served upon an investor shall be deemed to have been duly given to the investor if it is sent by post to or left at his address as appearing in the register.

(2) Any notice served by post shall be deemed to have been served on the fourth day following that on which the letter containing the

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same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

(3) Subject to regulation 102, any notice required to be served shall be in such a form as to enable the recipient to know or record the time of receipt and to preserve a legible copy thereof.

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

**PART XXI
COMPENSATION**

Compensation

245 (1) An investor or former investor of an approved scheme shall have a right of action against the custodian or manager of the scheme, as the case may be, for any loss incurred by him as a result of any material breach by the custodian or manager respectively,—

(a) of the bye-laws, or constitutional documents of the scheme; or

(b) of any provision of these Regulations, or the Act,

subject to the defences applying to actions for breach of statutory duty.

(2) For the purposes of obtaining any information which the Authority needs to ensure that the provisions of this Part are fulfilled, the Authority may direct the custodian or the manager of a scheme to furnish it with such information in such form and manner and within such time as it may specify.

(3) The custodian and manager of a mutual fund or unit trust shall furnish the trustee or administrator of any compensation arrangement with such information as he may require for the proper performance of his duties as such.

**PART B
BERMUDA STANDARD SCHEMES**

Interpretation

1 In this Part unless the context otherwise requires—

"auditor" means the person or firm appointed as auditor to a scheme;

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"constitution"	means— (a) in the case of a mutual fund company its memorandum of association (including if incorporated by private act, its private act) and bye-laws and (b) in the case of a unit trust, its trust deed;
"director"	includes an alternate director and any person occupying the position of, or purporting to act as, director, by whatever name called;
"document"	includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to the production of a copy of the information in legible form;
"financial institution"	means a person, body or entity, specified in the Third Schedule to the Bermuda Monetary Authority Act 1969;
"investment adviser"	means the person appointed by or on behalf of a scheme to render investment advice or investment management services or both, in connection with the investment activities of a scheme;
"investments"	means property of any description which is acquired by a scheme for investment purposes and includes securities, stocks, bonds, debt instruments, warrants, options, futures, derivatives, commodities and land and includes short-selling of any investments;
"investor"	means a person who holds securities in a scheme;
"person"	means a natural person or a company or association or body of persons, whether incorporated or not;

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“prospectus”	means the prospectus, offer document, explanatory memorandum or other document or instrument issued by a scheme for the purposes of offering securities;
“registrar”	means the person appointed by a scheme as registrar for the issue, transfer, conversion (if applicable) and redemption of securities in a scheme;
"securities"	means shares of mutual fund scheme or units of a unit trust;
“service provider”	means any person in or from within Bermuda providing services to a scheme and includes a scheme's custodian, administrator, registrar, auditor, attorneys and any other person providing general management, administrative or accounting and auditing services.

**SECTION A
THE SCHEME**

Availability of Constitution

2 The following provisions shall apply in respect of the constitution—

- (a) it shall be made available for inspection without charge at the request of any investor or prospective investor at the registered or principal office of a scheme in Bermuda or at the office in Bermuda of at least one of the service providers;
- (b) copies of the constitution shall be made available to investors or potential investors on payment (if any) of any reasonable disbursement costs associated with the making and forwarding of such copies.

Content of Constitution

3 The constitution shall include provisions for the following:

- (a) the rights and restrictions attaching to the securities;
- (b) the terms for valuation of assets and liabilities;

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- (c) the manner of calculation of the net asset value per security and the issue price and redemption price of securities;
- (d) the terms upon which securities are issued;
- (e) the terms upon which securities may be transferred or converted, if applicable;
- (f) the terms upon which securities may be redeemed and the circumstances in which redemptions may be suspended;
- (g) the investment restrictions or borrowing limitations, if any; and
- (h) the appointment of an auditor.

Publication of Prices

4 The issue and redemption prices for securities shall be made available on request without charge at the registered or principal office of a scheme in Bermuda or at the office in Bermuda of at least one of the service providers.

Reports to Investors

5 (1) A scheme shall make provision for the preparation and distribution of an annual report to investors including copies of its audited financial statements.

(2) At the discretion of the directors, or in the case of a unit trust, a director of the administrator, interim or periodic reports may also be prepared and distributed.

Reports to the Administrator

6 (1) For the purposes of this regulation “reportable event” means an event in relation to which a report is required under paragraph (2).

(2) Where a service provider becomes aware that the assets of a scheme have not been invested in accordance with the constitution or that the general management of a scheme is not materially in accordance with the provisions of its constitution such service provider shall—

- (a) immediately advise the Authority of the occurrence of any such event and the circumstances applicable thereto; and
- (b) make a report in writing of such reportable event to the administrator,

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and that report shall be included in the scheme's next annual report and next periodic report if such next periodic report is to be distributed before the next annual report.

(3) No service provider shall be in breach of any duty of which it is subject to as a service provider of a scheme by reason of its making a report to the administrator, or its communicating to the Authority, in good faith any reportable event or any other information on any other matter of which it becomes aware in its capacity of service provider of that scheme and which relates to the business or affairs of that scheme.

Reports to the Authority

7 A scheme shall report to the Authority within 20 business days after the end of the previous month (the reporting period to which such report refers) or on such other basis as may be requested by the Authority, on the activities of a scheme and such reports shall contain:

- (a) the name of the scheme;
- (b) the net asset value per security;
- (c) the percentage change in the net asset value of the scheme and per security from the previous reporting period;
- (d) the total value of net assets of the scheme;
- (e) the amount of new subscriptions in the relevant reporting period;
- (f) the amount of redemptions in the relevant reporting period;
- (g) the number of securities in circulation at the end of the reporting period; and
- (h) such other information as may reasonably be requested by the Authority.

**SECTION B
THE ADMINISTRATOR**

Appointment

8 A scheme shall appoint an administrator.

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Administrative Expertise

9 (1) An administrator shall demonstrate to the Authority's satisfaction its expertise and experience in the administration of schemes.

(2) The Authority shall be satisfied as to the reputation, expertise and experience of the directors and all persons connected with the administrator.

Changes

10 (1) No change in the administrator shall be made without the prior approval of the Authority.

(2) Notice of any change in the administrator shall be given in writing to investors.

(3) A new administrator shall be required to demonstrate its experience and expertise to the Authority as required under regulation 9.

Functions

11 (1) The administrator shall, (with the directors in the case of a mutual fund scheme), provide or procure—

- (a) that subscription monies received by a scheme are applied in accordance with its constitution;
- (b) that the issue, conversion and redemption of securities of a scheme are carried out in accordance with its constitution and all applicable laws;
- (c) that on the sale of any assets of a scheme the consideration is remitted to the custodian within reasonable time limits;
- (d) that the income of a scheme is applied in accordance with its constitution;
- (e) that the net asset value of the securities, and their issue, conversion and redemption prices, are calculated in accordance with a scheme's constitution and made available to investors or potential investors;
- (f) that the investment of the assets of a scheme is in accordance with its stated investment objectives;
- (g) that all necessary office facilities, equipment and personnel to enable the administrator to carry out its functions and all general administrative services

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required by a scheme in connection with its business operations;

- (h) the preparation of periodic reports for despatch to the investors in such form, subject to these regulations and the Companies Act 1981, as the directors or trustees of a scheme may agree;
- (i) the supply of such information and instructions as may be requisite to enable the registrar and the custodian to perform their respective duties;
- (j) the payment to or deposit with or to the order of the custodian of all monies and securities received on behalf of a scheme;
- (k) the monitoring of the procedure for the holding of assets and securities of a scheme by the custodian and any sub-custodian;
- (l) all necessary registrations with any governmental, supervisory and regulatory agencies and compliance with all laws, in connection with the offering of securities in each jurisdiction where the securities are offered and the maintenance of the listing of the securities of a scheme on any stock exchange on which they are listed;
- (m) that the accounts of a scheme and such financial books and records as are required by these regulations, by any other law or otherwise are maintained in good order;
- (n) the monitoring of the procedures of the registrar and for giving to the registrar all such instructions as may be necessary in connection with the maintenance of the register; and
- (o) the distribution to the investors of securities of a scheme of all dividends or other distributions which may from time to time be declared and paid by it on such securities.

(2) It shall be the duty of the administrator to manage the scheme in accordance with—

- (a) the constitution;
- (b) these Regulations;
- (c) the most recently published prospectus; and

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- (d) in the case of a mutual fund scheme, any directions given from time to time by the directors—
 - (i) pursuant to a power conferred on the directors by the constitution with regard to the constituents of the property of the scheme; and
 - (ii) consistent with the provisions of the documents referred to in sub-paragraphs (a), (b) and (c).

Delegation

12 (1) The administrator shall be entitled to delegate any or all of its functions or duties to any such person or persons, whether in or outside Bermuda, as it shall consider appropriate but the administrator shall remain responsible for the performance by such persons of any duty so delegated.

(2) Notice of any such delegation shall be given to the Authority, the scheme, the service providers and to the investors.

**SECTION C
THE CUSTODIAN**

Appointment

13 A scheme shall appoint a custodian who shall normally be a financial institution in Bermuda or a subsidiary of such a financial institution and be approved by the Authority.

Expertise

14 A custodian shall demonstrate to the Authority's satisfaction its expertise and experience.

Changes

15 (1) No change in the custodian may be made without the prior approval of the Authority.

(2) Notice of any change to the custodian shall be given in writing to investors.

Functions

- 16 (1) The custodian shall—
- (a) provide for the safekeeping of the assets of a scheme; and

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(b) carry out the instructions of the administrator unless they conflict with a scheme's constitution or applicable regulations or laws.

(2) The custodian shall be entitled to demand copies of records and information relating to the following:

- (a) the receipt and application of subscription monies;
- (b) the carrying out of the issue, conversion and redemption of securities of a scheme;
- (c) the obligation to ensure that consideration received on the sale of assets of a scheme is remitted to the custodian within a reasonable time;
- (d) the application of income of a scheme; and
- (e) the calculation in accordance with a scheme's constitution of the net asset value of the securities and their issue, conversion and redemption prices.

Sub-custodians

17 (1) The custodian shall—

- (a) be entitled to appoint any such person or persons as it thinks fit to be sub-custodians of a scheme, to carry out on its behalf any and all of the obligations of the custodian;
- (b) exercise reasonable skill, care and diligence in the selection of a suitable sub-custodian under subparagraph (a);
- (c) be responsible for ensuring, on a continuing basis, the suitability of the sub-custodian to provide custodial services; and
- (d) give notice of any such delegation in advance to the Authority, the scheme, the administrator and the service providers.

(2) The custodian shall maintain an appropriate level of supervision over each sub-custodian and make appropriate enquiries, periodically, to confirm that the obligations of the sub-custodians continue to be competently discharged.

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Co-custodians

18 (1) One or more persons may, with the prior approval of the Authority, be appointed as co-custodians to the custodian of a scheme investing in commodities, futures, options and other similar investments.

- (2) Where an appointment is made under paragraph (1),—
- (a) the custodian shall hold the scheme's uninvested cash (other than as required for margins and similar matters);
 - (b) unless otherwise agreed in writing, the custodian shall not be liable or responsible for any defaults of a co-custodian.

**SECTION D
THE REGISTRAR**

Appointment

19 A scheme shall appoint a registrar who shall be a person resident in Bermuda with power to carry on the business of a registrar.

Expertise

20 A registrar shall demonstrate to the Authority's satisfaction its expertise and experience.

Changes

21 (1) No changes shall be made to the registrar without the prior approval of the Authority.

(2) Notice of any change in the registrar shall be given in writing to the investors.

Functions

22 The registrar shall be responsible for the issue, transfer, conversion and redemption of securities of a scheme and the duties of the registrar shall include:

- (a) maintaining a register of investors at its offices in Bermuda;
- (b) making the register available for inspection as required by these Regulations, any other law or the constitution or all of the foregoing and supplying copies of the register or of any part thereof as required;
- (c) preparing and, if required, sealing on behalf of a scheme new certificates and balance certificates and ensuring

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that certificates for securities in a scheme are issued or cancelled in accordance with the provisions of its constitution; and

- (d) providing such facilities as may from time to time be necessary with respect to the replacement or transfer of securities of a scheme.

Sub-registrars

23 (1) The registrar shall be entitled to appoint any such person or persons as it shall think fit to be sub-registrar or branch registrar to carry out on its behalf any and all of the obligations of the registrar but the registrar shall remain responsible for the performance by any such sub-registrar or branch registrar of any duty so delegated.

(2) Notice of any such delegation shall be given in advance to the Authority, the scheme, the administrator and the service providers.

**SECTION E
THE INVESTMENT ADVISER**

Appointment

24 A scheme shall, with the approval of the Authority, appoint an investment adviser.

Expertise

25 An investment adviser shall demonstrate to the Authority's satisfaction its expertise and experience.

Sub-advisers

26 (1) The investment adviser shall be entitled to appoint any such person(s) as it shall think fit to be sub-advisers but the investment adviser shall remain responsible for the performance by any such sub-adviser.

(2) Notice of any such appointment shall be given in advance to the Authority, the scheme, the administrator and the service providers.

Changes

27 (1) No change in the investment adviser may be made without the prior approval of the Authority.

(2) Notice of any change in the investment adviser shall be given in writing to the investors.

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SECTION F
FINANCIAL REPORTS

Financial Reports

28 (1) There shall be prepared and distributed annually to investors a financial report containing audited financial statements.

(2) Interim financial statements and report shall be prepared and distributed in accordance with the constitution.

(3) The prospectus shall contain provisions relating to the nature and frequency of financial reports to be distributed to investors.

Basis of Preparation

29 Financial statements and other financial information distributed to investors and financial information used in the determination of net asset value shall be prepared in accordance with generally accepted accounting principles (GAAP) which may be those of a country or jurisdiction other than Bermuda.

Guidance on the selection of GAAP

30 A scheme shall adopt appropriate GAAP in preparing its financial statements and in making such a decision, the scheme shall consider the appropriateness of the GAAP to be selected in relation to:

- (a) the requirements of any securities authorities or agencies, or supervisory or regulatory bodies to which the scheme is subject;
- (b) the country or jurisdiction in which the majority of investors, or potential investors, in the scheme reside;
- (c) the countries in which the sponsor, promoter and investment adviser are located; and
- (d) the proposed business of the scheme and the nature of its investments.

Audited Financial Statements to be included in Financial Reports

31 Subject to the requirements of GAAP and those of any securities exchanges or other supervisory or regulatory bodies, audited financial statements of a scheme shall include:

- (a) a statement of net assets, a balance sheet, or a statement of assets and liabilities;

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- (b) a statement of operations, or a statement of income and expenses;
- (c) a statement of changes in net assets or in financial position;
- (d) a statement of retained earnings or deficit, if appropriate; and
- (e) notes to the financial statements containing disclosure as required by:
 - (i) GAAP;
 - (ii) any securities exchanges or other supervisory or regulatory bodies to which the scheme is subject;
 - (iii) such further information as is required by these regulations, the Companies Act 1981 or the scheme's constitution.

Specific requirements for inclusion in Financial Statements

32 The financial statements shall disclose the following minimum information, if material:

- (a) in relation to the statement of net assets, balance sheet or statement of assets and liabilities—
 - (i) cash and bank balances;
 - (ii) accrued investment income receivable;
 - (iii) amounts receivable on subscriptions for the scheme's securities;
 - (iv) receivables in respect of sales of investments;
 - (v) unamortised organisation costs;
 - (vi) loans and other forms of borrowing;
 - (vii) amounts payable on redemption of the scheme's securities;
 - (viii) amounts payable on distributions;
 - (ix) the value of net assets;
 - (x) net asset value per security;

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- (b) in relation to the statement of operations or statement of Income and expense—
 - (i) investment income by significant category;
 - (ii) other income;
 - (iii) such other expenses as are material, including amortisation of organisation costs, auditors' fees, legal fees, and other professional fees;
 - (iv) taxes;
 - (v) net income;
 - (vi) realised gains (losses) on investments and foreign currencies unless separately disclosed in the Statement of Changes in Net Assets or in Financial Position;
 - (vii) unrealised gains (losses) on investments and foreign currencies unless separately disclosed in the Statement of Changes in Net Assets or in Financial Position;
- (c) in relation to the statement of changes in net assets or in financial position—
 - (i) increases in net assets resulting from subscriptions during the year;
 - (ii) the decrease in net assets resulting from redemptions during the year;
 - (iii) distributions made during the period, if any;
 - (iv) the impact of operations on the net assets for the year, including, if not separately disclosed elsewhere, net investment income (loss), realised gains (losses) on investment and foreign currencies, and unrealised gains (losses) on investment and foreign currencies;
- (d) in relation to the Notes to Financial Statements—
 - (i) the country or jurisdiction whose GAAP has been followed in the preparation of the financial statements;
 - (ii) significant accounting policies, including:

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- (A) the basis of valuation of investments including the basis of valuation of unquoted and unlisted investments;
 - (B) the basis of recognition of investment income;
 - (C) foreign currency translation policies and disposition of gains (losses);
 - (D) the basis of amortisation of organisation costs, if material;
 - (E) any other accounting policy adopted to deal with items which are judged material;
- (iii) any changes to accounting policies made during the period;
 - (iv) an analysis of the material contingent liabilities not provided for in the financial statements.

**SECTION G
AUDIT**

Appointment

33 The scheme shall, with the approval of the Authority, appoint an auditor.

Expertise

34 The auditor shall demonstrate to the Authority's satisfaction its expertise and experience in carrying out duties as auditor to schemes.

Changes

35 (1) No change in the appointment of auditor shall be made without the prior approval of the Authority.

(2) Notice of any change in the auditor shall be given in writing to the investors.

Auditor's Consent

36 The scheme shall not publish or distribute any report of the auditor in respect of a scheme without first receiving the written consent of the auditor.

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Auditor's Responsibility

37 (1) The auditor shall audit the financial statements to be included in an annual report to the investors in a scheme.

(2) The audit shall be conducted in accordance with generally accepted auditing standards, and the auditor shall make a report to the investors in accordance with those standards.

Generally Accepted Auditing Standards

38 (1) The auditor may use the generally accepted auditing standards of a country or jurisdiction other than Bermuda and, in such a case, the report of the auditor shall disclose this fact and name the country or jurisdiction.

(2) The auditor shall be responsible for making the determination as to which auditing standards shall be applied in his audit and, in making his selection, the auditor should consider the GAAP approved by a scheme for the preparation of the financial statements to be audited.

Auditor's concurrence with selection of GAAP

39 The auditor shall consider, in determining whether or not to accept the appointment as auditor, whether or not he concurs with the choice of GAAP to be applied in preparing the financial statements.

Auditor's Independence

40 (1) The auditor shall be independent of a scheme, the administrator, the investment adviser, the registrar, and the custodian.

(2) The minimum standards of independence required for the purposes of this regulation, shall be those required by the Institute of Chartered Accountants of Bermuda.

Regulatory Requirements

41 The auditor shall, in addition to the specific requirements of these Regulations, adhere to the auditing requirements of any securities exchange or other supervisory or regulatory bodies to which the scheme is subject.

SECTION H
THE PROSPECTUS

Applicability

42 A scheme shall publish a prospectus.

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Availability

43 The prospectus shall be available without charge at the registered or principal office of the scheme in Bermuda or at the office in Bermuda of at least one of the service providers.

Content

44 The prospectus shall, in addition to any requirements of law, provide information on:

- (a) the scheme, including—
 - (i) the name of the scheme and the address of its registered or principal office, or both in Bermuda;
 - (ii) the date of incorporation or establishment of the scheme (indicating whether or not the duration is limited);
 - (iii) a statement of the place in Bermuda where copies of the constitution and any annual or periodic reports may be inspected and obtained;
 - (iv) the date of the financial year end of the scheme;
 - (v) the name of the auditor;
 - (vi) the names, addresses and details of directors, officers, resident representatives, administrators, custodians, registrars, promoters, legal advisers, investment advisers, and other persons having significant involvement in the affairs of the scheme;
 - (vii) details of the capital of the scheme including, where applicable, any existing initial, founder or manager security capital;
 - (viii) details of the principal rights and restrictions attaching to the securities, including with respect to currency, voting rights, circumstances of winding up or dissolution, certificates, entry in registers and other similar details;
 - (ix) where applicable, an indication of stock exchanges or markets where the securities are, or are to be, listed or dealt in;

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- (x) the procedures and conditions for the issue and sale of securities;
- (xi) the procedures and conditions for the redemption of securities and the circumstances in which such redemption may be suspended;
- (xii) a description of the intentions with respect to the declaration of dividends;
- (xiii) a description of the scheme's investment objectives, including its financial objectives, investment policy and any limitations on that investment policy, a description of the scheme's material risks and an indication of any techniques and instruments or borrowing powers which may be used;
- (xiv) a description of the rules applicable to valuation of the scheme's assets;
- (xv) a description of the rules applicable to the determination of issue and redemption prices (including the frequency of dealings) and the places where information as to the prices may be obtained;
- (xvi) information concerning the manner, amount and calculation of remuneration to be paid to directors, administrators, investment advisers, custodians, registrars and any other third parties receiving or likely to receive fees from the scheme;
- (xvii) a description of the potential conflicts of interest between the scheme, its directors, trustees and its service providers;
- (xviii) a statement if the scheme is registered or licensed, as the case may require, (or intends to be registered or licensed) in any jurisdiction or with any supervisory or regulatory authority outside Bermuda;
- (xix) the following statement:

"Approvals received from the Bermuda Monetary Authority do not constitute a guarantee by the Authority as to the performance of the scheme or its creditworthiness.

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Furthermore, in giving such approvals the Authority shall not be liable for the performance or default of the scheme or for the correctness of any opinions or statements expressed."

(b) the administrator, including:

- (i) the name of the administrator and the address of its registered or principal business office or both;

(c) the custodian, including:

- (i) the name of the custodian, and the address of its registered or principal business office or both;
- (ii) the main business activity of the custodian and any co-custodian;

(d) the investment advisers including:

- (i) the name of any and all investment advisers, details of their experience and the addresses of their registered or principal business office or both;
- (ii) the material provisions of any contract engaging the services of any and all investment advisers.

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**PART C
BERMUDA INSTITUTIONAL SCHEMES**

Application

1 In addition to regulations contained in this Part, and subject to regulation 2 of this Part, the regulations contained in Part B (Bermuda Standard Schemes) shall also apply to a Bermuda Institutional Scheme.

Interpretation

2 The terms defined under Part B shall apply to this Part unless otherwise specified.

Exemptions

3 A scheme shall be exempted from the need to appoint a Bermuda custodian, if it—

- (a) has a minimum investment or subscription of BD\$100,000 per investor (or foreign currency equivalent), or such other amount as may be prescribed by the Authority from time to time; and
- (b) has a minimum initial offering size of BD\$50,000,000 (or foreign currency equivalent), or such other amount as may be prescribed by the Authority from time to time.

Appointment of an Administrator

4 A Bermuda Institutional Scheme shall appoint an administrator who shall be either a local, exempted or overseas (permit) company or partnership and have a physical presence in Bermuda.

Administrative expertise

5 An administrator shall demonstrate to the Authority's satisfaction its expertise and experience.

Changes

6 (1) No change in the administrator shall be made without the prior approval of the Authority.

(2) Notice of any change in the administrator shall be given in writing to investors.

(3) A new administrator shall be required to demonstrate its experience and expertise to the Authority as previously described in regulation 5.

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Administrator's independence

7 An administrator shall be independent of the scheme and any other service provider (except with the prior approval of the Authority).

Functions of an Administrator

8 The administrator shall be responsible for ensuring a scheme's compliance with these Regulations.

Supervision & prospectus disclosure

9 A Bermuda Institutional Scheme shall not be supervised to the same degree as other schemes which are regulated and supervised by the Authority and the following statement shall be included in its prospectus or offering document (in a prominent position), in addition to any other statement required to be included therein.

"(name of scheme) has been classified as a Bermuda Institutional Scheme. As such, the scheme is exempted from the need to appoint a Bermuda custodian and may not be supervised to the same degree as other schemes which are regulated and supervised by the Authority. Therefore, the scheme should be viewed as an investment suitable only for investors who can fully evaluate and bear the risks involved."

**APPENDIX 1 (Regulation 10(c)(iii))
MATTERS TO BE CONTAINED IN THE BYE-LAWS OF THE COMPANY
CONSTITUTING A MUTUAL FUND SCHEME**

**PART A
MATTERS WHICH SHALL BE CONTAINED IN THE BYE-LAWS OF
THE COMPANY**

CONSTITUTING A MUTUAL FUND SCHEME

Name of scheme

1 A statement of the name of the scheme being a name consistent with the objects of the scheme stated in accordance with paragraph 2.

Investment objectives

2 If an objective of the scheme is investment in a particular geographical area (including the whole world), statement of that fact (specifying the area) and if an objective of the scheme is investment in

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any economic sector or all economic sectors, a statement of that fact (specifying the sectors).

Governing law

3 A statement that the company has been incorporated in Bermuda and is governed by the Act.

Application of the regulations

4 A statement that the company is a mutual fund which has been approved by the Authority in accordance with these Regulations.

Directors

5 Provision for the appointment of directors and retirement of directors and for regulating and recording their proceedings.

Category of scheme

- 6 (1) A statement:
- (a) in all cases, of the relevant category of collective investment scheme to which the scheme belongs under regulation 1(1);
 - (b) in the case of a fund of funds, identifying the categories of scheme in which the fund of funds may invest; and
 - (c) in the case of an umbrella fund, identifying, in the case of each constituent part, to which category of scheme it belongs under regulation 1(1).

Feeder funds

7 If the scheme is a feeder fund, a statement of the name and authorised status of the scheme (or of the name of the eligible investment trust) into which it is to feed.

Exchange within umbrella fund

8 A statement that the investors are entitled to exchange rights in one part of the scheme for rights in another.

Base currency

9 A statement of what currency is the base currency of the scheme.

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Investment powers in eligible markets

10 (1) Except in the case of a feeder fund, a statement that, subject to any restriction in the constitutional documents or in the prospectus, the scheme has the power to invest in any securities market or deal on any derivatives market:

- (a) which is an eligible securities or derivatives market, by virtue of these Regulations or the prospectus; or
- (b) where the power is conferred by these regulations irrespective of any question about eligibility.

Declaration of custodianship

11 A declaration that, subject to the provisions of the custodian agreement and to these regulations for the time being in force:

- (a) the property of the scheme (other than sums standing to the credit of the distribution account) is held by the custodian for each investor, or, in a case where income and accumulation units are both in issue, according to the number of individual units in the property of the scheme represented by the units held by each investor; and
- (b) the sums standing to the credit of the distribution account are held by the custodian on trust to distribute or apply them in accordance with these Regulations.

Holder's liability to pay

12 A provision that the investor is not liable to make any further payment after he has paid the issue price for his units and that no further liability can be imposed upon him in respect of the units which he holds.

Annual accounting period

13 The dates in the calendar year on which the annual accounting period begins and ends.

Annual income allocation date

14 The date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date.

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**PART B
MATTERS WHICH MAY BE CONTAINED IN THE BYE LAWS OF THE
COMPANY CONSTITUTING**

A MUTUAL FUND SCHEME

Duration of the scheme

15 If there is to be a period fixed for the duration of the scheme a statement to that effect.

Manager's preliminary charge

16 (1) A statement:—

- (a) authorising the manager to make a preliminary charge to be included in the issue price of a unit; and
- (b) specifying a maximum to that charge expressed either as a fixed amount in the base currency or as a percentage of the creation price of a unit.

Manager's periodic charge

17 (1) A statement authorising the manager to make a periodic charge payable out of the property of the scheme, and any statement under this paragraph shall:—

- (a) provide for the charge to be expressed as an annual percentage (to be specified in the prospectus and taken in accordance with these regulations) of the value of the property of the scheme; and
- (b) specify the accrual intervals and how the charge is to be paid; and
- (c) specify a maximum to that charge expressed as an annual percentage of the value of the property of the scheme.

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

18 A statement authorising the manager of an umbrella fund to make a percentage charge or a charge of a fixed amount on the exchange of units in one constituent part for units in another (other than the first such exchange by an investor in any one annual accounting period) and specifying what the maximum of that percentage or amount may be.

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Manager's charge on redemption

19 A statement authorising the manager to deduct a charge on redemption out of the proceeds of redemption.

Custodian's remuneration

20 A statement authorising payments to the custodian by way of remuneration for its services, to be paid whether in whole or in part out of the property of the scheme, relieving the custodian from any obligation to account for those payments to the scheme, the investors or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue due and be paid.

Initial price

21 A statement of the initial price of units.

Period of the initial offer

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

Investment in schemes managed by the manager or its associate

23 A statement that the property of the scheme may include units in another collective investment scheme which is managed or operated by the manager or by another company in the same group as the manager or which is managed or operated by any person who is a controller of the manager or of whom the manager is the controller.

Constituents of property, hedging transactions and borrowing powers

24 If the descriptions of—

- (a) the asset of which the capital property of the scheme may consist; or
- (b) the proportion of the capital property of the scheme which may consist of an asset of any description ;or
- (c) hedging transactions which may be effected on behalf of the scheme ;or
- (d) the borrowing powers exercisable in relation to the scheme,

are narrower than those permitted for the categories of scheme to which the scheme belongs under these Regulations, a statement of those narrower descriptions of asset, hedging transactions or borrowing powers.

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Restricted economic or geographic objectives

25 If there are to be restrictions on the geographic areas or economic sectors in which investment of the capital property of the scheme may be made, a statement of what they are.

Government and other public securities fund

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

Accumulation units

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

Interim income allocation date

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

Cash deposits with custodian or associates of the custodian

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

Borrowing from custodian or associates of the custodian

30 A provision that money which may be borrowed for the account of the scheme may be borrowed from the custodian (if an eligible institution) or from any associate (being an eligible institution) of the custodian or of the manager so long as the eligible institution charges interest at no greater rate than is, in accordance with normal banking practice, the commercial rate for a loan of the size of loan in question negotiated at arm's length.

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Dealings by manager, custodian and associates

31 (1) A provision authorising a person who is the manager, the custodian, any associate of either of them, any investment adviser of the manager or a person of any other specified description:

- (a) to become the owner of units in the scheme and to hold, dispose or otherwise to deal with those units as if, but subject to regulation 223, that person were not such a person; or
- (b) to deal in property of any description on that person's individual account notwithstanding the fact that property of that description is included in the property of the scheme; or
- (c) to act as agent in the sale or purchase of property to or from the custodian for the account of the scheme;

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

Limited categories of investor

32 A provision that investors of units in the scheme, apart from the manager, shall be confined to persons who are within defined categories, and provisions permitting the manager to redeem any units held by persons outside such categories.

Income equalisation

33 A statement that is to apply, and if so, and if grouping is to be permitted for periods within an accounting period, what those periods are to be.

Meetings

34 (1) If the investors competent to requisition the calling of a meeting are to be those holding a proportion less than one-tenth in value of the units in issue, what that lesser proportion is to be.

(2) If the period of notice for the calling of a meeting of unit investors is to be longer than the period of 14 days referred to in regulation 225(1), what that longer period is to be.

(3) If the number of investors present in person or by proxy at a meeting which is to constitute a quorum is to be more than one-tenth of the investors of all the units for the time being in issue, what that greater proportion is to be.

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(4) If the number of investors competent to demand a poll at a meeting of investors is to be less than those holding one-twentieth of the number of units for the time being in issue, what that lesser proportion is to be.

(5) If the percentage required for the purpose of carrying on an extraordinary resolution is greater than 75%, what that percentage is to be.

Manager's and custodian's discretions

35 (1) A statement that the manager is authorised to arrange for property of the scheme to be loaned under regulation 205(3).

(2) A provision that the manager, the custodian, the directors or any two or more of them together may not perform or refrain from performing an act of any description or make a decision of any description which otherwise in accordance with these Regulations they would have a discretion so to do.

(3) A statement that the directors may give directions to the manager with regard to the constituents of the property of the scheme and a statement of any limitations on the power of the directors to give such directions.

Directors

36 Provisions for the removal of directors from office, for alternate directors and for directors' remuneration.

Indemnity

37 An indemnity for the officers of the company to the extent permitted by law.

Appointment of investment adviser

38 A provision authorising the manager to appoint an investment adviser, subject to regulation 22.

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**APPENDIX 2 (Regulation 9)
MATTERS TO BE CONTAINED IN THE TRUST DEED OF A UNIT
TRUST SCHEME**

**PART A
MATTERS WHICH SHALL BE CONTAINED IN THE TRUST DEED OF A
UNIT TRUST SCHEME**

Name of scheme

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

Investment objectives

2 If an objective of the scheme is investment in a particular geographical area (including the whole world), a statement of that fact (specifying the area). If an objective of the scheme is investment in any economic sector or all economic sectors, a statement of that fact (specifying the sectors).

Governing law

3 A statement that the deed is made under, and governed by, the law of Bermuda.

Trust deed to binding and authoritative

4 A statement that the trust deed is binding on each investor as if he had been a party to it and so to be bound by its provisions and authorises and requires the trustee and the manager to do the things required of them by the terms of the trust deed.

Category of scheme

5 A statement:—

- (a) in all cases, of the relevant category of collective investment scheme to which the scheme belongs under regulation 1(1);
- (b) in the case of a fund of funds, identifying the categories of scheme in which the fund of funds may invest; and
- (c) in the case of an umbrella fund, identifying, in the case of each constituent part, to which of the categories of scheme it would belong under regulation 1(1).

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Feeder funds

6 If the scheme is a feeder fund, a statement of the name and authorised status of the scheme (or of the name of the eligible investment trust) into which it is to feed.

Exchange within umbrella fund

7 A statement that the investors are entitled to exchange rights in one part of the scheme for rights in another.

Base currency

8 A statement of what currency is the base currency of the scheme.

Investment powers in eligible markets

9 Except in the case of a feeder fund, a statement that, subject to any restriction in these regulations, the scheme has the power to invest in any securities market or deal on any derivatives market:—

- (a) which is an eligible securities or derivatives market, by virtue of these Regulations; or
- (b) where the power is conferred by these regulations irrespective of any question about eligibility.

Declaration of trust

10 A declaration that, subject to the provisions of the deed and to these Regulations for the time being in force:—

- (a) the property of the scheme (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the investors of the units *pari passu* according to the number of units held by each investor, or, in a case where income and accumulation units are both in issue, according to the number of individual units in the property of the scheme represented by the units held by each investor; and
- (b) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with these Regulations.

Holder's liability to pay

11 A provision that an investor is not liable to make any further payment after he has paid the purchase price of his units and that no

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further liability can be imposed on him in respect of the units which he holds.

Annual accounting period

12 The date in the calendar year on which the annual accounting period begins and ends.

Annual income allocation date

13 The date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date.

Supplemental deeds

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

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

- (a) to implement any change in the law, including a change brought about by an amendment of these Regulations or of any other regulations made under any Act of the Bermudian Parliament; or
- (b) as a direct consequence of any such change in the law; or
- (c) to change the name of the scheme; or
- (d) to change the dates on which the annual accounting period begins and ends or to change the annual income allocation date; or
- (e) if the trust deed provides for interim accounting periods, to change the date on which any such periods begin or end or to change the interim allocation date which relates to any such periods; or
- (f) to make an amendment which the manager, where applicable a custodian, and the trustee agree is either for the benefit of investors and potential investors or does not involve any of them in any material prejudice; or

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- (g) to remove from the trust deed obsolete provisions; or
- (h) to replace the manager, where applicable the custodian, or the trustee when that person has been removed or wishes to retire or has retired.

(4) A provision that, where such a supplemental deed as is referred to in paragraph (1) contains a relevant modification (as defined below) to the trust deed, that supplemental deed shall not be taken to have been approved by an extraordinary resolution at a meeting of investors unless each such modification has been the subject of a separate motion for its approval which has been separately approved by an extraordinary resolution at that meeting and for this purpose each of the following is a relevant modification:—

- (a) an increase in the maximum of any periodic charge payable to the manager; and
- (b) a modification to a matter specified in regulation 16 which is the subject of a provision in the trust deed or in the prospectus.

**PART B
MATTERS WHICH MAY BE CONTAINED IN THE TRUST DEED OF A
UNIT TRUST SCHEME**

Duration of the scheme

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

Manager's preliminary charges

16 A statement:—

- (a) authorising the manager to make a preliminary charge to be included in the issue price of a unit; and
- (b) specifying a maximum to that charge expressed either as a fixed amount in the base currency or as a percentage of the creation price of a unit.

Manager's periodic charge

17 A statement authorising the manager to make a periodic charge payable out of the property of the scheme, and any statement under this paragraph shall:—

- (a) provide for the charge to be expressed as an annual percentage (to be specified in the prospectus and taken

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in accordance with these regulations) of the value of the property of the scheme; and

(b) specify the accrual intervals and how the charge is to be paid; and

(c) specify a maximum to that charge expressed as an annual percentage of the value of the property of the scheme.

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

18 A statement authorising the manager of an umbrella fund to make a percentage charge or a charge of a fixed amount on the exchange of units in one constituent part for units in another (other than the first such exchange by an investor in any one annual accounting period) and specifying what the maximum of that percentage or amount may be.

Manager's charge on redemption

19 A statement authorising the manager to deduct a charge on a redemption of units out of the proceeds of redemption.

Trustee's remuneration

20 A statement authorising payments to the trustee by way of remuneration for its services, to be paid whether in whole or in part out of the property of the scheme, relieving the trustee from any obligation to account for those payments to the investors or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

Initial price

21 A statement of the initial price of units.

Period of the initial offer

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

Investment in schemes managed by the manager or its associate

23 A statement that the property of the scheme may include units in another collective investment scheme which is managed or operated by the manager or by another company in the same group as the manager or which is managed or operated by any person who is a controller of the manager or of whom the manager is the controller.

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Constituents of property, hedging transactions and borrowing powers

24 If the descriptions of—

- (a) the asset of which the capital property of the scheme may consist; or
- (b) the proportion of the capital property of the scheme which may consist of an asset of any description; or
- (c) the hedging transactions which may be effected on behalf of the scheme; or
- (d) the borrowing powers exercisable in relation to the scheme;

are narrower than those permitted for the categories of scheme to which the scheme belongs under these Regulations a statement of those narrower descriptions of assets, proportion, hedging transactions or borrowing powers.

Restricted economic or geographic objectives

25 If there are to be restrictions on the geographic areas or economic sectors in which investment of the capital property of the scheme may be made, a statement of what they are.

Government and other public securities fund

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

Accumulation units

27 Whether under the scheme, units may be accumulation units only or accumulation units as well as income units.

Interim income allocation date

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

Cash deposits with trustee or associates

29 A provision that cash forming part of the property of the scheme or standing to the credit of the distribution account may be placed by the trustee in any current, deposit or loan account with itself (if an eligible

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institution) or with any associate (being an eligible institution) of the trustee or of the eligible institution so long as the eligible institution pays interest hereon at no lower rate than is, in accordance with normal banking practice, the commercial rate for deposits of the size of the deposit in question negotiated at arm's length.

Borrowing from trustee or associates of the trustee

30 A provision that money which may be borrowed for the account of the scheme may be borrowed from the trustee (if an eligible institution) or from any associate (being an eligible institution) of the trustee or of the manager so long as the eligible institution charges interest at no greater rate than is, in accordance with normal banking practice, the commercial rate for a loan of the size of loan in question negotiated at arm's length.

Dealings by manager, trustee and associates

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

- (a) to become the owner of units in the scheme and to hold, dispose or otherwise to deal with those units as if, but subject to regulation 223, that person were not such a person; or
- (b) to deal in property of any description on that person's individual account notwithstanding the fact that property of that description is included in the property of the scheme; or
- (c) to act as agent in the sale or purchase of property to or from the trustee for account of the trust,

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

Limited categories of investor

32 A provision that investors of units in the scheme, apart from the manager, shall be confined to persons who are within defined categories, and provisions permitting the manager to redeem any units held by persons outside such categories.

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Income equalisation

33 A statement that regulation 109 is to apply, and if so, and if grouping is to be permitted for periods within an accounting period, what those periods are to be.

Meetings

34 (4) If the investors competent to requisition the calling of a meeting are to be those holding a proportion less than one-tenth in value of the units in issue, what that lesser proportion is to be.

(5) If the period of notice for the calling of a meeting of unit investors is to be longer than the period of 14 days referred to in regulation 225(1), what that longer period is to be.

(6) If the number of investors present in person or by proxy at a meeting which is to constitute a quorum is to be more than one-tenth of the investors of all the units for the time being in issue, what that greater proportion is to be.

(7) If the number of investors competent to demand a poll at a meeting of investors is to be less than those holding one-twentieth of the number of units for the time being in issue, what that lesser proportion is to be.

(8) If the percentage required for the purpose of carrying an extraordinary resolution is greater than 75%, what that percentage is to be.

Manager's and trustee's discretions

35 (1) A statement that the manager is authorised to arrange for property of the scheme to be loaned under regulation 205(3).

(2) A provision that the manager, the trustee or both of them together may not perform or refrain from performing an act of any description or make a decision of any description which otherwise in accordance with these regulations they would have a discretion so to do.

Appointment of investment adviser

36 A provision authorising the manager to appoint an investment adviser, subject to regulation 22.

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**APPENDIX 3
INFORMATION TO BE CONTAINED IN THE PROSPECTUS**

The scheme and manager

1 (1) The following particulars of the scheme and, where there is a manager, the manager shall be stated:

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of the manager's registered office;
- (f) the address of the manager's head office if that is different from the address of the registered office;
- (g) if neither the registered office nor the head office of the manager is in Bermuda, the address of the manager's principal place of business in Bermuda;
- (h) the date of its incorporation;
- (i) if the duration of its corporate status is limited, when that status will or may cease;
- (j) the amount of its issued share capital and how much of it is paid up;
- (k) the names of the directors and, in each case, any significant activities of the director not connected with the business of the manager or operator;
- (l) whether or not it has been approved by the Authority in accordance with these Regulations;
- (m) a statement if the scheme is registered or licensed, as the case may require, (or intends to be registered or licensed) in any jurisdiction or with any supervisory or regulatory authority outside Bermuda;
- (n) if the manager is the manager of another scheme, the name of that other scheme, the investment objectives of that scheme and the fact that the manager is the manager of it,

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And if any director of the manager is a body corporate there shall also be stated in relation to that director the matters referred to in (a) to (d) and (h) to (k) above.

The custodian

- 2 (1) The following particulars of the custodian shall be stated:
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country or territory of its incorporation;
 - (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
 - (e) the address of its registered office;
 - (f) the address of its head office if that is different from the address of its registered office;
 - (g) if neither its registered office nor its head office is in the Island and it has a place of business in Bermuda, the address of its principal place of business in Bermuda;
 - (h) a description of its principal business activity and that of any co-custodian; and
 - (i) whether or not it is a licensed bank in Bermuda or a subsidiary company of such a bank.

The investment adviser

- 3 (1) If the manager employs the services of an investment adviser who manages any of the property of the scheme or provides advice in relation to the scheme, the following particulars of each and every investment adviser shall be stated:
- (a) the name;
 - (b) the address of its registered office and/or principal place of business;
 - (c) whether or not he has been approved by the Authority to act as an investment adviser;
 - (d) if the investment adviser is a body corporate in a group of which the operator is a member, that fact;

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- (e) if the principal activity of the investment adviser is other than providing services as an investment adviser, what that principal activity is;
- (f) the main terms of the agreement or arrangement between the manager and each and every investment adviser (other than those relating to the investment adviser's remuneration) and, if the investment adviser has the authority of the manager to make decisions on behalf of the manager that fact and a description of the matters in relation to which the investment adviser has that authority; and
- (g) if the investment adviser is authorised to deal on behalf of the scheme and is an associate of the manager the relationship by virtue of which he is an associate, and the maximum percentage commission payable to him under the agreement or arrangement in paragraph (f) above for any deal done or which could be done on behalf of the scheme.

The registrar

4 If the manager or the custodian employs the services of a registrar, that is to say, a person who maintains the register of investors in the scheme, that person's name and address shall be stated.

The auditor

5 The name and address of the auditor of the scheme shall be stated.

The register

6 The address in Bermuda where the register of investors can be inspected shall be stated.

The constitution and objectives of this scheme

7 (1) The following shall be stated:

- (a) the name of the scheme;
- (b) the date on which the scheme was established and, if the duration of the scheme is not unlimited, when it will or may terminate;
- (c) in respect of a scheme, a statement (which in the case of an umbrella fund is to be made separately in relation to each constituent part) of which of the categories of

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scheme under regulation 1(1) of these Regulations the scheme is intended to belong to;

- (d) if the scheme is a feeder fund, the name and a description of the status of the scheme, or eligible investment trust, into which it is to feed;
- (e) if the scheme is a fund of funds, a list of the categories of schemes in which the fund of funds may invest;
- (f) if the scheme is a mutual fund, particulars of its capital structure, including, where applicable, any existing, initial, founder or manager share capital.

Investment policy

- 8 (1) The following shall be stated:
- (a) whether the objective of the investment policy is to be capital growth, income growth or some other stated policy;
 - (b) the manager's investment policy for achieving that objective;
 - (c) if the investment policy does not envisage remaining fully invested at all times a statement of the manager's policy in that respect;
 - (d) any economic sectors or geographical areas to which investment will be confined or which are likely to be preferred in the making of decisions as to how the funds of the schemes are to be invested;
 - (e) a description of the type of property which may be included in the scheme;
 - (f) any limitations on the types of property which may be included in the scheme indicating (where appropriate) where the restrictions imposed on the scheme are more restrictive than would otherwise be imposed by the regulations;
 - (g) if and the extent to which a scheme may invest in other schemes managed by the manager or any associate of the manager;
 - (h) the names of the states, local authorities and/or public international bodies in whose securities the scheme may

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invest more than 35% of the assets and whether or not it has done so;

- (i) whether the manager may enter into and, if so, what types of transaction are likely to be entered into for the purposes of efficient portfolio management;
- (j) a statement of what borrowing powers are exercisable in relation to the scheme; and
- (k) a description of the scheme's material risks.

Winding-up

9 The circumstances in which the winding-up of a scheme can be decided upon, a description of the procedure to be followed in a winding-up and what the rights of investors will be in a winding-up shall be stated.

Accounting periods

10 The accounting reference date shall be stated and if there are interim accounting periods, such periods shall be stated.

List of eligible markets

11 List any individual eligible securities and derivatives markets through which the scheme may invest or deal.

Any securities market in a member state which is eligible may be included in the list or referred to in general terms.

The characteristics of units in the scheme

12 The following shall be stated:

- (a) In relation to each available type of unit in the scheme, the entitlement of the investor of that unit to participate in the property of the scheme and the income thereof, a statement of the nominal value (if any) of each type of unit and, where there is more than one type of unit, the names given to each type and the characteristics of each type which distinguishes it from the others;
- (b) in the case of a unit trust scheme, the fact that the nature of the right represented by units is that of a beneficial interest under a trust, and in the case of a mutual fund scheme, the nature of the right represented by the units in the scheme; and

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- (c) what voting rights are exercisable at meetings of investors by the investors of units and, if different rights attach to different classes of units, what those different rights are and, whether persons other than investors can vote at meetings of investors and who those persons are.

Characteristics of the scheme itself

13 (1) State any characteristics of the scheme itself, including in particular any risks it may reasonably be regarded as presenting for reasonably prudent investors of moderate means, and anything else which may reasonably be regarded as relevant and requisite.

(2) In particular, where, in accordance with regulation 131(5), the manager and the custodian have agreed that all or part of the periodic charge is to be treated as a capital charge, state that the fund has been structured so as to concentrate on the generation of income as a higher priority than on capital growth (or as the case may be so as to place equal emphasis on the generation of income and on capital growth) and that this may accordingly constrain capital growth.

Valuation of the property of the scheme

14 The following shall be stated:

- (a) how frequently and at what time of day the property of the scheme will be regularly valued for the purpose of determining prices at which units in the scheme may be issued or redeemed by the manager and a description of any circumstances in which the scheme may be specially valued;
- (b) in relation to each purpose for which the property of the scheme will be required to be valued, whether it will be valued on a creation basis, a cancellation basis, a mid-market basis or any other specified basis.

Preliminary charge

15 If the price at which units may be purchased from the manager may include a preliminary charge by the manager, state:

- (a) the maximum amount of that charge, expressed either as a percentage of the average of the creation and cancellation prices of those units or as a fixed amount in the base currency which is the maximum amount permitted by the constitutional documents and;

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- (b) if the amount of that charge currently included in the price of units is below the maximum:
 - (i) that amount; and
 - (ii) if notice has been given to the investors of the manager's intention to increase the amount currently charged, particulars of that increase and when it will take effect; and
 - (iii) if notice has been given to the investors of an intention to propose an increase in the maximum amount of that charge at a meeting of investors, particulars of that proposal.

Periodic charge

16 If the manager may make a periodic charge out of the property of the scheme, state:

- (a) the maximum amount of that charge, expressed as an annual percentage of the value of the property of the scheme, which is permitted by the constitutional documents; and
- (b) if the amount of that charge currently made is below the maximum:
 - (i) that amount; and
 - (ii) if notice has been given to investors of the manager's intention to increase the amount currently charged, particulars of that increase and when it will take effect;
- (c) if, in accordance with regulation 131(5), the manager and the custodian have agreed that all or part of that charge is to be treated as a capital charge:
 - (i) that fact; and
 - (ii) the actual or maximum amount of the charge which may be so treated; and
- (d) if notice has been given to investors of an intention to propose an increase in the maximum amount of that charge at a meeting of investors, particulars of that proposal.

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Charge on redemption

17 If the manager may make a charge by way of deduction from the proceeds of redemption, state:

- (a) the amount of that charge or, if it is variable, the rate or method of arriving at it;
- (b) if the amount or rate or method has been changed, that details of any previous amount or rate or method may be obtained from the manager on request; and
- (c) if notice has been given to the custodian of an intention to propose an increase in the amount or rate at a meeting of investors, particulars of that proposal.

Other charges and expenses

18 (2) Where they are payable out of the property of the scheme the following remuneration and expenses will be stated and how they will be determined:

- (a) the remuneration of the custodian;
- (b) the remuneration of the manager;
- (c) the remuneration of the registrar;
- (d) where the scheme is a mutual fund scheme, the remuneration and expenses of the directors or other members of the principal company's governing structure and, if the constitutional documents of the mutual fund scheme permit any of the above to be at a higher level, what those higher levels are or how they may be determined;
- (e) the nature of any other expenses payable out of the property of the scheme and how their amounts will be determined;

(3) if the custodian is to be reimbursed out of the property of the scheme, expenses incurred in performing any of the duties of the custodian, what those duties are and that expenses incurred in their performance will be reimbursed out of the property of the scheme. It is envisaged that the duties undertaken by the custodian may include any or all of the following:

- (a) delivery of stock;
- (b) custody of assets;
- (c) maintenance of the register;

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- (d) collection of income;
- (e) preparation of the custodian's annual report;
- (f) such other duties as the custodian is required by law to perform.

Distribution of income

19 The following shall be stated:

- (a) a description of the scheme's intentions with respect to the declaration of dividends and the date or dates in each calendar year on which distributions of income are to be made to investors;
- (b) if grouping for equalisation is permitted by the constitutional documents, that fact with an explanation of its meaning and a statement of what the grouping periods are.

The issue and redemption of units in the Schedule

20 The following shall be stated:

- (a) the days and times therein on which the manager will be available to receive requests for the issue and redemption of units;
- (b) the procedures for effecting the issue and redemption of units and the settlement of transactions and how an investor to whom no certificate has been issued may produce evidence of title to his units;
- (c) the steps required to be taken by an investor in redeeming units before he can receive the proceeds of redemption;
- (d) the amounts of the following minima (if they apply) for each type of unit in the scheme:
 - (i) the minimum number of units which any one person may hold;
 - (ii) the minimum value of units which any one person may hold;
 - (iii) the minimum number of units which may be the subject of one transaction of redemption;

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- (iv) the minimum value of units which may be the subject of any one transaction of redemption;
- (v) the minimum number of units which may be the subject of one act of redemption; and
- (vi) the minimum value of units which may be the subject of any one act of redemption;
- (vii) the circumstances in which the redemption of units may be suspended;
- (viii) the days and times therein on which the re-calculation of issue and redemption prices will commence;
- (ix) where and when the most recent issue and redemption prices will be published;
- (x) the investment exchanges (if any) on which units in the scheme are or are to be, listed or dealt in;
- (xi) that the total consideration payable under a deal in units of the scheme which is to be a large deal is an amount exceeding a specified sum, that specified sum being less than BD\$30,000; and
- (xii) details of the principal.

Pricing basis for issue and redemption

21 State the manager's annual basis of dealing (whether at a forward or historic price or on the basis of a switch from the latter to the former in every dealing period).

General information

22 The following shall be stated:—

- (a) when annual and half-yearly reports will be published;
- (b) the address at which copies of the constitutional documents of the scheme, any amending instrument and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (c) that the cancellation price last notified to the custodian is available on request;

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- (d) the case of a scheme out of whose property amortised establishment expenses are paid, the amount of those expenses payable in each year.

Special provisions for umbrella funds

23 (3) In the case of an umbrella fund state:—

- (a) that in no circumstances will an investor who exchanges rights or units in one part of the scheme for rights or units in another part of the scheme be given a right by law to withdraw from or cancel the transaction; and
- (b) what arrangements are made by the constitutional documents for charges in the case of an exchange of units in one constituent part for units in another, including the maximum amount of the charge and the minimum number of exchanges that will be permitted free of charge.

(4) In the application of this schedule to an umbrella fund, the information required:

- (a) shall be stated in relation to each part of the scheme where the information for any part of the scheme differs from that for any other part; and
- (b) shall be stated for the scheme as a whole, but only where the information is meaningful in relation to the scheme as a whole.

Conflicts of interest

24 A description of the potential conflicts of interest between the scheme, its directors and its service providers.

Health warning

25 "Approvals received from the Bermuda Monetary Authority do not constitute a guarantee by the Authority as to the performance of the scheme or its creditworthiness.

Furthermore, in giving such approvals the Bermuda Monetary Authority shall not be liable for the performance or default of the scheme or for the correctness of any opinions or statements expressed."

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Additional information

26 State any other material information which is within the knowledge of the directors or trustee or which the directors or trustee would have obtained by the making of reasonable enquiries:—

- (1) which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgment about the merits of investing in the scheme and the extent and characteristics of the risks accepted by so investing; and
- (2) including a statement of any risks in the scheme which may reasonably be regarded as existing for reasonably prudent investors.

**APPENDIX 4 (Regulation 218(1))
ANNUAL AND HALF-YEARLY REPORTS**

**PART A
REPORT OF THE MANAGER**

The following matters shall be set out in every annual and half-yearly report of the manager:—

- 1 The names and addresses of the following:-
 - (1) the manager;
 - (2) the custodian;
 - (3) any investment adviser;
 - (4) the registrar;
 - (5) the auditor.
- 2 The objectives of the scheme.
- 3 The manager's policy for achieving the objectives of the scheme.
- 4 A statement that the scheme is a Bermuda Recognised Scheme.
- 5 A statement of which of the categories of collective investment scheme the scheme is intended to belong to and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent part.
- 6 A review of the manager's investment activities during the period to which the report relates.

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7 Particulars of any significant change in the prospectus made since the making of the last report by the manager.

8 A statement of the amount (if any) to be distributed to investors or accumulated in respect of the period in question.

9 A statement of the total number of the units of each type in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.

10 A statement of the mid-market value per unit of the property of the scheme at the beginning of the period to which the report relates and at the end of that period.

11 A statement of any subdivision or consolidation of units which has been effected during the period to which the report relates.

12 Any other significant information which would enable investors to make an informed judgement on the development of the activities of the scheme during this period and the results of those activities as at the end of that period.

**PART B
COMMISSIONS PAID ON DEALINGS**

13 The statement of commissions paid shall specify the following information on dealings in the property of the scheme:—

(1) in relation to transactions effected direct with a market maker without the employment of an intermediary as broker:—

(a) the proportion of the aggregate value of the transactions in the property of the scheme which were effected with market-makers who were associates of the manager; and

(b) the proportion of the aggregate value of the transactions in the property of the scheme which were effected with market-makers who were associates of the custodian; and

(c) the name of each market-maker with whom were effected more than 10% of the aggregate value of transactions (however effected) in the property of the scheme.

(6) in relation to transactions effected through the agency of an intermediary as broker:—

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- (a) the average rate of commission for such transactions; and
- (b) the aggregate amount of the commissions paid to associates of the manager; and
- (c) the aggregate amount of the commissions paid to associates of the custodian; and
- (d) the name of each broker who received more than 10% of the aggregate amount of the commissions paid.

**PART C
PORTFOLIO STATEMENT**

14 The following shall be set out in the portfolio statement included in the report of the manager:—

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

**PART D
COMPARATIVE TABLE**

15 The following matters shall be set out in the comparative table included in the report of the manager:—

- (1) A performance record over the last 10 calendar years, or if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing—
 - (a) the highest issue price and the lowest redemption price of the units during each of those years;
 - (b) the net income per unit distributed or, in the case of accumulation units, allocated during

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each of those years taking account of any sub-division or consolidation of units that occurred during that period; and

- (c) the net income which would have been distributed or allocated to accumulation units over each of those years per BD\$2,000 invested at the beginning of the 10 year period.

(2) Over the last three annual accounting periods, or if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, the total value of the property of the scheme at the end of each of those years (calculated on the cancellation basis of valuation) and the cancellation price per unit and the number of units in existence or deemed to be in existence at the end of each of those years.

(3) If, in the period covered by the table:—

- (a) the scheme has been the subject of an amalgamation or reconstruction having, to a significant extent, an effect on the size of the scheme; or
- (b) there have been changes in the investment objectives of the scheme,

an indication, related in the body of the table to the relevant year in the table, of the date of the amalgamation or reconstruction or change in investment objectives, and a brief description of its nature.

**PART E
REPORT OF THE AUDITOR**

Report of the auditor

16 The report of the auditor to the investors for any annual accounting period shall state:—

- (a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these regulations and the principal constitutional documents;
- (b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the

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financial position of the scheme as at the end of that period;

- (c) if the auditor is of the opinion that proper accounting records have not been kept by the manager or that the accounts are not in agreement with the manager's accounting records, that fact;
- (d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact; and
- (e) if the auditor is of opinion that the information given in the report of the manager for that period is inconsistent with the accounts, that fact.

**PART F
REPORT OF THE CUSTODIAN**

17 The report of the custodian to the investors for any annual accounting period shall state whether in the custodian's opinion the manager has managed the scheme in that period:—

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the manager and custodians by the constitutional documents, by the prospectus and by these Regulations; and
- (b) otherwise in accordance with the provisions of the constitutional documents and these Regulations; and

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

**PART G
REPORT BY A SERVICE PROVIDER TO THE MANAGER**

18 The annual report or half-yearly report shall include details of any report made by a service provider in accordance with regulation 48(1) in the preceding annual or half-yearly accounting period which the report was issued by the service provider.

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**APPENDIX 5 (Regulation 218(3))
ACCOUNTS**

**PART A
STATEMENT OF ASSETS AND LIABILITIES**

1 The statement of assets and liabilities included in the accounts shall set out a statement of assets and liabilities as at the end of the period to which the report relates including a portfolio statement representing the different descriptions of asset in which the property of the scheme is invested grouped according to classifications appropriate to the stated investment objectives and showing:—

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

**PART B
INCOME AND DISTRIBUTION ACCOUNT**

2 The following matters shall be set out in the income and distribution account included in the accounts:—

- (a) the total income from assets of the scheme, specifying the descriptions;
- (b) the total other income, specifying the descriptions;

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- (c) any periodic charge payable to the manager and authorised to be paid out of the property of the scheme;
- (d) where any fees or expenses of the custodian have been paid by the manager out of the manager's own resources and not out of the property of the scheme, the amount of those fees and expenses if not separately shown in the capital account;
- (e) the total amount deducted for taxation (if any) before distribution to the investors;
- (f) the balance brought forward from the last account and the balance carried forward to the next account;
- (g) the amount available for allocation to the investors in respect of the period;
- (h) the custodian's fees and disbursements payable out of the property of the scheme distinguishing fees for custody of documents or assets from other fees;
- (i) the auditor's fees payable out of the property of the scheme;
- (j) any other payments out of the property of the scheme;
- (k) the amount of any interim allocations of income;
- (l) the amount of the final allocation of income, showing by way of a note to the account how the amount is made up, taking account of tax (if any) and any income equalisation adjustment referred to in regulation 119(2);
- (m) if there is a deficit on income account charged to capital account, the amount of that deficit; and
- (n) if there is a deficit on capital account charged to income account, the amount of that deficit.

**PART C
CAPITAL ACCOUNT**

3 The following matters shall be set out in the capital account included in the accounts:—

- (a) The value of the property of the scheme at the beginning of the period.
- (b) The amount of cash or the value of assets received on the creation of new units.

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- (c) The amount of cash or the value of assets paid out on the cancellation of units.
- (d) The net increase or decrease in the aggregate value of the property of the scheme over the period.
- (e) Any charges and expenses charged to capital.
- (f) The value of the property of the scheme at the end of the period.
- (g)(i) Information about the dealing commissions, including mark-up or mark-down, incurred in dealing in the property of the scheme, including the average rate of commission paid for those transactions where any commission is paid.
- (ii) The proportion of the aggregate value of the transactions in the property of the scheme done with or through each of the associates, if any, of the manager or the custodian with which transactions have been carried out in the property of the scheme excluding foreign exchange transactions and the total amount of such commissions.
- (iii) The names of all persons, other than the custodian acting as such, dealing in more than 10% of the aggregate value of the transactions in the property of the scheme.
- (h) A statement of the net realised profits or losses during the period.

**PART D
NOTES TO THE ACCOUNTS**

4 The following matters shall be set out in the notes to the accounts: —

- (a) The policy regarding dividends and other income received and receivable.
- (b) The basis of valuation of the property of the scheme.
- (c) The exclusion from the statement of assets and liabilities of any assets or liabilities relating to the income of the scheme or the amount of the current distribution.

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(d) If applicable, a statement of the basis for covering amounts in currencies other than dollars into amounts in dollars.

(e) If applicable, an explanation of the basis for valuing unlisted or suspended securities.

Other income

2 An analysis of the income shown in the income and distribution account and, where material, showing separately the following items:—

(a) interest on loan and debenture stocks;

(b) interest on deposits and loans in currencies other than sterling;

(c) interest on bank and short term deposits; and

(d) dividends on overseas stocks.

Equalisation

3 A definition and explanation of equalisation.

Units in issue and redemption price of units

4 The number of units in existence or deemed to be in existence and the redemption price of such units at the end of the period to which the account relates.

Net liquid assets

5 An analysis of net liquid assets as at the end of the period to which the account relates (unless shown in the statement of assets and liabilities) including the following items where applicable:—

(a) amounts receivable from brokers for the issue of securities;

(b) amounts payable to brokers for the redemption of securities.

Back-to-back loans

6 Details of any back-to-back loans including the terms and interest rate margins.

Partly paid shares

7 A statement showing the uncalled liability in respect of any partly paid shares.

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Forward exchange transaction

8 A statement of open forward exchange positions.

APPENDIX 6

**INVESTMENTS ISSUED OR GUARANTEED BY A SPECIFIED
GOVERNMENT OR TERRITORY WHICH IS NOT A MEMBER STATE**
(REFERRED TO IN THE DEFINITION OF GOVERNMENT AND OTHER
PUBLIC SECURITIES IN REGULATION 2(1))

Australia

Canada

Japan

New Zealand

Norway

Switzerland

United States of America