



**Financial Services
Commission**

Code of Practice

Collective Investment Schemes

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1 Introduction and General

1.1 Definitions

1.1.1 In this Code of Practice:

“CIS Regulations” means the Financial Services (Collective Investment Schemes) Regulations, 2006,

“Code” means this Code of Practice,

“Ordinance” means the Financial Services (Collective Investment Schemes) Ordinance 2005 and, where appropriate, includes regulations made under section 53 of the Ordinance.

1.1.2 Unless otherwise stated, any words or expressions used in this Code of Practice that are defined in either the Ordinance or the CIS Regulations have the same meaning in this Code of Practice.

1.2 Issuance of Code

1.2.1 This Code is issued by the Financial Services Commissioner as the person appointed by the Minister as the Authority for the purposes of the Ordinance.

1.2.2 This Code is issued pursuant to the powers granted to the Authority under section 55(1) of the Ordinance.

1.3 Application of the Code

1.3.1 This Code applies to:

- The operation of authorised schemes; and
- To the extent appropriate, any person authorised under section 27 of the Ordinance to undertake a restricted activity.

1.3.2 As provided by the Ordinance and the CIS Regulations, the following are restricted activities:

- Establishing, acting as the manager or administrator of, or otherwise as the operator of, or winding up a collective investment scheme,
- Acting as the trustee of a unit trust scheme,
- Acting as the depositary or sole director of an open-ended investment company,
- Acting as the depositary of any other collective investment scheme that is not an open-ended investment company or a unit trust, including of an experienced investor fund and a private scheme.

1.3.3 The Code has no application to experienced investor funds.

1.4 General Obligations and Responsibilities

1.4.1 The manager of an authorised scheme is responsible for operating the scheme on a day-to-day basis in accordance with the Ordinance, the CIS Regulations, this Code and the constituting instrument of the scheme.

1.4.2 The manager may delegate functions to other persons to the extent permitted by this Code.

1.4.3 The depositary’s duty is to ensure the safe custody of scheme property and to oversee certain functions of the manager of the scheme.

1.4.4 The trustee of an authorised unit trust, in addition to acting as trustee, has a duty to oversee the responsibilities of the manager.

1.5 UCITS Schemes

1.5.1 A UCITS Scheme is a collective investment scheme that complies with the UCITS Directive, as amended.

1.5.2 A UCITS scheme has the benefit of the rights specified in the UCITS Directive, including the passporting rights.

1.5.3 If it is proposed to market units in an authorised UCITS scheme in an EEA State, the manager of that scheme must give the Authority notice of the proposal no later than the date on which notice is given to the authorities in the EEA State concerned.

1.5.4 A notice under paragraph 1.5.3 must specify the EEA State concerned.

1.6 Restrictions of business for UCITS management companies

1.6.1 As provided by the UCITS Directive, a Gibraltar UCITS management company must not engage in any activities other than:

- (a) acting as:
 - (a) the manager of an authorised scheme; or
 - (b) an operator of any other collective investment scheme for which it is subject to prudential supervision;
- (b) activities for the purposes of or in connection with those in subparagraph (a);
- (c) collective portfolio management, including without limitation:
 - (i) investment management;
 - (ii) administration:
 - (A) legal and fund management accounting services;
 - (B) customer enquiries;
 - (C) valuation and pricing (including tax returns);
 - (D) regulatory compliance monitoring;
 - (E) maintenance of unitholder register;
 - (F) distribution of income;
 - (G) unit issues and redemptions;
 - (H) contract settlements (including certificate dispatch); and
 - (I) record keeping; and
 - (iii) marketing;
- (d) managing investments where the relevant portfolio includes one or more ISD instruments;
- (e) advising on investments where:
 - (i) it is authorised to manage investments as specified under subparagraph (d); and
 - (ii) each of the instruments are ISD instruments; and

- (f) safeguarding and administration of collective investment scheme units where it is authorised to manage investments as specified under subparagraph (d).

2 Valuation and Pricing

2.1 General Obligations With Respect to Valuation

2.1.1 The manager of an authorised scheme:

- (a) is responsible for valuing the scheme property and for calculating the price of units in the scheme on the basis of the valuation; and
- (b) must ensure that every valuation of the scheme property is accurate and fair and that, where appropriate, the valuation is carried out in accordance with this Code.

2.1.2 In the case of an authorised scheme that is an umbrella scheme:

- (a) the requirements of this Code must be applied separately to each sub-fund of the scheme; and
- (b) where appropriate, the currency of a sub-fund may be used instead of the base currency of the scheme.

2.2 Unit Price

2.2.1 The price of a unit in an authorised scheme must be

- (a) calculated by reference to the net value of the scheme property and in accordance with the provisions of the prospectus and; and
- (b) expressed in a form that is accurate to at least four significant figures.

2.3 Valuation Points

2.3.1 Schedule 3 of the CIS Regulations requires (in paragraph 18) that the prospectus of an authorised scheme must provide for the valuation and pricing of the units in an authorised scheme and, in particular, that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point.

2.3.2 Subject to paragraphs 2.3.4 and 2.3.5, an authorised scheme must have at least two regular valuation points in any month and, if there are only two regular valuation points in a month, these must be at least two weeks apart.

2.3.3 In order to comply with paragraph 18(b)(ii) of Schedule 3 of the Ordinance, the prospectus of an authorised scheme must include details concerning its regular valuation points.

2.3.4 Paragraph 2.3.2 does not apply to a scheme that operates limited redemption arrangements as permitted by section 4.14, provided that the requirements of that section are complied with.

2.3.5 High volatility schemes must have at least one valuation point every business day.

2.3.6 No valuation points are required during the period of any initial offer.

2.3.7 The manager of an authorised scheme may decide to have an additional valuation point with respect to the scheme, in which case he must advise the depositary.

2.4 Valuation of Scheme Property

- 2.4.1 Investments that form part of the scheme property of an authorised scheme must be valued using a reputable source, where such a source is available, and the reliability of any such source should be kept under regular review.
- 2.4.2 Where different prices are quoted for an investment depending upon whether the investment is being bought or sold, it must be valued at its mid market price.
- 2.4.3 The constituting instrument of an authorised scheme must set out the valuation method that will apply where a single price for buying and selling a security is quoted.
- 2.4.4 Subject to paragraph 2.4.6, other scheme property must be valued at a fair value.
- 2.4.5 For the purposes of paragraphs 2.4.1 to 2.4.4, any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable, on acquiring or disposing of the scheme property, or any part of it, must be excluded.
- 2.4.6 Where the manager of an authorised scheme has reasonable grounds for believing that:
- (a) no reliable price exists for a security at a valuation point; or
 - (b) the most recent price available does not reflect the manager's best estimate of the value of a security at the valuation point;
- he should value the investment at a price which, in his opinion, reflects a fair and reasonable price for that investment (the fair value price).
- 2.4.7 The circumstances which may give rise to a fair value price being used include:
- (a) no recent trade in the security concerned; or
 - (b) the occurrence of a significant event since the most recent closure of the market where the price of the security is taken.
- 2.4.8 For purposes of paragraph 2.4.7(b), a significant event is an event that results in the most recent price of a security or a basket of securities being materially different to the price that it is reasonably believed would exist at the valuation point had the relevant market been open.
- 2.4.9 In determining whether to use a fair value price, the manager of an authorised scheme must include in his consideration:
- (a) the type of authorised scheme concerned;
 - (b) the securities involved;
 - (c) the basis and reliability of the alternative price used; and
 - (d) the manager's policy on the valuation of scheme property as disclosed in the prospectus.
- 2.4.10 The manager of an authorised scheme must document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.
- 2.4.11 Where the price of a unit is determined using properly applied fair value prices, subsequent information that indicates that the price should have been different from that calculated will not normally give rise to an instance of incorrect pricing.

2.5 Pricing Controls of Manager

2.5.1 The manager of an authorised scheme must be able to demonstrate that he has effective controls over the calculation of unit prices.

2.5.2 The matters that should be covered by the controls referred to in paragraph 2.5.1 include ensuring that:

- (a) asset prices are accurate and up to date;
- (b) investment transactions are accurately and promptly reflected in valuations;
- (c) the components of the valuation are regularly reconciled to their source or prime records and any reconciling items resolved promptly and debtors reviewed for recoverability;
- (d) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;
- (e) compliance with the investment and borrowing powers is regularly reviewed;
- (f) dividends are accounted for as soon as stocks are quoted ex-dividend (unless it is prudent to account for them on receipt);
- (g) fixed interest dividends, interest and expenses are accrued at each valuation point,
- (h) tax positions are regularly reviewed and adjusted, if necessary;
- (i) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated; and
- (j) the manager regularly reviews the portfolio valuation for accuracy.

2.5.3 In exercising his pricing controls, the manager of an authorised scheme may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the scheme or the materiality of any effect on the price.

2.5.4 The manager must ensure that evidence of the exercise of the pricing controls is retained.

2.5.5 The manager may delegate the pricing function to a third party, in which case section 6.8 applies.

2.6 Depositary's Review of Manager's Systems and Controls

2.6.1 The depositary of an authorised scheme must:

- (a) carry out such checks as he considers necessary to be satisfied that the manager of the scheme adopts systems and controls which are appropriate to ensure that prices of units are calculated in accordance with this Code and to ensure that the likelihood of incorrect prices will be minimised;
- (b) review the systems and controls of the manager to confirm that they are satisfactory, and such review must include an analysis of the controls in place to determine the extent to which reliance can be placed on them;
- (c) from time to time, review other aspects of the valuation of the scheme property verifying, on a sample basis if necessary, the assets, liabilities, accruals, units in issue, securities prices (and in particular the prices of unapproved securities and the basis for the valuation of unquoted

securities) and any other relevant matters such as an accumulation factor or a currency conversion factor.

2.6.2 A depositary must carry out the checks required under paragraph 2.6.1 whether or not the manager has delegated all or some of his pricing functions to a third party.

2.6.3 The depositary of an authorised scheme must perform a review when he is appointed and thereafter as often as he considers appropriate but the depositary should carry out a review more frequently where he knows or suspects that the manager's systems and controls are weak or are otherwise unsatisfactory.

2.6.4 The depositary should ensure that any issues identified in any review are properly followed up and resolved.

2.7 Recording and Reporting Instances of Incorrect Pricing

2.7.1 The manager of an authorised scheme must record each instance where the price of a unit is incorrect as soon as the error is discovered, and report the fact to the depositary together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.

2.7.2 The depositary of an authorised scheme must:

- (a) report to the Authority:
 - (i) any breaches of the rules in this Code relating to valuation and pricing that he considers material as soon as possible after the breach comes to his attention;
 - (ii) any instance of incorrect pricing where the error is 0.5% or more of the price of a unit, where the depositary believes that reimbursement or payment is inappropriate and should not be paid by the manager.
- (b) make a quarterly return to the Authority summarising the number of instances of incorrect pricing during the quarter.

2.8 Dilution

2.8.1 Schedule 3 of the CIS Regulations requires (in paragraph 20) that the prospectus of an authorised scheme:

- (a) must specify details of what is meant by dilution; and
- (b) where the manager of the scheme may require a dilution levy or make a dilution adjustment, must contain a number of statements, including as to the manager's policy in deciding when to require a dilution levy or make a dilution adjustment.

2.8.2 When arranging to sell, redeem, issue or cancel units, or when units are issued or cancelled through the manager under section 4.5, the manager of an authorised scheme may, if permitted by the prospectus:

- (a) require the payment of a dilution levy;
- (b) make a dilution adjustment; or
- (c) decide neither to require the payment of a dilution levy or make a dilution adjustment.

2.8.3 The manager of an authorised scheme may only require the payment of a dilution levy or make a dilution adjustment in accordance with the statements set out in the prospectus.

- 2.8.4 Notwithstanding the prospectus, the manager of an authorised scheme must require a dilution levy or make a dilution adjustment in a fair manner and solely for the purposes of reducing dilution.
- 2.8.5 A dilution levy becomes due at the same time as the payment or transfer of property becomes due for the issue, sale, redemption or cancellation of the unit and any such payment in respect of a dilution levy must be paid to the depositary to become part of the scheme property as soon as practicable after receipt.
- 2.8.6 A dilution adjustment may be made as part of the calculation of the unit price for the purpose of reducing dilution in the scheme or to recover any amount which the manager has already paid or reasonably expects to pay in the future in relation to the issue or cancellation of units.
- 2.8.7 Where the manager decides to make, or not to make, a dilution adjustment, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an affected person.
- 2.8.8 As soon as practicable after a valuation point, the manager must provide the depositary with the amount or rate of any dilution adjustment made to the price or any dilution levy applied.

2.9 Forward and Historic Pricing

- 2.9.1 For the sale and redemption of units, the manager of an authorised scheme must, in accordance with the prospectus of the scheme, operate on the basis of forward price only or historic prices.
- 2.9.2 If forward prices only are to be used, all deals must be at a forward price.
- 2.9.3 Forward prices for the sale and redemption of units must be used:
- (a) for a high volatility scheme;
 - (b) where the regular valuation points are more than one day apart;
 - (c) if the request to deal reaches the manager through the post or by any similar form of non-interactive communication;
 - (d) for an issue or cancellation through the manager under section 4.5;
 - (e) if the applicant for the sale or redemption so requests; or
 - (f) where the manager has reason to believe at any time that the price that would reflect the current value of the scheme property would vary by more than 2% from the last calculated price, unless he has decided to carry out an additional valuation.
- 2.9.4 If the manager of an authorised scheme operates historic prices, the prospectus must detail the circumstances under which deals in the authorised scheme, individually or otherwise, will nevertheless be carried out on a forward price basis or when the scheme will elect to move to forward prices or declare an additional valuation point.
- 2.9.5 Where the authorised scheme elects to move to forward prices temporarily in accordance with paragraph 2.9.4, such election will only apply until the next valuation point.
- 2.9.6 All sub-funds of an authorised scheme which is an umbrella scheme must adopt the same pricing basis.
- 2.9.7 The manager of an authorised scheme must advise the depositary of the scheme of the date and time of any decision to use forward prices.

2.10 Publication of Prices

- 2.10.1 Where the manager of an authorised scheme is prepared to deal in units, or is willing to issue or cancel units, under section 4.14, he must make the dealing prices public in an appropriate manner.
- 2.10.2 In determining the appropriate manner for making prices public, the manager must ensure that:
- (a) a unitholder or potential unitholder can obtain the prices at a reasonable cost;
 - (b) prices are available at reasonable times;
 - (c) publication is consistent with the manner and frequency at which the units are sold;
 - (d) the manner of publication is disclosed in the prospectus; and
 - (e) prices are published in a consistent manner.
- 2.10.3 The manager must make previous prices available to any unitholder or potential unitholder.

3 Rights of Unitholders

3.1 Class Meetings

- 3.1.1 Unless the context otherwise requires, this section applies to class meetings and to unitholders holding a class of units.

3.2 Fundamental Changes to be Approved by Meeting of Unitholders

- 3.2.1 The manager of an authorised scheme must obtain the prior approval of the unitholders by extraordinary resolution for any fundamental change to the scheme.
- 3.2.2 For the purposes of paragraph 4.1.1, a change is a fundamental change if it:
- (a) changes the purposes or nature of the scheme;
 - (b) may materially prejudice one or more unitholders;
 - (c) materially alters the risk profile of the scheme; or
 - (d) introduces any new type of payment out of the scheme property.
- 3.2.3 In this Code, "extraordinary resolution" means a resolution passed by a majority of not less than three-quarters of the votes validly cast at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been given.

3.3 Prior Notice of Significant Change to be Given to Unitholders

- 3.3.1 The manager of an authorised scheme must give prior written notice to the unitholders of any significant change to the scheme.
- 3.3.2 For the purposes of paragraph 3.3.1, a change is a significant change if, not being a fundamental change, it:
- (a) affects any one or more unitholder's ability to exercise his rights in relation to his investment;

- (b) would reasonably be expected to cause the unitholder to reconsider his participation in the scheme;
- (c) results in any increased payments out of the scheme property to the manager, any director of an open-ended investment company or any associate of either; or
- (d) materially increases other types of payment out of the scheme property.

3.4 Certain Changes to be Notified to Unitholders

- 3.4.1 The manager of an authorised scheme must inform unitholders of any change, not being a fundamental or significant change, that is likely to affect, or has effected, the operation of the scheme, unless the manager considers on reasonable grounds that the change is insignificant.
- 3.4.2 Unitholders must be informed of changes under paragraph 3.4.1 in such manner and timescale as is appropriate given the nature of the change.

3.5 General Meetings of Unitholders

- 3.5.1 A general meeting of unitholders of an authorised scheme may be called at any time by the manager or depositary of the scheme or, in the case of an open-ended investment company, by the directors of the company.
- 3.5.2 A general meeting of unitholders of an authorised scheme may be requisitioned by a notice signed by unitholders who, at that date, are registered as the unitholders of units representing not less than one-tenth in value, or such lower proportion as may be stated in the constituting instrument, of all of the units then in issue.
- 3.5.3 A notice requisitioning a general meeting in accordance with paragraph 3.5.2 must:
 - (a) state the objects of the meeting;
 - (b) be dated; and
 - (c) in the case of an open-ended investment company, be deposited at its head office or in the case of a unit trust, with the trustee.
- 3.5.4 The manager or depositary or, in the case of an open-ended investment company, the directors must on receipt of a notice that complies with this section, immediately convene a general meeting of the unitholders of the authorised scheme for a date no later than eight weeks after receipt of the notice.

3.6 Notice of General Meetings

- 3.6.1 Where a general meeting of unitholders is called under section 3.5:
 - (a) each unitholder must be given at least 14 days written notice, inclusive of the date on which the notice is first served and the day of the meeting; and
 - (b) the notice must specify the place, date and time of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the depositary.
- 3.6.2 The accidental omission to give notice to, or the non-receipt of notice by, any unitholder does not invalidate the proceedings at any meeting.
- 3.6.3 Notice of an adjourned meeting of unitholders must be given to each unitholder, stating that while two unitholders present in person or proxy are required to constitute a quorum at the adjourned meeting, this may be

reduced to one in accordance with section 3.7, should two such unitholders not be present after a reasonable time of the convening of the meeting.

3.6.4 Paragraph 3.6.1(1)(a) does not apply to the notice of an adjourned meeting.

3.7 Quorum at Meeting of Unitholders

3.7.1 The quorum required to conduct business at a meeting of unitholders is two unitholders, present in person or by proxy.

3.7.2 If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting:

- (a) if convened on the requisition of unitholders, must be dissolved; and
- (b) in any other case, must be adjourned to:
 - (i) a date and time determined by the chairman, which must be seven or more days after the date and time of the meeting; and
 - (ii) a place to be appointed by the chairman.

3.7.3 If, at an adjourned meeting under paragraph 3.7.2(b), a quorum is not present after a reasonable time from the time for the meeting, one person entitled to be counted in a quorum present at the meeting shall constitute a quorum.

3.8 Resolutions

3.8.1 Except where an extraordinary resolution is specifically required or permitted, any resolution of unitholders is passed by a simple majority of the votes validly cast at a general meeting of unitholders.

3.8.2 In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.

3.8.3 Where a resolution, including an extraordinary resolution, is required to conduct business at a meeting of unitholders and every unitholder is prohibited under paragraph 3.9.4 from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the depositary to the process, instead be passed with the written consent of unitholders representing 50% or more, or for an extraordinary resolution, 75% or more, of the units of the scheme in issue.

3.9 Voting Rights

3.9.1 On a show of hands every unitholder who is present in person has one vote.

3.9.2 On a poll:

- (a) votes may be given either personally or by proxy or in another manner permitted by the constituting instrument;
- (b) the voting rights for each unit must be the proportion of the voting rights attached to all of the units in issue that the price of the unit bears to the aggregate price or prices of all of the units in issue.
- (c) a unitholder need not use all his votes or cast all his votes in the same way.

3.9.3 For joint unitholders, the vote of the most senior who votes, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint unitholders and for this purpose seniority must be determined by the order in which the names stand in the register of unitholders.

3.9.4 Neither a director of an open-ended investment company nor the manager of an authorised scheme can be counted in the quorum of, and no such director or

the manager nor any of their associates may vote at, any meeting of the authorised scheme.

3.9.5 The prohibition in paragraph 3.9.4 does not apply to any units held on behalf of, or jointly with, a person who, if himself the registered unitholder, would be entitled to vote and from whom the director, the manager or his associate have received voting instructions.

3.9.6 For the purpose of this section, units held, or treated as held, by the manager of an authorised scheme, or in the case of an open-ended investment company, any director, must not, except as mentioned in paragraph 3.9.5, be regarded as being in issue.

3.10 Right to demand a poll

3.10.1 A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by:

- (a) the chairman;
- (b) at least two unitholders; or
- (c) the depositary.

3.10.2 Unless a poll is demanded in accordance with paragraph 3.10.1, a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.

3.11 Proxies

3.11.1 A unitholder may appoint another person to attend a general meeting and vote in his place.

3.11.2 Unless the constituting instrument provides otherwise, a unitholder may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.

3.11.3 Every notice calling a meeting of an authorised scheme must contain a reasonably prominent statement that a unitholder entitled to attend and vote may appoint a proxy.

3.11.4 For the appointment to be effective, any document relating to the appointment of a proxy must not be required to be received more than 48 hours before the meeting or adjourned meeting

3.12 Chairman, adjournment and minutes

3.12.1 A meeting of unitholders must have a chairman, nominated:

- (a) in the case of an authorised unit trust, by the trustee;
- (b) in the case of an open-ended investment company, by a director or, if no such nomination is made, by the depositary.

3.12.2 If the chairman is not present after a reasonable time from the time for the meeting, the unitholders present must choose one of them to be chairman.

3.12.3 The chairman:

- (a) may, with the consent of any meeting of unitholders at which a quorum is present; and
- (b) must, if so directed by the meeting;

adjourn the meeting from time to time and from place to place.

- 3.12.4 Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
- 3.12.5 The manager of an authorised scheme must ensure that:
- (a) minutes of all resolutions and proceedings at every meeting of unitholders are made and kept; and
 - (b) any minute made under paragraph (a) is signed by the chairman of the meeting.
- 3.12.6 Any minute referred to in paragraph 3.12.5(b) is conclusive evidence of the matters stated in it.

3.13 Notices to unitholders

- 3.13.1 Where the Ordinance, the CIS Regulations or this Code requires any notice or document to be served on a unitholder, it is properly served if it is:
- (a) sent by post to or left at the unitholder's address as appearing in the register; or
 - (b) sent electronically using an electronic medium and complies with the requirements for an "other notice" specified in paragraph 3.14.2.
- 3.13.2 Any notice or document served by post is deemed to have been served on the second business day following the day on which it is posted.
- 3.13.3 Any document left at a registered address or delivered other than by post is deemed to have been served on that day.

3.14 Other notices

- 3.14.1 Any document or notice to be served on or information to be given to, any person, including the Authority, must be in legible form.
- 3.14.2 For the purposes of this paragraph, a form is legible form if it:
- (a) is consistent with the open-ended investment company's, the director's, the manager's or the depositary's knowledge of how the recipient of the document wishes or expects to receive it;
 - (b) is capable of being provided in hard copy by the manager, depositary or, in the case of an open-ended investment company, by any director;
 - (c) enables the recipient to know or record the time of receipt; and
 - (d) is reasonable in the context.

4 Dealing

4.1 Introduction

- 4.1.1 The manager of an authorised scheme is responsible for arranging for the issue and cancellation of units for the scheme, and is permitted to sell and redeem units for his own account.
- 4.1.2 The requirements in this section of the Code must be applied separately to each sub-fund of a scheme which is an umbrella scheme, and, if appropriate, the currency of a sub-fund may be used instead of the base currency of the umbrella scheme.

4.2 Initial offers

- 4.2.1 During the initial offer period, units may only be issued at the initial price.

- 4.2.2 The length of any initial offer should not be unreasonable when considered alongside the characteristics of the authorised scheme.
- 4.2.3 The manager of an authorised scheme must, as soon as practicable after receiving the initial price from the purchaser and no later than the fourth business day following the end of the initial offer, pay the depositary the initial price of any unit that it has agreed to see during the initial offer period.
- 4.2.4 The initial offer period comes to an end if the manager reasonably believes the price that would reflect the current value of the scheme property would vary by more than 2% from the initial price.
- 4.3 Issue and cancellation of units by open-ended investment company**
- 4.3.1 Units in an authorised open-ended investment company are issued or cancelled by the manager making a record of the issue or cancellation and of the number of the units of each class concerned, and cannot be issued or cancelled in any other manner, unless the constituting instrument provides otherwise as permitted by the CIS Regulations (Schedule 2, paragraph 14).
- 4.3.2 The time of the issue or cancellation is the time when the record is made.
- 4.4 Issue and cancellation of units in authorised unit trust**
- 4.4.1 The trustee of an authorised unit trust must issue or cancel units in the unit trust when instructed to do so by the manager.
- 4.4.2 Any instructions given by the manager to issue or cancel units in an authorised unit trust must state, for each class of unit to be issued or cancelled, the number of units to be issued or cancelled.
- 4.4.3 If the trustee of an authorised unit trust is of the opinion that it is not in the interests of unitholders that any units should be issued or cancelled, or that to do so would not be in accordance with the constituting instrument or the prospectus, he must notify the manager of that fact and he is then relieved of the obligation to issue or cancel those units.
- 4.4.4 Issue and cancellation of units through manager
- 4.4.5 The manager of an authorised scheme may require, on agreement with the depositary, or may permit, on the request of the investor, direct issues and cancellations of units by an open-ended investment company or by the trustee of an authorised unit trust if:
- (a) the prospectus and the constituting instrument provide for this; and
 - (b) the prospectus sets out details of the procedure to be followed.
- 4.6 Controls over the issue and cancellation of units**
- 4.6.1 The manager of an authorised scheme must ensure that at each valuation point there are at least as many units of any class in issue as there are registered to unitholders for that class.
- 4.6.2 The manager of an authorised scheme must not do, or omit to do, anything which would, or might, confer on himself or an associate a benefit or advantage at the expense of a unitholder or a potential unitholder:
- (a) in the case of an authorised unit trust, when giving instructions to the depositary for the issue or cancellation of units; or
 - (b) for an open-ended investment company, when arranging for the issue or cancellation of units.

4.6.3 For the purpose of paragraph 4.6.1, the manager of an authorised scheme may take into account instructions to redeem units at the following valuation point received before any time agreed with the depositary for such purpose.

4.7 Modification to number of units issued or cancelled

4.7.1 Any instruction for the issue or cancellation of units under sections 4.3 or 4.4 may, with the agreement of the depositary, be modified if:

- (a) the modification corrects an error in the instruction; and
- (b) the error is an isolated one.

4.7.2 The depositary must, before agreeing to a modification under paragraph 4.7.1 take reasonable care to satisfy himself as the matters specified in subparagraphs (a) and (b) of that paragraph.

4.7.3 Any error in paragraph 4.7.1 must be corrected within the payment period applicable under sections 4.9 or 4.10, as the case may be.

4.8 Compensation for errors

4.8.1 Subject to paragraph 4.8.2, where the manager of an authorised scheme has not complied with section 4.6, he must correct the error as soon as possible and must reimburse to the scheme any costs it may have incurred in correcting the position.

4.8.2 The manager is not required to reimburse the scheme when:

- (a) the costs are not, in the opinion of the depositary, material to the scheme;
- (b) the manager can demonstrate that it has effective controls in place to prevent such errors; and
- (c) the requirements of section 4.6 have been complied with.

4.9 Payment for units issued

4.9.1 The manager of an authorised scheme must, by the close of business on the fourth business day following the issue of any units arrange for payment of the value of the units issued and any payment required in respect of dilution to the trustee or the open-ended investment company.

4.9.2 The manager must make the payment referred to in paragraph 4.9.1 in cash or cleared funds unless section 4.11 applies.

4.9.3 Where the manager has not complied with paragraph 4.9.1, he must reimburse the scheme for any lost interest unless the amount involved is not, in the depositary's opinion, material to the scheme.

4.10 Payment for cancelled units

4.10.1 On cancelling units the manager of an authorised scheme must, before the expiry of the fourth business day following the cancellation of the units or, if later, as soon as practicable after delivery to the trustee or the open-ended investment company of such evidence of title to the units as the trustee or company may reasonably require, require the depositary to pay the price of the units, less any deduction with respect to dilution, to the manager or, where relevant, the unitholder.

4.10.2 If the manager has not ensured that the scheme property includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction on investment and borrowing powers

in the CIS Regulations), within the period specified in paragraph 4.10.1, that period is extended, for any relevant currency, until the shortage is rectified.

- 4.10.3 If paragraph 4.10.2 applies, the manager must take reasonable steps to rectify the currency shortage as quickly as possible.
- 4.10.4 This requirement does not apply where section 4.11 applies.
- 4.10.5 Nothing in this section requires an open-ended investment company, a depositary or the manager of an authorised scheme to pay any money or to transfer scheme property for a cancellation or redemption of units where any money due on the earlier issue or sale of those units has not been received.

4.11 In specie issue and cancellation

- 4.11.1 The depositary may take into or pay out of scheme property assets other than cash as payment for the issue or cancellation of units if:
 - (a) he has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of unitholders; and
 - (b) the constituting instrument so permits him to do so.

4.12 Sale and redemption

- 4.12.1 The manager of an authorised scheme must, at all times during the dealing day, be willing to effect the sale of units in the scheme, in accordance with the conditions in the constituting instrument and the prospectus:
 - (a) he has reasonable grounds to refuse the sale; or
 - (b) the issue of units is prevented under section 4.13.
- 4.12.2 Subject to sections 4.14. and 4.15, the manager must, at all times during the dealing day, on the request of any qualifying unitholder, effect the redemption of units in accordance with the conditions in the constituting instrument and the prospectus unless it has reasonable grounds to refuse such redemption.
- 4.12.3 On agreeing to a redemption of units, the manager must pay the unitholder the appropriate proceeds of redemption within the period specified in paragraph 4.12.4 unless the manager has reasonable grounds for withholding all or any part of the proceeds.
- 4.12.4 The period referred to in paragraph 4.12.3 expires at the close of business on the fourth business day following the later of:
 - (a) the valuation point at which the price for the redemption was determined; or
 - (b) the time when the manager has all the duly executed instruments and authorisations to effect (or enable the manager to effect) the transfer of title to the units.
- 4.12.5 Except where paragraph 4.12.6 applies, and subject to section 4.15, the manager must sell or redeem units at a price determined no later than the end of the business day immediately following the receipt and acceptance of an instruction to do so, or at the next valuation point for the purposes of buying or selling units if later (or, for a sale or redemption at an historic price, at the price determined at the last valuation point).
- 4.12.6 Where an authorised scheme operates limited redemption arrangements, the manager must sell or redeem units at a price determined no later than the expiry of a period of 185 days from the date of the receipt and acceptance of the instruction to sell or redeem.

- 4.12.7 The manager of an authorised scheme must not sell a unit for more than the price of a unit of the relevant class at the relevant valuation point, to which may be added any preliminary charge permitted and any payment required with respect to dilution.
- 4.12.8 The manager must not redeem a unit for less than the price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted and any deduction with respect to dilution.
- 4.12.9 Paragraphs 4.12.3, 4.12.4 and 4.12.8 do not apply where the manager is buying units as principal on an investment exchange and settlement will be made in accordance with the rules of that exchange.

4.13 Limited issue

- 4.13.1 If an authorised scheme limits the issue of any class of unit, the prospectus of the scheme must provide for the circumstances and conditions when units will be issued.
- 4.13.2 Where paragraph 4.13.1 applies, the manager may not provide for the further issue of units unless, at the time of the issue, he is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the scheme's investment objective or materially prejudicing existing unitholders.
- 4.13.3 Unit classes within a scheme may operate different arrangements for the issue of units provided there is no prejudice to the interests of any unitholder.

4.14 Limited redemption

- 4.14.1 The constituting instrument of a scheme may provide for limited redemption arrangements appropriate to its aims and objectives.
- 4.14.2 A scheme that has limited redemption arrangements must provide for redemptions at least once in every six months.
- 4.14.3 Unit classes within a scheme may operate different arrangements for redemption of units provided there is no prejudice to the interests of any unitholder.

4.15 Deferred redemption

- 4.15.1 The constituting instrument and the prospectus of an authorised scheme which has at least one valuation point on each business day, may permit deferral of redemptions at a valuation point to the next valuation point where the requested redemptions exceed 10%, or some other reasonable proportion disclosed in the prospectus, of the scheme's value.
- 4.15.2 Any deferral of redemptions under paragraph 4.15.1 must be undertaken in accordance with the procedures explained in the prospectus which must ensure:
- the consistent treatment of all unitholders who have sought to redeem units at any valuation point at which redemptions are deferred; and
 - that all deals relating to an earlier valuation point are completed before those relating to a later valuation point are considered.

5 Titles and Registers

5.1 Requirement to Maintain Register

- 5.1.1 The manager of an authorised scheme must establish and maintain a register of unitholders in accordance with this section. In the case of an authorised unit

trust, the constituting instrument may provide for the register to be maintained by the trustee and, where applicable, all references in this section to the manager include a reference to the trustee.

- 5.1.2 The manager must exercise all due diligence and take all reasonable steps to ensure the information contained on the register is at all times complete and up to date.
- 5.1.3 The register must contain:
- (a) the name and address of each unitholder, although where units are jointly held no more than four unitholders need to be registered;
 - (b) the number of units of each class held by each unitholder;
 - (c) the date on which the unitholder was registered for units standing in his name; and
 - (d) the number of units of each class currently in issue.
- 5.1.4 No notice of any trust, express, implied or constructive which may be entered in the register is binding on the manager.
- 5.1.5 The register is conclusive evidence of the persons entitled to the units entered in it.
- 5.1.6 The manager must:
- (a) take reasonable steps to alter the register on receiving written notice of a change of name or address of any unitholder;
 - (b) in relation to a change of name of a unitholder where a certificate has been issued, either endorse the existing certificate or issue a new one;
 - (c) make the register available for inspection free of charge in Gibraltar by or on behalf of any unitholder during normal office hours, although the register may be closed for periods not exceeding 30 business days in any one year;
 - (d) on request, supply free of charge to any unitholder or his authorised representative a copy of the entries on the register relating to that unitholder;
 - (e) where a unitholder defaults on paying for the issue or sale of units, make an alteration or deletion in the register to compensate for the default after which the manager becomes entitled to those units until they are either cancelled or re-sold; and
 - (f) carry out any conversion of units allowed for by section 5.5 after consultation with the manager or trustee, as appropriate.

5.2 The Manager As Unitholder

- 5.2.1 If no person is entered in the register as the unitholder of a unit, the manager must be treated as the unitholder of each such unit which is in issue.
- 5.2.2 Where units are transferred to the manager, they need not be cancelled and the manager need not be entered on the register as the new unitholder.

5.3 Transfer Of Units By Act Of Parties

- 5.3.1 Every unitholder is entitled to transfer units held on the register by an instrument of transfer in any form that the manager may approve, but the manager is not under a duty to accept a transfer unless it is permitted by the constituting instrument or prospectus.

- 5.3.2 Every instrument of transfer of units must be signed by, or on behalf of, the unitholder transferring the units or, for a body corporate, sealed by that body corporate or signed by one of its officers authorised to sign it and, unless the transferee is the manager, the transferor must be treated as the unitholder until the name of the transferee has been entered in the register.
- 5.3.3 Every instrument of transfer must be left with the manager for registration accompanied by:
- (a) any necessary documents that may be required by legislation; and
 - (b) any other evidence reasonably required by the manager.
- 5.3.4 The details of instruments of transfer must be kept for a period of six years from the date of its registration.
- 5.3.5 On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the register.

5.4 Certificates

- 5.4.1 Following the sale of units as a result of section 5.3, a document recording title to those units may be issued in such a form as the constituting instrument permits.
- 5.4.2 The manager must issue any document recording title or provide relevant information in a timely manner where the procedures for redeeming units require the unitholder to surrender that document.

5.5 Conversion of Units

- 5.5.1 Where there is more than one class of unit offered for issue or sale, the unitholder has a right to convert from one to the other, provided that doing so would not contravene any provision in the prospectus.

6 Managers and Depositaries of Authorised Scheme

6.1 Functions of Manager

- 6.1.1 The manager of an authorised scheme must:
- (a) manage the scheme in accordance with:
 - (i) the Ordinance, the CIS Regulations and this Code;
 - (ii) the constituting instrument of the scheme; and
 - (iii) the most recently published prospectus.
 - (b) take such steps as are necessary to ensure that the scheme is in compliance with the Ordinance, the CIS Regulations and this Code.
- 6.1.2 The manager must:
- (a) make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
 - (b) instruct the depositary in writing how rights attaching to the ownership of the scheme property are to be exercised, except where section 6.7 applies; and
 - (c) take action immediately to rectify any breach of Part 2 (Valuation and Pricing) and, where the breach relates to the incorrect pricing of units or to the late payment in respect of the issue of units, the rectification must, unless the depositary otherwise directs, extend to the reimbursement or payment, or arranging the reimbursement or payment, of money:

- (i) by the manager to unitholders and former unitholders;
- (ii) by the manager to the scheme;
- (iii) by the scheme to the manager;
- (iv) by the manager to the trustee; or
- (v) by the trustee to the manager.

6.1.3 Rectification under paragraph 6.1.1(c) need not, unless the depositary so directs, extend to any such reimbursement or payment where it appears to the depositary such breach, is of minimal significance.

6.2 General duties of the depositary

6.2.1 The depositary of an authorised scheme must take reasonable care to ensure that the scheme is managed by the manager in accordance with:

- (a) the provisions of the CIS Regulations relating to investment and borrowing powers;
- (b) The provisions of this Code relating to dealing, valuation and pricing and the accounting, allocation and distribution of income; and
- (c) any provision of the constituting instrument or prospectus that relates to the provisions referred to in sub-paragraphs (a) and (b).

6.2.2 The depositary must, in so far as not already required under paragraph 6.2.1(c), take reasonable care to ensure on a continuing basis that:

- (a) the manager is adopting appropriate procedures to ensure that the price of units is calculated for each valuation point in accordance with Part 2 (Valuation and Pricing); and
- (b) the manager has maintained sufficient records to show compliance with Part 2 (Valuation and Pricing).

6.2.3 The depositary, when acting in its capacity as depositary, must act solely in the interests of the unitholders.

6.2.4 The depositary:

- (a) must take reasonable care to ensure that:
 - (i) the manager considers whether or not to exercise any power with respect to dilution and, if applicable, the amount of any dilution levy or dilution adjustment that is imposed;
 - (ii) the manager has in relation to sub-paragraph (i), taken account of all factors that are material and relevant to his decision; and
 - (iii) when the manager considers whether or not to exercise any power with respect to dilution, he has acted in accordance with the restrictions imposed by this Code; and
- (b) has no duty in respect of the manager's exercise of the discretion referred to in sub-paragraph (a).

6.3 Maintenance of records

6.3.1 The manager of an authorised scheme must make, and retain for six years, such records as will enable:

- (a) the scheme and the manager to comply with the Ordinance, the CIS Regulations and this Code; and

- (b) the manager to demonstrate at any time that such compliance has been achieved.

6.3.2 The manager of an authorised scheme must make and retain for six years a daily record of the units in the scheme held, acquired or disposed of by the manager, including the classes of such units, and of the balance of any acquisitions and disposals.

6.3.3 Where relevant, the manager must make and retain for a period of six years a daily record of:

- (a) how any dilution is calculated and estimated; and
- (b) the policy and method for determining the amount of any dilution levy or dilution adjustment.

6.3.4 The manager must on the request of the depositary immediately supply the depositary with such information concerning the management and administration of the scheme as the depositary may reasonably require.

6.4 Notification re Failure to Maintain Capital

6.4.1 The manager of an open-ended investment company must notify the Authority forthwith in writing if the company's capital falls below the minimum or exceeds the maximum stated in its constituting instrument.

6.5 Dealings in scheme property

6.5.1 The manager of an authorised scheme may give instructions to deal in the property of the scheme.

6.5.2 The manager must obtain the consent of the depositary for the acquisition or disposal of immovable property.

6.5.3 Where the depositary is of the opinion that a deal in property is not within the CIS Regulations or this Code and the constituting instrument, the depositary may require the manager to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.

6.5.4 Where the depositary is of the opinion that:

- (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a person other than the depositary; and
- (b) the depositary cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other person;

the manager must, if the depositary so requests, either cancel the transaction or make a corresponding disposal.

6.6 Control by the depositary over the scheme property

6.6.1 The depositary of an authorised scheme is responsible for the safekeeping of all of the scheme property (other than tangible movable property) entrusted to him and must:

- (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the scheme;
- (b) ensure that scheme property in registered form is, as soon as practicable, registered in the name of the depositary, his nominee or a person retained by it in accordance with section 6.8;

- (c) take into his custody or under his control documents of title to the scheme property other than for transactions in derivatives or forward transaction; and
 - (d) ensure that any transaction in derivatives or a forward transaction is entered into so as to ensure that any resulting benefit is received by the depositary.
- 6.6.2 The depositary is responsible for the collection of income due to be paid for the account of the scheme.
- 6.6.3 The depositary must keep for six years such records as are necessary:
 - (a) to enable it to comply with the Ordinance, the CIS Regulations and this Code; and
 - (b) to demonstrate that it has achieved such compliance.
- 6.7 Exercise of Rights in Respect of the Scheme Property**
- 6.7.1 The depositary of an authorised scheme must take all necessary steps to ensure that instructions given to it by the manager for the exercise of rights attaching to the ownership of scheme property are carried out.
- 6.7.2 Where the scheme property of an authorised scheme contains units in any other collective investment scheme managed or otherwise operated by the manager of the scheme or by any associate of either, the depositary must exercise any voting rights associated with those units in accordance with what he reasonably believes to be the interests of the unitholders in the authorised scheme.
- 6.8 Committees and delegation**
- 6.8.1 The directors of an open-ended investment company may delegate to any one or more of their number any of the directors' powers or duties but they remain responsible for the acts or omissions of any such directors.
- 6.8.2 The manager of an authorised scheme and the directors of an open-ended investment company may retain the services of any other person to assist in the performance of their respective functions, provided that:
 - (a) a mandate in relation to managing investments of the scheme property is not given to:
 - (i) the depositary; or
 - (ii) any other person whose interests may conflict with those of the manager or the unitholders; or
 - (iii) any other person who is not both:
 - (A) authorised or registered for managing of investments; and
 - (B) subject to prudential supervisionunless there is an agreement in place between the Authority and the foreign regulator of the delegate ensuring adequate co-operation;
 - (b) the manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;
 - (c) the mandate permits the manager to:
 - (i) give further relevant instructions to the person retained; and

- (ii) withdraw the mandate with immediate effect when this is in the interests of the unitholders; and
 - (d) the mandate does not prevent effective supervision of the manager or prevent the manager from acting, or the scheme from being managed, in the best interests of the unitholders.
- 6.8.3 Where services are retained under paragraph 6.8.2, the responsibility which the manager had in respect of such services prior to that retention of services will remain unaffected.
- 6.8.4 The depositary of an authorised scheme may delegate any function to any other person except to:
 - (a) the open-ended investment company or any director of the company, or to the manager of the scheme, to assist the depositary to perform:
 - (i) any function of oversight in respect of the scheme, its directors or the manager, as the case may be; or
 - (ii) any function of custody or control of the scheme property;
 - (b) an associate of the open-ended investment company or any director of the company or of the manager of the scheme (as the case may be) to assist the depositary to perform any oversight function; or
 - (c) a nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property of the scheme unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depositary.
- 6.8.5 Where a depositary retains services under paragraph 6.8.4:
 - (a) if he retains the services of a director of the open-ended investment company, or an associate or such a director or his own associate, then its liability for those services shall remain unaffected; and
 - (b) in any other case, he will not be held responsible by virtue of the provisions in this Code for any act or omission of the person so retained if he can show that:
 - (i) it was reasonable for him to obtain assistance to perform the function in question;
 - (ii) the person retained was and remained competent to provide assistance in the performance of the function in question; and
 - (iii) he had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.
- 6.9 **Conflicts of interest**
- 6.9.1 The manager of an authorised scheme, any director of an open-ended investment company that is an authorised scheme and the depositary of an authorised scheme must take reasonable care to ensure that none of the following transactions is carried out on behalf of the scheme:
 - (a) putting cash on deposit with a conflicted person unless that person is an eligible institution or an approved bank and the transaction complies with paragraph 6.9.2;

- (b) lending money by a conflicted person to, or for the account of, the scheme, unless the conflicted person is an eligible institution or an approved bank, and the transaction complies with paragraph 6.9.2;
 - (c) dealing in property by a conflicted person, to, or with, the scheme (or the depositary for the account of the scheme), unless paragraph 6.9.3 applies;
 - (d) the vesting of property (other than cash) by a conflicted person in the scheme or the depositary for the account of the scheme against the issue of units in the scheme, unless:
 - (i) paragraph 6.9.3 applies; or
 - (ii) the purpose of the vesting is that the whole or part of the property of a body corporate or a collective investment scheme becomes the first property of the scheme and the unitholders of shares or units in the body corporate or collective investment scheme become the first unitholders in the scheme;
 - (e) the acquisition of scheme property by a conflicted person from the scheme (or the depositary acting for the account of the scheme), unless section 4.11 or paragraph 6.9.3 applies; and
 - (f) transactions within regulations 49 and 50 of the CIS Regulations by a conflicted person with, or in relation to, the scheme unless the transaction complies with paragraph 6.9.2.
- 6.9.2 This paragraph is satisfied for the purposes of paragraph 6.9.1(a), (b) and (f) if the transaction is at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm's length between the conflicted person and an independent party.
- 6.9.3 Paragraph 6.9.1(c), (d) or (e) is not contravened if the transaction meets the requirements of:
- (a) best execution on-exchange;
 - (b) independent valuation; or
 - (c) arm's length transaction.
- 6.9.4 For the purposes of paragraph 6.9.3(a), there is best execution on-exchange if:
- (a) the property is an approved security or an approved derivative;
 - (b) the transaction is effected under the rules of the relevant exchange with or through a person who is bound by those rules;
 - (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 ensure that the transaction is effected on the terms which are the best available for the scheme.
- 6.9.5 For the purposes of paragraph 6.9.3(b), there is independent valuation if:
- (a) the value of the property is certified in writing for the purpose of the transaction by a person approved by the depositary as:
 - (i) independent of any conflicted person; and
 - (ii) qualified to value property of the relevant kind; and
 - (b) the depositary is of the opinion that the terms of the transaction are not likely to result in any material prejudice to unitholders.
- 6.9.6 For the purposes of paragraph 6.9.3(c), there is an arm's length transaction if:

- (a) paragraph 6.9.4 (a) is not satisfied;
- (b) it is not reasonably practicable to obtain an independent valuation under paragraph 6.9.5; and
- (c) the depositary has reliable evidence that the transaction is or will be on terms which satisfy requirements of paragraph 6.9.2.

7 Payments Out of Scheme Property

7.1 Introduction

7.1.1 The only payments which may be recovered from the scheme property of an authorised scheme are those in respect of:

- (a) remunerating the parties operating the scheme;
- (b) the administration of the scheme; or
- (c) the investment or safekeeping of the scheme property.

7.1.2 No payment under this paragraph can be made from scheme property if it is unfair to, or materially prejudices the interests of, any class of unitholders or potential unitholders.

7.1.3 Paragraphs 7.1.1 and 7.1.2 do not apply to any payments in relation to any taxation payable by the authorised scheme.

7.2 Charges on buying and selling units

7.2.1 Only the manager of an authorised scheme may impose charges on unitholders or potential unitholders when they buy or sell units.

7.2.2 The manager of an authorised scheme must not make any charge or levy in connection with:

- (a) the issue or sale of units except where a preliminary charge is made in accordance with the prospectus of the scheme which must be either a fixed amount or calculated as a percentage of the price of a unit; or
- (b) the redemption or cancellation of units, except a redemption charge made in accordance with the prospectus current at the time the relevant units were purchased by the unitholder.

7.2.3 This section is subject to the provisions concerning dilution.

7.3 Charges for the exchange of units in an umbrella

7.3.1 For an authorised scheme which is an umbrella scheme, the manager must not make a charge on an exchange of units in one sub-fund for units in another sub-fund unless the amount of the charge is not more than the amount stated in the current prospectus.

7.4 Allocation of payments to income or capital

7.4.1 The manager of an authorised scheme must determine whether a payment is to be made from the income property or capital property of an authorised scheme, and in doing so the manager must:

- (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the scheme; and
- (b) agree the treatment of any payment with the depositary.

7.4.2 Where, for any annual accounting period, the amount of the income property is less than the income distributed, the shortfall must, as from the end of that

period, be charged to the capital account and must not subsequently be transferred to the income account.

7.5 Prohibition on promotional payments

7.5.1 No payment may be made from the scheme property of an authorised scheme to any person, other than a payment to the manager permitted by the CIS Regulations or this Code, for the acquisition or promotion of the sale of units in an authorised scheme.

7.6 Movable or immovable property

7.6.1 An open-ended investment company must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

7.7 Payment of liabilities on transfer of assets

7.7.1 Where the property of an authorised scheme is transferred to a second authorised scheme (or to the depositary for the account of the authorised scheme) in consideration of the issue of units in the second authorised scheme to unitholders in the first scheme, paragraph 7.7.2 applies.

7.7.2 The open-ended investment company or its depositary or the trustee of the authorised unit trust as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

- (a) there is nothing in the constituting instrument of the authorised scheme expressly forbidding the payment; and
- (b) the manager 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.

7.8 Allocation of scheme property

7.8.1 For an authorised scheme which is an umbrella scheme, any assets to be received into, or any payments out of, the scheme property which are not attributable to one sub-fund only, must be allocated by the manager between the sub-funds in a manner which is fair to the unitholders of the umbrella scheme generally.

8 Accounting, Allocation and Distribution of Income

8.1 Accounting periods

8.1.1 An authorised scheme must have:

- (a) an annual accounting period;
- (b) a half-yearly accounting period; and
- (c) an accounting reference date.

8.1.2 A half-yearly accounting period begins with the first day of an annual accounting period and ends on the day which is six months later or ends on some other reasonable date as set out in the prospectus of the scheme.

8.2 Income allocation and distribution

8.2.1 An authorised scheme must have:

- (a) an annual income allocation date, which must be within four months of the accounting reference date.
 - (b) a distribution account to which the income property is transferred at the end of the relevant accounting period.
- 8.2.2 An authorised scheme may have an interim income allocation date and interim accounting periods and, if it does, the interim income allocation date must be within four months of the end of the relevant interim accounting period.
- 8.2.3 If income is allocated and distributed during an accounting period:
 - (a) with effect from the end of the relevant accounting period, the amount of income allocated to unit classes that accumulate income becomes part of the capital property and requires an adjustment to the proportion of the value of the scheme property to which they relate if other classes of units are in issue during the period;
 - (b) the adjustment in subparagraph (a) must ensure the price of units remains unchanged despite the transfer of income; and
 - (c) the amount of any interim distribution may not be more than the amount which, in the opinion of the manager, would be available for allocation if the interim accounting period and all previous interim accounting periods in the same annual accounting period, taken together, were an annual accounting period.

8.3 Unclaimed, de minimis and joint unitholder distributions

- 8.3.1 Any distribution remaining unclaimed after a period of six years, or such longer time specified by the prospectus, must become part of the capital property.
- 8.3.2 The manager and the depositary may agree a de minimis amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.
- 8.3.3 Distributions made to the first named joint unitholder on the register will be as effective a discharge to the trustee and manager, as if the first named joint unitholder had been a sole unitholder.

9 Investment Powers, Authorised Non-UCITS Retail Schemes

9.1 Introduction

- 9.1.1 Part III, Division 3 of the CIS Regulations provides for the investment and borrowing powers of authorised schemes.
- 9.1.2 Regulation 20(2) of the CIS Regulations permits the Codes of Practice to modify the provisions for investment and borrowing powers in the Regulations with respect to authorised non-UCITS retail schemes or with respect to specified categories of authorised non-UCITS retail schemes.
- 9.1.3 The purpose of this Part of the Code is to specify the modifications of the CIS Regulations that are applicable to authorised non-UCITS retail schemes.
- 9.1.4 Unless expressly stated in this Part of the Code:
 - (a) Part III, Division III of the CIS Regulations continues to apply to authorised non-UCITS retail schemes; and
 - (b) the modifications in this Part apply to all authorised non-UCITS retail schemes.

9.2 Scheme property

9.2.1 Subject to the provisions of this Code (and the CIS Regulations where applicable), the scheme property of an authorised non-UCITS retail scheme must comprise only of any or all of the following:

- (a) any investment permitted under regulation 24(1) of the CIS Regulations;
- (b) immovables as permitted under paragraphs 9.5 and 9.6;
- (c) gold up to a limit of 10% in value of the scheme property.

9.2.2 Transferable securities and money market-instruments held within a non-retail UCITS scheme must be admitted to or dealt with on an eligible market within the meaning of regulation 25.

9.2.3 Paragraph 9.2.2 applies to a non-UCITS retail scheme in place of regulation 24(3) and (4) of the CIS Regulations.

9.2.4 Regulation 32 of the CIS Regulations does not apply.

9.3 Spread of investments, general

9.3.1 Regulation 26 applies to non-UCITS retail schemes with the following modifications:

- (a) the maximum percentage in value of the scheme property that may consist of transferable securities or money market instruments issued by a single body [regulation 26(1)(b)] is increased from 5% to 10% and regulation 26(3) does not apply;
- (b) the maximum exposure to any one counterparty in an OTC derivative transaction [regulation 26(5)] is increased from 5% to 10% and the and the second part of that subregulation does not apply;
- (c) unless the scheme is a feeder scheme, the maximum percentage in value of the scheme that may consist of the units of any one collective investment scheme [regulation 26(7)] is increased from 20% to 35%; and
- (d) regulation 26(8) does not apply.

9.4 Investment in collective investment schemes

9.4.1 The provisions in this paragraph apply to a non-UCITS retail scheme in place of regulation 28 of the CIS Regulations.

9.4.2 A non-UCITS retail scheme must not invest in units in a collective investment scheme (second scheme) unless -

- (a) the second scheme:
 - (i) satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive,
 - (ii) is a foreign recognised scheme,
 - (iii) is a non-UCITS retail scheme,
 - (iv) is constituted outside Gibraltar and the investment and borrowing powers of the scheme are the same or more restrictive than those of a non-UCITS retail scheme, or
 - (v) is a scheme not falling within subparagraphs (i) to (iv), in respect of which no more than 20% in value of the scheme property (including any transferable securities which are not approved securities) is invested;

- (b) the second scheme operates on the principle of the prudent spread of risk;
- (c) the second scheme is prohibited from having more than 15% in value of the property of that scheme consisting of units in collective investment schemes; and
- (d) the participants in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price:
 - (a) related to the net value of the property to which the units relate; and
 - (b) determined in accordance with the scheme.

9.5 Investment in property

9.5.1 Any investment in land or a building held within the scheme property of a non-UCITS retail scheme must be an immovable within the meaning of subparagraphs 9.5.2 to 9.5.5.

9.5.2 An immovable must:

- (a) be situated in a country or territory identified in the prospectus for the purpose of this subparagraph; and
- (b) if situated in Gibraltar be a freehold or long leasehold interest;
- (c) if not situated in Gibraltar, be equivalent to a freehold or long leasehold interest.

9.5.3 The manager of a non-UCITS retail scheme must have taken reasonable care to determine that the title to the immovable is a good marketable title.

9.5.4 The manager or the authorised open-ended investment company must -

- (a) have received a report from an appropriate valuer which:
 - (i) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
 - (ii) states that in the appropriate valuer's opinion the immovable would, if acquired by the scheme, be capable of being disposed of reasonably quickly at that valuation; or
- (b) have received a report from a qualified valuer as required by subparagraph (a)(i) stating that:
 - (i) the immovable is adjacent to or in the vicinity of another immovable included in the scheme property or is another legal interest as defined in paragraph 9.5.2(b) or (c) in an immovable which is already included in the scheme property; and
 - (ii) in the opinion of the qualified valuer, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.

9.5.5 An immovable must:

- (a) be bought or be agreed by enforceable contract to be bought within six months after receipt of the report of the qualified valuer under (4);
- (b) not be bought, if it is apparent to the manager that the report in (a) could no longer reasonably be relied upon; and
- (c) not be bought at more than 105% of the valuation for the relevant immovable in the report in paragraph 9.5.4.

- 9.5.6 Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.
- 9.5.7 A qualified valuer must be a person who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a standing independent valuer of a non- UCITS retail scheme or is considered by the scheme's standing independent valuer to hold an equivalent qualification;
 - (c) is independent of the authorised open-ended investment company, the depositary and each of the directors of the authorised open-ended investment company or of the manager and trustee of the authorised unit trust; and
 - (d) has not engaged himself or any of his associates in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

9.6 Investment limits for immovables

- 9.6.1 The following limits apply in respect of immovable property held as part of scheme property of a non-UCITS retail scheme:
- (a) not more than 15% in value of the scheme property is to consist of any one immovable;
 - (b) immovables within section 9.5.4(b) must be regarded as one immovable;
 - (c) the figure of 15% in subparagraph (a) may be increased to 25% once the immovable has been included in the scheme property in compliance with subparagraph (a);
 - (d) the income receivable from any one group in any accounting period must not be attributable to immovables comprising -
 - (i) more than 25%; or
 - (ii) in the case of a government or public body more than 35%;of the value of the scheme property;
 - (e) not more than 20% in value of the scheme property is to consist of mortgaged immovables and any mortgage must not secure more than 100% of the value in paragraph 9.5.4, on the assumption the immovable is not mortgaged;
 - (f) an immovable may be mortgaged up to 100% of the value in subparagraph (d) provided that no more than 20% of the value of the scheme property consists of such immovables and any transferable securities which are not approved securities;
 - (g) not more than 50% in value of the scheme property is to consist of immovables which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and
 - (h) no option may be granted to a third party to buy any immovable comprised in the scheme property unless the value of the relevant immovable does not exceed 20% of the value of the scheme property together with, where appropriate, the value of investments in:
 - (a) unregulated collective investment schemes; and
 - (b) any transferable securities which are not approved securities.

9.7 Independent valuer and valuation

9.7.1 The following requirements apply in relation to the appointment of a valuer:

- (a) the manager must ensure that any immovable property in the scheme property are valued by a qualified valuer appointed by the manager; and
- (b) the appointment must be made with the approval of the trustee or depositary at the outset and upon any vacancy.

9.7.2 The valuer must be independent and must:

- (a) for an authorised unit trust, be independent of the manager and trustee; and
- (b) for an authorised open-ended investment company, be independent of the authorised open-ended investment company, the directors and the depositary.

9.7.3 The following requirements apply in relation to the functions of the independent valuer:

- (a) the manager must ensure that the independent valuer values all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
- (b) for the purposes of (a) any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;
- (c) the manager must ensure that the independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;
- (d) if either the manager or the depositary becomes aware of any matters that appear likely to:
 - (i) affect the outcome of a valuation of an immovable; or
 - (ii) cause the valuer to decide to value under (a) instead of under (c);

it must immediately inform the standing independent valuer of that matter;

- (e) the manager must use its best endeavours to ensure that any other affected person reports to the standing independent valuer immediately upon that person becoming aware of any matter within subparagraph (d); and
- (f) any valuation by the standing independent valuer must be on the basis of an 'Open Market value'.

9.7.4 In relation to an immovable:

- (a) any valuation undertaken in accordance with this Code has effect, until the next valuation under that regulation, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the scheme property unless it reasonably appears to the manager to be legally enforceable.

9.8 CIS Regulations not to apply

9.8.1 Regulations 40 to 42 do not apply to, or with respect to, non-UCITS retail schemes.

10 Cancellation Rights

10.1 Purpose of chapter

10.1.1 The Commission is concerned to ensure that the operators of authorised and recognised collective investment schemes give appropriate consideration to the interests of scheme participants and treat them fairly.

10.1.2 The Commission considers that, in certain circumstances, retail customers should have the benefit of a limited period of reflection after contracting to purchase units in an authorised or recognised collective investment scheme. During this period, the customer can decide whether or not he wishes to proceed with the purchase.

10.1.3 This Part requires every operator of an authorised and recognised collective investment schemes to provide retail customers with certain cancellation rights during this reflection period.

10.1.4 A retail customer, as defined in the CIS Regulations, is an individual who is acting for purposes which are outside his trade, business or profession.

10.2 General rule

10.2.1 Unless one of the exceptions specified in section 9.8 applies, a retail customer has the rights provided in this Part to cancel a contract made with the operator of an authorised or recognised collective investment scheme to subscribe for, or purchase, units in the scheme.

10.2.2 It is a requirement of this Code that managers of authorised and recognised schemes provide retail customers with the cancellation rights specified in this Part and provide written notification to them of their cancellation rights before concluding a contract with them. However, nothing in this Part should be taken as prohibiting scheme managers from providing retail customers with cancellation rights that exceed those provided for in this chapter.

10.2.3 This Part does not apply to:

- (a) contracts to subscribe for, or purchase, units in a scheme that is not an authorised or recognised scheme; or
- (b) contracts to subscribe for, or purchase, units in an authorised or recognised scheme where the purchaser is not a retail customer.

10.2.4 In the remaining provisions of this Part, "scheme" means an authorised scheme or a recognised scheme as defined in the CIS Ordinance.

10.3 Cancellation reminder notice

10.3.1 Where the operator of a scheme enters into a contract with a retail customer which the customer is entitled to cancel in accordance with this Chapter, the operator must send the customer a clearly written notice setting out his cancellations rights.

10.3.2 The cancellation reminder notice must be sent to the retail customer

- (a) if the operator is entitled to charge the customer for market loss in accordance with section 10.6, no later than the eighth day after the contract is concluded; or

- (b) in any other case, no later than the fourteenth day after the contract is concluded.

10.3.3 If the scheme operator fails to give a retail customer notice of his cancellation rights in accordance with this Part, the contract remains cancellable by the customer and the operator may not make any charge to the customer for market loss under section 10.6.

10.4 Cancellation by the customer

10.4.1 A retail customer who has a right to cancel a contract for the subscription or purchase of units in a scheme must exercise the right within 14 days of the date he receives the cancellation reminder notice sent to him by the scheme operator. The customer need not give any reason for his decision to cancel the contract.

10.4.2 The retail customer must exercise his right to cancel by serving notice on the operator by post to the operator's last known address or in accordance with any other reasonable instructions provided by the operator for exercising the right.

10.4.3 Where a contract is cancelled under this rule, the contract is terminated.

10.5 Action to be taken by scheme operator on cancellation

10.5.1 When a retail customer cancels in accordance with rules in this Chapter, the operator must pay the without delay, and no later than 30 days after the date on which it received notice of cancellation from the customer, any sums which the customer has paid to or for the benefit of the operator in connection with the contract (including sums paid by the customer to agents of the operator).

10.5.2 The operator is entitled to receive without delay, and no later than 30 days after the date on which the customer sent notice of cancellation to the operator:

- (a) any sums of money, or property, that became the customer's under the contract; and
- (b) the payment of any charge for market loss that the operator is entitled to make under rule 10.6.

10.6 Market Loss

10.6.1 Subject to paragraph 10.6.2, where a retail customer cancels a contract under this Chapter, the scheme operator is entitled to charge the customer for the market loss which it would incur in cancelling the contract.

10.6.2 A scheme operator does not have the right to make a charge to a customer in respect of market loss where:

- (a) the operator fails to notify the retail customer of his cancellation rights before concluding the contract, as required by section 9.3;
- (b) the operator fails to notify the retail customer of its rights to charge market loss;
- (c) the operator fails to send the customer a cancellation reminder notice; or
- (d) the customer serves the cancellation notice before the contract is concluded.

10.7 Retention of Records

10.7.1 Where notice of cancellation or withdrawal has been served on an operator, or its representative or agent, the operator must make and retain records, which must include a copy of any receipt of notice issued to the customer and the customer's original notice instructions for a minimum period of three years.

10.8 Exceptions

10.8.1 A retail customer does not have the right to cancel a contract to subscribe for, or purchase, units in the scheme in the following circumstances:

- (a) the contract is entered into with the operator as an execution only transaction;
- (b) the contract represents an exchange of units between sub-funds;
- (c) the contract relates to a change from accumulation units to income units, or vice versa, in the same scheme;
- (d) the contract is with the operator of a recognised scheme who is not authorised by the Authority under the Ordinance or who is not carrying on business in Gibraltar.

11 Prospectus Projections

11.1 Purpose of chapter

11.1.1 The CIS Regulations provides that the Codes of Practices shall provide for–

- (a) the circumstances in which projections must be contained in a prospectus and a simplified prospectus; and
- (b) the methods by which projections must be calculated and set out, whether included in a prospectus or simplified prospectus pursuant to an obligation under paragraph (a) or otherwise.

11.1.2 The purpose of this section of the Code is to comply with that requirement of the CIS Regulations.

11.2 General rule

11.2.1 Where investment advice is provided by the manager or operator of an authorised scheme to potential, or existing, investors in units of the scheme, the prospectus of such a scheme must include information relating to projections that complies with the relevant requirements that may be set out in the Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations 2006 and Financial Services Guidance Note 3 – Dealing with and Advising Clients.

11.3 Exceptions

11.3.1 The above requirements do not apply to execution-only transactions.



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