

STATUTORY INSTRUMENTS.

2003 No. 100.

THE COLLECTIVE INVESTMENT SCHEMES (UNIT TRUSTS) REGULATIONS 2003.

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STATUTORY INSTRUMENTS.

2003 No. 100.

The Collective Investment Schemes (Unit Trusts) Regulations, 2003.

(Under sections 30 and 31 of the Collective Investment Schemes Act, 2003, Act No.4 of 2003)

IN EXERCISE of the powers conferred on the Capital Markets Authority by sections 30 and 31 of the Collective Investment Schemes Act, 2003, these Regulations are made this 29th day of October, 2003.

PART I—PRELIMINARY.

Explanation. *These Regulations are made under the Act and, with it, make provision for the constitution and management of unit trusts in Uganda. The Authority's underlying purpose is to assure a high level of investor protection for the benefit of those who invest in such trusts.*

1. Citation and commencement

These Regulations may be cited as the Collective Investment Schemes (Unit Trusts) Regulations, 2003, and shall be deemed to have come into force on the 17th day of November, 2003.

2. Application

These Regulations apply to licensed unit trust schemes constituted in Uganda, and to unit trust schemes that are recognised under the Act.

Explanation. *Definitions in the Act apply also to these Regulations. In order to assist users, some of the terms used in these Regulations and defined elsewhere are listed with an appropriate cross-reference.*

3. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“accounting reference date” means the date stated in the most recently published scheme particulars as the date on which the scheme’s annual accounting period is to end in each year;

“accrual interval”, in relation to the manager’s periodic charge, means the interval specified in the trust deed over which the charge accrues due;

“accumulation unit” means a unit in a licensed unit trust scheme described as such in regulation 7(1);

“Act” means the Collective Investment Schemes Act, 2003;

“affected person” has the meaning in regulation 99(1);

“amalgamation” has the meaning in regulation 126(1);

“annual accounting period” has the meaning in regulation 109;

“annual income allocation date” has the meaning in regulation 110(1);

“approved security” has the meaning in regulation 49;

“associate”,

(a) in relation to a person, means—

(i) an undertaking in the same group as that person;

(ii) an appointed representative of the first person or of any undertaking in the same group; and

(iii) any other person whose business or domestic relationship with the first person or its associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealing with third parties; and

(b) in relation to a firm which is a body corporate, includes any officer of that firm;

“Authority” means the Capital Markets Authority established by the Capital Markets Authority Act;

‘base currency’ means the currency specified in the trust deed as the base currency of the scheme;

“bearer certificate” means a certificate representing units of any type—

(a) which contains a statement that the bearer of the certificate is entitled to the number of units of that type represented by the certificate; or

(b) delivery of which is otherwise sufficient to transfer title to the units concerned;

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

“cancellation price” means the price for each unit payable by the trustee on the cancellation of units (note: this is the same as the creation price);

“capital account” means an account relating to the capital property of the scheme;

“capital property” means all the property for the time being held on the trusts of the trust deed other than income property, and any amount for the time being standing to the credit of the distribution account;

“cash” includes foreign currency;

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

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

“court” means the High Court as defined in section 2 of the Act;

“controller”, in relation to a body corporate, means a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power of any general meeting of the body corporate or another body corporate of which it is a subsidiary and, for this purpose, associate means any subsidiary of that body corporate and any employee of that subsidiary;

“creation price” means the price for each unit payable by the manager to the trustee on the creation of units (Note: this is the same as the cancellation price);

“current preliminary charge” has the meaning in regulation. 29(3) (See also paragraph 67 of Schedule 1 to the Act);

“dealing day” means the period in each business day (or in each other day when the manager or operator is open for business) during which the manager or operator keeps his or her premises or any of them 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;

“dilution” means the amount of dealing costs incurred, or expected to be incurred, by the scheme to the extent that they may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the scheme as a consequence (whether or not immediate) of the increase or decrease in the scheme’s cash resources resulting from the issue or cancellation of units over a period; for the purpose of this definition, dealing costs include both the costs of dealing in an investment and, where there is a spread between the buying and selling prices of the investment, the indirect cost resulting from the differences between such prices;

“deposit” has the same meaning as in the Financial Institutions Act;

“distribution account” has the meaning in regulation 111(1);

“dilution adjustment” means an adjustment to the price of units made by a manager under regulation 4(3) to compensate for dilution;

“documents evidencing title” includes any means of evidencing title, whether in documentary form or otherwise;

“extraordinary resolution” has the meaning in regulation 138;

“eligible” in the context of a securities market, means any market which the manager is, for the time being, entitled to regard as one through which more than 10% of the property of the scheme may be invested for the purposes of regulation 50;

“eligible institution” means a financial institution as defined in the Financial Institutions Act;

“forward price” means a price calculated by reference to the valuation point next following the manager’s agreement to issue or, as the case may be, to redeem the units in question;

“Government and other public securities” has the meaning in regulation 53(5);

“half-yearly accounting period” has the meaning in regulation 109(6);

“holder” in relation to a unit in a licensed unit trust scheme, means (subject to regulation 128(7)) the person who is entered in the register as the holder of that unit or the bearer of a bearer certificate representing that unit;

“income account” means an account relating to the income property of the scheme;

“income property” means all sums deemed by the manager, after consultation with the auditor, to be in the nature of income received or receivable by the trustee 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 licensed unit trust scheme which is not an accumulation unit;

“initial fixed price offer” means an offer for sale of units in a scheme (otherwise than on a unitisation) at the initial price of units where all or part of the consideration paid to the trustee for the units is to be used to acquire the initial capital property of the scheme;

“initial price of units” has the meaning in regulation 16;

“instrument constituting the scheme” means the trust deed;

“interim accounting period” has the meaning in regulation 114;

“interim income allocation date” has the meaning in regulation 114;

“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—

(a) to supply the manager with advice in relation to the scheme as to the merits of investment opportunities or information relevant to the making of judgments about the merits of investment opportunities; or

(b) to exercise as a delegate of the manager, any function concerning the management of the property of the scheme;

“issue” in relation to units, means the sale of units by the manager as a principal;

“issue price” means the manager’s price for issue under regulation 28;

“manager” in relation to a scheme, means the manager of the scheme;

“marketing” in relation to units in a licensed unit trust scheme, means—

(a) issuing or causing to be issued any advertisement inviting persons to become or offer to become participants in that scheme, or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in that scheme, or

(b) advising or procuring any person to become a participant in that scheme;

“money market fund” has the meaning in regulation 8(3);

“money market fund assets” has the meaning in regulation 58(2);

“mortgage” includes a charge, heritable security or other similar security created on or over an immovable property;

“near cash” means money, deposits or investments which fall within any of the following—

(a) money deposited with an eligible institution which is 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 holder;

(c) Government and other public securities, if redeemable at the option of the holder or bound to be redeemed within two years; or

(d) a bill of exchange issued by any Government or body within regulation 53(5) (issues of Government and other public securities);

“net asset value” has the meaning in regulation 46;

“participant” means holder;

“period of the initial fixed price offer” has the meaning in regulation 14(2);

“pre-listed security” means a security which is not listed but for which there is an intention to obtain a stock market listing;

“price” in relation to a unit, means the price of a unit calculated in accordance with Part IV of these Regulations before any adjustment for the effect of dilution;

“price swing” means an adjustment made to the price of a unit under regulations 42 and 43 to compensate for the effect of dilution;

“property of the scheme” in relation to a licensed unit trust scheme, means the capital property and the income property;

“recently issued” in relation to transferable securities, has the meaning in regulation 49(2);

“recognised scheme” means a scheme recognised under sections 24 or 25 of the Act;

“reconstruction” has the meaning in regulation 127;

“redemption”, in relation to units in a scheme, means the purchase of units from a participant by the manager as a principal;

“redemption price” means the manager’s price for redemption under regulation 32;

“register” has the meaning in regulation 74;

“registrar” means the person who maintains the register;

“scheme” means a licensed unit trust scheme;

“scheme documentation” means scheme particulars and any other material documentation provided to participants or potential participants;

“scheme particulars” means particulars of a scheme prepared and published in accordance with Part IV and Schedule 1 to the Act;

“securities” has the same meaning as in section 2 of the Capital Markets Authority Act and “security” shall be construed accordingly;

“securities fund” has the meaning in regulation 8(2);

“short selling” has the same meaning as in section 64 of the Capital Markets Authority Act;

“transferable security” has the meaning in regulation 48;

“trust deed” means the deed referred to in regulation 4 together with any deed expressed to be supplemental to it made between the manager and the trustee (or in the case of a recognised scheme, the instrument constituting the scheme as amended from time to time);

“trustee”, in relation to a scheme, means the trustee of the scheme; (see section 2 of the Act);

“umbrella fund” means a scheme which provides for pooling in relation to separate constituent parts of the property, and participants in which are entitled to exchange rights in one constituent part for rights in another;

“unit” has the meaning in regulation 6;

“units in existence” means all units which have been created, but including any unit which the trustee is obliged to create, and excluding any unit which the trustee is obliged to cancel;

“valuation point” has the meaning in regulation 18(2).

(2) Notes contained in these Regulations form part of the Regulations.

(3) Explanations contained in these Regulations do not form part of the Regulations.

PART II—CONSTITUTION

Explanation. *Each licensed unit trust scheme is constituted by a trust deed made between the manager and the trustee and setting out, amongst other things, what type of unit may be issued, whether income, accumulation, or both. A copy of the trust deed must be made available for inspection by the public.*

4. The trust deed

(1) A unit trust scheme does not qualify to be licensed under section 15 of the Act unless the scheme is constituted by a deed made between the manager and the trustees which—

(a) conforms with Part III of Schedule 1 to the Act; and

(b) subject to paragraph (a), makes no provision concerning matters which are dealt with elsewhere in these Regulations.

(2) Any power conferred on the manager, or on the trustee, or on them together, in these Regulations is subject to any express prohibition contained in the trust deed.

(3) Part V (Investment and borrowing powers) has effect in relation to any scheme subject to any restriction imposed by the trust deed under paragraph 47 of Schedule 1 to the Act.

5. Public availability of trust deed

(1) The manager and the trustee shall each make available a copy of the trust deed (and of any supplemental deed) for inspection by any member of the public in accordance with subregulation (2).

(2) The copy of the trust deed shall be made available at all times during ordinary office hours at the principal place of business in Uganda where the manager or trustee carries on the business of acting as the manager or, as the case may be, the trustee of a licensed unit trust scheme.

(3) A copy made available under this regulation shall be in the English language.

(4) The manager and the trustee shall allow any person to obtain, on payment of a reasonable fee, a copy of the deed.

(5) The places where the trust deed may be inspected or obtained shall be specified in the scheme documentation.

6. Units

The interests of the holders in a licensed unit trust scheme shall consist of units (including fractions of a unit) each unit representing one undivided share in the property of the scheme; but this general rule is modified in one special circumstance as to which see regulation 7.

7. Types of units

(1) Units may be of two types—

(a) income units, in which the income is paid periodically to holders, under regulation 113; and

(b) accumulation units, in which the income is credited periodically to capital, under regulation 112;

and the scheme will consist of income units only unless the manager and trustee decide in, (or the manager decides pursuant to a power contained in) the trust deed, that the scheme will consist of accumulation units, or both.

(2) The system of single undivided shares in regulation 6 is modified where both income and accumulation units are in existence—

(a) since, when income is accumulated and capitalised under regulation 112 this is achieved by increasing the number (including fractions) of

undivided shares which together constitute the accumulation units then in existence; and

(b) since any accumulation units issued thereafter must each represent when issued, the same number (including fractions) of undivided shares in the capital property of the scheme as each other accumulation unit then in existence.

8. Categories of scheme

(1) A licensed unit trust scheme must belong to one only of the following categories—

(a) a securities fund;

(b) a money market fund; or

(c) an umbrella fund.

(2) A securities fund is a scheme comprising principally of transferable securities.

(3) A money market fund is a scheme which comprises—

(a) deposits;

(b) instruments creating or evidencing indebtedness which are not transferable securities; and

(c) transferable securities other than equities.

(4) An umbrella fund has constituent parts which consist of any of the categories in paragraph 1(a) or (b).

(5) A scheme may not change from one category to another, nor may its objectives be changed so as to achieve that effect.

PART III—SCHEME PARTICULARS

Explanation. *The manager must prepare and keep up to date a document that gives information about the constitution, objectives and operation of the scheme; describing, for instance, the investment policy and limitations, the arrangements for valuation and so on.*

9. Preparation of scheme particulars

(1) The manager of a licensed unit trust scheme shall prepare a document (“scheme particulars”), stating prominently, at the head of the first page or on the cover page, that the document is scheme particulars prepared in accordance with the Act and these Regulations, for the purpose of marketing any units in that scheme in Uganda.

(2) Scheme particulars shall contain the matters specified in Part IV of Schedule 1 to the Act and may contain any other matter—

(a) the inclusion of which is necessary to enable the scheme, the manager or the trustee to obtain any privilege or power, if any, granted by these Regulations; or

(b) which is expressly contemplated in these Regulations.

(3) The scheme particulars shall contain, as an appendix, a list of those markets deemed eligible for investment by the scheme as agreed between the manager and the trustee.

(4) For the purposes of regulation 12, a market shall not be considered appropriate as an eligible market unless it—

(a) is regulated;

(b) operates regularly;

(c) is recognised; and

(d) is open to the public.

10. Publication of scheme particulars

(1) The manager of a licensed unit trust scheme—

(a) shall not market units in that scheme unless—

(i) scheme particulars have been prepared in accordance with regulation 9, in English;

(ii) arrangements have been made for a document containing those particulars to be available to enable the manager to satisfy those who accept the offer referred to in subparagraph (iii) (B); and

(iii) a copy of that document has been sent—

(A) to the Authority; and

(B) to the trustee;

(b) subject to paragraph (c), shall not effect any sale of units in the scheme to any person until it has made available for inspection by the person at all times during ordinary office hours at its principal place of business in Uganda, a copy of the scheme particulars in English; and

(c) must send a copy of the scheme particulars to any person who requests for them.

11. Inspection of scheme particulars

(1) The manager of a licensed unit trust scheme shall make a copy of the scheme particulars in English available for inspection by any member of the public at all times during ordinary office hours at its principal place of business in Uganda.

(2) The manager of a licensed unit trust scheme shall specify in all scheme documentation, the place where the scheme particulars may be inspected.

12. False or misleading scheme particulars

(1) The manager of a licensed unit trust scheme is responsible for the accuracy of any scheme particulars in relation to the trust scheme and must, subject to subregulations (2) and (3), ensure that the scheme particulars do not contain any untrue or misleading statement or omit any matter required by these Regulations to be included.

(2) A manager is not in breach of subregulation (1) if, at the time when the scheme particulars were prepared or revised (or ought to have been revised), he or she reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading, or that the omission was proper, and that—

- (a) he or she continued in that belief until the time of the purchase or agreement;
- (b) the purchase or agreement took place before it was reasonably practicable to bring a correction to the attention of potential purchasers;
- (c) he or she had already taken all such steps as it was reasonable for him or her to have taken, to ensure that a correction was brought to the attention of potential purchasers; or
- (d) the purchaser (or person agreeing to purchase) was not materially influenced or affected by that statement or omission in making his or her decision.

(3) A manager is also not in breach of subregulation (1) if—

- (a) before the purchase or agreement, a correction had been published in a manner calculated to bring it to the attention of persons likely to participate in the scheme;
- (b) he or she took all such steps as it was reasonable for him or her to take to secure such publication and he or she reasonably believed that it had taken place before the units were acquired;
- (c) the purchaser (or person agreeing to purchase) knew at the time that the statement was false or misleading, or knew of the omission; or
- (d) the issue arose only because of a failure to revise the scheme particulars, and that he or she reasonably believed at the time of the failure that there was no change or new matter such as to call for a revision of scheme particulars under regulation 13(1).

13. Revision of scheme particulars

(1) Scheme particulars shall be—

- (a) revised immediately upon the occurrence of any materially significant change in the matters stated in them, or upon the arising of any materially significant new matter which ought to be stated in them in

advance of an annual review, so far as is necessary to take account of that change or matter; and

(b) reviewed and re-dated at least once in every twelve months, and revised to take account of any change or any new matter, other than one which reasonably appears to the manager to be insignificant.

(2) A revision of scheme particulars may take the form of a complete substitution for the previous particulars or of a supplement to those particulars but, whichever it is, the date as at which the revision was made must be prominently displayed.

(3) References in these Regulations to scheme particulars prepared in accordance with regulation 9 include references to scheme particulars revised in accordance with this regulation.

(4) This regulation is subject to the procedural requirements affecting certain amendments to scheme particulars in regulations 124 and 134.

(5) A copy of the revised and re-dated scheme particulars shall be sent to the Authority and to the trustee.

PART IV—PRICING AND DEALING

Explanation. Each unit in a scheme represents, in microcosm, the overall property of the scheme: so valuation of units in a scheme is achieved, in broad outline, by valuing the property in the scheme, and dividing that value by the number of units in existence.

Units come into existence when they are created by the trustee on the instruction of the manager and the manager must then pay to the trustee money for them.

Units are then issued, to any person who applies, by the manager at the price fixed by him or her in accordance with these Regulations.

Managers often hold units for their own account (in the 'box'): so a purchaser of units from the manager may receive units that have just been created or units that have previously been issued (or have been redeemed by the manager from a previous unit holder).

If an owner of units wishes to realise the value of them, the manager will redeem them at a price fixed by him or her in accordance with these Regulations. The manager may then decide either to hold the units in his or her box or else to instruct the trustee to cancel them.

Units cease to be in existence when they are cancelled by the trustee on the instructions of the manager. Payment for cancelled units is made on delivery to the trustee of the relevant certificate of title, etc.

Each of these four stages of creation, issue, redemption and cancellation are the subject of pricing regulations in this Part.

The special provisions about initial creation and initial issue (whether for cash or on a unitisation), at the start of a scheme's life, are stated separately from the provisions about creation and issue in an ongoing scheme.

Provision also needs to be made for the dilutive effect of single pricing. Since single pricing results in a price at which scheme operators deal with participants, former investors (in respect of the issue or redemption of units) and the trustee (in respect of the creation and cancellation of units), no allowance is made for the dilutive effect of:

Expenses of dealing — i.e. commissions;
Fiscal duties — i.e. stamp duty.

Similarly by dealing with all at a single price, there is no allowance for any bid/offer spread which may exist where underlying securities are dealt with on this basis. If not addressed, this would work to the disadvantage of the remaining/existing investors in the fund, since it will be the fund which absorbs these costs, ultimately to the detriment of fund performance.

In order to compensate the fund for this dilutive effect, these Regulations require the manager to adjust the single price in response to fund growth or contraction.

Division A—Initial Fixed Price Offer and Unitisations

14. Introduction to this Part and to Division A

(1) Regulations 15 to 17 apply to the setting up of a new scheme by way of an initial fixed price offer, and apply during the period of that offer.

(2) The period of the initial fixed price offer shall be specified in the scheme particulars and is not to exceed twenty one days and an initial fixed price offer must, subject to regulation 17, be kept open for the period of the initial fixed price offer.

15. Creation of units: initial fixed price offer

(1) During the period of the initial fixed price offer and on the business day after it, units in the scheme may be created by the trustee under subregulation (2) or (4).

(2) The manager may instruct the trustee to create units in the scheme at the beginning of the first business day in the period.

(3) At or before the beginning of the first business day, the manager must irrevocably choose, in respect of that initial fixed price offer, to proceed either under subregulation (4) (a) ('up and running') or under subregulation (4) (b) ('pay over and wait') and must notify his choice to the trustee.

(4) Where on any business day during the period the manager assumes any obligation to issue units, he must, depending on his choice under subregulation (3), either—

(a) instruct the trustee, 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 fulfil that obligation, whether from the units so created or from other units; or

(b) proceed as follows—

(i) pay to the trustee (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 fixed price offer has come to an end, instruct the trustee to create units in the scheme in such number at least as will enable the manager to fulfil his or her obligations to issue units whether from the units so created or from other units.

(5) 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 the two).

(6) The trustee must, subject to regulation 24, create units on receipt of instructions by the manager given under this regulation, and must not, during an initial fixed price offer, create units otherwise.

16. Initial price

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

(2) For the purposes of subregulation (1), ‘initial price’ means such amount as may be agreed by the trustee and manager, as being the maximum amount, inclusive of the manager’s preliminary charge, if any, which may be paid by a potential participant to the manager for units on an initial fixed price offer.

(3) The amount which may be retained by the manager by way of preliminary charge shall not exceed the amount stated in the original scheme particulars as the current charge.

(4) A unit is treated as created during the period of the initial fixed price 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.

(5) The initial price of units shall be expressed in the base currency of the scheme.

17. Compulsory termination of initial fixed price offer

(1) An initial fixed price offer assumes a reasonably close correlation between the value of the property (whether or not wholly or partly invested in securities) 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 or she must immediately—

- (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;
- (b) refrain from agreeing to issue units at the initial price; and
- (c) refrain from instructing the trustee to create units, except to fulfil an obligation or an order to issue units at that price which he or she has already assumed or received.

(2) Where the manager carries out a valuation under subregulation (1) (a), the period of the initial fixed price offer comes to an end, if the outcome of the valuation shows that the 2% tolerance has been exceeded, and in all other cases, the initial fixed price period continues until the end of its published term.

(3) In this regulation, the ‘2% tolerance’ is 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 regulation 40 (excluding any preliminary charge in each case).

Division B—Creation and Cancellation

18. Introduction

(1) Regulations 19 to 25 apply to creation and cancellation (including creation prices and cancellation prices)—

- (a) in an ongoing scheme; and
- (b) where specifically stated, in relation to an initial fixed price offer.

(2) In this regulation, a ‘valuation point’ means the valuation point fixed by the manager under regulation 40, whether on a periodic basis or for a particular valuation.

19. Creation of units: manager’s instructions

(1) Where the manager wishes new units to be created, and complies with regulation 25, he or she may instruct the trustee to create new units; and any 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 the two.

(2) Where, at any valuation point, the manager has any outstanding obligation to issue units, he or she must instruct the trustee in writing, before the close of business on the day on which the valuation point occurs, to create units in the scheme in such number at least as will enable the manager immediately to fulfil that obligation, whether from the units so created or from other units owned by him or her immediately before the valuation point.

20. Creation by trustee

(1) Subject to subregulation (2) and to regulation 24, the trustee must create units on receipt of and in accordance with instructions given by the manager under regulation 19, and must not, after an initial fixed price offer, create units otherwise.

(2) The trustee may create units in exchange for assets other than money, but his or her obligation to comply with an instruction to create units in such a case arises only if he or she 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 participants or potential participants.

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

- (a) pay the creation price of the units (if it remains unpaid) to the trustee in cash; or
- (b) in the case of an exchange under subregulation (2), ensure transfer to the trustee of the assets to be taken in exchange.

(4) The period referred to in subregulation (3) expires 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 those instructions.

(5) In a case within subregulation (2) (exchange) the manager must ensure that the beneficial interest in the assets is transferred to the trustee with effect from the creation of the units, even if the legal ownership is not then transferred.

21. Creation price

The creation price payable for each unit to the trustee is calculated as follows—

- (a) take the most recent valuations of the capital and of the income elements of that property, bearing in mind accrued expenses and the manager's best estimate of the scheme's taxation liability;
- (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 in paragraph (a);
- (e) divide the total at paragraph (c) by the number of units at paragraph (d);
- (f) express the result in base currency;
- (g) express the price in a form that is accurate to the nearest whole shilling arithmetically rounded;
- (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.

22. Cancellation of units

(1) Where the manager wishes units to be cancelled, and complies with regulation 25, he or she may instruct the trustee to cancel them; and any instructions given by the manager shall state, 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 the two.

(2) Where, at any moment of instruction, the manager has any outstanding obligation to issue units, he or she may not instruct the trustee to cancel any units if or to the extent that his or her so doing would prevent him or her immediately from fulfilling any such obligation which had been assumed before the valuation point.

(3) The trustee must, subject to regulation 24, cancel units on receipt of instructions given by the manager, and the trustee may not cancel units otherwise.

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

(5) On the cancellation of units and on delivery to the trustee of such evidence of the title to those units as he or she may reasonably require, the trustee shall, within the period specified in subregulation (6), pay the cancellation price of the units to the person who was the owner of those units.

(6) The period referred to in subregulation (5) expires 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 is extended, until the shortage is rectified by the manager.

23. Cancellation price

The cancellation price payable for each unit by the trustee under regulation 22 is calculated in the same way as the creation price and is identical to that price.

24. Trustee's refusal to create or cancel units

(1) Where, on receipt of instructions to create or cancel units, the trustee is of the opinion that it is not in the interests of participants that—

(a) units should be created; or

(b) units should be cancelled; or

(c) units should be created or cancelled in the number requested by the manager;

the trustee must give notice to the manager stating that the trustee 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 notice under subregulation (1), the trustee is relieved of the obligation to create or cancel the number of units to which the notice relates.

(3) This regulation also applies to an initial fixed price offer.

25. Timing of instructions to create or cancel units

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

(2) Where instructions are given before the close of business on the day on which the last valuation point occurs and before the next valuation point, the instructions must be given by reference to the price calculated (or being calculated) for the last valuation point.

Division C—Issue and Redemption (And Purchase and Sale)

Explanation. *There are two main ways in which the units in a licensed unit trust scheme can be obtained by, or cashed in by, an investor. One method is by dealing with the manager as principal, in which case units will be issued (or redeemed) by him or her. The other way is when the manager is acting as agent for the trustee in which case units will be sold (or bought) by the manager for the trustee. These Regulations seek to provide a maximum and minimum price level of transactions of all these kinds, and to ensure, so far as possible, that the investor receives equitable treatment whether the manager is acting as principal or as agent.*

26. Introduction

(1) Regulations 27 to 38 apply to issue and redemption (and to issue prices and redemption prices)—

(a) in an ongoing scheme; and

(b) where specifically stated, in relation to an initial fixed price offer and a unitisation.

(2) Regulations 27 to 38 also apply, in similar manner, to purchases and sales of units effected or to be effected by the trustee acting through the manager as agent, or by the manager acting as principal.

27. Manager's obligation to issue

(1) The manager must, at all times during a dealing day, be willing to issue units in the scheme; and he or she must, at the request in writing of any person, agree to issue units to that person at a price arrived at under these Regulations.

(2) Subregulation (1) does not apply—

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

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

(c) if the manager has not received payment with or prior to the order; or

(d) if the manager has reason to believe that the potential purchaser has not seen or been offered a copy of the latest scheme particulars and of the last two reports to participants.

(3) Units must be issued in the base currency.

(4) This regulation also applies during an initial fixed price offer.

(5) This regulation is subject to Part XIII (Suspension and termination).

28. Issue price parameters

(1) The manager's price for issue of units shall not exceed the price to be notified to the trustee at the next valuation point; in the event that the manager imposes a preliminary charge, this may be added to the cost when issuing the contract note to the participant.

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

(3) The manager's price for issue shall be identical to the redemption price.

(4) 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 will be the one next to be notified in respect of that point, or, where relevant, the next point.

29. Charges on issue

(1) Where the trust deed so permits, there may be added to the cost to the participant a preliminary charge, and that charge may be expressed either as a fixed

amount, or calculated as a percentage of the creation/issue price, and any appropriate levy or tax imposed by law.

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

(3) Where subregulation (1) permits the manager to make a preliminary charge, the amount which he or she may charge shall not exceed the amount stated in the scheme particulars as the current charge.

(4) Subject to regulation 34, the manager may not rely on any increase in the current charge (within the maximum stated in the trust deed) for the purposes of subregulation (1) or (3), unless—

- (a) he or she has given notice in writing of that increase and of the date of its commencement to the trustee and to all the persons who ought reasonably to be known to him or her to have made an arrangement for the purchase of units at regular intervals;
- (b) he or she has revised the scheme particulars to reflect the new current preliminary charge and the date of its commencement; and
- (c) ninety days have elapsed since the revised scheme particulars became available.

(5) Subregulation (1) and regulation 28 do not apply on an exchange of units within an umbrella fund.

30. Manager's obligation to redeem

(1) The manager must at all times during a dealing day be willing to redeem units in the scheme; and, accordingly, must at the request in writing of any participant agree to redeem units owned by that participant at a price arrived at under these Regulations.

(2) Subregulation (1) does not apply—

- (a) where the number or value of the units sought to be redeemed is—
 - (i) less than the entirety of the participant's holding; and
 - (ii) less than any number or value stated in the scheme particulars as the minimum number to be redeemed;
- (b) where the number or value of the units sought to be redeemed would result in the participant holding less than any number or value stated in the scheme particulars as the minimum number to be held;
- (c) where the manager ensures that the participant is able to sell his or her units on an investment exchange at a price not significantly different from the price at which they would have been redeemed;
- (d) to the extent that the power to refuse in subregulation (3) applies; or
- (e) in the case of an initial fixed price offer.

(3) Units must be redeemed in the base currency or, at the request of the participant, in any other currency in which the manager has previously issued units.

(4) Subregulation (1) does not apply where units are redeemed in return for property transferred or sold under regulation 41.

(5) This regulation is subject to Part XIII (Suspension and Termination).

31. Payment on redemption

(1) On agreeing to redeem units, the manager shall, within the period specified in subregulation (2), except where paragraph (b) applies, pay the appropriate proceeds of redemption less, where applicable—

- (a) the cost of remitting the sum abroad;
- (b) any redemption charge to the participant; and
- (c) any applicable levy or tax imposed by law.

(2) The period referred to in subregulation (1) expires 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—

- (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 authorisation to effect (or enable the manager to effect) transfer of title to the units;

whichever is the later.

(3) Nothing in this regulation shall require a manager to part with money in respect of a redemption of units where he or she has not yet received the money due on the earlier issue of those units, or where he or she considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to a statutory obligation.

32. Redemption price parameters

(1) The manager's price for redemption of units shall not be less than the price to be notified to the trustee at the next valuation point.

(2) In the event that a manager levies an exit charge, this may be deducted from the proceeds when issuing the confirmation note to the participant.

(3) In the case of an umbrella fund, 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 the minimum price at which the old units may be taken in exchange shall not be less than the equivalent minimum redemption price.

(4) The manager's price for redemption of units shall be identical to the issue price under regulation 28.

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

33. Charges on redemption

(1) Where the trust deed so permits, 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 holder has held the units, but may not be expressed as liable to vary in any other respect.

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

(4) Where the trust deed of a scheme, whenever executed, is modified so as to include the provision enabled by paragraph 45 of Schedule 1 to the Act (Manager's charge on redemption), the modification must be expressed so as to apply only to units issued after the date on which the modification takes effect.

(5) A modification of the rate or method which is adverse to redeeming unit holders must be limited so as to apply only to units which have been issued, whether at the request of the current unit holder or otherwise, after the date on which the modification takes effect.

(6) Subject to regulation 34, the manager may not rely on any increase in the rate or method of the charge, unless—

(a) he or she has given notice in writing of that increase and of the date of its commencement to the trustee and to all the persons who ought reasonably to be known to him or her to have made an arrangement for the purchase of units at regular intervals;

(b) he or she has revised the scheme particulars to reflect the new rate or method and the date of its commencement; and

(c) ninety days have elapsed since the revised scheme particulars became available.

(7) In deciding whether and to what extent a charge is deductible for the purposes of this regulation, units held by a holder are to be taken to be redeemed in

the order in which they were issued (whether at the request of the current holder or otherwise), unless—

- (a) the manager has the holder's instructions to the contrary;
- (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 trustee have agreed on another way of deciding the order in which units are redeemed, which appears to them unlikely materially to prejudice the holder concerned.

(8) In subregulations (3) 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 holder.

(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 right of redemption.

34. Control over maximum charges on issue and redemption

(1) In the circumstance envisaged by subregulation (2), no introduction of, or change to, either of the charges permitted by regulation 19 (charges on issue) shall take effect unless the trust deed is modified under regulation 123 (modification of trust deed: with meeting) or, as case may be, the scheme particulars are amended following approval of the introduction or change by an extraordinary resolution at a meeting of the holders called for the purpose.

(2) The circumstances envisaged by subregulation (1) are that, (in respect of any individual unit notionally issued and redeemed on the same day) the maximum amount or percentage of any preliminary charge and of any charge on redemption would, in aggregate, exceed the maximum amount or percentage for the preliminary charge alone which is stated in the trust deed.

35. Exchange of units in umbrella funds

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

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

36. Notification of prices to the trustee

(1) By the close of business of the trustee on the dealing day, the manager shall notify the trustee of—

- (a) the creation price;
- (b) the cancellation price;
- (c) the issue price;
- (d) the redemption price;
- (e) in the case of an umbrella fund, the issue price for units in any part on an exchange of units.

(2) The prices to be notified under subregulation (1) are those relevant to deals based on prices determined at that valuation point.

(3) Any notification under subregulation (1) shall include a statement of the number of units owned by the manager at that valuation point.

37. Publication of prices

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

(2) Where the manager holds himself or herself out as willing to issue or redeem units, he or she must publish, in accordance with subregulation (4), on the business day following any valuation, the price of those units, the current preliminary charge and any exit charge.

(3) The prices published under subregulation (2) are to be the relevant prices as notified to the trustee under regulation 36 before the relevant newspaper referred to in subregulation (4) ceased to accept material for publication in the relevant edition.

(4) Publication required by subregulation (2) must be in at least one English language newspaper of nationwide circulation.

(5) Prices published under this regulation must be—

- (a) accurate to the nearest whole shilling arithmetically rounded; and
- (b) shown in base currency.

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

38. Instructions *etc* by manager to trustee

(1) Any instruction or notification given (or report supplied) under this Part by the manager to the trustee—

- (a) must be recorded by the manager, at the time when it is given or supplied;

(b) must be sent in a form which enables the trustee to know or record the time of receipt; and

(c) may be communicated in any form other than by word of mouth.

(2) Instructions are given within any period under this Part if they are received by the trustee within the period, and instructions received by the trustee after the expiry of any period are treated as given after that expiry.

(3) This regulation also applies, with the necessary modifications, to any notice or notification given by the trustee to the manager.

Division D—Forward Pricing

Explanation. *This Division requires the manager to issue and redeem units at forward prices.*

39. Forward pricing

The pricing basis for unit trusts in Uganda will be at forward prices, that is to say, at prices calculated by reference to the valuation point next following the manager's agreement to issue or, as the case may be, to redeem the units in question.

Division E—Valuation

Explanation. *Regulation 40 deals with the time and method of valuation of a licensed unit trust scheme for the purposes of determining creation, cancellation, issue and redemption prices.*

40. Valuation of the property of the scheme

(1) For regular valuation, 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 carry out a valuation of the property of the scheme at each valuation point, determined by him or her in accordance with the scheme particulars, and the valuation points shall not be less frequent than specified in the scheme particulars and in any event not less than once in two weeks.

(2) For additional valuation, the manager may at any time during a dealing day carry out an additional valuation of the property of the scheme if he or she considers it desirable to do so.

(3) For valuation for effecting a scheme of amalgamation or reconstruction, 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 does not create a valuation point for the purposes of dealings.

(4) For valuation at end of annual or half-yearly accounting period, the manager may 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) where that day is not a dealing day; or

(b) where the accounting period ends on a day before or after the period of that day which is the dealing day;

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

(5) The manager shall inform the trustee of any decision to carry out a valuation referred to in subregulation (2).

41. Valuation methodology

(1) The scheme shall be valued upon the basis of a valuation of—

- (a) investment holdings and cash (together comprising the capital assets of the scheme); and
- (b) gross income after deduction of allowable expenses and taxation (which comprises net available income); in accordance with the requirements of this regulation.

(2) For investment holdings—

- (a) prices to be used for valuation shall be at close of business as evidenced by official stock exchange publications;
- (b) prices shall be at the mid point of bid and offer where dual prices are quoted;
- (c) prices shall be the single price where that is the basis of quotation;
- (d) no expenses of dealing (i.e. commission, stamp duty or other fiscal charges and fees) shall be included;
- (e) investment holdings shall be as at the valuation point; and
- (f) securities in which there is no regular market, or for which there has been no recent dealing, shall be valued upon the basis of a best estimate to be given by the manager and agreed by the trustee with a full record of the basis of the valuation being maintained by the trustee and manager.

(3) For cash—

- (a) all cash balances must be identified as at the valuation point;
- (b) all cash balances must be converted to the base currency of the scheme; and
- (c) all cash balances must be included as part of the capital assets of the scheme as at the valuation point.

(4) For gross income—

- (a) gross income must be accrued from valuation point to valuation point in respect of securities having a fixed rate of return and cash deposits;
- (b) gross income must be accrued in pricing at ex dividend date for equities; and
- (c) gross income must be taken into pricing only when received in the case of non domestic securities.

(5) For expenses chargeable to the scheme—

(a) ad valorem expenses (e.g. operators annual charge, trustee fees) must be accrued from valuation point to valuation point;

(b) other expenses must be taken into pricing as incurred (subject to agreement with the trustee that accrual is not material).

(6) After deducting chargeable expenses accrued against the gross income accrued, an allowance for any taxation that the scheme may suffer shall be provided.

42. Amendment of single price

(1) The scheme operator shall amend the calculated price for dealing in units of the scheme upwards or downwards by a factor (determined in accordance with these Regulations) in order to compensate for the dilutive effect of dealing expenses and bid to offer spreads where applicable.

(2) The scheme operator may only make such adjustments within the criteria specified in these Regulations and then only in response to growth or contraction of a scheme.

(3) The scheme operator shall disclose details of such adjustments as part of each transaction confirmation.

43. Resolution of the dilutive effect

(1) For purposes of adjusting the dilutive effect, the manager shall—

(a) adjust upwards the single price calculated under regulation 41 by a factor which represents the scheme's average expenses of buying underlying securities (e.g. commission, fiscal and other fees);

(b) adjust downwards the single price calculated under regulation 41 by a factor which represents the scheme's average expenses of selling underlying securities (e.g. commission, fiscal and other fees); and

(c) deal with issues, redemptions, creations, cancellations at the adjusted single price required by this regulation.

(2) For purposes of box management and dealing—

(a) a manager must make the adjustments required by this regulation at all times in response to his or her net dealing position at the end of each dealing period;

(b) a manager shall not move a price either upwards or downwards with the aim of creating a dealing profit for his or her own account;

(c) any decision to move the single price must be taken by the manager solely in response to the dealing day's net dealing position and without consideration for his or her own profit/loss position.

(3) A manager shall—

(a) maintain a record of his or her dealing position at each valuation point including his or her box position;

(b) maintain a record of the price swing and of the movement of the price (upwards or downwards) and the amount in percentage terms; and

(c) maintain the records for a period of seven years.

(4) A manager shall make and retain for a period of seven years from the date each record is made, a daily record of the units in the scheme held, acquired or disposed of by the manager, including the types/classes of such units and of the balance of any acquisitions and disposal.

(5) A manager shall make and retain for a period of seven years from the date each record is made a daily record of—

(a) how dilution is calculated and estimated; and

(b) the policy and method for determining the amount of any dilution adjustment.

PART V—INVESTMENT AND BORROWING POWERS

Explanation. *This Part sets out the regulatory framework within which decisions as to investment management may be taken on behalf of the scheme. This Part provides for securities funds, money market funds and umbrella funds.*

The general pattern emerging from this Part may be summarised in the following Table: it is, however, indicative only and does not include all the detail in the Part. Umbrella funds are not treated separately in the table.

Table: Overview of Investment and Borrowing Powers

| POWER CONCERNING | Securities Fund | Money Market Fund |
|---|-----------------|-------------------|
| 1 Transferable securities | | |
| 1.1 Transferable but not approved including Pre-Listed Securities | 10% | NO |
| 1.2 Government or Public Securities | YES | 80% |
| 1.3 Collective Investment Scheme Units | 5% | NO |
| 1.4 Investment trusts | YES | NO |
| 1.5 Approved Securities | YES | 80% |
| 2 Cash (and near cash) | PRR | YES |
| 3 Immovables | NO | NO |
| 4 Stock lending | NO | NO |
| 5 Derivative instruments | NO | NO |
| 6 Underwriting | YES | YES |

| | | | |
|---|---------------|-----|-----|
| 7 | Borrowing | 10% | 10% |
| 8 | Short selling | NO | NO |

Notes to Table

1. 'YES' means can be invested in without specific upper limit (though there may be limits of other kinds);

'NO' means not available for investment;

A percentage means an upper limit (though there may be limits of other kinds);

'PRR' means permitted if reasonable for redemption or in the context of the scheme's dedication within regulation 8 (see regulation 63).

Note: Investment in equities is not permitted in the category of approved securities for money market funds.

2. The umbrella fund is not covered: all of its parts must fall within the table, and each of them must fall within one column.

44. Application

Each of the Divisions below applies only to schemes of the kind mentioned in the title to the relevant Division.

Division A—General

Explanation. *This Division, which sets the scene for the following Division, deals with the general investment powers for licensed unit trusts. The basic investment restrictions for the different categories of scheme, covered in the following Division, may be supplemented by further restrictions in the trust deed or the scheme particulars. The duties of the manager and trustee concerning rectification of any breach of investment limits are covered in Part 7.*

45. Investment powers: general

(1) Subject to this Part, the property of a scheme may comprise any property, the holding of which is consistent with the relevant category of scheme.

(2) The property of a scheme may be invested only in accordance with this Part and within any relevant upper limit (such as 'up to 10%') in this Part.

(3) The trust deed may restrict—

(a) the descriptions of assets in which the property of the scheme may be invested;

(b) the proportion of the capital property of the scheme to be invested in assets of any description;

(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 Part.

(4) Restrictions from time to time included in scheme particulars pursuant to paragraph 62 of Schedule 1 to the Act (and regulation 125) shall be observed as if they were included in this Part.

46. Valuation

For the purpose of this Part, the value of the property of the scheme means the net asset value, that is the net value of the property of the scheme after deducting any outstanding borrowings whether immediately due to be repaid or not.

47. Part to be construed as a whole

In relation to any provision in this Part by which investment is permitted to be carried out or retained only if possible obligations arising out of the transaction would not cause any breach of any limit in these Regulations (examples being nil or partly paid securities and underwriting) it is to be assumed—

- (a) in applying any of those provisions, that the maximum possible liability to the scheme under any other such provision has also to be provided for; but
- (b) in relation to the value of the property itself, that any relevant investment in that property is valued in accordance with Part IV.

48. Transferable security

(1) In these Regulations, ‘transferable security’ means any security to which subregulations (2) or (4) do not apply.

(2) A security is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.

(3) In applying subregulation (2) to a security which is issued by a body corporate, and which consists of shares or stock, debentures, loan stock or any other instrument creating or acknowledging indebtedness, not being a security issued by or on behalf of a government, local authority or public authority, the need for any consent on the part of the body or any members or debenture holders of it may be ignored.

(4) A security is not a transferable security if the liability of the holder of it to contribute to the debts of the issuer is not limited to any amount for the time being unpaid by the holder.

49. Approved security

(1) A transferable security is an ‘approved security’ if—

- (a) it is traded on or under the rules of an eligible securities market (otherwise than by virtue of the specific permission of the market authority); or
- (b) it is recently issued within the meaning of subregulation (2).

(2) A transferable security is recently issued if it was issued within the last twelve months and an application for listing to an exchange or market has been made and has been accepted.

50. Eligible securities markets

(1) A securities market is eligible for the purposes of these Regulations, if it is a market established in a country in which transferable securities admitted to official listing in the country are dealt in or traded.

(2) A securities market not falling within subregulation (1) is, at any time, eligible for the purposes of these Regulations if—

- (a) the manager, after consultation with the trustee has decided, in accordance with subregulations (3) and (4), to choose the market as one which is appropriate for the purpose of investment of, or dealing in, the property of the scheme beyond, where appropriate, any limit which under these Regulations, would otherwise apply;
- (b) that decision is notified in writing to the trustee and has not been revoked; and
- (c) the market is included in a list in the scheme particulars.

(3) For the purposes of subregulation (2), a market may be considered to be appropriate if it—

- (a) is regulated;
- (b) operates regularly;
- (c) is recognised; and
- (d) is open to the public.

(4) In applying subregulation (2), regard shall in particular be had—

- (a) to the need for adequate liquidity in the market;
- (b) to the arrangements relevant to the market for unimpeded transmission of income and capital to or to the order of investors; and
- (c) to any relevant guidance of the Authority issued on or before the date of the making of these Regulations.

Division B—Securities Funds

51. Securities funds: general

(1) Subject to this Part, the property of a securities fund shall consist of transferable securities.

(2) Up to 10% in value of the property may consist of transferable securities which are not approved securities or which are pre-listed securities, but there is no limit on the value of the property which may consist of approved securities.

(3) Up to 5% in value may consist of transferable securities which are units in collective investment schemes but only if they fall within regulation 54.

(4) Investment under subregulation (3) counts towards the limit in subregulation (2) (except where the units are approved securities).

(5) Regulations 52 and 53 (spread) do not apply until—

(a) the expiry of a period of 18 months, or such longer period as may be prescribed by the Authority, after the date on which the scheme is launched; or

(b) the date when the value of the scheme first exceeds such amount as the Authority may determine in respect of each scheme; whichever is the earlier, but the manager and the trustee shall ensure, so far as practicable, during that period, that the scheme is invested with the aim of spreading risk.

52. Spread: general

(1) This regulation does not apply to Government and other public securities as defined in regulation 53(5).

(2) Up to 5% in value of the property may consist of transferable securities issued by any one issuer.

(3) In applying subregulation (2), certificates conferring rights in relation to a security are treated as equivalent to the underlying security.

(4) The figure of 5% in subregulation (2) may be regarded as 10% in respect of up to 40% of the value of the property.

53. Spread: Government and other public securities

(1) This regulation applies to Government and other public securities only, in this regulation described as ‘such securities’.

(2) As long as 35% or less of the property of a scheme is invested in such securities issued by any one issuer, there is no limit on the amount which may be invested in—

(a) such securities; or

(b) such securities issued by any one issuer or of any one issue.

(3) Where, however, a scheme is invested as to more than 35% in such securities issued by any one issuer, then—

(a) up to 30% of the property may consist of such securities of any one issue;

- (b) the property must include such securities issued by that or another issuer of at least three different issues; and
- (c) the disclosures in subregulation (4) must have been duly made.

(4) Where it is intended or anticipated that subregulation (3) may apply, the trust deed, and the most recently published scheme particulars, must 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 this regulation, ‘Government and other public securities’ means transferable securities which are issued by—

- (a) the Government of Uganda;
- (b) a local authority or public authority in Uganda or in any other country approved by the Authority; or
- (c) the Government of any country approved by the Authority or any international organisation approved by the Authority; and

also includes any security which would have been such a security had it been issued as opposed to merely guaranteed by a Government or local authority or public authority specified in paragraph (a), (b) or (c).

(6) In subregulations (2), (3) and (4) (but not in subregulation (5)), in relation to Government and other public securities—

- (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.

54. Investment in collective investment schemes

(1) A securities fund may invest in units in a collective investment scheme only if the scheme is also a securities fund.

(2) A securities fund may invest in units in a collective investment scheme if the scheme—

- (a) is a licensed scheme;
- (b) is a recognised scheme or, being constituted in a country or territory outside Uganda, consists of units which are approved securities;
- (c) is dedicated to investing funds raised from the public in transferable securities;
- (d) operates on the principle of risk spreading; and

(e) 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 themselves falling within this regulation.

55. Investment in nil paid or partly paid securities

A transferable security on which any sum is unpaid falls 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.

56. Significant influence

(1) A scheme may only acquire transferable securities issued by a body corporate carrying rights to vote at a general meeting of that body or scheme if—

- (a) immediately before the acquisition, the aggregate number of any such securities of that body held by the scheme does not give the scheme power significantly to influence the conduct of business of that body; and
- (b) the acquisition will not give the scheme that power.

(2) For the purpose of subregulation (1), a scheme shall be taken to have power significantly to influence the conduct of business of a body corporate if it can, by virtue of the transferable securities held by it, exercise or control the exercise of 20% or more of the votes cast at a general meeting of that body (disregarding for this purpose any temporary suspension of voting rights in respect of the securities of that body).

(3) A scheme must not hold—

- (a) transferable securities which do not carry rights to vote at a general meeting of the body corporate that issued them, and represent more than 10% of the issued share capital of that body corporate; or
- (b) more than 10% of the units of a collective investment scheme.

57. Investment in collective investment schemes managed by manager *etc*

Units in a collective investment scheme do not fall within regulation 54 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 scheme states that its investment will be restricted to a particular geographic area or economic sector;
- (b) the instrument constituting the investing scheme and its scheme particulars clearly state that the property of the investing scheme may include such units; and

(c) regulation 71 (investment in other group schemes) is complied with.

Division C—Money Market Funds

Explanation. *The money market fund is a licensed unit trust scheme invested in cash and near cash. Regulations in this Division governing the investment limits of money market funds ensure that such schemes maintain a high level of liquidity.*

58. Money market funds: general

(1) Subject to this Division, to Division A (general) and to the subsequent Divisions of this Part, the property of a money market fund shall consist of ‘money market fund assets’.

(2) In this regulation, ‘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; or

(c) a deposit which would be within the meaning of paragraph (a) (near cash) except that it is repayable within six months (instead of immediately and without payment of a penalty exceeding seven day’s interest calculated at ordinary commercial rates).

(3) Regulation 60 (spread) does not apply until—

(a) the expiry of a period of nine months after the date on which the scheme is launched (or on which the initial fixed price offer commenced if later); or

(b) the date when the value of the property first exceeds such amount as may be determined by the Authority in respect of each scheme.

whichever is the earlier.

59. Investment limits

(1) This regulation is subject to regulation 58.

(2) At least 50% in value of the property must 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 this purpose).

(3) Up to 80% in value may consist of transferable securities not including equities.

60. Spread

(1) Up to 5% in value of the property may consist of instruments issued by any one issuer; but this limit does not apply to instruments which are Government and other public securities.

(2) Up to 30% in value may consist of Government and other public securities of the same issue.

(3) If more than 35% in value consists of Government and other public securities, it must include such securities of at least three different issues.

(4) Up to 10% in value may be kept on deposit with any one institution but not with the manager or his or her associates.

(5) For the purposes of subregulation (4), the trustee and his or her associates are regarded as one person, and the manager and his or her associates as another.

(6) The figure of 10% in subregulation (4) may be regarded as 20% if the person is an eligible institution which is not included within subregulation (5), except that 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.

(7) Subregulation (6) does not apply to a scheme if the total value of the property of the scheme which is held on deposit is less than an amount which may be determined by the Authority in respect of each scheme.

Division D—Umbrella Funds

Explanation. *The umbrella fund is a single licensed scheme with any number of constituent parts, providing the opportunity for unit holders to switch all or part of their investment from one part to another. Regulations in Part 12 adapt these regulations so as to enable the umbrella fund to be treated as a single scheme or as a collection of separate constituent parts as appropriate.*

61. Umbrella funds: general

(1) Subject to subregulation (2), each of the separate parts of an umbrella fund shall be invested as if it were a single scheme within one only of Division B and C.

(2) No part of an umbrella fund may invest in units in another part, nor may any part invest in units in another umbrella fund.

Division E—Stock Lending and use of Derivatives

Explanation. *The purpose of this Division is to prohibit the use of derivative instruments and the technique known as stock lending, in substance a disposal of the relevant securities in return for which it is agreed that securities of the same kind and amount should be transferred back at a later date. A separate transaction, also by way of transfer of assets, is also involved in the technique for the purpose of providing collateral to the 'lender' to cover him or her against the risk that the future transfer back of the securities may not be satisfactorily completed.*

62. Stocklending

(1) The property of the scheme may not be lent or used as collateral in cover of any transaction, except in so far as the cash property may be lent by way of deposit with eligible institutions.

(2) The property of the scheme shall not include any form of derivative instruments.

Division F—Cash, Borrowing, Lending etc

63. Cash and near cash

(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 (as to which see regulation 8).

(2) Subregulation (1) does not apply to a money market fund, but the property of any such scheme may consist of cash and near cash without limitation.

(3) Subregulation (1) does not apply during the period of the initial fixed price offer, during which the property of the scheme may consist of cash and near cash without limitation.

64. General power to borrow

(1) Subject to any restriction in the trust deed, the trustee 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 money borrowed is to be repayable out of the property of the scheme.

(2) The trustee may borrow under subregulation (1), only from an eligible institution.

(3) The manager of the scheme must 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

(b) the manager must ensure that no period of borrowing exceeds three months, whether in respect of any specific sum or at all, without the prior consent of the trustee which may be given only on such

conditions as appear to the trustee appropriate to ensure that the borrowing does not cease to be on a temporary basis.

65. Borrowing limits

The manager must ensure that the borrowing of a scheme does not, on any business day, exceed 10% of the value of the property of the scheme.

66. Restriction on lending of money

(1) None of the money in the property of any scheme may be lent, except in so far as it may be lent to eligible institutions.

(2) Purchasing a debenture is not lending for the purposes of subregulation (1), nor is the placing of money on deposit or in a current account.

67. Restriction on lending of property other than money

(1) None of the property of the scheme other than money may be lent by way of deposit or otherwise (including stock lending).

(2) None of the property of the scheme may be mortgaged.

68. General power to underwrite or accept placings

(1) Subject to any restriction in the trust deed, any power in this Part to invest in transferable securities may be used for the purpose of entering into transactions to which this regulation applies.

(2) Subject to subregulation (3), this regulation applies to any agreement or undertaking (whereby transferable securities will or may become part of the property of the scheme)—

(a) which is an underwriting or sub-underwriting agreement; or

(b) which contemplates that securities will or may be issued to or be subscribed for or acquired by the trustee.

(3) Subregulation (2) does not apply to purchase of a transferable security which confers a right—

(a) to subscribe for or acquire a transferable security; or

(b) to convert one transferable security into another.

(4) No agreement or underwriting within subregulation (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 within subregulation (2) must, on any business day 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.

69. Guarantees and indemnities

None of the property of a scheme may be used to discharge any obligation arising under a guarantee or indemnity given by the trustee or manager with respect to the obligations of a third party.

DIVISION G—MISCELLANEOUS

70. Requirement to cover sales

(1) No agreement on behalf of a scheme to dispose of property may be made by the manager or trustee unless—

- (a) that obligation, and any other similar obligation, could immediately be honoured by the scheme by delivery of property or the assignment of rights; and
- (b) the property and rights are owned by the scheme at the time of the agreement.

Explanation: *This regulation prohibits the manager from making any charges in relation to investments in his or her own schemes.*

71. Investment in other group schemes

(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 subregulation (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;
- (b) if the manager pays more for the units in the second scheme issued to him or her than the then prevailing creation price (in a case where that price could reasonably be known by him or her), 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 subregulation (1) expires 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).

72. Short selling

No scheme shall engage in short selling in relation to transactions in the underlying securities of the scheme.

73. Waiver from application of spread rules

The Authority may, on the written application of a manager, waive the application of the spread rules in regulations 51 to 61 for such period and on such conditions as the Authority may prescribe in writing.

PART VI—TITLE AND TRANSFER.

Explanation. *This Part deals (in regulations 74 to 78) with the register of holders, kept by the manager and the issue, etc of certificates either of registration of ownership in that register, or else in bearer form. Thereafter, this Part deals (in regulations 79 to 80) with the transferability of units, whether by act of the parties (eg trading) or by operation of law (death or bankruptcy). Other matters relating to ownership and documentation are also covered.*

74. The register

(1) The manager shall be responsible for establishing and maintaining a register of the holders ('the register') in accordance with this regulation.

(2) The register shall be maintained in a legible form or in a manner capable of being reproduced in a legible form.

(3) There shall be entered in the register—

(a) the name and address of each holder (other than one whose units are all for the time being represented by bearer certificates);

(b) the number of units (including fractions of a unit) of each type held by each such holder (other than units, the title to which is for the time being represented by bearer certificates);

(c) the date on which the holder was registered in the register in respect of the units standing in his or her name; and

(d) the number of units (including fractions of a unit) of each type for the time being in issue and represented by bearer certificates and the numbers of those certificates;

but the manager is not bound to register more than six persons as the holders of any units.

(4) The manager must—

(a) take all reasonable steps; and

(b) exercise all due diligence;

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

(5) In pursuance of subregulation (4), the manager must in particular take such steps as are necessary to obtain and supply information from or concerning any new holder of units to enable the entry in the register to be made.

(6) Nothing in this Part requires the manager to make or alter any entry in the register or to issue any certificate or other document or to accept any transfer or conversion in any case where he or she considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to a statutory obligation.

75. The register as evidence of title

(1) Subject to regulation 84, the register shall be conclusive evidence as to the persons respectively entitled to the units entered in it.

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

76. Inspection of the register and copies of entries

(1) The register shall be available for inspection by or on behalf of the holders in Uganda at all times during ordinary office hours except that the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the manager may, from time to time, determine.

(2) The manager shall supply to a holder or his or her authorised representative at his or her request, a copy in print of the entries on the register, relating to that holder.

(3) The manager shall state in scheme particulars, the place and times where the register may be inspected, or authorised copies obtained.

77. The manager as holder

(1) The manager may, unless expressly for bidden to do so by the trust deed, be a unit holder.

(2) The manager is deemed to hold each unit which is in issue (other than a unit the title to which is for the time being represented by a bearer certificate) if no person is entered in the register as the holder of that unit.

(3) Where units are transferred by a holder to the manager, they need not be cancelled, nor need the name of the manager be entered on the register as the new holder.

78. Certificates etc

(1) On or following the issue of units or, subject to regulation 79, at any other time, a certificate or other document recording title to the units may be issued to the holder if, and in such form, as the manager decides, having regard to any requirement of these Regulations.

(2) The manager shall decide on the procedures to be followed in redeeming units.

(3) Where the trust deed enables bearer certificates to be issued, the manager must decide on the form of certificates, and on the procedures to be followed in respect of the certificates.

(4) The steps required to be taken by a unit holder in relation to the issue and redemption of units must be specified in the scheme particulars.

79. Transfer of units by act of parties

(1) Subject to subregulation (2), every unit holder shall be entitled to transfer units held by him or her in respect of which he or she is entered in the register by an instrument of transfer in any usual or common form or in such other lawful form as the manager may from time to time approve.

(2) The manager is not under any duty to accept a transfer—

(a) if the number or value of the units sought to be transferred would result in the holder, or the transferee, holding less than any number or value stated in the scheme particulars as the minimum number to be held; or

(b) if the trust deed contains a limitation upon the categories of persons who may be holders 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 holder 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 holder 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, must be left for registration accompanied by—

(a) any necessary declarations or other documents that may be required in consequence of any legislation now or from time to time in force; and

(b) such other evidence as the manager 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 shall be registered shall be retained by the manager in original, copy or non-documentary form for a period of twelve years.

(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.

80. Transfer of units by operation of law

(1) On death of any one of the joint holders of any units, the survivor or survivors shall be the only persons recognised by the manager as having any title to or any interest in the units held by such joint holders.

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

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

- (a) he or she may, subject to paragraph (b), upon producing such evidence as to his or her title as the manager may properly require, either be registered himself or herself as holder of the unit (upon giving to the manager notice in writing that he or she so desires) or transfer the unit to some other person;
- (b) the provisions concerning transfer of units shall be applicable to any such notice or transfer of the unit, but shall not, until registered as holder, be entitled to receive notices or attend or vote at any meeting of holders;
- (c) subject to paragraph (d), the new owner may give a discharge for all monies payable in respect of the unit, but shall not, until registered as a holder, be entitled to receive notices or attend or vote at any meeting of holders; and
- (d) the manager may retain any monies payable in respect of the unit until the new owner is registered as the holder of the unit or duly transfers the unit.

81. Change of name and address of holder

(1) The manager shall—

- (a) upon receipt of notice in writing of a change of name or change of address of any holder;
- (b) upon being satisfied of the change of name or address referred to in paragraph (a); and
- (c) on compliance with such formalities as the manager may require, alter the register accordingly.

(2) Where a certificate has been issued and remains valid and the name of the holder is altered in the register, the manager shall either issue a new certificate to the holder or make an appropriate endorsement on the holder's existing certificate.

82. Conversion of units

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

(2) Conversion is possible under this regulation only if both types of units are in existence and are offered for issue or sale at the time of the request for conversion.

(3) If a participant requests the manager to convert units, the manager shall make the appropriate arrangements subject to his or her right to refusal if the number or value of such units on conversion would be less than any minimum stated in scheme particulars.

(4) If the manager makes an arrangement under subregulation (3), the trustee shall, unless excused by subregulation (3), convert the units into the appropriate number of units of the other type, and that number shall be determined by the manager, on terms that are fair to the participant requesting conversion and to other participants.

83. Subdivision and consolidation of units

(1) The manager may, unless expressly forbidden to do so by the trust deed, at any time or times when no bearer certificates are in issue, with the approval of the trustee, 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).

(2) Upon a subdivision or consolidation of units, the manager shall (unless it has done so before the subdivision or consolidation became effective) immediately give to each holder (or to the first named of joint holders) whose name is entered in the register, notice of the subdivision or consolidation.

84. Default by holder

Where—

(a) the holder of any units defaults in making any payment in money or a transfer of property due to the manager or the trustee under these Regulations, or the trust deed, in respect of the creation and issue or the re-issue of units to that holder; and

(b) the manager is satisfied that there has been such a default by such evidence furnished to the manager as the manager shall require, the manager may 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 holder's name has been removed from the register, until those units are either cancelled or re-issued and paid for.

PART VII—POWERS AND DUTIES OF MANAGER AND TRUSTEE

Explanation. *This Part deals with the general powers and duties of the manager, and the trustee severally, and then contains regulations applying to both of them. Both manager and trustee have fiduciary duties stemming from the general law,*

from the trust deed and other documents relating to the individual scheme (scheme particulars) and from these Regulations. Generally the manager has the executive responsibility for the scheme, in that he or she manages the investments, performs the valuations and determines the prices. The trustee has the duty of oversight and supervision and safeguards the title to the investments and the interests of the unit holders in them.

Division A—The Manager

85. Management of the scheme

(1) It is the duty of the manager to manage the scheme in accordance with—

- (a) the trust deed; and
- (b) these Regulations; and
- (c) the most recently published scheme particulars.

(2) Subject to subregulation (1), it is the manager's right and duty to make decisions as to the constituents of the property of the scheme in such a way as appears to him or her likely to secure that the objectives of the scheme are attained, and that any particular objectives specified in the scheme particulars are achieved.

(3) The manager must instruct the trustee from time to time, in writing, as to how rights attaching to the ownership of property of the scheme are to be exercised; but not in the case where, under regulation 94(2), the trustee has the right to decide after consultation with the manager.

(4) The duty in subregulation (1) extends to taking all reasonable steps, and exercising due diligence, to avoid the property of the scheme being incorrectly priced, contrary to any provisions of Part IV.

(5) The duty in subregulation (1) extends to action to be immediately taken to rectify any breach of Part IV; and where the breach relates to the incorrect pricing of units—

- (a) rectification shall, unless the trustee otherwise directs, extend to the reimbursement of money—
 - (i) by the manager to the scheme, to participants or to former participants; or
 - (ii) by the scheme to the manager; but
- (b) rectification need not, unless the trustee otherwise directs, extend to any such reimbursement where it appears to the trustee that the incorrect pricing is of minimal significance.

86. Dealings in property of the scheme

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

(2) Where the trustee is of the opinion that a particular acquisition or disposal of property by the manager exceeds the power conferred on the manager, it is the duty of the manager, at his or her own expense, to cancel the transaction or make a corresponding acquisition or disposal to secure restoration of the *status quo ante*.

(3) Where the trustee 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 trustee; and

(b) the trustee cannot reasonably be expected to accept the responsibility which would otherwise be placed upon him or her as a delegator;

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

87. Maintenance of records

(1) The manager must 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) After each valuation point, the manager must keep an up to date record of the units held by it, including the type of units, which have been acquired or disposed of, and of the balance of any acquisitions and disposals.

(3) The manager must make the record available for inspection by the trustee at all times during ordinary office hours and must supply the trustee with a copy of the record or any part of it on request.

88. Audit

(1) The manager must, at the outset and upon any vacancy, with the approval of the trustee, appoint as an auditor for the scheme, any person qualified for appointment as auditor of a person licensed by the Authority to carry on investment business.

(2) The audit fees of the auditor are determined by the manager with the approval of the trustee.

(3) The manager must ensure that the accounts required to be included in the annual report of the scheme are audited by the auditors appointed by the manager; and that that report is accompanied by a report of the auditor to the holders that those accounts have been audited in accordance with approved auditing standards and stating whether or not, in the auditor's opinion, they give a true and

fair view of the financial position of the scheme as at the end of the annual accounting period.

(4) The manager may, with the approval of the trustee, at any time remove an auditor and this power exists notwithstanding anything in any agreement between the persons concerned.

89. Tax certificates

Tax certificates in respect of the income available for allocation shall be sent or given in accordance with the requirements of the Income Tax Act, but in any event not less than once in respect of every annual accounting period.

90. Review of scheme's constitution

The manager must keep under review the trust deed and the scheme particulars with a view to ensuring that they are in compliance with the law, including these Regulations, and from time to time must make or propose the making of such changes in the trust deed and scheme particulars as are necessary or desirable in the interests of unit holders.

91. Manager to supply information to trustee

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

Division B—The Trustee

92. Oversight by the trustee of the manager

(1) It is the duty of the trustee to take reasonable care to ensure—

- (a) except in relation to Part V, that the scheme is managed by the manager in accordance with regulation 85(1); and
- (b) in relation to Part V, that decisions about the constituents of the property of the scheme do not exceed the powers conferred on the manager.

(2) The trustee must satisfy itself on reasonable grounds and on a continuing basis, that the manager has maintained and is maintaining sufficient records and 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 IV.

(3) Where the trustee is at any time not satisfied of any matter specified in subregulation (2), it must inform the Authority.

93. Control by the trustee of the property of the scheme

(1) The trustee must take all steps and execute all documents which are necessary to ensure that acquisitions, disposals and loans properly made by the manager in accordance with Division A are completed.

(2) The trustee must take into its custody or under its control, all the capital property of the scheme and hold it in trust for the holders in accordance with these Regulations and the trust deed.

(3) The trustee is responsible for the collection of any income due to be paid to the scheme and for claiming any repayment of tax, and shall hold any income received in trust for the holders in accordance with these Regulations and the trust deed.

(4) The trustee must 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.

94. Exercise of rights in respect of the property of the scheme

(1) The trustee must take all steps and execute all documents as are necessary to ensure 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 trustee may exercise any right of voting conferred by any of the property of the scheme which is in units or shares in other collective investment schemes managed or otherwise operated by the manager or by an associate of the manager, but only after consultation with the manager.

(3) The trustee must, 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 his or her 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 subregulation (2).

(4) The trustee must, 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 holder of any security.

(5) 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 or to give notice of any resolution or to circulate any statement or to consent to any short notice of any meeting.

Division C—The Manager and the Trustee

95. Duties of the manager and trustee under the general law

(1) Subject to subregulation (4), the duties of the manager and the trustee conferred on them by these Regulations and by the trust deed are in addition to, and not in derogation from the duties which are otherwise imposed on them by law.

(2) Subject to subregulation (4), the manager and the trustee are required to fulfil those other duties conferred on them by these Regulations as well as by the general law.

(3) Subject to subregulation (4), the manager and the trustee have, by virtue of these Regulations, all the powers conferred on them by the general law.

(4) Subregulations (1), (2) and (3) apply only in so far as the duties imposed or powers conferred by the general law are not qualified or restricted by the Act or by these Regulations.

96. Timely performance of duties

The manager and the trustee must perform the functions and fulfil the duties conferred upon them by these Regulations with dispatch, unless delay is both lawful and in the interests of the holders.

97. Duties of the manager and trustee: investment and borrowing powers

(1) Subject to subregulations (6) and (7), it is 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 V.

(2) It is the duty of the trustee—

(a) to take all reasonable steps; and

(b) to exercise all due diligence,

to exercise such degree of supervision of the manager's operation of the scheme as is appropriate with a view to ensuring that the manager complies with subregulation (1).

(3) The duty in subregulation (1) extends to action to be immediately taken by the manager to rectify any breach of any provision in Part V to which the following subregulations do not apply.

(4) Subregulation (6) applies—

(a) where the property of the scheme at any time is used or invested contrary to any provision of Part V (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 the manager and the trustee.

(5) Subregulation (6) also applies on or in anticipation of the arrival of a supervening transaction (such as the purchase by the scheme of property pursuant to a rights issue or the conversion by the scheme of convertible stock)—

(a) which, but for this regulation, would constitute a breach of Part V; and

(b) where it was not possible for the manager or trustee to know at the time of the earlier transaction whether there would be a subsequent breach or not.

(6) In the circumstances envisaged by subregulation (4) or (5)—

(a) nothing in Part V prevents the manager from entering into a transaction within subregulation (5) provided that it has obtained the consent of the trustee in writing; and

(b) the manager must 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 holders and, in any event, within the period specified in subregulation (8).

(7) Immediately upon the trustee becoming aware of any circumstance envisaged by subregulation (4) or (5), it must take such steps as are necessary to ensure that the manager complies with subregulation (6) (b).

(8) The maximum period for restoration of compliance under subregulation (6) (b) starts at the date of discovery of the relevant circumstance, and lasts for six months.

98. Delegation

(1) The manager may delegate any function to any person, including the trustee.

(2) The trustee may not delegate to the manager—

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

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

nor may the trustee delegate any function in paragraph (a) to an associate of the manager.

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

(4) Subject to subregulations (2) and (3), the trustee may delegate any function to any person, including the manager.

(5) Where—

- (a) the manager delegates any function concerning the management of the property of the scheme;
- (b) the manager delegates any function to the trustee or to an associate of its own or of the trustee; or
- (c) the trustee 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 trustee, remains responsible, even though it could have satisfied the conditions in subregulation (6), 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 trustee.

(6) In the case of any delegation by the manager or the trustee to which subregulation (5) does not apply, the manager, or as the case may be, the trustee, is not responsible for any act or omission of the delegate if the manager or trustee can show—

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

(7) Subregulations (1) and (4) are subject to any restriction in the trust deed.

99. Conflict of interest *etc*

(1) The manager and the trustee must take all reasonable steps to ensure that there is no breach of any of the following requirements in this regulation by any affected person, including—

- (a) the manager;
- (b) an associate of the manager;
- (c) the trustee;
- (d) an associate of the trustee;
- (e) any investment adviser; and
- (f) any associate of any person in paragraph (e).

(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 the affected person is an eligible institution and the arm's length requirement in subregulation (8) is satisfied.

(3) An affected person may lend money to the scheme only if the affected person is an eligible institution, and the arm's length requirement in subregulation (8) is satisfied.

(4) An affected person may not sell or deal in the sale of property to the trustee for the account of the scheme unless subregulation (9) applies.

(5) An affected person may not vest property in the trustee against the issue of units in the scheme, except upon a unitisation, or unless subregulation (9) applies.

(6) An affected person may not purchase property from the trustee acting for the account of the scheme unless subregulation (9) applies.

(7) An affected person within subregulations (1)(b), (1)(d) or (1)(f) may not provide services for the scheme unless the trustee has reliable evidence that the services are provided on terms which satisfy the arm's length requirement in subregulation (8).

(8) 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.

(9) There is no breach of subregulations (4), (5) or (6) if subregulation (10) (best execution on exchange) or subregulation (11) (independent valuation) or subregulation (12) (arm's length transaction) applies.

(10) There is best execution on exchange for the purposes of subregulation (9) if—

- (a) the property is an approved security;
- (b) the transaction is effected with or through a member of the relevant exchange under the rules of that exchange;
- (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 terms which are the best available for the scheme in the circumstances.

(11) There is independent valuation for the purposes of subregulation (9) 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 trustee as—

- (i) independent of any affected person; and
 - (ii) qualified to value property of the relevant kind; and
 - (b) the trustee is of the opinion that the terms of the transaction are not likely to result in any material prejudice to holders.
- (12) There is an arm's length transaction for the purposes of subregulation (9) if—
- (a) subregulation (10)(a) is not satisfied;
 - (b) it is not reasonably practicable to obtain an independent valuation under subregulation (11); and
 - (c) the trustee has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in subregulation (8).
- (13) Subregulations (2) to (7) are subject to any provision in the trust deed forbidding the taking of advantage of all or any of them.

Division D—New Managers and Trustees

100. Replacement of manager

(1) Subject to section 35 of the Act, the manager, for the time being, shall be subject to removal by notice in writing given by the trustee to the manager in 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 trustee);
- (b) a receiver is appointed of the undertaking of the manager or any part of the undertaking;
- (c) for good and sufficient reason the trustee is of the opinion, and so states in writing, that a change of manager is desirable in the interest of the holders;
- (d) an extraordinary resolution is passed removing the manager (or to determine that the manager be removed as soon as this is permitted by law); or
- (e) the holders of three quarters majority in value of the units in existence (excluding units held or deemed to be held by the manager or by any associate of the manager) make a request in writing to the trustee that the manager be removed.

(2) On receipt of a notice by the manager under subregulation (1), the manager shall cease to be the manager; and the trustee shall, by deed, appoint another person eligible under the Act to be the manager of the scheme upon and

subject to that other person's entering into a deed or deeds as the trustee may require.

(3) 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 trustee immediately to propose a change in the name of the scheme.

101. Retirement of manager

(1) Subject to section 35 of the Act, the manager shall have the right to retire in favour of some other person eligible under the Act and approved in writing by the trustee, upon and subject to fulfilment of the following conditions—

(a) the retiring manager appointing such a person by deed as manager of the scheme in its place and assigning to the appointee all its rights and duties as manager; and

(b) the new manager entering into such deed or deeds as the trustee may be advised is necessary or desirable to be entered into by that person in order to secure the due performance of its duties as manager.

(2) Upon retirement, the retiring manager—

(a) is absolved and released from all further obligations under these Regulations and under the trust deed, but without prejudice to the rights of the trustee or of any holder or any other person in respect of any act or omission on the part of the retiring manager prior to such retirement; and

(b) may retain for its own benefit, and without having to account for it to the holders or any of them, any consideration paid to it in connection with the change of manager.

(3) Upon the retirement of the retiring manager, the new manager may 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 trust deed as fully as if it had originally been a party to the trust deed.

102. Supplementary

(1) Upon the removal or retirement of the manager, the removed or retiring manager—

(a) remains entitled to all units held or deemed to be held by it;

(b) may require the trustee to issue to it a certificate or certificates in respect of the units (if not previously issued);

(c) is to be registered in the register in respect of those units; and

(d) thereafter has and may exercise all rights of a holder.

(2) Paragraphs (1)(b), (1)(c) and (1)(d) are subject to any restriction in the trust deed deriving from paragraph 50 of Schedule 1 to the Act (limited categories of holder).

103. Retirement of the trustee

(1) The trustee may not retire voluntarily, except upon the appointment of a new trustee.

(2) In the event of the trustee desiring to retire or ceasing to be a licensed person, the manager may, subject to section 35 of the Act, by deed supplemental to the trust deed, appoint another person eligible under section 17 of the Act to be the trustee in its place.

PART VIII—PAYMENTS AND BENEFITS TO MANAGER AND TRUSTEE

Explanation. *This Part deals with the remuneration of the manager and of the trustee, and also with associated subjects, such as removal of any duty to account where the manager may be remunerated either by a preliminary charge payable on issue of units under Part IV or by a periodic charge payable out of the property of the scheme, or by a deduction from the proceeds of redemption. The trustee receives from the property of the scheme only its remuneration, on a basis which is disclosed in the scheme particulars, and expenses properly incurred by it.*

104. Manager's periodic charge

(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 is a periodic charge arrived at and accruing under this regulation.

(2) A periodic charge is payable only where its payment is authorised by the trust deed.

(3) The amount of periodic charge is 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 valuation of that property as at the point at paragraph (a);

(c) multiply the value at paragraph (b) by a fraction (or 'rate') not exceeding the maximum percentage (e.g. 1/100) arrived at under subregulation (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 subregulation (3)(c) is—

(a) if the accrual interval is the first since inception, the annual percentage stated in the original scheme particulars as the rate of the manager's periodic charge,

(b) otherwise, either—

(i) the rate actually used at subregulation (3)(c) for the previous accrual interval; or

(ii) a higher rate (still however not exceeding the maximum rate of the manager's periodic charge stated in the trust deed) which the manager is permitted to use if he complies with subregulation (5).

(5) The manager may not rely on any increase in the maximum percentage unless—

(a) he or she has given notice in writing to the trustee and to the holders, of his or her intention to increase the amount currently charged by way of periodic charge;

(b) he or she has revised the scheme particulars to reflect the proposed increase in that amount; and

(c) ninety days have elapsed since the revised scheme particulars became available.

(6) The manager shall adapt the calculations in subregulation (3), where the relevant period includes the 29th day of February, so that his or her remuneration is the same as it would be if the year were not a leap year.

105. Remuneration of the trustee and reimbursement of trustee's expenses

(1) No payment may be made to the trustee out of the property of the scheme, whether by way of reimbursement of expenses or otherwise, except—

(a) remuneration for the trustee in respect of its services and in respect of which the following have been stated in the scheme particulars—

(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; and

(iv) when the remuneration is to be paid; and

(b) reimbursement of expenses properly incurred by the trustee in performing or arranging for the performance of the functions conferred on the trustee by these Regulations.

(2) Subregulation (1)(a)(i) may be taken to be complied with if the scheme particulars contain—

- (a) the maximum amount or rate of the remuneration which may become payable to the trustee; 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.
- (3) Payment may be made under subregulation (1)(a), only if authorised by the trust deed.

106. Other payments out of the property of the scheme

(1) No payments may be made out of the property of the scheme other than payments under regulations 104, 105 and 106 and sums due by virtue of any other provision in these Regulations (such as, for example, cancellation proceeds) 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 and confirmation notes as appropriate; and
- (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) taxation and duties payable in respect of the property of the scheme, the trust deed or the issue of units; and
- (d) any costs incurred in modifying the trust deed, including costs incurred in respect of meetings of holders convened for purposes which include the purpose of modifying the trust deed, 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 trustee agree is in the interest of holders; or
 - (iii) to remove from the deed obsolete provisions; and
- (e) any costs incurred in respect of meetings of holders convened on a requisition by holders not including the manager or an associate of the manager; and
- (f) liabilities on unitisation, amalgamation or reconstruction arising, when subregulation (2) applies, under subregulation (3); and

- (g) the audit fee properly payable to the auditor and any value added tax on it and any proper expenses of the auditor;
- (h) the scheme fees of the Authority; and
- (i) the reasonable costs of holding annual general meetings of unit holders.

(2) Subregulation (3) applies where the property of a body corporate (such as an investment trust) or of another collective investment scheme is transferred to the trustee in consideration of the issue of units in the scheme to shareholders in that body or to participants in that other scheme.

(3) In a case referred to in subregulation (2), the trustee 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 arisen before the transfer, could properly have been paid out of that other property, but it may pay only if—

- (a) there is nothing in the trust deed expressly forbidding the payment; and
- (b) the trustee 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.

(4) Other payments may be made from the property of the scheme provided that they are authorised in the trust deed and reflected and disclosed in other scheme documentation.

107. Exemption from liability to account for profits

(1) The manager is not liable to account to the trustee or the holders or any of them for the amount of any charge properly taken in accordance with these Regulations.

(2) The trustee is not liable to account to the manager or the holders or any of them for the amount of any remuneration (or expenses) properly paid to the trustee under these Regulations.

(3) Where the manager has disclosed prominently in the scheme particulars, a statement that he or she or another specified affected person is under no obligation to account to the trustee or to the holders or any of them for any profit he or she makes on the issue of units, or on the re-issue or cancellation of units which he has redeemed, that person is not liable to account to the trustee or to the holder or any of them for any such profit made since the disclosure.

(4) A person who is an affected person within the meaning of regulation 99(1) is not liable to account either to another affected person or to the holders or any of them for any benefits or profits made or derived from or in connection with—

- (a) his or her acting as agent for either or both the trustee and the manager in the sale or purchase of property to or from the trustee for the account of the scheme;

(b) his or her part in any transaction, or the supply of services permitted by regulation 99; or

(c) his or her dealing in property equivalent to any owned by (or dealt in for the account of) the scheme.

108. Allocation of payments to capital or to income

(1) Any payments under this Part (except under regulation 106(1)(a), (b) and (c)) shall be made from the income account in the first instance.

(2) Subsequently, any payment under regulation 106(1)(a) shall continue to be made from the capital account; and any payment under regulation 106(1)(b) or (c) shall be made from the income account.

(3) 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.

(4) Any tax applicable on any charge which is authorised to be levied against the scheme property under this Part shall be paid out of scheme property.

PART IX—INCOME

Explanation. *Each scheme must have an annual and a half-yearly accounting period and may have additional interim accounting periods each year. The manager calculates income in respect of each accounting period and the trustee distributes it to income unit holders or allocates it to accumulation unit holders in proportion to their respective interest in the property of the scheme. Regulations in this Part cover: the method of calculation of the amount available for income allocation; how distributions or allocations are to be made and when; and the providing of distribution statements and tax certificates.*

109. Accounting periods

(1) A scheme must have an annual and a half-yearly accounting period, and this regulation determines what they are.

(2) A scheme must also have an accounting reference date, which is the date in any year stated in the most recently published scheme particulars as the date on which the scheme's annual accounting period is to end.

(3) The first annual accounting period shall begin—

(a) where the scheme is the subject of an initial fixed price offer, on the first day of the period of the initial fixed price offer; or

(b) in any other case, when the scheme's licence is issued,

and each subsequent period shall begin immediately after the end of the one before.

(4) Each annual accounting period shall end at the last regular valuation point on the day arrived at under subregulation (5).

(5) The day, for purposes of subregulation (4) is—

(a) the next accounting reference date after the beginning of the period in question; or

(b) if that period is the first period or a period in the course of which a change in the accounting reference date takes place, and the next accounting reference date in either case is less than six months after the beginning of the period, and the manager after consulting the auditor so determines, the next but one accounting reference date.

(6) A half-yearly accounting period is a period beginning with the first day of an annual accounting period and ending on the day which is—

(a) six months before the next accounting reference date; or

(b) if the next accounting reference date is less than six months after that first day, six months before the next accounting reference date but one after that first day.

110. Annual income allocation date

(1) A scheme must have an annual income allocation date, which is the date in any year stated in the most recently published scheme particulars as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made.

(2) The annual income allocation date must be a date within two months after the relevant accounting reference date.

111. Annual allocation of income

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

(2) The trustee is not obliged to comply with subregulation (1) if it appears to it, having consulted the manager, that the average payment to the holders (disregarding holders of bearer certificates, holders of accumulation units, and holders who are the manager or the trustee or associates of either of them) by way of income would be less than an amount per unit agreed by the manager with the trustee.

(3) Where the trustee decides under subregulation (2) not to distribute income, the trustee must so inform the manager who must then immediately instruct the trustee to carry the income forward to the next annual accounting period (and to regard it as received at the start of that period).

(4) On or before each annual income allocation date, the manager shall calculate under subregulation (5) the amount available for income allocation in respect of the immediately preceding annual accounting period, and he or she shall inform the trustee of that amount.

- (5) The calculation of available income is as follows—
- (a) take the aggregate of the income property received or receivable by the trustee in respect of the period;
 - (b) add the manager's best estimate of any relief from tax on expenses properly payable out of income in respect of the period;
 - (c) deduct the aggregate of all the manager's and the trustee'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 108(1) (payments out of income);
 - (e) deduct such provision for taxation as the manager, after consulting the auditor, considers appropriate;
 - (f) deduct (or disregard) and carry forward any potential income, if the trustee and the manager agree that, because adequate information is normally not available about how that income accrues, it ought generally not to be accounted for on an accrued basis; and
 - (g) deduct (or disregard) and carry forward any potential income, if the trustee and the manager agree that that income is not likely to be received by the trustee until twelve months after the income allocation date, provided the auditor is satisfied that the trustee has made and intends to continue to make all proper efforts to obtain its receipt.

(6) On or before the annual income allocation date, the trustee shall allocate the available income to the units in existence in accordance with the relevant numbers of undivided shares, and in accordance with regulation 112 or 113, or both.

112. Annual allocation to accumulation units

(1) Where a scheme has in existence both accumulation units and income units, the trustee shall allocate the amount available for allocation of income between accumulation units and income units according to the respective shares 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 subregulation (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 holders in that amount shall be satisfied by an increase, as at the end of the period, in the number of undivided shares in the property of the scheme which an accumulation unit represents.

(3) The increase in undivided shares under subregulation (2) shall be of such number (which may be a fraction but must be calculated to at least four

decimal 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.

113. Annual distribution to holders of income units

(1) Subject to subregulation (2), where the units in existence in a scheme are to include income units, on or before each annual income allocation date the trustee shall distribute the income allocated to those units among the holders and the manager rateably 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 subregulation (1), the trustee shall deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period.

(3) Nothing in this Part requires the trustee to distribute income allocated to any units in any case where the manager or the trustee considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person in accordance with a statutory obligation.

114. Interim allocations of income

(1) This regulation applies, where at any time the most recently published scheme particulars—

(a) state that an allocation of income will be made before the annual income allocation date in any year in respect of a period ('an interim accounting period') within the annual accounting period; and

(b) specify a date as the interim income allocation date in relation to that interim accounting period.

(2) In such a case, regulations 111 to 113 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 or her 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.

115. How distributions may be made

(1) Any monies payable by the trustee to a holder in respect of any unit, the title to which is for the time being represented by a bearer certificate may be paid by crossed cheque or warrant made payable to the order of the person who, in such manner as is prescribed in the trust deed, has identified himself or herself to the trustee as the person entitled to that distribution, and may be sent by post to such address as that person shall have disclosed to the trustee for that purpose.

(2) Any monies payable by the trustee to the manager or to a registered holder in respect of any unit may 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 holder, as the case may be, or, in the case of joint holders, made payable to and sent to the registered address of that one of the joint holders who is first named on the register.

(3) The payment of any cheque or warrant to the first named of joint holders shall be as effective a discharge to the trustee and the manager as if such first named joint holder had been a sole holder.

(4) 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 trustee and the manager.

(5) Where an authority in writing given by the holder (or in the case of joint holders by all of them) in such form as the trustee shall consider sufficient, is held by the trustee, he or she shall pay the amount payable in accordance with that authority.

(6) Any distribution payment which remains unclaimed after a period of six years from the date of payment shall be transferred to and become part of the capital property in accordance with the provisions of the trust deed and thereafter, neither the payee nor the holder nor any successor in title shall have any right to it or in it except as part of the capital property.

116. Distribution statements and tax certificates

(1) On or before any income allocation date (whether annual or interim) the trustee shall send to each holder (or to the first named of joint holders) entitled to be entered in the register as at the end of the accounting period in question and shall, on request, give or send to every holder of units, the title to which is represented by a bearer certificate—

- (a) a statement prepared by the manager showing the calculation of the amount of income allocated in respect of the period to which he or she is entitled, whether or not the income is distributed to him or her or allocated to accumulation units; and
- (b) where applicable, a tax certificate to be prepared by the manager in a form to be approved by the trustee and the Uganda Revenue Authority in respect of the income available for allocation in respect of the preceding accounting period and attributable to such holder.

(2) In the case of any distribution on liquidation of the trust, each tax certificate shall show what proportion of the distribution represents capital and what proportion represents income.

(3) Where, in any year, an interim allocation of income is made in respect of a period of less than six months it shall, subject to subregulation (4), be a sufficient compliance with this regulation in relation to that interim allocation period if—

- (a) instead of sending or giving a distribution statement for that period in accordance with subregulation (1)(a), 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; and
- (b) tax certificates are sent or given in accordance with the requirements of the Income Tax Act.

(4) Subregulation (3) does not absolve the trustee from complying with subregulation (1) in respect of any person who was entitled to any part of the interim allocation but who ceased to be a holder of any or all of his or her units before the end of the period to be covered in the next distribution statement; but in such a case the trustee shall comply with subregulation (1) on or before the next ensuing annual (or half-yearly) income allocation date.

PART X—REPORTS

Explanation. *This Part requires the manager to prepare a report and accounts of the scheme in respect of every annual and half-yearly accounting period. Each annual report includes a report by the trustee on the management of the scheme during the year covered in the annual report.*

117. Annual and half-yearly reports

(1) The manager shall, in relation to each annual and half-yearly accounting period, prepare a report stating the matters set out in paragraph 1 of the Schedule in respect of the relevant twelve months or six months; the report shall also comply with the following requirements of this regulation; but 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 twelve months.

(2) A report which relates to an annual accounting period shall contain—

- (a) a statement of commissions paid on dealing as required by paragraph 2 of the Schedule;
- (b) a comparative table relating to that period stating the matters set out in paragraph 3 of the Schedule;

(c) a copy of a report of the auditor to the holders on the accounts contained in the report stating the matters set out in paragraph 4 of the Schedule; and

(d) a copy of a report of the trustee to the holders stating the matters set out in paragraph 5 of the Schedule and supplied to the manager by the trustee in accordance with regulation 121.

(3) 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, subject to these Regulations, include the matters required to be stated therein by the Authority.

(4) A report which relates to any accounting period shall be signed by two directors of the manager.

118. Publication of manager's reports

(1) The manager shall, on or before the annual income allocation date and within four months after the end of each annual accounting period and two months after the end of the half-yearly accounting period, publish the manager's annual and half-yearly report respectively in accordance with subregulations (2) and (3).

(2) The manager shall send a copy of the report to each holder (or to the first named of joint holders) entered in or entitled to be entered in the register at the close of business on the last day of the relevant accounting period (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) and shall supply a copy of the report to each holder of bearer units on request by the holder.

(3) The manager and the trustee 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, for inspection by the public at each place specified for the purpose in the most recently published scheme particulars during ordinary office hours.

(4) The manager shall send a signed copy of the annual report when it is published, to the Authority and also to the trustee.

119. Manager's reports to be offered to purchasers of units

The manager shall not effect any sale of units in the scheme to any person until it has made available for inspection by the person at all times during ordinary office hours at its principle place of business in Uganda, or sent to the person, on request, a copy of the most recent annual report of the manager and the most recent half-yearly report of the manager (unless it has been superseded by an annual report) in English.

120. Manager to publish daily statement of availability of reports, etc

(1) The manager shall, with every publication of prices under regulation 37, publish a statement that the most recent report of the manager, and the scheme particulars are available to any person who applies to the manager for them.

(2) Subregulation (1) is sufficiently complied with if one of the pages of the newspaper in which the manager publishes prices carries the statement required in subregulation (1) in relation to all the schemes referred to in the newspaper.

121. Annual report by the trustee

(1) It is the duty of the trustee to enquire into the conduct of the manager in the management of the scheme in each annual accounting period and to report on the conduct to the holders.

(2) The trustee's report shall contain the matters set out in paragraph 5 of the Schedule and shall be delivered to the manager in good time to enable him or her to include a copy of the report in his or her report to the holders made on or before the annual income allocation date.

PART XI—MEETINGS AND MODIFICATIONS

Explanation. *This Part deals with restrictions on the power of the manager or that of the manager and the trustee to modify the scheme, and with the requirements of meetings of unit holders with a view to authorising certain modifications. Subdivision and consolidation of units are also dealt with here.*

122. Annual meeting of holders

The manager shall arrange to hold an annual general meeting of holders and except where inapplicable, the provisions of this Part relating to meetings of unit holders (regulations 128 to 139) shall apply to annual general meetings convened by the manager under this regulation as they apply to other meetings convened by the manager or trustee under this Part.

123. Modification of the trust deed: with meeting

(1) A modification may be made to the trust deed only by a deed, expressed to be supplemental to the trust deed, entered into by the manager and the trustee following—

- (a) the calling of a meeting of holders by notice (if required under subregulation (2)); and
- (b) the approval of the holders (if required under subregulation (3)).

(2) The calling of a meeting is necessary unless the manager and the trustee have agreed that the modification is one which may, in accordance with regulation 124, be made without the approval of a resolution.

(3) The approval of the holders (signified by the passing at the meeting of an extraordinary resolution authorising the modification) is required in any case where a meeting of holders has to be called.

(4) If a meeting is required under subregulation (2), the notice calling the meeting must state that the trustee has reviewed the circumstances leading to the proposed resolution and considers that the information accompanying the notice contains sufficient information to enable unit holders to make an informed decision.

124. Modification of the trust deed: without meeting

(1) Subject to subregulation (2) and to any restriction on the powers to modify which may be contained in the trust deed, a modification to the trust deed may be made without the approval of a resolution of the holders if it is required solely—

- (a) to implement any change in the law, including a change brought about by an amendment to these Regulations;
- (b) as a direct consequence of any such change in the law; or
- (c) to change the name of the scheme;
- (d) to include a provision to enable the manager to deduct a charge on redemption, where the circumstance envisaged by regulation 34 does not apply;
- (e) to remove from the trust deed obsolete provisions;
- (f) to replace the manager or the trustee when he or she has been removed or wishes to retire or has retired;
- (g) to remove references to a constituent part of an umbrella fund; or
- (h) to make any other modification which the trustee and the manager have agreed in writing does not involve any holders or potential holders in any material prejudice.

(2) A modification is not within subregulation (1) if it—

- (a) would affect any express restriction imposed by the trust deed on the powers which the manager and trustee or either of them would otherwise be able to exercise within these Regulations;
- (b) would increase the maximum of any preliminary or periodic charge authorised by the trust deed 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 trustee by way of remuneration for the trustee's services.

125. Resolution to change scheme particulars

(1) A statement of policy or set of investment objectives in the scheme particulars of the kind referred to in regulation 135(2)(d) may not be changed without an extraordinary resolution, and no significant departure may be made in the management of the scheme from that stated policy or set of investment objectives unless and until the departure has been approved by an extraordinary resolution at a meeting of holders called for the purpose, and scheme particulars amended accordingly have been published.

(2) Except where approved by an extraordinary resolution at a meeting of holders called for the purpose, a change to the scheme particulars relating to a proposal to treat all or any part of the manager's periodic charge as a capital charge, may not be made; but this prohibition does not apply 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 unit holders were notified in writing by the manager of the change to the scheme particulars and of the date when it is to come into effect.

(3) Any amendment to the scheme particulars to introduce a list, or to add an eligible market to the list, required by paragraph 63 of Schedule 1 to the Act (list of eligible markets) shall require approval of an extraordinary resolution at a meeting of holders unless—

(a) the amendment is, in the context of the investment strategy of the scheme, of minimal significance only, and the trustee and the manager have so agreed in writing; or

(b) the manager has—

(i) given notice in writing of the intended amendment to the trustee and the holders;

(ii) included in the scheme particulars 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 scheme particulars became available.

126. Amalgamation

(1) An amalgamation is a scheme of arrangement (notified to the Authority whenever a licensed unit trust scheme is involved) whereby, the whole of the property of a collective investment scheme (whether licensed or not) or body corporate becomes the property (but not the first property) of a licensed scheme, and whereby unit holders (or shareholders) in the collective investment scheme or body corporate receive units in the licensed scheme.

(2) An amalgamation shall not result in the holders of units in a licensed unit trust scheme becoming holders (or shareholders) in an unlicensed scheme.

(3) Where it is proposed that two or more licensed unit trust schemes should be amalgamated, the proposals will require—

- (a) the approval of the holders of the scheme or any scheme which would cease to exist if carried through ('the discontinuing scheme or scheme'); and
- (b) unless subregulation (5) applies, the approval of the holders of the scheme or a scheme which would not so cease to exist ('the continuing scheme').

(4) Subregulation (3)(b) does not apply if the trustee 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 participants in the scheme;
- (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 Part V.

127. Reconstruction

(1) A reconstruction of a licensed unit trust scheme is a scheme of arrangement (notified to the Authority under section 35 of the Act) whereby—

- (a) part of the property of a licensed unit trust scheme becomes the property of a licensed scheme or schemes; or
- (b) the whole of that property becomes the property of two or more licensed schemes; and

whereby holders in the licensed unit trust scheme being reconstructed receive units in the licensed scheme or schemes in exchange for the property received into that scheme or schemes.

(2) A proposal for reconstruction requires, in respect of the scheme being reconstructed, the approval of the holders in the scheme.

(3) Where it is proposed that property of the scheme being reconstructed should become property of a licensed unit trust scheme, the proposals will (irrespective of any other approval and subject to regulation 21) require the approval of the holders of units in the licensed unit trust scheme unless that approval would not have been required on an amalgamation by virtue of regulation 126(4) (on the assumption that the property to be included were treated as a discontinuing scheme).

128. Convening of meetings and attendance and voting at meetings

(1) The trustee or the manager may, at any time, convene a meeting of the holders at such a time and place as the trustee, after consulting the manager, may think fit.

(2) The trustee shall, on request in writing of holders registered as holding not less than one-tenth (or any proportion below one-tenth specified for this purpose in the trust deed) in value of the units in issue, convene a meeting of holders at such time and place as the trustee, after consulting the manager, may think fit.

(3) The manager shall be entitled to receive notice of and attend at any such meeting but shall not be entitled to vote or be counted in the quorum for the meeting and accordingly, for the purposes of regulations 128 to 139, the units held or deemed to be held by the manager shall not be regarded as being in issue.

(4) The words in subregulation (3) after 'but' do not apply in respect of any units which the manager holds on behalf of or jointly with a person who, if himself or herself the sole registered holder, would be entitled to vote, and from whom the manager has received voting instructions.

(5) Any associate of the manager shall not be entitled to vote at any such meeting except in respect of units which he or she holds on behalf or jointly with a person who, if that person is the registered holder, would be entitled to vote, and from whom the associate has received voting instructions.

(6) The trustee and its solicitors shall be entitled to attend every such meeting.

(7) In this regulation, and in regulations 129 to 139, 'holders' means—

(a) the persons who were holders on the date, seven days before the notice under regulation 130 is sent or delivered, whichever is the earlier, but excluding any persons who are known not to be holders at the time of the meeting or at any other relevant time; and

(b) in the case of units for the time being represented by bearer certificates, the persons who for the time being are holders of such units which were in issue on the date, seven days before the notice under regulation 130 is sent or delivered, whichever is the earlier,

and where a meeting is adjourned, this subregulation applies as if the references to regulation 130 were references to regulation 131(4).

129. Powers of meeting of holders

(1) A meeting of holders duly convened and held in accordance with this Part shall be competent, by extraordinary resolution, to require, authorise or approve any act, matter or document in respect of which any such resolution is required or expressly contemplated by these Regulations, but shall not have any other powers.

130. Notices of meetings of holders

(1) Fourteen days' notice (or any longer period of notice specified for the purpose in the trust deed), inclusive of the day on which the notice is deemed to be served and of the day specified under subregulation (2), of every meeting shall be given to the holders in the manner provided for in Part XIV.

(2) The notice shall specify the place day and hour of meeting and the terms of the resolutions to be proposed.

(3) Unless he or she has convened the meeting, a copy of the notice shall be sent by post to the trustee.

(4) The accidental omission to give notice to or the non-receipt of notice by any of the holders shall not invalidate the proceedings at any meeting.

131. Quorum

(1) The quorum at a meeting of holders shall be the holders present in person or by proxy of one-tenth in value (or any proportion more than one-tenth in value specified for this purpose in the trust deed) of all the units in issue on the date specified in regulation 128 (7), excluding from that total any units known to have been redeemed before the time of the meeting.

(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 14 days thereafter and to such place as may be appointed by the chairperson and at such adjourned meeting, the holders present in person or by proxy shall be a quorum.

(4) Notice of any adjourned meeting of holders shall be given in the same manner as for an original meeting and such notice shall state that the holders present at the adjourned meeting, whatever their number and the number of units held by them, will form a quorum.

132. The chairperson

A person (other than the manager), who need not be a holder, nominated in writing by the trustee, shall preside at every meeting of holders and, if no such person is nominated or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting, the holders present shall choose one of their number to be chairperson.

133. Adjournment

The Chairperson may, with the consent of any meeting of holders 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.

134. Votes at meetings

(1) At any meeting of holders, an extraordinary 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 chairperson, by the trustee or by one or more holders present in person or by proxy and holding or

representing one-twentieth (or any proportion less than one-twentieth specified for this purpose in the trust deed) in value of all the units in issue on the date specified in regulation 128(7).

(2) Unless a poll is so demanded, a declaration by the chairperson 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 the resolution.

(3) If a poll is duly demanded, it shall be taken in such a manner as the chairperson may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(4) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately and a poll demanded on any other question shall be taken at such time and place as the chairperson directs.

(5) 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.

(6) On a show of hands, every holder who (being an individual) is present in person, or (being a corporation) is present by its representative properly authorised in that regard, shall have one vote.

(7) On a poll, every holder who is present in person or by proxy shall have one vote for every complete undivided share in the property of the scheme and a further part of one vote proportionate to any fraction of such an undivided share of which he or she is the holder; and a holder entitled to more than one vote need not, if he or she votes, use all his or her votes, cast all the votes he or she uses in the same way.

(8) A corporation, being a holder, may authorise such person as it thinks fit to act as its representative at any meeting of holders and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as the corporation could exercise if it were an individual holder.

(9) In the case of joint holders, 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 holders and for this purpose, seniority shall be determined by the order in which the names stand in the register of holders.

(10) On a poll, votes may be given either personally or by proxy.

135. Restrictions on the putting of composite resolutions to meetings of holders

(1) Modifications to the trust deed and departures from policies or a set of investment objectives stated in scheme particulars of the descriptions set out in

subregulation (2) shall not be taken to have been authorised by an extraordinary resolution at a meeting of holders, 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 following are the descriptions of modification to the trust deed and departures from policy referred to in subregulation (1)—

- (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;
- (c) a modification to any provision in the trust deed restricting—
 - (i) the descriptions of assets 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 scheme particulars that the manager will or may in relation to any matter within subregulation (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 Part V or by the trust deed; and
- (e) any change to any statement in paragraph (d).

136. Proxies

(1) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or, 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 naturally certified copy of such power or authority shall be deposited at such place as the trustee or the manager, with the approval of the trustee 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 a holder.

(5) An instrument of proxy may be in the usual common form or in any other form which the trustee shall approve.

(6) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the units in respect of which the proxy is given; except that no intimation in writing of such death, insanity, revocation or transfer shall have 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.

137. Minutes

(1) Minutes of all resolutions and proceedings at every meeting of the holders shall be made and duly entered in books to be, from time to time, provided for the purpose at the expense of the manager.

(2) Any such minute purporting to be signed by the chairperson of the meeting shall be conclusive evidence of the matters stated in them 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 at that meeting, to have been duly passed.

138. Meaning of ‘extraordinary resolution’

In these Regulations ‘extraordinary resolution’ means a resolution—

(a) proposed and passed at a meeting of holders duly convened and held in accordance with this Part 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 66% (or any larger proportion specified for this purpose in the trust deed) of the total number of votes cast for and against such resolution.

139. Class meetings

(1) Where the trustee is of the opinion that any extraordinary resolution to be proposed is one in relation to which there is or might be a conflict of interest between the holders of accumulation units and the holders of income units or, in the case of an umbrella fund, between the holders of units in one constituent fund and the holders of units in another, that resolution shall be deemed to have been duly passed only, if in lieu of being passed at a single meeting of all holders, it shall be duly passed at separate meetings respectively of the holders of accumulation units

and income units, or of the holders of units in the one constituent fund and holders of units in the other, as the case may be.

(2) This Part applies to each separate meeting held under subregulation (1) as it applies to other meetings.

PART XII—SPECIAL PROVISIONS FOR UMBRELLA FUNDS

Umbrella Funds

Explanation. *Umbrella funds are schemes which consist of a number of constituent parts, and which provide opportunities for investors to switch all or part of their investment from one part to another. This regulation requires each constituent part of such schemes to comply with licensing requirements.*

140. Qualification to be licensed as an umbrella fund

A unit trust scheme does not qualify to be licensed as an umbrella fund unless each constituent part would, if it were the subject of a separate application for licensing, qualify for separate licensing.

PART XIII—SUSPENSION AND TERMINATION

Unit Trusts

Explanation. *This Part sets out the circumstances in which a manager must or may suspend the issue and redemption of units in the scheme, the circumstances in which a scheme falls to be wound up, and the manner in which suspension and winding up are to be carried into effect.*

141. Suspension and resumption of issue and redemption of units

(1) The manager may, with the prior agreement of the trustee, or shall, if the trustee so requires, at any time for a period not exceeding twenty eight days suspend the issue and the redemption of units if he or she, or the trustee in the case of any requirement by him or her, is of the opinion that there is good and sufficient reason to do so, having regard to the interests of participants or potential participants.

(2) At the time of suspension under subregulation (1) the manager, or the trustee if he or she has required the manager to suspend issue and redemption, shall—

- (a) inform the Authority of the suspension, stating the reasons for his action;
 - (b) immediately confirm the suspension by giving notice in writing to the Authority, stating the reasons for this action; and
 - (c) publish notice of the suspension in an English language newspaper of nationwide circulation.
- (3) Where issue and redemption are suspended—
- (a) the trustee shall not create or cancel units; and

(b) the manager shall not buy or sell units as agent for the trustee or on his or her own account.

(4) Before the resumption of issue and redemption of units, the manager shall inform the Authority of the proposed resumption and immediately after the resumption, confirm the resumption by giving notice in writing to the Authority, and publish notice of the resumption in an English language newspaper of nationwide circulation.

(5) 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 trustee at a price calculated by reference to the first valuation point after resumption of issue and redemption.

(6) During the period of a suspension, none of the obligations in Part IV relating to the creation, cancellation, issue or redemption of units or to the valuation of units shall apply.

142. When the scheme is to be wound up

(1) Upon the occurrence of any of the events specified in subregulation (2) and not otherwise—

(a) Parts IV and V shall cease to apply to the scheme;

(b) the trustee shall cease to create and cancel units in the scheme;

(c) the manager shall cease to issue and redeem units in the scheme;

(d) the manager shall cease to buy and sell units as agent for the trustee or on his or her own account; and

(e) the trustee shall proceed to wind up the scheme in accordance with regulation 143.

(2) The events referred to in subregulation (1) are—

(a) where the order declaring the scheme to be a licensed unit trust scheme is revoked;

(b) in response to a request to the Authority by the manager or the trustee for the revocation of the order declaring the scheme to be a licensed unit trust scheme, the Authority has agreed, albeit subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the scheme, the Board will accede to that request;

(c) the expiration of any period specified in the trust deed as the period at the end of which the scheme is to terminate;

(d) the effective date of a duly approved scheme of amalgamation; or

(e) the effective date of a duly approved scheme of reconstruction which results in all the property of the reconstructed scheme becoming the property of two or more licensed schemes.

(3) This regulation is without prejudice to regulation 141 and to any order or direction made under section 141 of the Act.

143. Manner of winding up

(1) In a case falling within regulation 142(2)(d) or 142(2)(e), the trustee shall wind up the scheme in accordance with the approved scheme of amalgamation or reconstruction.

(2) In any other case falling within regulation 142—

(a) the trustee shall, as soon as practicable after the scheme falls to be wound up, realise the property of the scheme and, after paying out or retaining adequate provision for all liabilities properly so payable and retaining provision for the costs of the winding up, distribute the proceeds of that realisation to the holders and the manager (upon production by them of such evidence, if any, as the trustee may reasonably require as to their entitlement to the proceeds) proportionately to their respective interests in the scheme as at the date of the relevant event referred to in regulation 142(2); and

(b) any unclaimed net proceeds or other case (including unclaimed distribution payments) held by the trustee after the expiration of twelve months from the date on which the same became payable, shall be paid by the trustee into court subject to the trustee having a right to retain any expenses incurred by him or her in making and relating to that payment;

but, in the case of a scheme which is a relevant pension scheme, payments shall not be made to holders in the scheme but the proceeds of realisation shall be paid by the trustee in accordance with the destinations specified in the trust deed.

(3) Where the trustee and one or more holders agree, the requirement in subregulation (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 holders, and the trustee may distribute that part in the form of property, after making such adjustments or retaining such provision as appears to the trustee appropriate for ensuring that that or those holders bear a proportional share of the liabilities and costs.

(4) Nothing in this Part requires the trustee to distribute proceeds of a realisation to any holder in any case where the manager or the trustee considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to a statutory obligation.

(5) On completion of the winding up in respect of the events referred to in paragraphs (b), (c), (d) or (e) of regulation 142(2), the trustee shall notify the

Authority in writing of that fact and at the same time, the manager or trustee shall request the Authority to revoke the licence under section 51 of the Act and the trustee shall publish notice of the winding up in the *Uganda Gazette* and in an English language newspaper of nationwide circulation.

144. Accounting and reports during winding up

(1) Subject to any order of the High Court, and to subregulations (2) and (3), while a scheme is being wound up, whether under regulation 143 or otherwise—

- (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 trustee (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 participants or of the regulators, it may direct that immediate production of the report may be dispensed with, and thereupon, the period in question must be reported on together with the ensuing period in the next report prepared under subregulations (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 trustee in respect of that final period, shall be published and sent to each person who was a holder immediately before the end of the final accounting period within two months after the end of the period.

PART XIV—MISCELLANEOUS.

145. Service of notices and documents

(1) Any notice required to be served upon a holder shall be deemed to have been duly given—

- (a) in the case of units for the time being represented by bearer certificates, if it is given in the manner provided for in the most recently published scheme particulars; or
- (b) in the case of units held by a registered holder, if it is sent by post to or left at his or her address as appearing in the register.

(2) Subject to regulation 38, any notice required to be served or information to be supplied or given to any other person, including the Authority, shall be in writing in such other form as enables the recipient to know or record the time of receipt and to preserve a legible copy of the notice.

(3) Any notice served by post shall be deemed to have been served on the second day following that on which the letter containing the notice is posted, and in proving such service, it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

(4) Service of a notice or document on any one of several joint holders shall be deemed effective service on the other joint holders.

SCHEDULE

Regulation 117(1)

ANNUAL AND HALF-YEARLY REPORTS

1. Report of the manager

The following matters shall be set out in every annual and half-yearly report of the manager—

- (a) the names and addresses of the following—
 - (i) the manager;
 - (ii) the trustee;
 - (iii) any investment adviser;
 - (iv) the registrar;
 - (v) the auditor;
- (b) the objectives of the scheme;
- (c) the manager's policy for achieving the objectives of the scheme;
- (d) a statement that the scheme is a licensed unit trust scheme within the meaning of the Act;
- (e) a statement of which the categories of scheme in regulation 8(1) the scheme belongs to and, in the case of an umbrella fund, this statement is to be made separately in relation to each constituent part;
- (f) a review of the manager's investment activities during the period to which the report relates;
- (g) particulars of any significant change in the scheme particulars made since the making of the last report by the manager;
- (h) a statement of any subdivision or consolidation of units which has been effected during the period to which the report relates; and
- (i) any other significant information which would enable holders to make an informed judgment 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.

2. Commissions paid on dealing

The statement of commissions paid shall specify the following information on dealings in the property of the scheme in relation to transactions effected through the agency of a broker—

- (a) the average rate of commission for such transactions;
- (b) the aggregate amount of the commissions paid to associates of the manager;
- (c) the aggregate amount of the commissions paid to associates of the trustee; and

- (d) the name of each broker who received more than 10% of the aggregate amount of the commissions paid.

3. **Comparative table**

The following matters shall be set out in the comparative table included in the report of the manager—

- (a) a performance record of the last five 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, showing the highest price and the lowest price of the units during each of those years, the net income per unit distributed or, in the case of accumulation units, allocated during each of those years taking account of any sub-division or consolidation of units that occurred during that period;
- (b) 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 net asset value of the property of the scheme at the end of each of those years and the net asset value per unit and the number of units in existence or deemed to be in existence at the end of each of those years;
- (c) if, in the period covered by the table—
 - (i) 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
 - (ii) 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.

4. **Report of the auditor**

The report of the auditor to the holders 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 any statement of recommended practice relating to licensed unit trust schemes issued by the Authority in these regulations and the trust deed;
- (b) if there is any material departure from the standard expected by subparagraph (a), what that departure is and the reasons for it; and
- (c) without prejudice to subparagraph (a), 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;
- (d) if the auditor is of the opinion that proper accounting records for the scheme have not been kept by the manager or that the accounts are not in agreement with the manager's accounting records for the scheme, that fact;

(e) if the auditor has not been given all the information and explanations which, to the best of his or her knowledge and belief, are necessary for the purposes of his or her audit, that fact; and

(f) 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.

5. Report of the trustee

The report of the trustee to the holders for any annual accounting period shall state whether in the trustee'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 trustee by the trust deed, by scheme particulars and by all regulations for the time being in force under section 31 of the Act;

(b) otherwise than in accordance with the provisions of the trust deed and those regulations; and

if he or she has not done so, the respects in which the manager has not done so, and the steps which the trustee has taken in that respect.

LEO KIBIRANGO,
Chairperson, Capital Markets Authority.