

STATUTORY INSTRUMENTS

2003 No. 101.

THE COLLECTIVE INVESTMENT SCHEMES (OPEN-ENDED INVESTMENT COMPANIES) REGULATIONS, 2003.

ARRANGEMENT OF REGULATIONS.

Regulation

PART I—PRELIMINARY.

1. Citation and commencement.
2. Application.
3. Interpretation.

PART II—CONSTITUTION.

4. Instrument of incorporation.
5. Categories of company.
6. Share classes.
7. Larger and smaller denomination shares.
8. Subdivision and consolidation of shares.

PART III—PROSPECTUS.

9. Drawing up of prospectus.
10. Availability of prospectus.
11. Inspection of prospectus.
12. False or misleading prospectus.
13. Revision of prospectus.
14. Changes to prospectus.

PART IV—PRICING AND DEALING

Division A—Initial Fixed Price Offers

15. Introduction to this Part and to Division A.
16. Initial price.
17. Compulsory termination of initial fixed price offer.

Division B—Issue and Cancellation

18. Introduction.
19. Issue of shares by company.
20. Issue of shares to meet ACD's obligation to sell.
21. Cancellation of shares.
22. Price of a share.
23. Modification to number of shares issued or cancelled.

Division C—Sale and Redemption

24. Introduction.
25. ACD's obligation to sell.
26. ACD's obligation to redeem.
27. Payment on redemption.
28. Proceeds of redemption.
29. Issue and cancellation through the ACD when not acting as principal.
30. Notification of price to the depository.
31. Publication of prices.

Division D—Forward pricing.

32. Forward pricing.

Division E—Valuation.

33. Valuation of the scheme property
34. Valuation methodology
35. Resolution of the dilutive effect
36. Amendment of single price
37. Records

PART V—INVESTMENT AND BORROWING POWERS.

38. Introduction

Division A—General

39. Investment powers: general.
40. Valuation.
41. Part to be construed as a whole.
42. Transferable security.
43. Eligible securities markets.
44. Approved security.

Division B—Securities Companies.

45. Securities companies: general.
46. Spread: general.
47. Spread: Government and other public securities.
48. Investment in collective investment schemes.
49. Investment in warrants and in nil paid or partly paid securities.
50. Significant influence.
51. Investment in associated collective investment schemes.

Division C—Money Market Companies.

52. Money market companies: general.
53. Investment limits.
54. Spread.

Division D—Umbrella Companies.

- 55. Umbrella companies: general.
- 56. Restriction on investment.

Division E—Stocklending and use of Derivatives.

- 57. Stocklending.

Division F—Cash, Borrowing, Lending, etc

- 58. Cash and near cash
- 59. General power to borrow
- 60. Borrowing limits.
- 61. Restriction on lending of money.
- 62. Restriction on lending of property other than money.
- 63. General power to underwrite or accept placings.
- 64. Guarantees and indemnities.

Division G—Miscellaneous.

- 65. Requirement to cover sales.
- 66. Investment in other group schemes.
- 67. Short selling.
- 68. Waiver from application of spread rules.

PART VI—POWERS AND DUTIES OF THE DIRECTORS
AND DEPOSITARY.

Division A—Directors

- 69. Directors.
- 70. Authorised Corporate Director.
- 71. Dealings in scheme property.
- 72. Maintenance of records, etc.

Division B—The Depositary

- 73. General duties of the depositary.
- 74. Control by the depositary over the scheme property.
- 75. Exercise of rights in respect of the scheme property.

Division C—The Company, its Directors and the Depositary.

- 76. Timely performance of duties.
- 77. Duties of the ACD and depositary: investment and borrowing powers.
- 78. Committees and appointments.
- 79. Conflict of interest, etc.

*Division D—Appointment and Termination of
Appointment of the ACD.*

- 80. Appointment of ACD.
- 81. Termination of appointment of ACD.

PART VII—CHARGES AND EXPENSES.

82. Payments by the company to the ACD.
83. Preliminary charge.
84. Increase in remuneration or preliminary charge.
85. Redemption charge.
86. Umbrella companies.
87. Restricted payments.
88. Movable and immovable property.
89. Payment of liabilities on transfer of assets.
90. Amortisation.
91. Tax.
92. Allocation of payments to capital or income.

PART VIII—INCOME.

93. Accounting periods.
94. Annual income allocation date.
95. Annual allocation of income.
96. Annual allocation to accumulation shares.
97. Annual distribution to holders of income shares.
98. Interim allocations of income.
99. Tax certificates.
100. Unclaimed distributions.

PART IX—REPORTS AND ACCOUNTS.

101. Contents of annual and half-yearly reports.
102. Publication of company reports.
103. Reports to be offered to purchasers of shares.
104. Publication of availability of reports and prospectus.
105. Annual report by the depositary.

PART X—SHAREHOLDERS MEETINGS AND AMENDMENTS TO THE INSTRUMENT OF INCORPORATION.

106. General meetings.
107. Notice of meetings.
108. Quorum.
109. Resolutions.
110. Voting rights.
111. Right to demand a poll.
112. Proxies.
113. Special meaning of shareholder.
114. Class meetings.
115. Variation of class rights.

116. Amendment of instrument of incorporation.
117. Service of notices and other documents.

PART XI—UMBRELLA COMPANIES.

118. Qualification to be licensed as an umbrella company.
119. Base currency.
120. Allocation of scheme property.
121. Investment and borrowing powers.
122. Income.
123. Shares in respect of less than two subfunds in issue.

PART XII—SUSPENSION AND TERMINATION.

Division A—Suspension and Resumption of Dealings in Shares.

124. Suspension and resumption of dealings in shares.

Division B—Winding Up a Solvent Company.

125. When a company is to be wound up.
126. Consequences of commencement of winding up.
127. Manner of winding up.
128. Final account.
129. Duty to ascertain liabilities.
130. Reports and accounts.
131. Liabilities of the ACD.
132. Additional provisions applicable to umbrella companies.
133. Miscellaneous.

Division C—Termination of a Subfund of an Umbrella Company.

134. General.
135. When a subfund is to be terminated.
136. Consequences of commencement of termination of a subfund.
137. Manner of termination.
138. Termination account.
139. Duty to ascertain liabilities.
140. Reports and accounts.
141. Liabilities of the ACD.

Division D—Amalgamation and Reconstruction.

142. Amalgamation and reconstruction.

SCHEDULE.

SCHEDULE—ANNUAL AND HALF-YEARLY REPORTS

STATUTORY INSTRUMENTS

2003 No. 101.

The Collective Investment Schemes (Open-Ended Investment Companies) Regulations, 2003.

(Under sections 30 and 31 of the Collective Investment Schemes Act, 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 Collective Investment Schemes Act, 2003 and, with it, make provision for the constitution and management of open-ended investment companies which are incorporated in Uganda (referred to in these Regulations as “companies”). The Authority’s underlying purpose is to assure a high standard of investor protection for the benefit of those who invest in such companies.*

1. Citation and commencement

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

2. Application

These Regulations apply to companies which have their respective head offices in Uganda, or are registered to conduct business in Uganda under Part X of the Companies Act.

Explanation. *Definitions in the Act apply 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

In these Regulations, unless the context otherwise requires—

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

“accumulation share” has the meaning in regulation 6;

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

“affected person” has the meaning in regulation 79(1);

“amalgamation” means a scheme or an arrangement whereby the whole of the property of a collective investment scheme or body corporate

becomes the property (but not the first property) of a licensed collective investment scheme and whereby unitholders (or shareholders) in the collective investment scheme or body corporate receive units or shares in the licensed collective investment scheme; and references in this definition to a collective investment scheme include a subfund (or equivalent separately pooled part) of such a scheme;

“annual accounting period” has the meaning in regulation 93;

“annual general meeting” has the meaning in paragraph 4 of Schedule 4 to the Act;

“annual income allocation date” has the meaning in regulation 94;

“annual report” has the meaning in paragraph 51(1)(a) of Schedule 4 to the Act;

“approved security” has the meaning in regulation 44;

“associate” in relation to a person (including a company), means—

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

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

(c) 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 dealings with third parties;

and, in relation to a body corporate, includes any officer of that body corporate;

“authorised corporate director” or “ACD” means the director who is the ACD in accordance with regulation 69(2);

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

“base currency” means the currency specified in the instrument of incorporation as the currency in which the accounts of the company are to be prepared;

“bearer certificate” means a certificate representing bearer shares;

“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;

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

“capital property” means the scheme property (other than income property and any amount for the time being standing to the credit of the distribution account);

“cash” includes foreign currency;

“class” in relation to shares, means, according to the context, all of the shares related to a single subfund or a particular class of shares of a company or a particular class of shares related to a single subfund;

“class meeting” means a separate meeting of shareholders of a class of shares;

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

“company” means an investment company with variable capital incorporated under the Act;

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

“current preliminary charge” (and “current charge”) has the meaning in regulation 83(2) and paragraph 27 of Schedule I to the Act);

“dealing day” means the period in each business day (or in each other day when the ACD is open for business) during which the ACD keeps its premises or any of them open to the public or is otherwise publicly available for business of any kind;

“dealing period” means the period between one valuation point and the next;

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

“depository” has the meaning in section 2 of the Act;

“dilution” means the amount of dealing costs incurred, or expected to be incurred, by the company to the extent that they may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the company as a consequence (whether or not immediate) of the increase or decrease in the company’s cash resources resulting from the issue or cancellation of shares over a

period; and 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;

“dilution adjustment” means an adjustment to the price of shares made by the ACD under regulation 36 to compensate for dilution;

“director” means a director (as defined in section 2 of the Act) of the company and when a company has only one director, “directors” means that director;

“distribution account” has the meaning in regulation 95(1);

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

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

“eligible” in the context of a securities market, means any market which the company is, for the time being, entitled to regard as one through which more than 10% of the property of the company may be invested for the purposes of regulation 43;

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

“extraordinary resolution” means a resolution passed by a majority of not less than three quarters of the votes validly cast (whether on a show of hands or on a poll) for and against the resolution at a general meeting of shareholders or (as the case may be) class meeting, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given;

“final account” has the meaning in regulation 128(1);

“final accounting period” has the meaning in regulation 128(2);

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

“gross accumulation share” has the meaning in regulation 6;

“half yearly accounting period” has the meaning in regulation 93(6);

“half-yearly report” has the meaning in paragraph 51(1)(b) of Schedule 4 to the Act;

“holder” where the context so permits, has the same meaning as shareholder;

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

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

“income share” has the meaning in regulation 6;

“initial fixed price offer” means an offer at the initial price of shares for sale of shares in a company, or shares in respect of a subfund (otherwise than under regulation arrangements of the type described in regulation 64(2)) where all or part of the consideration paid for the account of the company for the shares is to be used to acquire the initial scheme property of the company, or the initial scheme property attributable to the subfund;

“initial price of shares” has the meaning in regulation 16(1);

“instrument constituting the scheme” in the case of a collective investment scheme other than a company, includes any instrument to which the operator is a party setting out any arrangements with any other person relating to any aspect of the operation or management of the scheme, and, in the case of a company, means the instrument of incorporation;

“instrument of incorporation” means the instrument of incorporation (as amended as from time to time) referred to in regulation 4;

“interim accounting period” has the meaning in regulation 98;

“interim income allocation date” has the meaning in regulation 98;

“investment adviser” in relation to a company, means a person who is retained by that company, its directors or its ACD under a commercial arrangement not being a mere contract of employment—

(a) to supply them with advice in relation to the company 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 for any of them any function concerning the management of the scheme property of the company;

“larger denomination share” means any share that is not a smaller denomination share;

“marketing”, in relation to shares in a company, means—

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

(b) advising or procuring any person to become a shareholder in that company,

and “to market” shall be construed accordingly;

“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; and

(d) a bill of exchange issued by any Government or body within regulation 47(5) (Government and other public securities);

“net accumulation share” has the meaning in regulation 6(1)(b);

“period of the initial fixed price offer” has the meaning in regulation 15(2);

“preliminary charge” has the meaning in regulation 83;

“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 share, means the price of the share 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 under regulation 35 to compensate for the effect of dilution;

“prospectus” has the meaning in section 2 of the Act;

“recently issued” in relation to transferable securities has the meaning in regulation 44(2);

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

“reconstruction” in relation to a company (which in this definition includes a subfund) is a scheme of arrangement whereby—

(a) part of the scheme property of the company becomes the property of a licensed scheme or recognised scheme, (which in this definition includes a subfund or equivalent separately pooled part, of a regulated collective investment scheme); or

(b) the whole of that scheme property becomes the property of two or more regulated collective investment schemes; or

(c) the whole of that scheme property becomes the first property of a regulated collective investment scheme;

and whereby shareholders in the company being reconstructed receive shares or units in the licensed scheme or recognised scheme or schemes in exchange for the property received into that scheme or schemes;

“redemption” in relation to shares in a company, means the purchase of shares from a holder by the ACD as a principal;

“redemption charge” has the meaning in regulation 85;

“register of shareholders” (or ‘register’) means a register kept under subregulation 15(1) of Schedule 4 to the Act;

“registrar” means the person who maintains the register;

“sale” in relation to shares (except where the context otherwise requires) means the sale of shares by the ACD as a principal;

“scheme” depending on the context, may mean a licensed collective investment scheme or another collective investment scheme;

“scheme documentation” means a prospectus and any other material documentation provided to shareholders or potential shareholders;

“scheme property” means the property subject to the collective investment scheme constituted by the company;

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

“share” or “shares” means, (except where the context otherwise requires), a share or shares in a company (and includes both smaller and larger denomination shares);

“shareholder” has the meaning in section 2(2) of the Act;

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

“smaller denomination share” has the meaning in paragraph 11(5) of Schedule 4 to the Act;

“subfund” means a part of the scheme property of an umbrella company that is pooled separately;

“termination account” has the meaning in regulation 138(1);

“transferable security” has the meaning in regulation 42;

“umbrella company” has the meaning in section 2(1) of the Act;

“unclaimed payments account” has the meaning in regulation 137(7)(a);

“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. *A company will be created by virtue of the Act. It will be governed by its instrument of incorporation, which must comply with Part 1 of Schedule 1 to the Act as well as with these Regulations.*

This Part lists the different categories of company that may be formed. A company may change from one category to another in accordance with these Regulations.

In accordance with the Act, the instrument of incorporation of a company must state what classes of shares the company may issue and, in the case of an umbrella company, indicate the classes that may be issued in respect of each subfund. For this purpose, an instrument of incorporation may cross-refer to the classes of shares described in this Part. These include ‘net accumulation shares’ and ‘gross accumulation shares’. If the company intends to issue gross

accumulation shares, the instrument will need to provide for mandatory cancellation or conversion to net accumulation shares if the tax law conditions relating to them cease to be fulfilled.

This Part includes a requirement that the instrument of incorporation shall provide that the designated person shall be the person who is, for the time being, the ACD of the company. Accordingly, an instrument of incorporation will not require amendment solely as a result of a change of ACD.

Although fractions of a share are not possible, paragraph 11 of Schedule 4 to the Act provides that the rights attached to a share of any class may be expressed in two denominations, in which case the 'smaller' denomination shall be such proportion of the 'larger' denomination (ie. a standard share) as is fixed by the instrument of incorporation of the company. This will enable holdings to consist of more or less than a complete number of larger denomination shares. If a company wishes to take advantage of this, the relevant proportion must be stated in its instrument of incorporation. A single document of title, tax certificate or cheque may cover a single holding of both larger and smaller denomination shares of any class.

Whenever a single shareholding includes a sufficient number of smaller denomination shares to form a larger denomination share, they must be consolidated into such a share; and smaller denomination shares may be substituted for a large denomination share when required to effect a transaction.

4. Instrument of incorporation

(1) Subject to subregulations (2) and (3), the instrument of incorporation must not include any provision which is unfairly prejudicial to the interests of shareholders generally, or to the holders of any class of shares.

(2) Where, subject to compliance with a condition imposed by any law or regulation of Uganda, any income property of the company may be allocated or paid to a shareholder without deduction of income tax, the instrument of incorporation shall provide that if the condition is never, or ceases to be, fulfilled, the relevant shares of that shareholder shall be redeemed or cancelled, or converted into or exchanged for shares in respect of which income allocated or paid is subject to deduction of income tax, and shall provide the procedure for that redemption or cancellation, conversion or exchange.

(3) The instrument of incorporation may provide that, where the holding of any shares by a shareholder is (or is reasonably considered by the directors to be) an infringement of any law or governmental Regulation, the shares so held shall be redeemed or cancelled and, if the instrument of incorporation contains such a provision, it shall also provide the procedure for that redemption or cancellation.

(4) The instrument of incorporation shall provide that the person designated for the purposes of paragraph 30 of Schedule 4 to the Act shall be the person who is, for the time being, the ACD of the company.

(5) The instrument of incorporation shall provide that the company may, without prejudice to the requirements of section 35 of the Act, by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of shareholders, remove a director before the expiration of his or her period of office, notwithstanding anything in its instrument of incorporation or in any agreement between the company and the director.

(6) Subregulation (5) is not to be taken as depriving a person removed under it of compensation or damages payable to him or her in respect of the termination of his or her appointment as director, or of any appointment terminating with that as director, nor shall it restrict the effect of any provision in the instrument of incorporation relating to a notice to be given to the company or to the shareholders of the intention to move a resolution to remove a director or relating to the rights of a director to make representations.

(7) Any power conferred on any company by these Regulations is subject to any express restriction contained in the company's instrument of incorporation.

(8) The ACD and the depositary shall each make available a copy of the instrument of incorporation (and any supplement to it) for inspection by any member of the public in accordance with subregulations (12), (13), (14) and (15).

(9) The copy shall be made available at all times during ordinary office hours at the principal place of business in Uganda where it carries on the business of acting as the ACD or, as the case may be, the depositary of open-ended investment companies.

(10) A copy made available under this regulation shall be made available in English.

(11) The ACD and the depositary shall allow any person to obtain, on payment of a reasonable fee, a copy of any instrument of incorporation or supplement thereto.

(12) The places where the instrument of incorporation may be inspected or obtained shall be publicised in the scheme documentation.

5. Categories of company

(1) A company must belong to one only of the following categories—

- (a) a securities company;
- (b) a money market company; or
- (c) an umbrella company.

(2) A securities company is a company whose objective is to invest in transferable securities, subject to the limits in Part V of these Regulations.

(3) A money market company is a company whose objective is to invest in—

- (a) deposits;
- (b) instruments creating or evidencing indebtedness which are not transferable securities; and
- (c) transferable securities other than equities.

(4) An umbrella company is as defined in Schedule 2 to these Regulations.

6.Share classes

(1) Classes of shares may include—

- (a) income shares, in respect of which income is allocated periodically to holders under regulation 97;
- (b) net accumulation shares, in respect of which income (net of any tax deducted or accounted for by the company) is credited periodically to capital under regulation 97;
- (c) gross accumulation shares, in respect of which income is credited periodically to capital under regulation 96, but, in accordance with relevant tax law, without deduction by the company of any income tax.

(2) If any class of shares in the company has different rights from any other class of shares in the company, the instrument of incorporation shall provide for the manner in which the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class shall be calculated.

(3) Without prejudice to subregulations (1) and (2)—

- (a) in the case of a company which is not an umbrella company, the instrument of incorporation must not provide for any class of shares in respect of which—
 - (i) the extents of the rights to participate in the capital property, income property or distribution account would be determined differently from the extents of the corresponding rights for any other class of shares; or
 - (ii) payments or accumulation of income or capital would differ in source or form from those of any class of shares;
- (b) in the case of a company which is an umbrella company, the provisions in paragraph (a) apply to classes of shares in respect of each subfund as if each subfund were a separate company;
- (c) the prohibitions in paragraphs (a) and (b) shall not be regarded as breached by reason of any difference between the rights attached to one class of shares and another class of shares that relates solely to—

- (i) the accumulation of income by way of periodical credit to capital than distribution;
- (ii) charges and expenses that may be taken out of the scheme property or payable by the shareholder; or
- (iii) the currency in which prices or values are expressed or payments made.

7. Larger and smaller denomination shares

(1) Subregulations (2) and (3) shall apply to shares of any class in respect of which the instrument of incorporation provides for smaller denomination shares and larger denomination shares.

(2) The ACD shall, whenever not less than the relevant number of smaller denomination shares of any class are included in any registered holding, consolidate the relevant number of such shares into a larger denomination share of the same class.

(3) The ACD may, at any time for the purpose of effecting a transaction in shares, substitute for a larger denomination share the relevant number of smaller denomination shares, in which case subregulation (2) shall not apply to the resulting smaller denomination share holding or holdings until immediately after the completion of the transaction.

(4) For the purpose of subregulations (2) and (3), the relevant number shall be calculated by reference to the proportion, stated in the instrument of incorporation, of a larger denomination share represented by a smaller denomination share.

8. Subdivision and consolidation of shares

(1) Without prejudice to regulation 7, the directors of a company may, unless expressly forbidden to do so by its instrument of incorporation, determine—

- (a) that each share of any class shall be subdivided into two or more shares (whereupon each such share shall stand subdivided accordingly); or
- (b) that two or more shares of any class be consolidated (whereupon those shares shall stand consolidated).

(2) The company 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) notice of any subdivision or consolidation under subregulation (1).

PART III—PROSPECTUS.

Explanation. *The ACD must draw up, in accordance with the Act, and keep up to date, a prospectus that gives information about the constitution, objectives and operation of the company and the persons responsible for it. It must include, for instance, a description of its investment policy, the arrangements for the*

management of its investments, the risks associated with those investments, the rights and liabilities of the shareholders and the types of expenses that may be deducted from the scheme property. The prospectus and any revisions to it must be approved by the directors. This Part covers who is responsible for the prospectus and what changes to it require the prior approval of the shareholders.

9. Drawing up of prospectus

(1) A document (“prospectus”) which shall contain the matters specified in Part II of Schedule 1 to the Act shall be drawn up by the ACD and approved by the directors.

(2) A prospectus may contain any other matter, the inclusion of which is expressly contemplated in these Regulations.

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

(4) For the purposes of subregulation (3), 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. Availability of prospectus

A company—

(a) shall not market its shares in Uganda unless—

- (i) a prospectus has been drawn up in English and approved in accordance with regulation 9;
- (ii) arrangements have been made for the prospectus to be available to enable the company to satisfy those who accept the offer referred to in subparagraph (B) of this regulation;

(iii) a copy of the prospectus has been sent—

- (A) to the Authority;
- (B) to the depositary;

(b) shall not effect any sale of its shares to any person in Uganda, unless 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 prospectus in English; and

(c) must send a copy of the prospectus to any person who requests a copy.

11. Inspection of prospectus

(1) A company shall make a copy of its prospectus in English available for inspection by the public at all times during ordinary office hours at its principal place of business in Uganda.

(2) The company shall publicise in all scheme documentation the place where the prospectus may be inspected.

12. False or misleading prospectus

(1) Subject to subregulations (4), (5) and (6), the person or persons responsible for a prospectus shall—

- (a) ensure that the prospectus does not contain any untrue or misleading statement or omit any matter required by these Regulations to be included in it; and
- (b) without prejudice to any liability incurred apart from this Regulation, be liable to pay compensation to any person who has acquired any shares in the company and suffered loss in respect of them as a result of any such statement or omission.

(2) The following persons are responsible for a prospectus—

- (a) each person who was a director of the company when the prospectus was approved by the directors, whether or not such person personally approved the prospectus;
- (b) each person who has authorised that he or she be named, and is named, in the prospectus, as a director or as having agreed to become a director of the company either immediately or at a future time; and
- (c) each person who accepts, and is stated in the prospectus as accepting, responsibility for, or for any part of, the prospectus.

(3) (a) A person shall not be responsible under subregulation (2)(a) where the prospectus is published without his or her knowledge or consent and, on becoming aware of publication, he or she immediately gives reasonable public notice that it was so published; and

(b) where a person has accepted responsibility for only part of a prospectus, he or she is responsible under subregulation (2)(c) for only that part and only if it is included in the prospectus in (or substantially in) the form and context to which he or she has agreed.

(4) A person is not in breach of subregulation (1)(a) and shall not incur liability under subregulation (1)(b) where, at the time when the prospectus was approved by the directors, 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 relevant acquisition of shares in the company;
- (b) the acquisition 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 or her to have taken to secure that a correction was brought to the attention of potential purchasers; or
- (d) the person who acquired the shares was not materially influenced or affected by that statement or omission in making his or her or her decision.

(5) A person is also not in breach of subregulation (1)(a), and shall not incur any liability under subregulation (1)(b) where—

- (a) before the acquisition, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the shares in question;
- (b) he or she took all such steps as it was reasonable for him or her to take to secure such publication and reasonably believed that it had taken place before the shares were acquired; or
- (c) the person who acquired the shares knew, at the time of his or her acquisition that the statement was untrue or misleading or of the omission.

(6) For the purposes of this regulation, a revised prospectus shall be treated as a different prospectus from the prospectus to which the revision was made.

(7) References in this regulation to the acquisition of shares include references to contracting to acquire them.

13. Revision of prospectus

(1) A prospectus shall be—

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

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

(3) Without prejudice to regulation 12(6), references in these Regulations to a prospectus drawn up and approved in accordance with regulation 9 include references to a prospectus revised in accordance with this regulation.

(4) This regulation is subject to the procedural requirements affecting certain amendments to a prospectus in regulation 14.

(5) A copy of the revised and re-dated prospectus shall be sent to the Authority and the depositary.

14. Changes to prospectus

(1) Subject to subregulation (3), any change to, or introduction of, any of the provisions of the prospectus referred to in subregulation (2) shall require the prior approval of a resolution of the shareholders or, in the case of a change that affects only the holders of the shares of a particular class or classes, resolution(s) of class meeting(s) of those holders.

(2) The provisions referred to in subregulation (1) are those required to be included in the prospectus in order to comply with the following subregulations of Part II of Schedule 1 to the Act (including when the subregulation listed applies to a subfund by virtue of subregulation 30(1)(b) of that Schedule)—

(a) 8 (investment objectives and policy);

(b) 19(2)(a), but only so far as it relates to the maximum rate or amount of the ACD's remuneration (other than a decrease);

(c) 19(2)(b), (calculation, accrual and payment of the ACD's remuneration) except where it is a change that is of minimal significance; and

(d) 20 (other payments out of the scheme property),

and, in the case of the provisions included to comply with subregulations 8 or 19(2)(a) of Schedule 1 to the Act, the resolution giving the approval must be an extraordinary resolution.

(3) Subregulation (1) shall not apply to a change to a prospectus which is required—

(a) solely to fulfil a requirement resulting from a change in the law (including a change to the Act or these Regulations);

(b) in order to comply with subregulation 10(a) of Schedule 1 to the Act if the change is, in the context of the investment policy of the company or subfund concerned, of minimal significance only, and the ACD and

the depository have so agreed in writing or the ACD has not less than 90 days before the intended change—

- (i) given notice in writing of the intended change to the depository and the shareholders; and
 - (ii) revised the prospectus to reflect the intended change and the date of its commencement;
- (c) solely to reflect action taken for the purposes of compliance with regulation 123(1); or
- (d) solely to reflect an amendment to the instrument of incorporation
- (i) made either in accordance with regulation 116(3)(b)(iv) or by a resolution passed at a meeting or, when appropriate, class meeting, of shareholders and which is not a change to any of the provisions of the prospectus included to comply with paragraph 8 of Schedule 1 to the Act; or
 - (ii) of one of the types described in subregulations 116(1)(a) and (b); or
- (e) to enable changes to be made to the list of eligible markets, set out in the prospectus.

(4) No significant departure may be made in the management of the scheme property of a company from the statements in its prospectus current at the relevant time in fulfilment of the requirements of subregulation 8 or 19 of Schedule 1 to the Act.

PART IV—PRICING AND DEALING.

Explanation. *In accordance with the Act, a right to participate in the scheme property of a company is attached to each share in it. This Part of these Regulations permits a company to issue shares, which may be of different classes. The price of a share of any class is calculated by valuing the scheme property attributable to shares of that class and dividing that value by the number of shares of the class in issue. The valuation of the scheme property must be in accordance with Division E of this Part and the relevant provisions of the instrument of incorporation.*

The ACD may hold shares for its own account (in the “box”): so a purchaser of shares from the ACD may receive shares which have been issued by the company to the ACD or shares that have been redeemed by the ACD from a previous shareholder. In addition to selling and redeeming shares for its own account, the ACD may arrange for the company to issue shares direct to an investor or to cancel an investor’s shares.

The ACD must be prepared to redeem (that is to purchase) shares from an owner of shares who wishes to realise the value of the shares.

The price at which a share of any class is issued, sold, redeemed or cancelled will be a single price determined in accordance with this Part.

Shares are issued when the ACD records the issue and the ACD must then pay cash or transfer assets to the depositary for the account of the company in return for the shares. Shares cease to be in issue when the ACD records their cancellation. Payment by the company to the ACD for cancelled shares is normally made on the fourth business day after the cancellation.

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 former participants (in respect of the issue or redemption of shares) and the depositary (in respect of the creation and cancellation of shares), no allowance is made for the dilutive effect of—

- expenses of dealing - i.e. commissions; and*
- 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 ACD to adjust the single price in response to fund growth or contraction.

Division A—Initial Fixed Price Offers

15. Introduction to this Part and to Division A

(1) Regulations 16 and 17 apply to, and to the period of, an initial fixed price offer of shares of a company.

(2) The period of the initial fixed price offer shall be specified in the prospectus 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.

(3) Where an initial fixed price offer is of shares in respect of a subfund, regulations 16 and 17 apply as if references in these Regulations to a share were to a share in respect of that subfund.

16. Initial price

(1) The price to be paid to the company for a share of any class issued during the period of the initial fixed price offer shall be the initial price of a share of that class as determined by the directors and notified in writing to the depositary prior to the start of the period of the initial fixed price offer.

(2) For the purpose of subregulation (1), a share is treated as issued during the period of the initial fixed price offer if the ACD had agreed to the sale of it or received an order for it to be sold before the close of the period, and it was issued only afterwards.

(3) The ACD shall, by the close of business on the fourth business day after the ACD has received the price from the purchaser, pay to the depositary the price of any share agreed to be sold by the ACD during the period of the initial fixed price offer, unless payment by the ACD is due earlier under regulation 19, but the ACD may retain for its own account any preliminary charge made by it under regulation 83.

(4) During the period of the initial fixed price offer, the ACD shall not agree to issue shares for the company (as to which see regulation 29) at a price other than the initial price (to which may be added, for the account of the ACD, any preliminary charge permitted under regulation 83).

(5) The initial price of a share shall, subject to regulation 119 be expressed in the base currency of the company, or in the case of a currency class share, the currency of designation of that class, but during the period of the initial fixed price offer the ACD may agree to sell and arrange the issue of shares in any other currency, so long as the price in that other currency, compared with the initial price, is not, at the time of the agreement, likely to result in any material prejudice to the interests of shareholders or potential shareholders.

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

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 shares: and, accordingly, if the ACD becomes aware, or has reason to believe that the 2% tolerance has been exceeded, it must immediately—

(a) carry out a valuation of the property of the scheme for the purpose of determining new prices at which shares in the scheme are to be created, cancelled, issued and redeemed;

- (b) refrain from agreeing to issue shares at the initial price; and
- (c) refrain from instructing the trustee to create shares 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 ACD 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; 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 shares if the property of the scheme were valued in accordance with regulation 33 (excluding any preliminary charge in each case).

Division B—Issue and Cancellation.

18. Introduction

(1) Regulations 19 to 23 apply to the issue and cancellation of shares.

(2) In this division, a “valuation point” means the valuation point fixed in accordance with regulation 33, whether on a periodic basis or for a particular valuation.

(3) Shares in a company shall be issued or cancelled by virtue of the ACD making a record for the company of the issue or cancellation and the number of the shares of each class concerned (and, accordingly, the time of the issue or cancellation shall be the time at which the record is made), and references in these Regulations to arrangements for the company to issue or cancel shares shall mean arrangements for making a record of such issue or cancellation.

(4) Subject to these Regulations, the ACD may, at any time in accordance with subregulation (3), arrange for the company to issue or cancel shares, and shares shall not be issued or cancelled in any other manner.

19. Issue of shares by company

(1) Subject to regulation 142 the ACD may arrange for the company to issue shares in exchange for assets other than money, provided that the depositary is satisfied that the acquisition of the assets in exchange for the shares to be issued is not likely to result in any material prejudice to the interests of shareholders or potential shareholders.

(2) The ACD shall, by the close of business on the fourth business day next after the issue of any shares—

- (a) pay the price of the shares (where it remains unpaid) to the depositary in cash or in cleared funds; or

(b) in the case of an exchange under subregulation (1), ensure transfer to the depositary of the assets to be taken in exchange.

(3) In a case of an exchange under subregulation (1), the ACD must ensure that the beneficial interest in the assets is transferred to the company with effect from the issue of the shares, even if the legal ownership is not then transferred to the depositary.

(4) This regulation applies to a share issued during the period of the initial fixed price offer (and for this purpose, the time of issue shall not be governed by regulation 16(2)).

20. Issue of shares to meet ACD's obligation to sell

Where, at any valuation point, the ACD has any outstanding obligation to sell shares of any class, then it must arrange for the company before the close of business on the day on which the said valuation point occurs, to issue shares of that class and in such number at least as will enable the ACD immediately to fulfil that obligation, whether from the shares so issued or from other shares of that class owned by it immediately before the valuation point.

21. Cancellation of shares

(1) The ACD shall not arrange for the cancellation of shares of any class where, or to the extent that, by so doing the ACD would be prevented from immediately fulfilling any outstanding obligation to sell shares of that class which had been assumed before the relevant valuation point.

(2) For the purpose of subregulation (1), the ACD shall take account of all shares sold or redeemed by reference to the relevant valuation point.

(3) On the cancellation of shares, the company shall within the period specified in subregulation (4), require the depositary to pay the price of the shares to, or to the order of the shareholder or the ACD (as the case may be).

(4) Payment need not be made prior to delivery to the company of such evidence of the title to the shares as it may reasonably require but, subject to this, the period expires at the close of business on the fourth business day next after the cancellation of the shares; however, where the ACD has not ensured that the scheme property includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in Part V) within that period, the period is extended, for any relevant currency, until the shortage is rectified.

22. Price of a share

(1) Subject to subregulation (3), the price of a share of any class shall be calculated as follows—

(a) take the proportion, attributable to the shares of the class in question, of the value of the scheme property (excluding the distribution account

and the unclaimed payments account), by reference to the most recent valuation of that scheme property;

- (b) compute the number of shares of the relevant class in issue immediately before the valuation in paragraph (a);
- (c) divide the total at paragraph (a) by the number of shares at paragraph (b);
- (d) express the result in the base currency, or when appropriate, the currency of designation of the class of shares in question, or else comply with subregulation (2);
- (e) except in the case of smaller denomination shares, express the price in a form that is accurate to the nearest whole shilling arithmetically rounded.

(2) A currency other than a currency referred to in subregulation (1)(d) above may be used if the ACD is satisfied that the rate of exchange between the two currencies is not likely to result in any material prejudice to the interests of shareholders or potential shareholders.

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

(4) Where an issue or cancellation is made by the ACD after the last valuation point but before the close of business on the day on which the last valuation point occurs and before the next valuation point, it must be made by reference to the price of the relevant class of shares calculated (or being calculated) for the last valuation point.

23. Modification to number of shares issued or cancelled

(1) The number of shares issued or cancelled may be modified by the ACD making a record for the company of the modification provided that—

- (a) the ACD ensures that any appropriate consequential payment as between the ACD and the company is made; and
- (b) the requirements of subregulation (2) are satisfied.

(2) The ACD may make a modification under subregulation (1) only with the agreement of the depositary and the depositary may not agree unless it is reasonably satisfied—

- (a) that the purpose of the modification is to rectify the consequences of an error which relates to the number of shares held by the ACD, or issued or cancelled in connection with the sale or redemption of shares by the ACD; and

(b) that in view of the quality of the ACD's controls systems, the circumstance that resulted in the error in question is an isolated one and is unlikely to recur.

(3) A modification under subregulation (1) shall be of no effect unless the corrected number of shares is calculated by the end of the business day next following the relevant valuation point, or, if the depositary agrees, within the payment period applicable to the original issue or cancellation under regulation 19(2) or 21(4).

Division C—Sale and Redemption

Explanation. *There are two main ways in which the shares in a company can be bought or sold by an investor. One method is by dealing with the ACD as principal, in which case shares will be sold or redeemed by it. The other way is when the ACD is acting for the company in which case shares will be sold or redeemed by the ACD for the account of the company. These Regulations seek to ensure, so far as possible, that the investor receives equitable treatment whether the ACD is acting as a principal, or for the company.*

24. Introduction

(1) Regulations 25 to 28 and 30 to 31 apply, so far as the context permits, to issues and cancellations of shares effected or to be effected by the ACD for the company under regulation 29.

(2) Where the ACD deals under these Regulations in a currency other than the base currency, or the currency of designation of a share class, the rate of exchange as between the currencies is to be determined by it, so as to be fair to the person with whom it deals and (if the deal is for the company) to the company.

25. ACD's obligation to sell

(1) Subject to Part XII and the company having shares in issue, the ACD must, at all times during the dealing day, be willing to sell shares in the company and, subject to subregulation (2), it must, at the request in writing of any person, agree to sell shares of at least one class of shares or, in the case of an umbrella company, one class in respect of each of its subfunds (excluding any subfund in respect of which no shares are in issue), to that person.

(2) The ACD's obligation to sell shares under sub-regulation (1) does not apply where—

- (a) the ACD has reasonable grounds, relating to the circumstances of the person concerned, for refusing to sell shares to him or her;
- (b) the number or value of the shares sought to be purchased is less than any number or value stated in the prospectus as the minimum number or value that may be purchased or held;
- (c) the ACD has not received payment with or prior to the order; or

(d) the ACD has reason to believe that the potential purchaser has not seen or been offered a copy of the latest prospectus and of the last two reports to shareholders.

(3) The ACD shall not sell a share for more than the price of a share of the relevant class to be notified to the depositary in respect of the next valuation point to which may be added as a separate charge and without affecting the price—

(a) any preliminary charge permitted under regulation 83; and

(b) any applicable levy or tax imposed by law.

(4) Shares must be sold in the base currency of designation of the class concerned, unless the person concerned requests, and the ACD agrees, that the shares should be sold in another currency.

26. ACD's obligation to redeem

(1) Subject to Part XII and except during the period of the initial fixed price offer, the ACD must, at all times during the dealing day, be willing to redeem shares in the company; and, accordingly, must at the request in writing of any holder, agree to redeem shares owned by that holder at a price arrived at under these Regulations.

(2) Subregulation (1) does not apply where—

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

(i) less than the entirety of the shareholder's holding of shares of the class concerned; and

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

(b) the number or value of the shares sought to be redeemed would result in the holder holding less than any number or value stated in the prospectus as the minimum number of shares of the class concerned that may be held; or

(c) the company ensures that the holder is able to sell shares on an investment exchange at a price not significantly different from the price at which they would have been redeemed.

27. Payment on redemption

(1) On agreeing to redeem shares, the ACD shall, within the period specified in subregulation (2), pay the appropriate proceeds of redemption (less, where applicable, the cost of remitting the sum abroad) to the holder.

(2) The period expires at the close of business on the fourth business day next after the later of—

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

(3) Nothing in this regulation shall require a company or an ACD to part with money in respect of a cancellation or redemption of shares where it has not yet received the money due on the earlier issue or sale of those shares, or where it considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person under a statutory obligation, for example on money laundering.

28. Proceeds of redemption

The amount to be paid by the ACD as the proceeds of redemption of a share shall not be less than the price of a share of the relevant class to be notified to the depositary in respect of the next valuation point less a deduction as a separate charge without affecting that price of—

- (a) any redemption charge permitted under regulation 85; and
- (b) any applicable levy or tax imposed by law.

29. Issue and cancellation through the ACD when not acting as principal

(1) At the request of any person, the ACD is obliged to arrange for the company to issue shares to that person under this regulation in any case where it would otherwise be obliged to sell them under regulation 25 and is obliged to arrange for the company to cancel, under this regulation, shares held by that person in any case where it would otherwise be obliged to redeem them under regulation 26.

(2) The price of a share issued or cancelled under this regulation must be the price of a share of the relevant class notified to the depositary in respect of the next valuation point after the request referred to in subregulation (1).

- (3) (a) in the case of an issue, the ACD may require to be paid in addition to the price under subregulation (2) for the account of the ACD, any preliminary charge permitted under regulation 83;
- (b) in the case of a cancellation, the ACD may require to be deducted from the proceeds otherwise payable—
 - (i) for the account of the ACD, any redemption charge permitted under regulation 85; and

(ii) any applicable levy or tax imposed by law.

(4) The ACD shall pay to the depositary, in accordance with regulation 19(2), the price of any shares issued under this regulation whether or not the ACD has received it from the investor, but the ACD may defer

arranging for the issue of the shares until payment for them has been received.

30. Notification of price to the depositary

(1) Immediately upon completion of a valuation under Division E (whether regular or otherwise) the ACD shall notify the depositary of the price of a share or share of each class (as the case may be) as determined for the relevant valuation point by the close of business of the depositary on the dealing day (whether regular or otherwise).

(2) Each notification under subregulation (1) shall include a statement of the number of shares (or shares of each class) owned by the ACD at that valuation point (or notified point if there is one).

31. Publication of prices

(1) Where the ACD holds itself out as willing—

(a) to sell or redeem shares (or shares of any class); or

(b) to issue or cancel shares (or shares of any class) for the company under regulation 29;

it must make public the prices of shares of each of those classes.

(2) The prices made public under subregulation (1) are to be the price or prices last notified to the depositary under regulation 30 or, in the case of publication in a newspaper, last notified before the relevant newspaper ceased to accept material for publication in the relevant edition.

(3) The prices to be made public under subregulation (1) must be published in at least one English language newspaper with nationwide circulation in Uganda.

(4) Where the ACD holds itself out as willing to sell and redeem shares (or as the case may be to issue or cancel shares for the company under regulation 29) in any other country, it must also comply with subregulation (1) in the manner provided for by the law of that country.

Explanation *Regulation 32 requires ACDs to sell or redeem shares at forward prices.*

32. Forward pricing

In relation to the sale and redemption of shares, the ACD shall operate on the basis of forward prices, that is to say at the price prevailing at the next valuation point following the instruction to deal.

Division E—Valuation.

Explanation. *This Division includes provisions which relate to valuation of the scheme property of a company for the purposes of determining the price of a share.*

33. Valuation of the scheme property

(1) For the purposes of determining in accordance with these Regulations the price at which shares of any class in a company may be issued, cancelled, sold or redeemed, the ACD shall carry out a valuation of the scheme property at each valuation point, determined by him or her in accordance with the prospectus, for the company or the subfund (as the case may be). The valuation points shall not be less frequent than specified in the prospectus and in any event not less than once in two weeks.

(2) A security included in the scheme property for which different prices are quoted according to whether it is being bought or sold shall be valued at its mid-market price.

(3) Any part of the scheme property of a company that is not an approved security shall be valued at a fair value.

(4) For the purposes of the subregulations (1), (2) and (3), there shall be excluded from the values of a security or other part of the scheme property, any fiscal charges or commissions or other charges that were paid or would be payable on the acquisition or disposal of the security or other part of the scheme property.

(5) There must be at least two valuation points in each calendar month and if there are only two valuation points in any calendar month, they must be two weeks or more apart.

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

(7) Notwithstanding subregulation (5), no valuation points are required during the period of any initial fixed price offer (but see regulation 17)

(8) The ACD may determine to have an additional valuation point and to carry out an additional valuation of the scheme property (or the scheme property related to a subfund) at any time if it considers it desirable to do so.

(9) Prior to any additional valuation point, the ACD shall inform the depositary of it.

34. 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 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 ACD and agreed by the depository with a full record of the basis of the valuation being maintained by the depository.

(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 fixed coupon 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 on a received basis for non domestic securities.

(5) For expenses chargeable to the scheme—

- (a) *ad valorem* expenses (e.g. operators annual charge, depository fees) must be accrued from valuation point to valuation point; and
- (b) other expenses must be taken into pricing as incurred (subject to agreement with the depository 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.

35. Resolution of the dilutive effect

(1) For adjustment of the dilutive effect—

- (a) the ACD shall adjust upwards the single price calculated under regulation 34 by a factor which represents the schemes' average expenses of buying underlying securities (e.g. commission, fiscal and other fees);
- (b) the ACD shall adjust downwards the single price calculated under regulation 34 by a factor which represents the schemes' average expenses of selling underlying securities (e.g. commission, fiscal and other fees); and
- (c) the ACD shall deal with issues, redemptions, creations, cancellations at the adjusted single price required by this regulation.

(2) For box management and dealing—

- (a) an ACD 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) an ACD shall not move a price either upwards or downwards with the aim of creating a dealing profit for his or her own account; and
- (c) any decision to move the single price must be taken by the ACD in response to the dealing day's net dealing position and without consideration for his or her own profit/loss position.

36. Amendment of single price

(1) An ACD shall amend the calculated price for dealing in shares 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) An ACD 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) An ACD shall disclose details of such adjustments as part of each transaction confirmation.

37. Records

(1) An ACD shall maintain a record of its dealing position at each valuation point, including his or her box position.

(2) An ACD shall maintain a record of the price swing and of the movement of the price (upwards and downwards) and the amount in percentage terms.

(3) Records shall be maintained for a period of at least seven years.

(4) An ACD shall make and retain for a period of at least seven years from the date of each record, a daily record of the shares in the scheme held, acquired or disposed of by the ACD, including the classes of such shares and of the balance of any acquisitions and disposal.

(5) An ACD shall make and retain for a period of at least seven years from the date each record is made, a daily record of—

(a) how it calculates and estimates dilution; and

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

PART V—INVESTMENT AND BORROWING POWERS.

Explanation. *This part contains provisions in respect of the investment and borrowing powers of a company.*

TABLE: OVERVIEW OF INVESTMENT AND BORROWING POWERS

<i>POWER CONCERNING</i>	<i>Securities Fund</i>	<i>Money Market Fund</i>
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% ⁿ
2 Cash (and near cash)	PPR	YES
3 Immovables	NO	NO
4 Stocklending	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);

‘PPR’ means permitted if reasonable for redemption or in the context of the scheme’s dedication within regulation 5 (see regulation 58)

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

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

38. Introduction

Divisions B to D apply only to companies of the kind mentioned in the title to the relevant Section.

Division A—General

Explanation. *This Division, which sets the scene, deals with the general investment powers for companies. The basic investment restrictions for the different categories of company, covered in the following Divisions, may be supplemented by further restrictions in the Instrument of Incorporation. The duties of the ACD and depositary concerning rectification of any breach of investment limits are covered in Part VI below (see regulation 77).*

39. Investment powers: general

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

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

(3) Subregulations (1) and (2) are subject to the obligation of the company to comply with any restrictions for the time being contained in its instrument of incorporation as to—

- (a) the range of transferable securities in which investment may be made;
- (b) the proportion of the capital property of the company to be invested in assets of any description;
- (c) the descriptions of transactions permitted; or
- (d) the borrowing powers of the company.

40. Valuation

(1) For the purpose of this Part, the value of the scheme property of the company means the net value of the scheme property after deducting any outstanding borrowings, whether immediately due to be repaid or not.

(2) In valuing the scheme property for the purposes of this Part the time at which the valuation is being carried out (“the relevant time”) is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of Part IV.

41. Part to be construed as a whole

In relation to any provision in this Part, whereby investment is permitted to be carried out or retained only if possible obligations arising out of the transactions would not cause any breach of any limit in these Regulations (examples being 49 (nil or partly paid securities) and 63(5) (underwriting), it is to be assumed, in applying any of those provisions, that the maximum possible liability of the company under any other such provision has also to be provided for, but that the value of the scheme property is ascertained in the normal manner.

42. Transferable security

(1) In this Part “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, 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 of it in respect of it.

43. Eligible securities markets

(1) A securities market is eligible for the purposes of this Part if it is a market approved for this purpose by the Authority.

(2) A securities market not falling within subregulation (1) is, at any time, eligible for the purposes of this Part where—

(a) the ACD, after consultation with the depositary, considers that market as one which is, in accordance with subregulations (3) and (4), appropriate for the purpose of investment of or dealing in the scheme property beyond, where appropriate, any limit which under these

Regulations, would otherwise apply and has so advised the other directors (if any);

(b) the directors taking account of the advice of the ACD, have decided to choose that market as appropriate for the purpose referred to in paragraph (a);

(c) that decision is notified in writing to the depository and has not been revoked;

(d) the market is included in a list in the prospectus; and

(e) the instrument of incorporation contains a provision for the directors to choose markets in accordance with paragraph (b).

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

(a) is regulated;

(b) operates regularly;

(c) is recognised; and

(d) is open to the public

(4) In considering whether a market is appropriate, regard shall in particular be had to—

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

(b) the arrangements relevant to the market for unimpeded transmission of income and capital to or to the order of investors; and

(c) any relevant guidance of the Authority issued on or before the date of the coming into force of these Regulations.

44. Approved security

(1) A transferable security is an “approved security” where—

(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 where it was issued, within the last twelve months, and an application for listing has been made to an exchange or market and has been accepted.

Division B—Securities Companies.

Explanation. *These companies include companies investing wholly or largely in Government and other public securities.*

45. Securities companies: general

(1) Except where otherwise provided in these Regulations, the scheme property of a securities company shall consist of transferable securities.

(2) Up to 10% in value of the scheme 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 scheme 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 48.

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

(5) Regulations 46 and 47 (spread) do not apply until whichever is the earlier of—

(a) the expiry of a period of eighteen 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 property of the company first exceeds, such amount as the Authority may determine in respect of each scheme,

but the company shall ensure, so far as practicable, during the period prior to the application of regulations 46 and 47 that the scheme property is invested with the aim of spreading risk.

46. Spread: general.

(1) This regulation does not apply to Government and other public securities as defined in regulation 47(5).

(2) Up to 5% in value of the scheme 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 scheme property.

47. Spread: Government and other public securities

(1) This Regulation applies to Government and other public securities only and in this Regulation they are described as 'such securities'.

(2) As long as 35% or less of the scheme property of a company 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, scheme property is invested as to more than 35% in such securities issued by one issuer, then—

- (a) up to 30% of the scheme property may consist of such securities of any one issue;
- (b) the scheme 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 instrument of incorporation, and the most recently published prospectus, must clearly state—

- (a) the fact that more than 35% of the scheme 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 Part, “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 paragraphs (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.

48. Investment in collective investment schemes

A securities company may invest in units or shares in a collective investment scheme only if the scheme—

(a) is either—

(i) a licensed scheme;

(ii) a recognised scheme; or

(iii) a collective investment scheme constituted outside Uganda in which the investment of the company consists of units or shares which are approved securities;

(b) is dedicated to investing funds raised from the public in transferable securities;

(c) operates on the principle of risk spreading; and

(d) has terms which—

(i) prohibit more than 5% in value of the property of the scheme consisting of units or shares in collective investment schemes; and

(ii) have the effect that the only units in which the company may invest are units or shares in schemes themselves falling within this Regulation.

49. Investment in warrants and 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 company at the time when payment is required, without contravening these Regulations.

50. Significant influence

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

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

(b) the acquisition will not give the company that power.

(2) For the purpose of subregulation (1), a company 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 company 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.

51. Investment in associated collective investment schemes

Units or shares in a collective investment scheme do not fall within regulation 48 if that scheme is managed or operated by (or, if it is a company, has as its ACD) the ACD of the investing company or an associate of that ACD 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 of Incorporation constituting the investing company and its prospectus clearly state that the property of the investing company may include such units or shares; and
- (c) Regulation 66 (investment in other group schemes) is complied with.

Division C—Money Market Companies.

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

52. Money market companies: general

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

(2) For this purpose, “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; and
- (c) a deposit which would be within paragraph (a) (near cash) except that it is repayable within six months (instead of immediately and without payment of a penalty exceeding seven day’s interest calculated at ordinary commercial rates).

(3) Regulation 54 (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.

53. Investment limits

(1) This regulation is subject to regulation 52.

(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.

54. Spread

(1) Up to 5% in value of the scheme 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) Where more than 35% in value consists of Government and other public securities, it must include such securities of at least six different issues.

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

(5) For the purposes of subregulation (4), the depositary and its associates are regarded as one person, and the operator and its 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), provided 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 such amount as may be determined by the Authority in respect of each scheme.

Explanation. *An umbrella company is a single company with at least two subfunds, providing the opportunity for shareholders to switch all or part of their investment from one subfund to another. Part XI of these Regulations enable the umbrella company to be treated as a single company and/or as a collection of separate subfunds as appropriate.*

55. Umbrella companies: general

Subject to regulation 56, each of the subfunds of an umbrella company shall be invested as if it were a single company.

56. Restriction on investment

No subfund of an umbrella company may invest in shares in another subfund of the same umbrella company.

Division E—Stocklending and use of derivatives.

Explanation. *The purpose of this Division is to prohibit the use of derivative instruments and the technique known as stocklending, 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.*

57. Stocklending

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

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

Division F—Cash, Borrowing, Lending, etc.

58. Cash and near cash

(1) Scheme property may consist of cash and near cash, where this may reasonably be regarded as necessary in order to enable—

- (a) redemption of shares;
- (b) efficient management of the company in accordance with its investment objectives; or
- (c) any other purpose which may reasonably be regarded as ancillary to the investment objectives of the company.

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

59. General power to borrow

(1) Subject to the obligation of the company to comply with any restriction in the Instrument of Incorporation, the company may, in accordance with these Regulations, borrow money for its use on terms that the borrowing is to be repayable out of the scheme property.

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

(3) The ACD must ensure that the borrowing is on a temporary basis and, for this purpose—

(a) the ACD 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 ACD 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 depositary, which may be given only on such conditions as appear to the depositary appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

60. Borrowing limits

The ACD must ensure that the company's borrowing does not, on any business day, exceed 10% of the value of the scheme property.

61. Restriction on lending of money

(1) None of the money in the scheme property of a company may be lent and, for the purposes of this Regulation, money is lent by the company if it is paid to a person ("the payee") on the basis that it should be repaid, whether or not by the payee.

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

(3) Subregulation (1) does not prevent a company from providing an officer of the company with funds to meet expenditure to be incurred by him or her for the purposes of the company (or for the purposes of enabling him or her properly to perform his or her duties as an officer of the company) or from doing anything to enable an officer to avoid incurring such expenditure.

62. Restriction on lending of property other than money

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

(2) Scheme property of a company shall not be mortgaged.

63. General power to underwrite or accept placings

(1) Subject to the obligation of the company to comply with any restriction in the Instrument of Incorporation, 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 understanding (whereby transferable securities will or may become part of the scheme property)—

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

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

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

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

(ii) to convert one transferable security into another.

(4) No agreement or undertaking to which this regulation applies may be entered into if it relates to units in a collective investment scheme.

(5) The exposure of a company 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.

64. Guarantees and indemnities

(1) Except as permitted by the Act, a company shall not provide any guarantee or indemnity in respect of the obligations of any third party and none of the scheme property may be used to discharge any obligation arising under a guarantee or indemnity that may be given by the company, any director of the company or the depositary with respect to the obligations of any third party.

(2) Subregulation (1) does not apply to an indemnity given to a person winding up a scheme if the indemnity is given for the purposes of arrangements whereby the whole or part of the property of that scheme becomes the first property of the company and the holders of units in that scheme become the first shareholders in the company.

65. Requirement to cover sales

No agreement by or on behalf of a company to dispose of property may be made—

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

66. Investment in other group schemes

(1) No company may invest in or dispose of units or shares in another collective investment scheme (the second scheme) which is managed or operated by the ACD of such company or an associate of that ACD, unless the ACD of the company is under a duty to pay to the company, by the close of business on the fourth business day next after the agreement to buy or sell—

- (a) on investment, either any amount by which the consideration paid by the company for the units or shares in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the units been newly created or issued by it or, if such price cannot be ascertained by the ACD of the company, the maximum amount of any charge permitted to be made by the issuer of units or shares in the second scheme; and
- (b) on disposal, the amount of any charge made in respect of the disposal.

(2) For the purposes of this Regulation—

- (a) any addition to or deduction from the consideration paid on the acquisition or disposal of units or shares in the second scheme, which is applied for the benefit of the second scheme and is, or is akin to, a dilution levy made under regulation 35, shall be treated as part of the price of the units and not as part of any charge; and
- (b) any charge made in respect of an exchange of units or shares in one subfund or separate part of the second scheme for units or shares in another subfund or separate part of that scheme shall be included as part of the consideration paid for the units or shares.

67. Short selling

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

Explanation: *The purpose of this provision is to enable CMA to waive spread rules until sufficient number of securities exist in Uganda.*

68. Waiver from application of spread rules

The Authority may, on the written application of an ACD, waive the application of the spread rules in regulations 45 to 55 for such period and on such conditions as it may prescribe.

PART VI—POWERS AND DUTIES OF THE DIRECTORS
AND THE DEPOSITARY.

Explanation. *This part deals with the powers, duties and responsibilities of the directors, including the authorised corporate director (“ACD”), of a company, and the depositary of a company.*

Each company must have an ACD. Where the ACD is the sole director, the provisions in this Part and other Parts that allocate responsibilities between directors do not apply.

Where there is more than one director, unless there is a vacancy in the position of ACD, no director other than the ACD is responsible for the exercise of any functions which, under this Part, are to be exercised exclusively by the ACD, but the board of directors is responsible for oversight of the ACD in the manner provided for in this Part.

The depositary is responsible for the safekeeping of scheme property entrusted to it. It has a number of other responsibilities and powers under this Part. Its responsibilities include ensuring that the company is managed in accordance with certain provisions of these Regulations.

It should be noted that the depositary and the directors are bound by the provisions of the company’s instrument of incorporation.

The directors (including the ACD in its role as such) and the depositary may each, to the extent permitted by this Part, retain the services of others to assist them (or it) to perform their (or its) respective functions. Where there is a vacancy in the position of an ACD, the directors must appoint one or more licensed persons to assist them in performing the functions that it would otherwise be the duty of the ACD to perform. Where there are no directors the depositary’s powers are extended, temporarily, to enable it to manage the scheme property.

This Part also contains requirements relating to transactions entered into between the company and the persons directly or indirectly connected with it. A transaction which complies with these Regulations remains subject to subparagraph (10) of Schedule 4 to the Act under which certain transactions between a company and a director of the company, or an associate of any such director, may be voidable.

Finally, this Part includes provisions concerning the appointment and termination of the appointment of an ACD.

Division A—Directors.

69. Directors

(1) At least one director must be a body corporate which is a licensed person and which is not prohibited from acting as the ACD of a company by a prohibition imposed under section 45 of the Act.

(2) Where there is only one director of the type described in subregulation (1), it shall be the ACD, but if there is more than one such director of that type, the directors shall appoint one of the directors of that type to be the ACD.

(3) At any time when the ACD is not the sole director and subregulation (6) does not apply, no director other than the ACD—

(a) shall be responsible for any of the functions for which the ACD is made responsible by regulation 70, but the directors shall exercise reasonable care to satisfy themselves that the ACD undertakes those functions in a competent manner and the directors are entitled to receive from the ACD such information and explanations they consider necessary for this purpose; or

(b) shall have any power to undertake the management of the company to the extent that the management is to be undertaken by the ACD in accordance with regulation 70.

(4) In the event of—

(a) any person becoming or ceasing to be a director;

(b) the appointment of an ACD being terminated;

(c) a new ACD being appointed; or

(d) any change of a controller of a corporate director (including the ACD),

the Authority shall be notified in writing of the event, in the case of paragraph (a), immediately by the ACD; in the case of paragraph (b), immediately by the ACD whose appointment is being terminated; in the case of paragraph (c), immediately by the new ACD; and in the case of paragraph (d) by the corporate director concerned, immediately upon his or her becoming aware of the change of its controller.

(5) No person shall be appointed as an alternate director of a director.

(6) At any time when there is no person acting as ACD, the directors shall (without prejudice to the provisions of regulation 78(7)) have the responsibilities and duties that an ACD would have had under regulation 70.

(7) At any time that subregulation (6) applies, the directors shall retain the services of one or more licensed persons to assist them in performing the functions referred to in regulations 70(2) and 70(3).

(8) Where a document is to be executed by the company in accordance with paragraph 42 of Schedule 4 to the Act, unless subregulation (6) applies, it shall be executed by the ACD and may also be signed (or executed) by one or more of any other directors.

(9) At any time when the ACD is the sole director it shall, to the extent that such action is not already required by the Act or by these Regulations, be responsible for and have the duty to take the action envisaged by regulation 70(3)(d).

(10). Nothing in this regulation shall be taken as excluding the functions described in regulations 70(2) and 70(3) from the functions of the ACD when it is the sole director.

70. Authorised Corporate Director

(1) Subject to regulations 69(9) and 69(10), this regulation does not apply at any time when the ACD is the sole director of the company.

(2) The ACD shall be responsible for, and have the duty to carry out such functions as it is necessary for it to carry out in order to ensure compliance with the provisions of these Regulations which impose obligations upon the company or the ACD.

(3) Without restricting the generality of subregulation (2), the functions to be carried out by the ACD include—

- (a) making decisions as to the assets for the time being constituting the scheme property of the company in accordance with the investment objectives and policy of the company;
- (b) instructing the depositary from time to time in writing as to how rights attaching to the ownership of the scheme property are to be exercised, but not in any case where, under regulation 75(2), the depositary has the right to exercise voting rights after consultation with the directors of the company;
- (c) taking all reasonable steps, and exercising due diligence, to ensure that the shares in the company are priced in accordance with the provisions of Part IV;
- (d) taking action immediately to rectify any breach of Part IV and, where the breach relates to the incorrect pricing of shares or to the late payment in respect of the issue of shares, rectification shall, unless the

depository otherwise directs, extend to the reimbursement or payment, or arranging the reimbursement or payment, of money—

(i) by the ACD to shareholders or former shareholders;

(ii) by the ACD to the company; or

(iii) by the company to the ACD;

but rectification need not, unless the depository otherwise directs, extend to any such reimbursement or payment where it appears to the depository that the incorrect pricing, or late payment in respect of issue, is of minimal significance; and

(e) ensuring that the company complies with the obligations imposed by, and, when appropriate, exercises the powers provided by the following provisions of the Act and these Regulations—

section 21	(notifications to registrar of companies);
section 35(5)	(approval for certain changes in respect of company);
Schedule 4, paragraph 3	(inspection of directors' service contracts);
Schedule 4, paragraph 12	(share certificates), subject to subregulation 13 (exceptions from subregulation 12);
Schedule 4, paragraph 14	(bearer shares);
Schedule 4, Part III	(register of shareholders) excluding subregulations 26 and 28; and
Schedule 4, Part IV	(share transfers);
Schedule 4, paragraph 39(1)	(name to appear in correspondence etc);
Schedule 4, paragraph 40	(particulars to appear in correspondence etc).

71. Dealings in scheme property

(1) The ACD may, without the specific authority of the depository, give instructions as to the acquisition or disposal of property (other than immovable property) for the account of the company.

(2) Where the depository is of the opinion that a particular acquisition or disposal of property for the account of the company exceeds the powers conferred on the company by these Regulations, the depository may require the ACD to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previously existing situation and to meet any resulting expense.

(3) Where the depository is of the opinion that—

(a) an acquisition of property for the account of the company necessarily involves documents of title or documents evidencing title being kept in the custody of a person other than the depository; and

(b) the depository cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by such other person,

the depository may require the ACD (for the account of the company) to cancel the transaction or make a corresponding disposal.

(4) Where the company ceases to have any directors, the depositary shall have power—

(a) to retain the services of a licensed person to carry out the functions referred to in regulation 70(3)(a) and (b); or

(b) provided it is not prohibited from doing so by any rule or prohibition made under the Act to manage the scheme property itself on behalf of the company;

until in either case—

(i) a director is appointed; or

(ii) a winding up of the company is commenced.

72. Maintenance of records, etc

(1) The ACD must keep such accounting and other records for the company as are necessary—

(a) to enable the company to comply with these Regulations; and

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

(2) After each valuation point, the ACD must keep an up to date record of the shares in the company held, acquired or disposed of by the ACD, including the classes of such shares, and of the balance of any acquisitions and disposals and such accounting and other records as are necessary—

(a) to enable the ACD to comply with the Act and these Regulations; and

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

(3) Where, at any time after the size of the company's capital (as provided for the purposes of subregulation 4(1)(c) of Part I of Schedule 1 to the Act in subregulation 4(2) of that Schedule) has reached the minimum size provided in its instrument of incorporation, the size of that capital either falls below that minimum or exceeds the maximum size provided in the instrument of incorporation, the ACD shall immediately notify the Authority of that fact.

Division B—The Depositary.

73. General duties of the depositary(1) It is the duty of the depositary to take reasonable care to ensure that—

(a) the company is managed in accordance with—

(i) Part IV of these Regulations;

(ii) Part VIII of these Regulations; and

(iii) regulations 121 and 122 of these Regulations,

and without infringement of any provision of the instrument of incorporation that relates to—

(aa) the initial fixed price offer or issue or cancellation or sale or redemption or pricing of shares;

(bb) the dilution levy;

(cc) the valuation of the scheme property;

(dd) accounting periods (including half-yearly accounting periods);

(ee) the calculation of income available for allocation;

(ff) the allocation, payment or retention of income; and

(gg) unclaimed distributions;

(b) decisions about the constituents of the scheme property do not cause an infringement of Part V of these Regulations.

(2) The depositary must satisfy itself on reasonable grounds, and on a continuing basis that—

(a) the ACD is adopting procedures and methods which are appropriate to ensure that the price of a share is calculated for each valuation point in accordance with Part IV of these Regulations; and

(b) the ACD has maintained sufficient records to show compliance with Part IV.

(3) The depositary, in the context of its role as such, must act solely in the interests of the shareholders.

74. Control by the depositary over the scheme property

(1) The depositary shall be responsible for the safekeeping of all of the scheme property of the company (other than tangible movable property) entrusted to it and shall ensure that any of that scheme property in registered form shall, as soon as practicable, be registered in the name of the depositary, or subject to regulation 78, its nominee.

(2) The depositary is responsible for the collection of any income due to be paid for the account of the company and shall hold and deal with any income so collected in accordance with these Regulations.

(3) The depositary must take all steps and execute all documents which are necessary to ensure that transactions properly entered into for the account of the company in accordance with Division A are completed.

(4) The depositary 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.

75. Exercise of rights in respect of the scheme property

(1) Subject to subregulation (2), the depositary must take all steps and execute all documents as are necessary to secure that instructions properly given to it by the ACD as to the exercise of rights (including voting rights) attaching to the ownership of scheme property are carried out.

(2) The depositary may exercise (or not exercise) any right of voting conferred by any of the scheme property of the company which is in units or shares in any other collective investment scheme managed or otherwise operated by any director of the company or by an associate of any such director, but only after consultation with the directors of the company.

*Division C—The Company, its Directors and
the Depositary*

76. Timely performance of duties

The company and its directors and the depositary must each comply with such of the requirements of these Regulations respectively applicable to them in a timely manner, unless delay is both lawful and in the interests of the company.

77. Duties of the ACD and depositary: investment and borrowing powers

(1) Subject to subregulations (6) and (7), it is the duty of the ACD—

(a) to take all reasonable steps; and

(b) to exercise all due diligence;

to avoid the scheme property being used or invested contrary to any provision in Part V, or in respect of any other restriction contained in the company's instrument of incorporation.

(2) It is the duty of the depositary—

(a) to take all reasonable steps; and

(b) to exercise all due diligence;

to monitor the management of the scheme property sufficiently to ensure that the ACD complies with subregulation (1).

(3) Without prejudice to subregulation (1), it is the duty of the ACD, immediately upon becoming aware of any breach of any provision in Part V, to take action, at its own expense, to rectify that breach, unless the breach occurred as the result of a circumstance of one of the types described in subregulations (4) and (5).

(4) Subregulation (6)(b) applies—

(a) where the scheme property is used or invested at any time 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 ACD and the depositary.

(5) Subregulation (6) applies to a transaction deriving from a right attributable to an existing investment of the company (such as the exercise of a right to convert stock or subscribe to a rights issue)—

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

(b) where it was not possible for the ACD or depositary to know at the time of the acquisition of the right whether there would necessarily be a subsequent breach.

(6) (a) nothing in Part V prevents the company from entering into a transaction of the type described in subregulation (5) provided that the ACD obtains the prior consent of the depositary in writing; and

(b) take such steps as are necessary to ensure a restoration of compliance with Part V 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 depositary becoming aware of any circumstance described in subregulation (4) or any breach resulting from the exercise of, or receipt of a benefit from, a right in the circumstance described in subregulation (5), it must take such steps as are necessary to ensure that the ACD 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.

78. Committees and appointments

(1) Without prejudice to regulation 69(3), the directors may delegate to any director, or any committee consisting of one or more directors, any of the directors' powers or duties, but the directors shall remain responsible for the acts or omissions of any such director or committee as if they were acts or omissions of the directors.

(2) The ACD or the directors may retain the services of anyone, including the depositary, to assist the ACD or the directors, (as the case may be) to perform their respective functions.

(3) Subject to subregulations (4) and (5), the depositary may retain the services of anyone, including a director of the company, to assist the depositary to perform its functions.

(4) The depositary may not retain the services of the company or any director of the company to assist the depositary to perform—

- (a) any function of oversight in respect of the company, its directors or any of them; or
- (b) any function of custody or control of the scheme property of the company,

nor may the depository retain the services of an associate of the company or of any of the directors of the company to assist the depository to perform any function in paragraph (a).

(5) The depository may not retain the services of anyone to assist it to perform the function of being a custodian of documents of title or documents evidencing the title to scheme property of the company, unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depository.

(6) Where—

- (a) the ACD retains the services of (or causes the company to retain the services of) anyone to assist the ACD to perform any function concerning the management of the scheme property of the company;
- (b) the ACD or the directors of the company retain the services of (or cause the company to retain the services of) the depository, or an associate of any of the directors of the company or of the depository, to assist the ACD or the directors (as the case may be) to perform any of their respective functions; or
- (c) the depository retains the services of a director of the company or an associate of such a director or of the depository to assist the depository to perform the functions of the depository,

then in the case of paragraph (a) the ACD and in the case of paragraph (b) the ACD or the directors and, in the case of paragraph (c) the depository, remains responsible for the acts or omissions of the person retained as if they were the acts or omissions of the ACD or of the directors or of the depository (as the case may be).

(7) At any time when regulation 69(7) applies, the directors shall, in respect of the functions conferred on the ACD in accordance with regulation 70, have the same rights to retain the services of other persons to assist in the performance of those functions and have the same responsibilities for the acts or omissions of the person retained as an ACD has under this regulation.

(8) Subject to the provisions of the Act and to subregulations (1) and (6), the directors of the company, the ACD or the depository (as the case may be) are not responsible, by virtue of these Regulations, for any act or omission of any person whose services are retained by any of them to assist them (or it) to perform their (or its) respective functions if the director, the ACD or the depository (as the case may be) can show—

- (a) that it was reasonable for the directors, the ACD or the depositary (as the case may be) to obtain assistance to perform the function in question;
- (b) that the person retained was and remained competent to provide assistance in the performance of the function in question; and
- (c) that the directors, the ACD or the depositary (as the case may be) had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.

79. Conflict of interest, etc

(1) The ACD, any other director and the depositary, must respectively take all reasonable steps to ensure that there is no breach of any of the following requirements of this regulation by an affected person, and an affected person includes—

- (a) the company;
- (b) the depositary;
- (c) a director of the company;
- (d) any investment adviser; and
- (e) any associate of any person referred to in paragraphs (a), (b), (c) or (d).

(2) Cash forming part of the scheme property or standing to the credit of the distribution account may be placed in any current, deposit or loan account with an affected person only if it is an eligible institution and the arm's length requirement in subregulation (7) is satisfied.

(3) An affected person may lend money to the company only if the affected person is an eligible institution, and the arm's length requirement in subregulation (7) is satisfied.

(4) An affected person may not sell or deal in the sale of property to the company (or the depositary for the account of the company) unless subregulation (9) applies, and for the purpose of this subregulation, a sale shall include any lease or other transaction under which movable or immovable property is made available by the company.

(5) An affected person may not vest property in the company or the depositary for the account of the company against the issue of shares in the company, unless—

- (a) subregulation (9) applies; or
- (b) it is vested for the purpose of arrangements whereby the whole or part of the property of a scheme being wound up becomes the first property

of the company, and the holders of units in the scheme become the first shareholders in the company.

(6) An affected person may not purchase scheme property from the company (or the depositary acting for the account of the company) unless subregulation (9) applies, and for the purpose of this subregulation, a purchase shall include any lease or other transaction under which scheme property that is movable or immovable property is made available by the company.

(7) The arm's length requirement is that the arrangements are at least as favourable to the company as would be any comparable arrangement effected on normal commercial terms negotiated at arm's length between the affected person and an independent party.

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

(9) There is best execution on exchange for the purposes of subregulation (8) where—

- (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 ACD has taken all reasonable steps to effect the transaction or to ensure that it is effected on the terms which are the best available for the company.

(10) There is independent valuation for the purposes of subregulation (8) where—

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

(11) There is an arm's length transaction for the purposes of subregulation (8) where—

- (a) subregulation (9)(a) is not satisfied;

(b) it is not reasonably practicable to obtain an independent valuation under subregulation (10); and

(c) the depositary has reliable evidence that the transaction is, or will be on terms which satisfy the arm's length requirement in subregulation (7).

(12) Subregulations (2) to (6) are subject to any provision in the instrument of incorporation forbidding the taking of advantage of all or any of them.

(13) Nothing in this regulation prevents the issue of shares by the company to the ACD or the cancellation by the company of shares held by or belonging to the ACD in accordance, in either case, with the relevant provisions of Part IV.

*Division D—Appointment and Termination of
Appointment of the ACD*

80. Appointment of ACD

(1) Only a person licensed under the Act may be appointed an ACD.

(2) Prior to, or upon the termination of the appointment of an ACD, the directors of the company shall take all steps practicable to appoint as the new ACD, another person who is qualified to act as such and whose appointment shall, if made prior to that termination, take effect immediately upon such termination.

(3) Where the company ceases to have any director, the depositary shall have power to appoint a body corporate as a director and the ACD of the company (provided the body corporate is a licensed person and is not prohibited from acting as the ACD of a company by a prohibition under section 45 of the Act), but such appointment as a director and ACD shall terminate unless it is or has been approved by a resolution of the shareholders at or before the next annual general meeting of the company.

(4) Subject to subregulation (3), the appointment of an ACD (other than the first ACD), whether or not it has taken effect, shall terminate at the close of the annual general meeting next following the date on which the appointment takes effect or (if later) upon the expiration of twelve months from the date of the appointment unless it has been approved by a resolution of the shareholders prior to the close of that annual general meeting or such expiration (as the case may be).

(5) An ACD shall not voluntarily terminate its appointment as such unless the termination is coterminous with the commencement of the appointment of a successor ACD.

81. Termination of appointment of ACD

(1) The appointment of an ACD as such shall terminate immediately upon it ceasing to be a director.

(2) The appointment of an ACD as such shall be terminated if a notice of termination of that appointment, the terms of which have been approved by a resolution of the board of directors, is given to the ACD.

(3) Where there is no director other than the ACD, the appointment of an ACD as such shall be terminated if a notice of termination of that appointment is given by the depositary to the ACD and to the company following any of the following events—

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

(b) a receiver is appointed of the undertaking of the ACD or any part of the undertaking.

(4) Any termination under subregulations (2) or (3) shall take effect when the notice is given or on any subsequent time for its effect stated in the notice or (if later) the time at which the termination may take effect in accordance with section 35 of the Act.

(5) Unless the effect of the termination of the appointment of an ACD is coterminous with the appointment of a successor ACD, the depositary shall ensure that the termination is published in such manner as the depositary considers appropriate and the depositary shall be reimbursed for its out of pocket expenses in so doing, out of the scheme property.

PART VII—CHARGES AND EXPENSES.

Explanation. *This Part contains some provisions relating to charges and expenses that may be paid out of scheme property and to charges of the ACD that are not payable out of the scheme property, but may be payable by investors upon their acquisition or disposal of shares. There are no limits on the amounts of directors fees or on the preliminary, redemption or annual charges of the ACD, but, in accordance with Part III of the Act, all categories of charges and expenses must be disclosed in the prospectus and authorised in the Instrument of Incorporation.*

The only payments that are specifically prohibited by this Part to be made out of scheme property are payments to anyone other than the ACD for acquiring or promoting the sale of shares, and performance fees, whether paid to the ACD or anyone else.

82. Payments by the company to the ACD

No payment may be made or benefit given to the ACD (whether as such or in any other capacity) out of the scheme property whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless the prospectus specifies each type of payment or benefit that may be made or given, each type of expense that may be so reimbursed and, in the case of each category of remuneration (or remuneration related to a class of share), specifies—

- (a) how it will be calculated and accrue and when it will be paid; and
- (b) the maximum and current rates or amount of such remuneration.

83. Preliminary charge

(1) The ACD may make a charge ('preliminary charge') upon a sale of shares by the ACD whether acting as a principal or issuing shares for the company and the company shall account to the ACD for any preliminary charge received by the company as part of a payment to it.

(2) The preliminary charge shall not, in respect of a share of any class, exceed an amount or rate calculated in accordance with a statement in the prospectus as to the current charge.

(3) The ACD shall not make any charge or levy in connection with the sale of shares except a preliminary charge in accordance with this Regulation and a dilution levy in accordance with regulation 35.

(4) Subregulation (1) does not apply on an exchange of shares within an umbrella company, but nothing in this regulation prevents the ACD from making a charge on such an exchange in accordance with regulation 86.

84. Increase in remuneration or preliminary charge

The ACD may not rely on any introduction of a new category of remuneration for its services or any increase in the current rate or amount of its remuneration payable out of the scheme property up to or towards any maximum stated in the prospectus or any introduction of or increase in the preliminary charge payable under regulation 83, unless not less than ninety days before the introduction or increase—

- (a) the ACD gave notice in writing of that introduction or increase and of the date of its commencement (in the case of remuneration payable out of the scheme property) to all shareholders or (in the case of preliminary charge) to all the persons who ought reasonably to be known to it to have made an arrangement for the purchase of shares at regular intervals; and
- (b) the ACD has revised the prospectus to reflect the introduction of the new current rate or amount of remuneration or preliminary charge and the date of its commencement and has made the revised prospectus available.

85. Redemption charge

(1) The ACD may make a charge ('redemption charge') upon—

- (a) a redemption of shares by the ACD as a principal;
- (b) a cancellation of shares by the ACD acting for the company; or
- (c) a cancellation of shares by the company at the request of a shareholder.

(2) In the case of subregulations (1)(b) and (c), the company shall deduct the amount of the redemption charge from the payment otherwise due to the shareholder and pay the redemption charge to the ACD.

(3) A redemption charge shall not exceed an amount calculated by reference to the amounts or rates of redemption charge stated in the prospectus current at the date when the relevant shares were sold by the ACD or issued by the company (other than to the ACD) and, if there was no such statement, the redemption or cancellation of such shares shall not be subject to any redemption charge.

(4) The ACD may not implement the introduction of a redemption charge or a change to the rate or method of calculation of a current redemption charge which is adverse to shareholders unless not less than ninety days before the introduction or change—

(a) the ACD has given notice in writing of that introduction or change and of the date of its commencement to all the persons who ought reasonably to be known to it to have made an arrangement for the purchase of shares at regular intervals; and

(b) the ACD has revised the prospectus to reflect the introduction or change and the date of its commencement and has made the revised prospectus available.

(5) If a prospectus contains a statement relating to the amount, or the calculation of the amount, of a redemption charge, it shall also contain a statement as to the determination of the order in which shares, which have been acquired at different times by a shareholder, are to be taken to be redeemed or cancelled for the purpose of the imposition of the redemption charge.

86. Umbrella companies

(1) In the case of an umbrella company, the ACD may make a charge on an exchange of shares in one subfund for shares in another subfund, but the charge shall not exceed the aggregate of—

(a) any excess of the amount of the preliminary charge that would be applicable to a sale of the shares being acquired (by reference to the current preliminary charge stated in the most recently published prospectus) over the preliminary charge actually paid on the original acquisition of the shares being redeemed; and

(b) the amount of any fee payable on switching stated in that prospectus.

(2) The ACD may not make a charge in excess of the fee referred to in subregulation (1)(b), unless the prospectus contains a statement as to how the order in which shares which have been acquired at different times by a shareholder are to be taken to be redeemed or cancelled, is to be determined, in so far as this is

necessary for calculating the maximum charge for an exchange of shares in one subfund for shares in another subfund.

87. Restricted payments

No payment or benefit, other than a payment or benefit to the ACD not prohibited by any other provisions of these Regulations, may be made out of or given at the expense of the scheme property to any person in consideration of that person acquiring (whether directly, indirectly, absolutely or conditionally) or promoting the sale of, or agreeing so to acquire or promote the sale of, shares in the company.

88. Movable and immovable property

A company shall not incur any expense for the use of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business.

89. Payment of liabilities on transfer of assets

Where the property of a body corporate or of another collective investment scheme is transferred to the company (or to the depositary for the account of the company) in consideration of the issue of shares in the company to shareholders in that body corporate or to participants in that other scheme, the company, as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only where—

- (a) there is nothing in its instrument of incorporation expressly forbidding the payment; and
- (b) the directors are 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.

90. Amortisation

Without prejudice to regulation 87, costs of the licensing and incorporation of a company and of its initial fixed price offer or issue of shares (or initial fixed price offer or issue of shares in respect of a subfund) may be amortised over a period not exceeding five years.

91. Tax

The restrictions contained in this Part shall not affect any liability for any sales tax or value added tax related to a charge or expense, but any notice given in accordance with this Part and any statement in a prospectus relating to any charge or expense payable out of the scheme property or by any shareholder or potential shareholder shall, if the person liable for the charge or expense may also be liable for such tax, contain a statement to this effect.

92. Allocation of payments to capital or income

(1) Any broker's commission, fiscal charges and other disbursements which are necessary to be incurred in effecting transactions for the company, and normally shown in contract notes, confirmation notes or difference accounts as appropriate may be charged to the capital account.

(2) Any interest on borrowings and charges incurred in effecting, terminating, negotiating or varying the terms of borrowings and taxation and duties payable in respect of scheme property and costs of the types described in regulation 90 may be paid from capital property or income property as the company considers appropriate.

(3) All other payments out of the scheme property shall be made from income property in the first instance.

(4) A company shall not increase the amount or part of the remuneration of the ACD so charged above the maximum amount or part stated in the prospectus unless that commencement or increase is—

(a) made with the prior approval of a resolution of the shareholders or (as the case may be) holders of the class of shares concerned; or

(b) after the expiration of not less than ninety days written notice to the shareholders or (as the case may be) holders of the class of shares concerned.

(5) 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 VIII—INCOME.

Explanation. *Each company must have an annual and a half-yearly accounting period and may have additional interim accounting periods each year. The ACD calculates income in respect of each accounting period and it is distributed to income shareholders or allocated to accumulation shareholders in proportion to their respective interests in the company. Regulations in this Part relate to the calculation of the amount available for income distributions and allocations and the provision of distribution statements and tax certificates. A company may pay interim distributions, which may be less than, but must not exceed, the income available for distribution in respect of the relevant period.*

93. Accounting periods

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

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

(3) The first annual accounting period shall begin

- (a) where the company makes an initial fixed price offer, on the first day of the period of the initial fixed price offer; or
- (b) in any other case, the date on which a licence in respect of the company 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 valuation point last preceding the end of that 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 ACD 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.

94. Annual income allocation date

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

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

95. Annual allocation of income

(1) At the end of each annual accounting period, the directors shall arrange for the depository to transfer the income property of the company to an account to be known as 'the distribution account'.

(2) The directors are not obliged to comply with subregulation (1), if it appears to them that the average of the allocations of income to the shareholders (disregarding holders of bearer shares and holders who are the ACD or the depository or associates of either of them) would be less than an amount per share agreed by the ACD with the depository.

(3) Any income that, in accordance with subregulation (2) is not transferred to the distribution account, must be carried forward to the next accounting period and be regarded as received at the start of that period.

(4) On or before each annual income allocation date, the ACD shall calculate the amount available for income allocation in respect of the immediately preceding annual accounting period.

(5) The calculation of available income is as follows—

(a) take the aggregate of the income property received or receivable for the account of the company in respect of the period;

(b) deduct the charges and expenses of the company paid or payable out of income property in respect of the period;

(c) add the ACD's best estimate of any relief from tax on such charges and expenses;

(d) make such other adjustments that the ACD considers appropriate (in the case of subregulation (i) and (ii), after consulting the auditors) in relation to—

(i) taxation;

(ii) the proportion of the price received or paid for shares that is related to income;

(iii) potential income which is unlikely to be received until twelve months after the income allocation date;

(iv) income which should not be accounted for on an accrual basis because of lack of information about how it accrues;

except that, with the approval of the depository, transfers from capital where income is insufficient to meet expenses may be made; and

(e) make any other adjustments (including for amortisation under regulation 90) that the ACD considers appropriate after consulting the auditors.

(6) On or before the annual allocation date, the ACD shall allocate the available income to the shares of each class in issue, taking account of the provisions of its instrument of incorporation relating to the proportion of available income attributable to each class.

96. Annual allocation to accumulation shares

(1) The amount of income allocated to accumulation shares 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 adjustment, as at the end of the period, in the proportion of the value of the scheme property to which the price of a share of the relevant class is related.

(2) The adjustment under subregulation (1) shall be such as will ensure that the price of an accumulation share of the relevant class remains unchanged, notwithstanding the transfer of the income to the capital property.

97. Annual distribution to holders of income shares

(1) Subject to subregulation (2), where the shares in issue in a company are or include income shares, on or before each annual income allocation date, the ACD shall give the depositary timely instructions sufficient to enable the depositary to distribute the income allocated to income shares amongst their holders in accordance with the number of shares held or deemed to be held by them respectively at the end of the relevant annual accounting period and the depositary shall pay the distribution in accordance with the instructions.

(2) In calculating the amount to be distributed under subregulation (1), the ACD shall deduct any amounts previously allocated by the way of interim allocation of income in respect of that annual accounting period.

(3) Nothing in this Part requires the company or the depositary to distribute income allocated to any shares in any case where the company or the depositary considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person under a statutory obligation.

98. Interim allocations of income

(1) This regulation applies if at any time the most recently published prospectus—

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

(2) In a case referred to in subregulation (1), regulations 95 and 97 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 directors were to treat as the available amount of income for the interim allocation, a sum which may be less than, but does not exceed the amount which, in the opinion of the ACD, 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.

99. 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.

100. Unclaimed distributions

A distribution that is unclaimed may only be forfeited and revert to the company in accordance with a provision of the instrument of incorporation for forfeiture and reversion to the company of a distribution unclaimed during the period of six years after the distribution became due for payment.

PART IX—REPORTS AND ACCOUNTS.

Explanation. *Part VI of Schedule 4 to the Act contains a number of requirements relating to reports and accounts in respect of a company. These requirements include—*

- (a) the directors must prepare annual and half-yearly reports, although a half-yearly report need not be prepared where a company's first accounting period is less than twelve months;
- (b) the directors must lay copies of annual report before the company in general meeting; and
- (c) every annual report is to contain accounts of the company and a report by the auditor to the company's shareholders.

This Part builds upon the requirements in the Act and Part VIII of these Regulations (which provides how the annual and half-yearly accounting period shall be determined). It covers the content of reports, including the annual reports of the depositary and of the auditor.

101. Contents of annual and half-yearly reports

(1) An annual report of a company, other than an umbrella company, shall contain—

- (a) accounts which shall include a balance sheet and an income and expenditure account;
- (b) the information required to comply with Parts I and II of the Schedule;
- (c) a copy of the report of the depositary referred to in regulation 105; and
- (d) a copy of the report of the auditor referred to in Part IV of the Schedule.

(2) An annual report of an umbrella company shall contain—

- (a) reports relating to each of its subfunds which shall each, so far as practicable, contain the accounts and the information that would be required by subregulations (1)(a) and (1)(b) if the subfund were a separate company, except that the information required to comply with Part I of the Schedule shall be that required by subregulation (12)(a) of the Part;
 - (b) a consolidation of the accounts required by paragraph (a); and
 - (c) except in so far as contained in a report relating to a subfund in accordance with that paragraph (a)—
 - (i) the information referred to in subregulation (1)(b); and
 - (ii) the copy of reports relating to the company referred to in subregulations (1)(c) and (1)(d).
- (3) An annual report relating to a subfund which is not contained in a report under subregulation (2) shall, contain—
 - (a) so far as practicable, the accounts and the information that would be required by subregulations (1)(a) and (1)(b) if the subfund were a separate company;
 - (b) the statements required by subregulation 13 of the Schedule; and
 - (c) the copy reports referred to in subregulations (1)(c) and (1)(d).
- (4) A half-yearly report of a company, other than an umbrella company, shall contain—
 - (a) accounts for the half-yearly accounting period which shall include a balance sheet and an income and expenditure account; and
 - (b) the information required to comply with Part I of the Schedule.
- (5) A half-yearly report relating to an umbrella company shall contain—
 - (a) reports relating to each of its subfunds which shall each, so far as practicable, contain the accounts and information that would be required by subregulation (4) if the subfund were a separate company, except that the information required to comply with Part I of the Schedule shall be that required by subregulation (12)(a); and
 - (b) a consolidation of the accounts required by paragraph (a) of this regulation and, except in so far as contained in a report relating to a subfund in accordance with paragraph (a), the information required to comply with Part I of the Schedule.
- (6) A half-yearly report relating to a subfund which is not contained in a report under subregulation (5) shall contain—

(a) so far as practicable, the accounts and information that would be required by subregulation (4) if the subfund were a separate company; and

(b) the statements required by paragraph 13 of the Schedule.

(7) The directors shall ensure that the accounts referred to in subregulations (1)(a), (2)(a), (2)(b) and (3)(a) give a true and fair view of the net income and the net gains or losses on the scheme property of the company or, in the case of subregulations (2)(a) and (3)(a), the subfund, for the annual accounting period in question and the financial position of the company or subfund as at the end of that period.

(8) Subject to subregulation (7), it shall be the duty of the ACD to ensure that each annual and half-yearly report (including any accounts to be contained in it) complies with this regulation.

(9) Each report (other than a report prepared in accordance with subregulations (2)(a) or (5)(a)) shall be signed by the ACD or, if there is more than one director of the company, shall, following approval of the report by the board of directors, be signed on behalf of the board of directors of the company by the ACD and at least one other director, and, in the case of a copy annual report sent by the ACD to the registrar of companies, the report shall be so signed at the end of the balance sheet contained in it.

(10) References in regulations 102, 103 and 104—

(a) to an annual report, shall mean an annual report that complies with subregulations (1) or (2) (as appropriate) of this regulation; and

(b) to a half-yearly report, shall mean a half-yearly report that complies with subregulations (4) or (5) (as appropriate) of this regulation.

102. Publication of company reports

(1) The ACD shall, within four months after the end of each annual accounting period, and within two months after the end of a half-yearly accounting period, respectively publish the annual report and half-yearly report in accordance with subregulations (2) and (4).

(2) Subject to subregulation (3) the ACD shall send a copy of each annual report and each half-yearly report to each shareholder (or to the first named of joint shareholders) 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 half-yearly accounting period, and shall supply a copy of the report to each holder of bearer shares at his or her request.

(3) In the case of an umbrella company, if the directors so determine for any accounting period, the reports sent or supplied to shareholders in accordance with subregulation (2) may be the reports complying with regulation 101(3) or 101(6) (as the case may be) relating to the respective subfund to which their shareholdings

relate, but if requested to do so by any shareholder in respect of any particular accounting period, the ACD shall send or supply to that shareholder (or, in the case of joint shareholders, the first named), a report complying with regulation 101(2) or 101(5) (as the case may be).

(4) The ACD shall make available the most recent annual report (and, if more recent, the most recent half-yearly report) of the company in English prepared in accordance with subregulations (1), (2), (4) or (5) (as appropriate) of regulation 101 for inspection by the public during ordinary office hours at a place specified for the purpose in the most recently published prospectus.

(5) The ACD shall also make the report referred to in subregulation (4) available for the same purpose at a place designated by it in each country in which it markets shares in the company, in English and in at least one of that country's official languages.

(6) The ACD shall send a signed copy of each annual report and half-yearly report and any report sent or supplied in accordance with subregulation (3) on publication to the Authority and to the depository.

103. Reports to be offered to purchasers of shares

A company shall not effect any sale of its shares 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 or sent to the person on request a copy in English of the most recent annual report of the company and (if more recent) the most recent half-yearly report of the company.

104. Publication of availability of reports and prospectus

(1) The ACD shall, with every publication of prices in a national newspaper under regulation 31, publish a copy of the most recent annual report or half-yearly report and the fact that the prospectus is available to anyone who requests the company for it.

(2) Paragraph (1) is sufficiently complied with if one of the pages in which the ACD publishes prices in the newspaper carries the statement there required in relation to all, or any relevant category of, the collective investment schemes referred to in those pages.

105. Annual report by the depository

It shall be the duty of the depository to make an annual report to the shareholders, which shall contain the matters set out in Part III of the Schedule, and be delivered to the directors in good time to enable its inclusion in the annual report to be published within four months after the end of an annual accounting period.

Explanation. *This Part contains requirements relating to shareholders meetings, including class meetings. Detailed procedures are contained in the instrument of incorporation. It should be noted that subregulations 4 and 6 of Schedule 4 to the Act contain provisions as to annual general meetings and the power of general meetings to bind the company whilst provisions relating to the service of documents are contained in section 83 of the Act as well as in regulation 117.*

This Part also includes provisions relating to the amendment of an instrument of incorporation. It should be noted that regulation 14 covers certain changes to a prospectus that require shareholder approval.

106. General meetings.

(1) The directors may convene a general meeting of shareholders at any time.

(2) On receipt of a requisition that complies with subregulation (3), the directors shall immediately proceed to convene a general meeting of the company for a date not later than eight weeks after receipt of the requisition.

(3) A requisition must—

(a) state the objects of the meeting;

(b) be dated;

(c) be signed by shareholders who, at that date, are registered as the holders of shares representing not less than one-tenth in value of all of the shares in the company then in issue; and

(d) be deposited at the head office of the company.

(4) A requisition may consist of several documents deposited with the company at the same time, each being in like form and signed by one or more shareholders.

107. Notice of meetings

(1) Not less than fourteen days written notice, inclusive of the date on which the notice is deemed to be served and the day of the meeting, shall be given to shareholders of a general meeting.

(2) Subregulation (1) does not apply to notice of an adjourned meeting.

(3) The accidental omission to give notice to, or the non-receipt of notice by, a shareholder shall not invalidate the proceedings at any meeting.

108. Quorum

(1) The quorum at a meeting of shareholders shall be two shareholders, present in person or by proxy or, in the case of a corporation, by a duly authorised representative.

(2) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

(3) Where within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of shareholders, shall be dissolved and in any other case it shall stand adjourned to such day and time not being less than seven days thereafter and to such place as may be appointed by the chairperson (if any has been appointed under the instrument of incorporation) or otherwise by the directors, and if at such adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting, one person entitled to be counted in a quorum present at the meeting shall be a quorum.

(4) Notice of any adjourned meeting of shareholders shall be given and such notice shall state that one or more shareholders present at the adjourned meeting, whatever their number, and the number of shares held by such shareholder or shareholders, may form a quorum.

109. Resolutions

(1) Except where an extraordinary resolution is specifically required or permitted by these Regulations, any resolution required under the Act or these Regulations shall be passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of shareholders.

(2) In the case of an equality of votes cast (whether on a show of hands or on a poll) in respect of a resolution put to a general meeting, any chairperson appointed under the instrument of incorporation shall be entitled to a casting vote in addition to any other vote he or she may have.

110. Voting rights

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

(2) On a poll, votes may be given either personally or by proxy or in any other manner permitted by the instrument of incorporation and the voting rights attached to each share shall be such proportion of the voting rights attached to all shares in issue as the price of the shares bears to the aggregate price(s) of all of the shares in issue at the date specified in regulation 113; and a shareholder entitled to more than one vote need not, if he or she votes, use all his or her votes or cast all his or her votes in the same way.

(3) In the case of joint holders of a share, 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 shareholders.

(4) No director of the company is entitled to be counted in the quorum of, and no director or any associate of the director is entitled to vote at, any meeting of the company, except in respect of any shares which the director or its associate holds on behalf of or jointly with a person who, if the registered shareholder, would be entitled to vote and from whom the director or its associate (as the case may be) has received voting instructions, and accordingly, for the purposes of regulations 108 and 111, shares held by any director shall not, except as mentioned in this regulation, be regarded as being in issue.

111. Right to demand a poll

A resolution put to the vote of a general meeting shall be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) then demanded—

(a) by the chairperson;

(b) by at least two shareholders (including proxies for shareholders as shareholders for this purpose);

(c) by the depositary; or

(d) without prejudice to paragraphs (a), (b) and (c), in accordance with any relevant provisions contained in the instrument of incorporation.

112. Proxies

(1) A shareholder entitled to attend and vote at a meeting of the company is entitled to appoint another person to attend and vote in his or her place (whether a shareholder or not).

(2) Except in so far as the instrument of incorporation otherwise provides, a shareholder is entitled to appoint more than one proxy to attend on the same occasion but a proxy is entitled to vote only on a poll.

(3) Every notice calling a meeting of the company shall contain a reasonably prominent statement that a shareholder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him or her.

(4) An instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy shall not be required to be received by the company or any other person more than 48 hours before the meeting or adjourned meeting in order that the appointment may be effective.

113. Special meaning of shareholder

In the preceding provisions of this Part, “shareholders” or “holders” means only—

- (a) the persons who were shareholders on the date seven days before the notice of the relevant meeting was deemed to have been served in accordance with regulation 117, but excluding any persons who are known to the ACD not to be shareholders at the time of the meeting; or
- (b) in the case of bearer shares, shareholders of bearer shares which were in issue on the date seven days before the notice of the relevant meeting was deemed to have been served in accordance with regulation 117.

114. Class meetings

This Part shall, unless the context otherwise requires, apply to class meetings as it applies to general meetings of shareholders, but by reference to the shares of the class concerned and the shareholders and prices of such shares.

115. Variation of class rights

The rights attached to a class of shares shall not be varied except with the sanction of a resolution passed at a class meeting of the holders of the class; and the instrument of incorporation may require such a resolution to be passed by more than a simple majority of the votes validly cast for and against it.

116. Amendment of instrument of incorporation

(1) The instrument of incorporation of a company may be amended by an extraordinary resolution and, in the case of a provision required to comply with paragraphs 3(1) or 4(1)(b) or 4(1)(d) of Schedule 1 to the Act, may only be amended by an extraordinary resolution unless—

- (a) the amendment is to the category of the company and is made for the purpose of regulation 123; or
- (b) the amendment is to a provision required to comply with paragraph 4(1)(d) of Schedule 1 to the Act and is made solely to reflect the introduction of a new subfund.

(2) Notwithstanding subregulation (1), an amendment to the instrument of incorporation that relates to a particular class of shares or particular classes (and does not relate to a provision required to comply with paragraph 3(1) of Schedule 1 to the Act) and does not prejudice the shareholders of any other class may be made by an extraordinary resolution passed at a class meeting or class meetings.

(3) Except where, in accordance with subregulation (1), an amendment may only be made by an extraordinary resolution, an amendment to the instrument of incorporation may be made by resolution of the directors where—

- (a) the instrument of incorporation provides for amendment to be made in such manner; and

- (b) the amendment is required solely—
 - (i) to implement any change in the law, including a change brought about by an amendment of the Act or these Regulations;
 - (ii) as a direct consequence of any such change;
 - (iii) to change the name of the company;
 - (iv) to remove from the instrument of incorporation obsolete provisions; or
 - (v) to make any other change to the instrument of incorporation which the directors consider does not involve any shareholder or potential shareholder in any material prejudice; and
- (c) it would not introduce or affect any provision relating to the descriptions of the transferable securities in which the scheme property may be invested unless it is required solely to reflect the introduction of a new subfund.

117. Service of notices and other documents

(1) Any notice or document required to be served upon a shareholder shall be deemed to have been duly served—

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

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

(3) Any notice or document served by post shall be deemed to have been served on the seventh day following that on which the letter containing the notice or document is posted, and in proving that service, it shall be sufficient to prove that the letter was properly addressed, stamped and posted; and any notice or document left at a registered address or delivered other than by post shall be deemed to have been served on the day it was so left or delivered.

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

Explanation. *An umbrella company provides a number of subfunds in which contributions from shareholders are pooled separately and enables investors to switch all or part of their investment from one subfund to another.*

In general, except as stated in these Regulations and, in particular, in this Part, these provisions apply to an umbrella company as they apply to other companies.

118. Qualification to be licensed as an umbrella company

A proposed umbrella company does not qualify for a licence under section 10 of the Act, unless, if each of its proposed subfunds were a separate company, then subject only to satisfaction of the criteria in section 17(1) and (2) of the Act, each of those separate proposed companies would qualify for a licence.

119. Base currency

In the case of an umbrella fund, any reference to base currency shall, in the context of a valuation of a subfund or the price of a share in respect of a subfund or a payment in respect of such a share, respectively be treated as if the reference were to the currency stated in the prospectus as being the currency to be used for the purpose in question in relation to that subfund.

120. Allocation of scheme property

In so far as any of the scheme property of an umbrella company, or any assets to be received as part of the scheme property, or any costs, charges or expenses to be paid out of the scheme property, are not attributable to one subfund only, the company must allocate such scheme property, assets, costs, charges or expenses between the subfunds in a manner which is fair to the shareholders of the umbrella company generally.

121. Investment and borrowing powers

Except in the case of regulation 50(3) (significant influence), the regulations contained in Part V shall be applied as if each subfund were a separate company.

122. Income

Except in the case of regulations 93 (accounting periods) and 94 (annual income allocation date), in Part VIII shall be applied as if each subfund were a separate company.

123. Shares in respect of less than two subfunds in issue

(1) Subject to subregulation (3), if for a period of twenty four consecutive months commencing at any time after the first issue of any shares of an umbrella company, shares in respect of less than two subfunds are in issue, the directors of the company shall take such action as is necessary to change the category of the company, or to cause shares in respect of more than one subfund to be in issue.

(2) Without prejudice to any requirement for a notice to the Authority in accordance with section 35 of the Act (alterations), if subregulation (1) becomes, or

should reasonably be expected by the directors to become, applicable, the ACD shall, before or immediately upon, the expiration of the twenty four months period, notify the shareholders and the Authority of any action proposed in order to comply with subregulation (1).

(3) Subregulation (1) does not apply if, on or before to the expiration of the twenty four months period, winding up of the company has commenced.

Explanation. *Provisions of these Regulations relating to classes of shares or class meetings are relevant to umbrella companies, as a share related to a subfund of an umbrella company will be of a different class to shares related to any other subfund of that umbrella company.*

Provisions of these Regulations which relate specifically to umbrella companies include—

<i>Regulation</i>	<i>Subject matter</i>
5	<i>Categories of company</i>
6(3)(b)	<i>Share class restriction</i>
15	<i>Initial fixed price offer</i>
32	<i>Forward prices</i>
55 and 56	<i>Investment powers</i>
86	<i>Fee payable on switching</i>
101(2) and 101(5)	<i>Annual and half-yearly reports of umbrella companies</i>
101(3), 101(6) and 102(3)	<i>Annual and half-yearly reports relating to subfunds</i>
134 to 141	<i>Termination of subfund</i>

PART XII —SUSPENSION AND TERMINATION.

Division A—Suspension and Resumption of Dealings in Shares.

Explanation. *This Division sets out the circumstances in which an ACD must or may suspend dealing in shares in the company and the manner in which a suspension is to be carried into effect.*

124. Suspension and resumption of dealings in shares

(1) The ACD may, at any time, with the prior agreement of the depositary, or shall without delay, if the depositary so requires, suspend the issue, cancellation, sale and redemption of shares (referred to in this regulation as ‘dealings in shares’) if it, or the depositary in the case of any requirement by the depositary, is of the opinion that due to exceptional circumstances there is good and sufficient reason to do so, having regard to the interests of shareholders.

(2) At the time of suspension under subregulation (1) the ACD, or the depositary if it has required the ACD to suspend dealings in shares, shall—

- (a) inform the Authority of the suspension, stating the reason for its action; and
- (b) immediately give written confirmation of the suspension and the reasons for it to the Authority and the authorities who are responsible for the authorisation of collective investment schemes in each country in which the ACD holds itself out as willing to sell or redeem shares of the company concerned; and
- (c) publish notice of suspension in an English language newspaper of nationwide circulation.
- (3) During the period of a suspension, none of the obligations in Part IV relating to the issue, cancellation, sale or redemption of shares or to the valuation of scheme property shall apply.
- (4) The suspension of dealings in shares shall cease as soon as practicable after the ACD or the depositary in the case of a requirement by it is no longer of the opinion referred to in subregulation (1) and in any event, within twenty eight days of the commencement of the suspension of dealings in shares.
- (5) Before the suspension of dealings in shares ceases, the ACD shall inform the Authority of the proposed resumption and immediately after the resumption, shall confirm the resumption by giving notice in writing to the bodies and authorities specified in subregulation (2)(b) and publish notice of the resumption in an English language newspaper of nationwide circulation.
- (6) Nothing in this regulation prevents the ACD from agreeing, during the period of the suspension, to sell or to redeem shares or to arrange for the company to issue or cancel shares at a price calculated by reference to the first valuation point after resumption of dealings in shares.
- (7) This regulation may be applied to one or more classes of share without being applied to other classes of share in a company and shall apply to a subfund (of an umbrella company) as it applies to a company, but by reference to the shares of the class or classes related to the subfund and to the scheme property attributable to the subfund; however, for the purpose of subregulation (1), the ACD or the depositary (as the case may be) shall have regard to the interests of all of the shareholders in the company (or umbrella company).

Division B—Winding Up a Solvent Company.

Explanation. *A company may be wound up by the court but, provided the company is solvent and the conditions contained in this Part are fulfilled, the winding up may instead be carried out under these Regulations. This Part contains provisions relating to the obligations of the ACD and any other directors in connection with a winding up under these Regulations. A winding up may not be carried out under these Regulations if there is a vacancy in the position of ACD.*

125. When a company is to be wound up

(1) A company shall not be wound up except under these Regulations or as an unregistered company under Part IX of the Companies Act and a company shall not be wound up under these Regulations—

- (a) (i) unless and until effect may be given, in accordance with section 35 of the Act, to a proposal to wind up the affairs of the company otherwise than by the court; and
- (ii) unless a statement has been prepared and sent or delivered to the Authority in accordance with subregulations (3)(a), (4) and (5) and received by the Authority before satisfaction of the condition in paragraph (a)(i);
- (b) if there is a vacancy in the position of ACD at the effective time; or
- (c) if it is being wound up under Part IX of the Companies Act.

(2) Subject to subregulation (1) and to the subsequent provisions of this Division, a company shall be wound up under this Part—

- (a) if an extraordinary resolution to that effect is passed;
- (b) when the period (if any) fixed for the duration of the company by its instrument of incorporation expires, or the event (if any) occurs, on the occurrence of which its instrument of incorporation provides that the company is to be wound up; or
- (c) on the date of effect stated in any agreement by the Authority to a request by the directors for the revocation of the licence in respect of the company, albeit that such agreement is subject to there being no material change in any relevant factor before the date of the revocation.

(3) On or before a notice is given to the Authority in accordance with section 35 of the Act, of the proposal referred to in subregulation (1)(a)(i), the directors shall commence to make a full enquiry into the company's affairs so as to ascertain whether the company will be able to meet all its liabilities (which in this Part include contingent and prospective liabilities) and the ACD shall prepare a statement, which shall reflect the results of such enquiry, and either—

- (a) confirm that the company will be able to meet all its liabilities within twelve months of the date of the statement; or
- (b) state that such confirmation cannot be given.

(4) The statement referred to in subregulation (3) must -

- (a) relate to the company's affairs at a date which must not be more than twenty eight days before the date on which notice is given to the Authority in accordance with section 35 of the Act; and

(b) if there is more than one director, be approved by the board of directors and be signed on their behalf by the ACD and, if it is given under subregulation (3)(a), by at least one other director or, if there is no director other than the ACD, be signed by the ACD and a statement given under subregulation (3)(a) must contain a statement signed by the auditor to the effect that in his or her opinion the enquiry required by subregulation (3) has been properly made and is fairly reflected by the confirmation.

(5) Following compliance with subregulation (4), the statement referred to in subregulation (3) must be sent or delivered to the Authority and a copy sent to the depositary either before, or on, or within the twenty eight days following, the date on which notice is given to the Authority in accordance with section 35 of the Act.

126. Consequences of commencement of winding up

(1) In this Part the 'effective time' means the time at which both of the conditions referred to in regulation 125(1)(a) are satisfied or, where later, the time, determined in accordance with regulation 125(2), at which the company shall be wound up.

(2) Immediately following the effective time—

(a) regulation 12(1), Parts IV (Pricing and Dealing) and V (Investment and Borrowing Powers) shall cease to apply to the company;

(b) the company shall cease to issue and cancel shares;

(c) the ACD shall cease to sell or redeem shares or to arrange for the company to issue or cancel them;

(d) no transfer of a share shall be registered and no other change to the register of shareholders shall be made without the sanction of the directors; and

(e) the company shall cease to carry on its business, except so far as may be required for its beneficial winding up; however the corporate state and corporate powers of the company and, (subject to the preceding provisions of this Regulation) the powers of the directors shall continue until the company is dissolved.

(3) The ACD shall, as soon as practicable after the effective time—

(a) publish notice of the commencement of the winding up in the Gazette and also in at least one English language newspaper with nationwide circulation; and

(b) if the ACD has not previously notified shareholders of the proposal to wind up, give written notice of the commencement of the winding up.

127. Manner of winding up

(1) The ACD shall, as soon as practicable after the effective time, cause the scheme property to be realised and the liabilities of the company to be met out of the proceeds.

(2) The ACD shall give instructions to the depository as to how such proceeds (until utilised to meet liabilities or make distributions to shareholders) shall be held and such instructions shall be with a view to the prudent protection of creditors and shareholders against loss.

(3) Provided there are sufficient liquid funds available after making adequate provision for the expenses of the winding up and the discharge of the liabilities of the company remaining to be discharged, the ACD may arrange for the depository to make one or more interim distributions out of such funds to the shareholders proportionately to the right to participate in scheme property attached to their respective shares as at the effective time.

(4) When the ACD has caused all the scheme property to be realised and all of the liabilities of the company known to the ACD to be met, the ACD shall arrange for the depository to make a final distribution, on or before the date on which the final account is sent to shareholders in accordance with regulation 128(4), of the balance remaining (net of a provision for any further expenses of the company) to the shareholders in the same proportions as provided by subregulation (3).

(5) Subregulations (1) to (4) are subject to the terms of any scheme of amalgamation or reconstruction sanctioned by an extraordinary resolution of the company passed on or before the effective time.

(6) Where the company and one or more shareholders (other than the ACD) agree, the requirement in subregulation (1) to realise the scheme property shall not apply to that part of the scheme property which is proportionate to the right to participate in scheme property of that or those shareholders; and in such a case, the ACD shall cause the company to distribute that part of the scheme property in specie to that or those shareholders in proportion to their respective rights to participate, after making such adjustments or retaining such provision as appears to the ACD appropriate for ensuring that that or those shareholders bear the proportion of the liabilities of the company and the expenses of the distribution attributable to his or her or their shares.

(7) Nothing in this Part requires the company to make a distribution to any holder in any case where the ACD or the depository considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person under to a statutory obligation.

(8) As soon as is reasonably practicable after the winding up of the company (including compliance with regulation 128) is complete, the ACD shall notify the Registrar of Companies of that fact and provide written confirmation to the

Authority that the ACD has done so; and the ACD shall publish notice of the completion of winding up in the Uganda Gazette and an English language newspaper of nationwide circulation.

(9) Where any sum of money stands to the account of the company at the date of its dissolution, the ACD shall arrange for the depositary to pay or lodge that sum within one month after that date in accordance with section 59(5) of the Act.

128. Final account

(1) As soon as the company's affairs are fully wound up (including distribution or provision for distribution in accordance with regulation 127(4), the ACD shall prepare an account of the winding up showing how it has been conducted and how the scheme property has been disposed of; and the account shall (where there is more than one director), following its approval by the board of directors, be signed on their behalf by the ACD and at least one other director or (if there is no director other than the ACD) be signed by the ACD and the account shall, once signed, be the "final account" for the purposes of these Regulations.

(2) The final account shall state the date on which the company's affairs were fully wound up and the date stated shall be regarded as the final day of the accounting period of the company then running ("final accounting period").

(3) The company's auditor shall make a report in respect of the final account, which shall state the auditor's opinion as to whether the final account has been properly prepared for the purposes of subregulation (1).

(4) Within two months of the end of the final accounting period, the ACD shall send a copy of the final account and the auditor's report on it to the Authority, to each person who was a shareholder (or the first named joint holders) immediately before its end, and to the Registrar of Companies.

129. Duty to ascertain liabilities

(1) The ACD shall use all reasonable endeavours to ensure that all the liabilities of the company are discharged before the completion of the winding up.

(2) The duty in subregulation (1) relates to all liabilities of the company of which—

(a) the ACD is, or becomes, aware before the completion of the winding up;
or

(b) the ACD would have become aware before the completion of the winding up had it used all reasonable endeavours to ascertain the liabilities of the company.

(3) Where the ACD rejects any claim against the company in whole or in part, the ACD shall immediately send to the claimant written notice of its reasons for doing so.

130. Reports and accounts

(1) While a company is being wound up—

- (a) the annual and half-yearly accounting periods shall continue to run;
- (b) the provisions about annual and interim allocation of income shall continue to apply; and
- (c) annual reports and half-yearly reports shall continue to be required.

(2) Notwithstanding regulation 102(2), the ACD need not send to each shareholder a copy of any report for an accounting period or half-yearly accounting period which began after the effective time, where the directors of the company, after consulting the Authority, are satisfied that the interests of shareholders are not such as to require the report to be sent to shareholders; however a copy of the report shall be sent or supplied to any shareholder requesting a copy.

131. Liabilities of the ACD

(1) The ACD shall be personally liable to meet any liability of a company wound up under these Regulations (whether or not the company has been dissolved) that was not discharged before the completion of the winding up, except to the extent that the ACD can show that it has complied with regulation 129.

(2) Where the proceeds of the realisation of the assets attributable, or allocated in accordance with regulation 120, to a particular subfund of an umbrella company are insufficient to meet the liabilities attributable or allocated to that subfund, the ACD shall pay to the company for the account of that subfund, the amount of the deficit, except and to the extent that the ACD can show that the deficit did not arise as a result of any failure by the ACD to comply with these Regulations.

(3) The liabilities of the ACD under this regulation create a debt in the nature of a specialty accruing due from it on the completion of the winding up and payable upon the demand of the creditor in question (including the company in the circumstances described in subregulation (2)).

(4) The obligations of the ACD under this regulation do not affect any other obligation of the ACD under these Regulations or the law.

132. Additional provisions applicable to umbrella companies

(1) Liabilities of an umbrella company attributable, or allocated in accordance with regulation 120, to a particular subfund shall be met first out of the scheme property attributable or allocated to that subfund.

(2) Where the liabilities to be met out of a particular subfund of an umbrella company are greater than the proceeds of the realisation of the scheme property attributable or allocated to that subfund, the deficit shall be met out of the scheme property attributable or allocated to subfunds ('the solvent subfunds') of the

umbrella company in respect of which the proceeds of realisation exceed liabilities and divided between subfunds in a manner that is fair to the shareholders in the solvent subfunds.

(3) Subregulation (2) applies in respect of any deficit arising as a result of additional liabilities accruing to a subfund through the operation of subregulation (2).

(4) In calculating the amount of liabilities for the purpose of subregulations (2) and (3), account shall be taken of any payments received or to be received from the ACD under regulation 131.

133. Miscellaneous

(1) Where—

(a) during the course, or as a result of, the enquiry referred to in regulation 125(3), the directors become of the opinion that it will not be possible to provide the confirmation referred to in paragraph (3)(a) of that regulation; or

(b) after the effective time the ACD becomes of the opinion that the company will be unable to meet all its liabilities within twelve months of the date of the statement provided under of regulation 125(3)(a), the directors shall immediately present a petition or cause the company to present a petition for the winding up of the company as an unregistered company under Part IX of the Companies Act.

(2) Where, after the commencement of a winding up under this Part, and before notice of completion of the winding up has been sent to the Registrar of Companies, there is a vacancy in the position of ACD, the directors shall immediately present or cause the company to present or, if there are no directors, the depositary shall immediately present, a petition for the winding up of the company as an unregistered company under Part IX of the Companies Act.

Division C—Termination of a Subfund of an Umbrella Company.

Explanation. *A termination of a subfund in accordance with this Part will necessitate alterations to the company's instrument of incorporation and prospectus and the proposed alterations must be notified to the Authority and permitted to take effect in accordance with section 35 of the Act before the termination can commence. On termination, the assets of the subfund will normally be realised, and the shareholders in the subfund will receive their respective shares of the proceeds, net of liabilities and the expenses of the termination. A subfund may also be terminated in connection with its amalgamation or reconstruction in which case, shareholders in the subfund will become entitled to receive shares or units in another regulated collective investment scheme in exchange for their shares in the subfund.*

It should be noted that regulation 134 provides for some terms to have special meanings where used in this Division.

134. General

In this Division—

- (a) references to shares are references to shares of the class(es) related to the subfund to be terminated;
- (b) references to shareholders are references to holders of such shares;
- (c) references to a resolution or extraordinary resolution are references to such a resolution passed at a meeting of holders of shares of the class(es) referred to in paragraph (a);
- (d) references to scheme property are references to the scheme property allocated or attributable to the subfund to be terminated; and
- (e) references to liabilities are references to liabilities of the company allocated or attributable to the subfund to be terminated.

135. When a subfund is to be terminated

(1) A subfund shall not be terminated—

- (a) unless and until effect may be given in accordance with section 35 of the Act to proposals to make the alterations to the company's instrument of incorporation and prospectus that will be required if the subfund is terminated; and
- (b) unless a statement has been prepared and sent or delivered to the Authority in accordance with subregulation (3)(a), (4) and (5) and received by the Authority before satisfaction of the condition in paragraph (a).

(2) Subject to subregulation (1) and the subsequent provisions of this Division, a subfund shall be terminated under this Part—

- (a) if an extraordinary resolution to that effect is passed;
- (b) when the period (if any) fixed for the duration of the subfund by the instrument of incorporation of the company expires or the event (if any) occurs, on the occurrence of which the instrument of incorporation provides that the subfund is to be terminated; or
- (c) on the date of effect stated in any agreement by the Authority to a request by the directors of the company for the termination of the subfund.

(3) On or before a notice is given to the Authority in accordance with section 35 of the Act of the proposal referred to in subregulation (1)(a), the directors shall make a full enquiry into the company's affairs, in so far as they relate to the subfund, so as to ascertain whether the company will be able to meet all liabilities (including contingent and prospective liabilities) out of the scheme property; and the ACD shall prepare a statement, which shall reflect the results of such enquiry, and either—

(a) confirm that the company will be able to meet all liabilities within twelve months of the date of the statement; or

(b) state that such confirmation cannot be given.

(4) The statement referred to in subregulation (3) must—

(a) relate to the company's affairs at a date which must not be more than twenty eight days before the date on which notice is given to the Authority in accordance with section 35 of the Act; and

(b) where there is more than one director, be approved by the board of directors and be signed on their behalf by the ACD and, where it is given under subregulation (3)(a), by at least one other director or, where there is no director other than the ACD, be signed by the ACD and a statement given under subregulation (3)(a) must contain a statement signed by the auditor to the effect that in his or her opinion, the enquiry required by subregulation (3) has been properly made and is fairly reflected by the confirmation.

(5) Following compliance with subregulation (4), the statement referred to in subregulation (3) must be sent or delivered to the Authority and a copy sent to the depositary either before, or on, or within the twenty eight days following, the date on which notice is given to the Authority in accordance with section 35 of the Act.

(6) Termination of a subfund commences at the time at which both of the conditions referred to in subregulation (1) are satisfied or, if later, the time, determined in accordance with subregulation (2), at which the subfund shall be terminated.

136. Consequences of commencement of termination of a subfund

(1) Immediately following the commencement of the termination of a subfund—

(a) Part IV (Pricing and Dealing) and Part V (Investment and Borrowing Powers) shall cease to apply to the shares and to the scheme property;

(b) the company shall cease to issue and cancel shares;

(c) the ACD shall cease to sell or redeem shares in the company or to arrange for the issue and cancellation of shares for the company; and

(d) no transfer of a share shall be registered and no other change to the register of shareholders shall be made without the sanction of the directors.

(2) If the ACD has not previously notified shareholders of the proposal to terminate the subfund, the ACD shall, as soon as practicable after the commencement of the termination, give written notice of the commencement to the shareholders.

137. Manner of termination

(1) The ACD shall, as soon as practicable after the termination of the subfund has commenced, cause the scheme property to be realised and the liabilities to be met out of the proceeds.

(2) The ACD shall give instructions to the depositary as to how such proceeds (until utilised to meet liabilities or pay distributions to shareholders) shall be held and such instructions shall be with a view to prudent protection of creditors and shareholders against loss.

(3) Provided there are sufficient liquid funds in the scheme property available after making adequate provision for the expenses of the termination and the discharge of the liabilities remaining to be discharged, the ACD may arrange for the depositary to make one or more interim distributions out of such funds to the shareholders proportionately to the right to participate in scheme property attached to their respective shares as at the date of the commencement of the termination.

(4) When the ACD has caused all the scheme property to be realised and all of the liabilities known to the ACD to be met, the ACD shall arrange for the depositary to make a final distribution, on or before the date on which the termination account is sent to shareholders in accordance with regulation 138(3), of the balance remaining (net of a provision for any further expenses of the termination) to the shareholders in the same proportions as provided by subregulation (3).

(5) Subregulations (1) to (4) are subject to the terms of any scheme of amalgamation or reconstruction sanctioned by an extraordinary resolution passed on or before the commencement of the termination.

(6) Where the company and one or more shareholders (other than the ACD) agree, the requirement in subregulation (1) to realise the scheme property shall not apply to that part of the scheme property which is proportionate to the right to participate in scheme property of that or those shareholders; and in such a case the ACD shall cause the company to distribute that part of the scheme property to that or those shareholders in proportion to their respective rights to participate, after making such adjustments or retaining such provision as appears to the ACD appropriate for ensuring that that or those shareholders bear the proportion of the liabilities and the expenses of the distribution attributable to his or her or their shares.

- (7) (a) Where any sums (including unclaimed distributions) remain standing to the account of the scheme property following tender of payment (whether to a creditor or a shareholder) the ACD shall instruct the depositary to retain the sums (“tendered sums”) in an account (“unclaimed payments account”) separate from any other part of the scheme property.
- (b) The depositary shall, if and when so instructed by the ACD, make a payment out of the unclaimed payments account for the purpose of settling a claim for a tendered sum.
- (c) Any costs and reasonable expenses of the ACD for investigating a claim and any costs and expenses incurred by the depositary in making a payment out of the unclaimed payments account may be deducted from the payment and retained for its own benefit by the ACD and/or the depositary (as the case may be).
- (d) The person entitled to any tendered sum is not entitled to any interest in respect of the unclaimed payments account, and any interest arising in respect of the unclaimed payments account shall be allocated between the continuing subfunds of the company in accordance with regulation 120.
- (e) Amounts standing to the credit of any unclaimed payments account shall be excluded from the value of the scheme property and shall not be subject to any distribution under the provisions of regulation 127, but upon a dissolution of the company under section 59 of the Act, the depositary shall cease to hold those amounts as part of that account and they shall become subject to the provisions of regulation 127(9).

138. Termination account

(1) As soon as the termination of the subfund (including distribution or provision for distribution in accordance with regulation 137(4)) has been completed, the ACD shall prepare an account of the termination showing how it has been conducted and how the scheme property has been disposed of and the account shall (if there is more than one director) following its approval by the board of directors be signed on their behalf by the ACD and at least one other director or (if there is no director other than the ACD) be signed by the ACD and the account shall, once signed, be the “termination account” for the purposes of these Regulations.

(2) The Company’s auditor shall make a report to the shareholders in respect of the termination account, which shall state the auditor’s opinion as to whether the termination account has been properly prepared for the purposes of subregulation (1).

(3) Within two months of the termination of the subfund being completed, a copy of the termination account and the auditors report on it shall be sent to the Authority and to each person who was a shareholder (or the first named of joint holders) immediately before such completion.

139. Duty to ascertain liabilities

(1) The ACD shall use all reasonable endeavours to ensure that all the liabilities are discharged before the completion of the termination.

(2) The duty in subregulation (1) relates to all liabilities of which—

(a) the ACD is, or becomes, aware prior to the completion of the termination; or

(b) the ACD would have become aware before the completion of the termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the ACD rejects any claim against the company in respect of a liability in whole or part, the ACD shall immediately send to the claimant written notice of its reasons for doing so.

140. Reports and accounts

The obligations under Part VIII (Income) and Part IX (Reports and Accounts) shall continue in respect of a subfund being terminated until the completion of the termination.

141. Liabilities of the ACD

(1) The ACD shall keep the company indemnified against any liability allocated or attributable to a subfund that has been terminated under these Regulations that was not discharged before the completion of the termination, except to the extent that the ACD can show that it has complied with regulation 139.

(2) The liabilities of the ACD under subregulation (1) create a debt in the nature of a speciality accruing due from it on the completion of the termination and payable upon the demand of the company.

Division D—Amalgamation and Reconstruction.

Explanation. *Under section 35 of the Act, the Authority's approval must be sought for any proposed reconstruction or amalgamation involving a company.*

This section contains requirements that must be complied with before a company or subfund can be subject to an amalgamation or reconstruction. These terms are defined in regulation 3 and the definitions are such that a subfund may be subject to a reconstruction with or amalgamation into another subfund of the same umbrella company. If there is another collective investment scheme involved, it must be a licensed scheme, as defined in regulation 3 or a subfund of such a scheme.

An amalgamation of a company, or of a subfund of an umbrella company or a reconstruction relating to the whole of the scheme property of a company, or to the whole of the scheme property attributable to a subfund of an umbrella company, can be implemented as part of the winding up of the company under Division B, or

of the termination of the subfund under Division C, and regulation 127(5) and 137(5) respectively provide for this.

142. Amalgamation and reconstruction

(1) Neither a company nor a subfund of an umbrella company shall be subject to an amalgamation or reconstruction, which would result in its shareholders becoming unitholders or shareholders in any body other than a licensed scheme or a recognised scheme.

(2) Where, for the purpose of an amalgamation or reconstruction, it is proposed that the scheme property of a company, or scheme property attributable to a subfund of an umbrella company, should become the property of another licensed scheme or subfund (or equivalent separately pooled part) of a licensed scheme, the proposal shall not be implemented without the sanction of an extraordinary resolution of the shareholders of the company or (as the case may be) of the class or classes of shares related to the subfund.

(3) Where it is proposed that a company or subfund of an umbrella company should receive property as a result of a scheme of amalgamation or reconstruction of some other collective investment scheme or subfund (or equivalent separately pooled part) of such a scheme or of a body corporate then (without prejudice to regulation 19(1)) the proposal shall not be implemented without the sanction of an extraordinary resolution of the shareholders of the company, or (as the case may be) of the class(es) of shares related to the subfund, unless subregulation (4) applies.

(4) This subregulation applies where the directors of the company are reasonably satisfied that the inclusion of the property concerned—

- (a) is not likely to result in any material prejudice to the interests of the shareholders in the company;
- (b) is consistent with the objectives of the company or subfund; and
- (c) could be effected without any breach of Part V.

SCHEDULE.

SCHEDULE

Regulations 101 and 105

ANNUAL AND HALF-YEARLY REPORTS

Except as otherwise stated, the following matters shall be set out in every annual and half-yearly report of the directors—

PART I—REPORT OF THE DIRECTORS.

1. The names and addresses of the following—
 - (a) the ACD;
 - (b) the depositary; and
 - (c) the auditor.
2. The names of any directors other than the ACD.
3. A statement that—
 - (a) the company is an open-ended investment company with variable capital; and
 - (b) the shareholders are not liable for the debts of the company.
4. A statement that the company is a securities company, a money market company or an umbrella company, as the case may be.
5. The investment objectives of the company.
6. The company's policy for achieving that objective.
7. A review of the company's investment activities during the period to which the report relates.
8. Particulars of any significant change in the prospectus made since the date of the last report.

9. Particulars of any significant change in the instrument of incorporation made since the date of the last report.

10. A statement of any subdivision or consolidation of shares which has been effected during the period to which the report relates (other than an as between smaller and larger denomination shares effected under regulation 8).

11. Any other significant information which would enable shareholders to make an informed judgment on the development of the activities of the company during this period and the results of those activities as at the end of that period.

12. In the case of a report relating to an umbrella company—

(a) information required under the preceding paragraphs shall be given in respect of each subfund if it would vary from that given in respect of an umbrella company as a whole and paragraph 4 shall apply as if it required a statement in respect of each subfund that it has investment powers equivalent to those of a securities company, or to those of a money market company as the case may be; and

(b) the report shall contain statements to the effect that—

(i) there may be, other subfunds of that umbrella company; and

(ii) as a subfund is not legal entity, if the assets attributable to any subfund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other subfunds of the umbrella company.

13. In the case of a report relating to a subfund which is not contained in a report relating to the umbrella company of which the subfund is part—

(a) statements equivalent to those required by paragraph (12)(b) and, in the case of the statement under paragraph (12)(b)(ii), making it clear that the shortfall, or part of it, might have to be met out of the subfund to which the report relates;

(b) a statement of whether the auditors report on the annual accounts of the company for the period in question was unqualified or qualified and, if it was qualified, contain a copy of that report in full together with any further material needed to understand the qualification; and

(c) a statement that a report relating to the umbrella company as a whole is available from the company on request.

PART II—COMPARATIVE TABLE.

1. A performance record over the last five annual accounting periods, or where the company has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing—

(a) the highest and the lowest price of a share of each class in issue during each of those years; and

(b) the net income distributed (or, in the case of accumulation shares, allocated) for a share of each class during each of those years, taking account of any subdivision or consolidation of shares that occurred during that period.

2. As at the end of each of the last three annual accounting periods (or all of the company's accounting periods, if less than three) the total value of the scheme property at the end of each of those years and the price for a share of each class and the number of shares of each class in issue at the end of each of those years.

3. Where, in the period covered by the table—

(a) the company has been the subject of any event, (such as an amalgamation or reconstruction but excluding any issue or cancellation of shares for cash), having a material effect on the size of the company; or

(b) there have been changes in the investment objectives of the company;

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

4. In the case of an umbrella company, paragraphs (1) to (3) shall not apply and the information required under each of paragraphs (1) to (3) shall instead be given in respect of each subfund of the umbrella company.

PART III—REPORT OF THE DEPOSITARY.

5. The report of the depositary to the shareholders for any annual accounting period shall contain statements—

(a) which may be in summary form, describing the duties of the depositary under regulation 73(1) and in respect of the safekeeping of the scheme property;

(b) to the effect of whether—

(i) the issue, sale, redemption and cancellation, and calculation of the price of the company's shares and the application of the company's income have been carried out in accordance with these Regulations and the instrument of incorporation of the company; and

(ii) the investment and borrowing powers and restrictions applicable to the company in accordance with these Regulations and, (if it contains any such powers or restrictions), the instrument of incorporation of the company, have been exceeded.

PART IV—REPORT OF THE AUDITOR.

6. The report of the auditor to the shareholders in respect of the accounts of the company (or, in the case of a report prepared of regulation 101(3), in respect of the accounts of the subfund) shall state—

- (a) whether in the auditor's opinion, the accounts have been properly prepared in accordance with these Regulations;
- (b) whether, in the auditor's opinion, the accounts give a true and fair view of the net income and the net gains or losses on the scheme property of the company (or, as the case may be, the scheme property attributable to the subfund) for the annual accounting period in question and the financial position of the company or subfund as at the end of that period;
- (c) if the auditor is of the opinion that proper accounting records for the company (or, as the case may be, subfund) have not been kept or that the accounts are not in agreement with those records, that fact;
- (d) 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
- (e) if the auditor is of the opinion that the information given in the report of the directors for that period is inconsistent with the accounts, that fact.

LEO KIBIRANGO,
Chairperson, Capital Markets Authority.