Revised Regulations of Anguilla: S13-3

SECURITIES ACT (R.S.A. c. S13)

COLLECTIVE INVESTMENT SCHEMES REGULATIONS

Note: These Regulations are enabled under section 108 of the Securities Act, R.S.A. c. S13.

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PART 1

PRELIMINARY

Interpretation

1. In these Regulations—

"appointed person" means a person duly appointed by the Commission to act under its authority for the purposes of an investigation;

"collective investment scheme" or "scheme" means collective investment scheme as defined in the Act;

"collective investment scheme particulars" means that document issued to the public containing information on a collective investment scheme calculated to invite offers by the public to subscribe for or purchase units in the collective investment scheme;

"custodian" means any person to whom the property of the scheme is entrusted for safekeeping;

"custodian agreement" means any agreement relating to the appointment and functions of the custodian to which the collective investment scheme and the custodian are parties;

"formation documents" means, in the case of a unit trust, the trust deed, and in the case of an investment company, its articles of incorporation, together with the management contract and the custodian agreement;

"investment adviser", in relation to a collective investment scheme, means a person who is engaged by the management or investment company under a commercial arrangement not being a mere contract of employment to supply the company with advice as to the merit of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities;

"management company", in relation to a collective investment scheme, means the management company appointed by the management contract;

"management contract" means any agreement relating to the appointment and functions of a management company to which the collective investment scheme and the management company are parties;

"participants" means the persons who participate in a collective investment scheme, and includes members of an investment company.

PART 2

ESTABLISHMENT OF COLLECTIVE INVESTMENT SCHEMES

Unit trusts

2. A collective investment scheme that is a unit trust shall be established by its scheme rules and shall provide for the matters specified in Schedule 1.

Investment companies

3. A collective investment scheme that is an investment company shall be established by its memorandum and articles of incorporation and shall provide for the matters specified in Schedule 2.

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PART 3

AUTHORISATION OF COLLECTIVE INVESTMENT SCHEMES

Application for authorisation

4. (1) An application to the Commission for the authorisation of a collective investment scheme shall be made jointly by the management or proposed management company and the custodian or proposed custodian of the scheme.

(2) An application must contain the information specified in Schedule 3.

(3) An application must be accompanied by the following—

(a) the collective investment scheme's formation documents;

(b) the collective investment scheme particulars;

(c) the management company's latest audited report;

(d) the custodian's latest audited report;

(e) the application fee specified in Schedule 3 to the Licence and Fee Regulations, R.R.A. S13-7.

(4) The Commission may require the applicant to furnish additional information.

Conditions for authorisation

5. (1) Subject to the provisions of these Regulations, the Commission may only authorise a unit trust under section 6 if it satisfies each of the following conditions—

(a) it is established under the laws of Anguilla;

(b) it has both a management company and a custodian;

(c) the management company is incorporated or registered in Anguilla;

(d) the custodian is incorporated or registered in Anguilla;

(e) the management company and the custodian are different persons who are independent of each other;

(f) the management company and the custodian are each licensed by the Commission to act respectively as such in relation to collective investment schemes;

(g) the formation documents and collective investment scheme particulars comply with the relevant provisions of these Regulations and are in a form acceptable to the Commission;

(h) the name is approved by the Commission;

(i) the participants are entitled to have their units redeemed in accordance with the formation documents at a price related to the net value of the property to which the units relate and determined in accordance with the formation documents;

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(j) the management company has appointed an auditor who has the approval of the custodian and who complies with the requirements of section 31.

(2) A unit trust shall be treated as complying with paragraph (1)(i) if it requires the management company to ensure that a participant is able to sell his units on a licensed securities market at a price not significantly different from that mentioned in paragraph (1)(i).

(3) Subject to the provisions of these Regulations, the Commission may only authorise an investment company under section 6 if it satisfies each of the following conditions—

(a) it is incorporated under the laws of Anguilla;

(b) it has a minimum paid-up capital of EC$1,500,000;

(c) the directors of the company are of good repute and satisfy the Commission that they possess the necessary experience and expertise for the performance of their duties;

(d) it has both a management company and a custodian;

(e) the management company is incorporated or registered in Anguilla;

(f) the custodian of the collective investment scheme is incorporated or registered in Anguilla;

(g) the management company and the custodian are different persons who are independent of each other;

(h) the management company and the custodian are licensed by the Commission to act as such in relation to collective investment schemes;

(i) its formation documents and collective investment scheme particulars comply with the relevant provisions of these Regulations and are in a form acceptable to the Commission;

(j) the name of the company is acceptable to the Commission;

(k) it has appointed an auditor who has the approval of the custodian and who complies with the requirements of section 31.

Authorisation by Commission

6. (1) The Commission may, on an application made in accordance with section 4, authorise a collective investment scheme for the purposes of these Regulations if—

(a) the conditions of section 5 are satisfied; and

(b) the Commission has received the fee specified in Schedule 3 to the Licence and Fee Regulations.

(2) An authorisation under subsection (1) may be granted subject to the terms and conditions the Commission considers necessary or desirable for the protection of participants.

(3) The Commission shall inform the applicant of its decision on the application not later than 3 months after the date on which the application was received or, if within that period the Commission has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.

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(4) If the Commission does not notify the applicant of its decision within the time required by subsection (3), it shall be taken to have refused the application.

Representations against refusal or revocation

7. (1) Before the Commission—

(a) refuses an application for authorisation; or

(b) revokes an authorisation;

it shall give the applicant written notice of its intention to do so, stating its reasons and the rights of the applicant under subsection (2).

(2) A person on whom a notice is served under subsection (1) may, within 21 days of its receipt, make written representation to the Commission.

(3) The Commission shall have regard to any representation made in accordance with subsection (2) in determining whether to refuse the application or revoke the authorisation.

Property of collective investment scheme to be held by custodian

8. The custodian shall hold the property of a collective investment scheme on behalf of the participants.

Changes of management company or custodian

9. (1) The management company shall give written notice to the Commission of any proposal to replace the custodian of the collective investment scheme.

(2) The custodian of a collective investment scheme shall give written notice to the Commission of any proposal to replace the management company of the collective investment scheme.

(3) Effect shall not be given to any such proposal unless—

(a) the Commission has given its approval to the proposal; or

(b) one month has elapsed since the date on which notice was given under subsection (1) or (2) without the Commission having notified the management company or the custodian that the proposal is not approved.

(4) Neither the management company nor the custodian shall be replaced except by persons who satisfy the requirements of these Regulations.

Avoidance of exclusion clauses

10. If a provision in the formation documents of a collective investment scheme has the effect of exempting the management company or custodian from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the collective investment scheme it shall be null and void.

Directions by Commission

11. (1) If it appears to the Commission that—

(a) any requirement for the authorisation of a collective investment scheme is no longer satisfied;

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(b) the exercise of the power conferred by this section is desirable in the interests of participants or potential participants in the collective investment scheme; or

(c) the management company or custodian of the collective investment scheme has contravened any provision of these Regulations or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under these Regulations;

the Commission may give a direction under subsection (2).

(2) A direction under this section may—

(a) require the management company of the collective investment scheme to cease the issue or redemption, or both the issue and redemption, of units under the collective investment scheme on a date specified in the direction until a further date as specified in that or another direction;

(b) require the management company and custodian of the collective investment scheme to wind it up by a date specified in the direction or, if no date is specified, as soon as is practicable.

(3) A management company or custodian, which fails to comply with a direction under subsection (2), commits an offence and is liable on conviction to a fine of $100,000.

Investigations

12. (1) The Commission may investigate the affairs of any collective investment scheme, the management company or custodian if it appears to the Commission that it is in the interests of the participants to do so or that the matter is of public concern.

(2) For the purposes of an investigation under subsection (1), the Commission, or an appointed person, may require the collective investment scheme, management company or custodian—

(a) to afford the Commission or appointed person access to its books, accounts and documents;

(b) to produce its books, accounts and documents and give any information and afford the use of any facilities that may be required for the investigation; and

(c) to attend before the Commission at a specified time and place and to answer questions or otherwise furnish information appearing to the Commission to be relevant to the investigation.

(3) A person who fails, without reasonable excuse, to comply with the requirements of the Commission or an appointed person under subsection (2) commits an offence and is liable on conviction to a fine of $50,000.

PART 4

CUSTODIAN

Appointment of custodian

13. Every collective investment scheme for which authorisation is requested shall appoint a custodian that has been licensed by the Commission to act as a custodian of collective investment schemes.

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Eligibility to be custodian

14. (1) A custodian shall be a body corporate which is—

(a) a bank licensed under the Banking Act*;

(b) a trust company which is a subsidiary of such a bank; or

(c) a company other than a company referred to under paragraph (b) that has a minimum issued and paid-up capital of $250,000 and the Commission is satisfied that the company has sufficient financial resources and experience necessary to enable it effectively to conduct its business and to carry out its obligations as a custodian.

(2) A custodian shall be independently audited.

Custody of property

15. (1) The custodian of a collective investment scheme shall take into its custody for safekeeping the property of the collective investment scheme by means of an agreement between the custodian and the management company in which the custodian accepts custodianship of the collective investment scheme property and agrees to observe the provisions of the formation documents and the custodian agreement.

(2) The custodian shall hold and deal with the property in accordance with the provisions of these Regulations and the formation documents of the collective investment scheme.

General duties of custodian

16. (1) The custodian shall act solely in the interests of the participants in the performance of its duties.

(2) The custodian shall take reasonable care to ensure that the collective investment scheme is managed by the management company in accordance with these Regulations and the formation documents of the collective investment scheme, and shall ensure that—

(a) the property of the collective investment scheme is invested and its income is applied in accordance with these Regulations and the formation documents;

(b) the value of the units is calculated by the management company or investment company, as the case may be; and

(c) the sale, issue, repurchase, redemption and cancellation of units are carried out.

(3) The custodian shall ensure that the methods adopted by the management company in calculating the value of units are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with these Regulations and of the formation documents.

(4) The custodian shall—

(a) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the collective investment scheme particulars or formation documents;

(b) take reasonable care to ensure that any investment and borrowing limitations set out in these Regulations and the formation documents, and the conditions under which the collective investment scheme was authorised, are complied with;

* Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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(c) issue a report to the participants to be included in the annual report on whether in the custodian's opinion the management company has in all material respects managed the collective investment scheme in accordance with these Regulations and of the formation documents; if the management company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof;

(d) take reasonable care to ensure that unit certificates are not issued until subscription monies have been paid;

(e) ensure that any registrable investments which are held for participants in the collective investment scheme are properly registered in the names of the participants or, with the consent of the participants, in the name of an eligible nominee; and

(f) where title to investments is recorded electronically, ensure that entitlements are separately identified from those of the management company of the collective investment scheme in the records of the person maintaining records of entitlement.

Instructions from management company

17. The custodian shall carry out the instructions of the management company unless it has reasonable cause to believe that to do so would contravene section 16.

Change of address

18. A custodian shall notify the Commission in writing of any intended change of address of its registered office or permanent place of business in Anguilla.

Liability of custodian

19. The custodian shall be liable to the management company and to the participants for any loss suffered by them as a result of—

(a) any unjustifiable failure by it to perform its obligations; or

(b) the improper performance by it of its obligations.

Register of participants

20. (1) The custodian shall establish and maintain a register of the participants of the collective investment scheme in a form determined by the Commission.

(2) The custodian may, with the prior approval of the Commission, appoint some other person to establish and maintain the register on its behalf.

(3) The register may be formed, in whole or in part, of records maintained by a securities depository approved by the Commission.

(4) The register shall be conclusive evidence as to the persons entitled to the units respectively standing in their name.

Notification of contraventions

21. The custodian shall notify the Commission in writing forthwith after becoming aware of the matter of any failure, act or omission of the management company constituting a breach or contravention of any of the provisions of these Regulations or of the formation documents of the collective investment scheme and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

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PART 5

MANAGEMENT COMPANIES

Appointment of management company

22. (1) Subject to subsection (2), every collective investment scheme for which authorisation is requested shall appoint a management company that has been licensed by the Commission to act as a management company of collective investment schemes.

(2) In the case of an investment company, the Commission may in its discretion permit it to be managed by its own board of directors, in these Regulations referred to as a "self-managed scheme", who are to perform the functions of a management company.

(3) Where the Commission permits an investment company to be a self-managed scheme under subsection (2), references in these Regulations to a management company or the directors of a management company shall be deemed to be references to the directors of the self-managed scheme.

(4) The directors of a self-managed scheme are prohibited from dealing with the scheme as principals.

(5) In addition to compliance with section 50, the articles of association of a self-managed scheme shall contain the following provisions—

(a) that participants may convene a meeting and, by way of an ordinary resolution, remove any director considered no longer fit and proper to manage the property of the scheme;

(b) that the directors' fees and remuneration shall be fixed by the participants at a general meeting.

Eligibility to be a management company

23. (1) A management company shall be a body corporate which—

(a) is engaged solely in the business of collective investment scheme management;

(b) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; and

(c) shall maintain at all times a net asset position.

(2) A management company shall have a minimum paid-up capital of $250,000.

Qualifications of directors

24. (1) The directors of the management company must be of good repute and in the opinion of the Commission possess the necessary experience for the performance of their duties.

(2) In determining the acceptability of the management company, the Commission may also consider the qualifications and experience of persons employed by the management company.

General duties of management company

25. The management company shall in the performance of its duties act solely in the interests of participants and take reasonable care to protect those interests, and in particular shall—

(a) manage the property of the collective investment scheme in accordance with—

(i) the provisions of these Regulations,

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(ii) the formation documents,

(iii) the most recently published collective investment scheme particulars, and

(iv) in the case of an investment company where the formation documents provide that the directors of the company may give directions, any directions from time to time so given by the directors of the company which are consistent with the provisions of subparagraphs (i), (ii) and (iii);

(b) take all reasonable steps and exercise all due diligence to avoid the property of the collective investment scheme being invested in contravention of these Regulations;

(c) have prepared in the prescribed form the accounts required by section 36 and shall arrange for such accounts to be audited in accordance with section 32; and

(d) ensure that the formation documents are made available for inspection by the public in Anguilla free of charge at all times during normal office hours, and make copies of such documents available upon the payment of a reasonable fee.

Restrictions on activities of management company

26. The management company of a collective investment scheme shall not engage in any activity other than the management of collective investment schemes.

Change of address

27. A management company shall notify the Commission in writing of any intended change of address of its registered office or permanent place of business in Anguilla.

Liability of management company

28. The management company shall be liable to the participants for any loss suffered by them as a result of—

(a) any unjustifiable failure by it to perform its obligations; or

(b) the improper performance by it of its obligations.

Requests to management company and investment adviser

29. The management company and any investment adviser appointed by the management company shall—

(a) at the request of the custodian forthwith supply the custodian with such information concerning the administration of the collective investment scheme as it may reasonably require; and

(b) comply with any directions given by the custodian for the purpose of satisfying section 16.

Units held by management company

30. (1) The management company shall keep a daily record of units held by it, distinguishing between different types of unit and showing all acquisitions and disposals by the management company and the balance thereof.

(2) The management company shall make the daily record available for inspection by the custodian during normal office hours and likewise supply to the custodian a copy of the record or any part of it on request.

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PART 6

AUDIT OF COLLECTIVE INVESTMENT SCHEMES

Appointment and qualifications of auditor

31. (1) The auditor of a collective investment scheme shall—

(a) have a place of business in Anguilla;

(b) be an accountant;

(c) not be a director or controller of the custodian, or the management company of the collective investment scheme or, in the case of an investment company, a director or controller of the company, or a partner, employee or shareholder of such a person; and

(d) be approved by the Commission.

(2) An auditor shall cease to hold appointment as auditor of a collective investment scheme if the auditor ceases to fulfil any of the requirements of subsection (1), or if the Commission withdraws its approval or if the management company with the approval of the custodian revokes the appointment.

(3) In the event that the management company revokes the appointment of the auditor the company shall forthwith notify the Commission of the revocation and of the reasons for it.

(4) In the event of a vacancy the management company shall as soon as practicable make a new appointment of an auditor who has the approval of the custodian.

Audit of accounts

32. The auditor shall audit the accounts required to be included in the annual report by section 36 and shall—

(a) carry out the duties of an auditor generally in accordance with international auditing standards; and

(b) in his report state whether or not in his opinion the accounts give a true and fair view of the financial position of the collective investment scheme as at the end of the accounting period to which they relate.

Communication with Commission

33. No duty to which an auditor of a collective investment scheme is subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request from the Commission, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of the collective investment scheme and which is relevant to any function of the Commission under these Regulations.

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PART 7

COLLECTIVE INVESTMENT SCHEME PARTICULARS AND FINANCIAL REPORTS

Documents to be prepared and published by management companies

34. (1) The management company of a collective investment scheme shall prepare and publish in accordance with the provisions of this Part the following documents relating to that collective investment scheme—

(a) the collective investment scheme particulars;

(b) an annual report for each financial year;

(c) a half-yearly report covering the first 6 months of each financial year.

(2) The annual and half-yearly reports shall be published not later than 4 months and 2 months respectively from the end of the accounting period to which they relate.

Contents of collective investment scheme particulars

35. (1) For the purposes of this Part, the formation documents of a collective investment scheme shall form an integral part of the collective investment scheme particulars and shall, except as provided for by subsection (3), be annexed thereto.

(2) The collective investment scheme particulars shall include—

(a) particulars of the matters specified in Schedule 4, in so far as that information does not appear in the formation documents; and

(b) any further information that may be necessary to enable participants to make an informed judgement as to the investment proposed.

(3) Notwithstanding subsection (1), the formation documents need not be annexed to the collective investment scheme particulars if participants and potential participants are informed by the collective investment scheme particulars—

(a) that the formation documents will be sent to them free of charge on request; or

(b) of the place in Anguilla where the documents are available for inspection free of charge.

(4) The collective investment scheme particulars shall be revised at least once in every 12 months but if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the collective investment scheme particulars are due for such an annual revision, they shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.

Contents of annual and half-yearly reports

36. (1) The annual report of a collective investment scheme shall include—

(a) a statement of assets and liabilities;

(b) an income and distribution account;

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(c) a capital account;

(d) a copy of the report of the auditor of the collective investment scheme on the accounts referred to in paragraphs (a), (b) and (c) including any qualifications made by the auditor;

(e) a report by the management company to the participants on the activities of the collective investment scheme during the financial year; and

(f) a copy of the report by the custodian to the participants as to the manner in which the collective investment scheme has been managed during the financial year.

(2) The financial accounts referred to in paragraphs (1)(a), (b) and (c) shall comply with the requirements of Schedule 5.

(3) The reports referred to in paragraphs (1)(d), (e) and (f) shall comply with the requirements of Schedule 6.

(4) The auditor and the custodian shall deliver their reports to the management company or investment company in good time to enable them to include them in the annual report.

(5) A half-yearly report shall include the matters specified in Parts A and B of Schedule 6.

Publication of collective investment scheme particulars and reports

37. (1) The management company of a collective investment scheme shall send to the Commission a copy of the collective investment scheme particulars (including any revision) and of every annual and half-yearly report of the collective investment scheme.

(2) The management company shall supply to the Commission, on request, all information relevant to the collective investment scheme's reports and accounts.

(3) Any advertisement or other information promoting a collective investment scheme in Anguilla shall indicate that collective investment scheme particulars exist and the places where those particulars may be obtained by members of the public.

(4) The management company shall not effect a sale of units in the collective investment scheme to any person unless it has offered to that person free of charge a copy of—

(a) the collective investment scheme particulars;

(b) the most recent annual report (if any); and

(c) any subsequent half-yearly report.

(5) The management company shall make copies of—

(a) the collective investment scheme particulars;

(b) the formation documents (if not annexed to the collective investment scheme particulars); and

(c) the annual and half-yearly reports;

available for inspection by any member of the public free of charge during ordinary office hours at its principal place of business in Anguilla and at any other place specified in the collective investment scheme particulars.

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(6) The management company shall, at the request of any participant in the collective investment scheme, supply to that person free of charge a copy of the most recent collective investment scheme particulars, annual report and any subsequent half-yearly report.

PART 8

GENERAL REQUIREMENTS

Publication of prices

38. The management company shall—

(a) in a manner approved by the Commission, publish the issue, sale, repurchase and redemption prices of units in the collective investment scheme on each day that it holds itself out as willing to issue, sell, repurchase or redeem the units; and

(b) in any event, publish the prices at least twice a month unless the Commission authorises a reduction of the frequency to once a month if such a reduction will not prejudice the interests of participants.

Units and accumulation units

39. (1) The interests of participants in a collective investment scheme shall consist of units and each unit shall be treated as representing one undivided share in the capital property of the collective investment scheme.

(2) Where accumulation units are in existence, any accumulation units issued otherwise than in pursuance of the initial offer shall, when issued, each represent the same number (including fractions) of undivided shares in the capital property of the collective investment scheme as each other accumulation unit then in existence.

Payments out of and into the property of a collective investment scheme

40. (1) The following expenses only may be paid out of the property of a collective investment scheme—

(a) the costs of dealing in the property of the collective investment scheme;

(b) interest on borrowings permitted under the collective investment scheme and charges incurred in effecting or varying the terms of such borrowings;

(c) the costs and expenses incurred in obtaining a listing of the units of the collective investment scheme on any licensed securities exchange;

(d) taxation and duties payable in respect of the property of the collective investment scheme, the formation documents of the collective investment scheme and the creation and sale of units;

(e) any costs incurred in modifying the formation documents of the collective investment scheme;

(f) any costs incurred in the preparation and publication of the collective investment scheme particulars and of any amended or supplementary particulars;

(g) any costs incurred in respect of meetings of the participants;

(h) any periodic charge payable to the management company;

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(i) the fees of the custodian;

(j) any expenses or disbursements of the custodian which are authorised by the formation documents of the collective investment scheme to be paid out of the property of the collective investment scheme;

(k) the fees and expenses of the auditor;

(l) the costs incurred in respect of the distribution of income to participants;

(m) the costs incurred in respect of the printing and posting of certificates;

(n) the costs incurred in keeping the register;

(o) costs reasonably incurred in respect of the publication of prices of units and in respect of the publication and distribution of the collective investment scheme particulars, annual and interim reports and accounts;

(p) the costs incurred in the establishment of the collective investment scheme as stated in the collective investment scheme particulars, amortised over the period, not exceeding 5 years, specified in those particulars;

(q) the costs incurred by the management company and permitted by the formation documents;

(r) any fees payable to the Commission.

(2) All payments or repayments of an income nature properly payable out of or into the property of a collective investment scheme shall be paid out of or into the income property of the collective investment scheme.

(3) All payments or repayments of a capital nature properly payable out of or into the property of a collective investment scheme shall be payable out of or into the capital property of the collective investment scheme.

(4) All payments of an income nature properly payable out of the property of a collective investment scheme shall, to the extent that the income property of the collective investment scheme is insufficient to meet them when they fall due for payment, be paid out of the capital property of the collective investment scheme.

Creation, etc. of units, repurchases and redemptions

41. (1) The formation documents of a collective investment scheme shall provide for the creation, cancellation, sale, repurchase and redemption of units, the valuation of the property of the collective investment scheme and the calculation of the sale, issue, repurchase and redemption prices of units.

(2) Subject to this section, a participant in a collective investment scheme shall be entitled to have his units repurchased or redeemed in accordance with the terms of the formation documents of the collective investment scheme at a price related to the net value of the property to which the units relate and determined in accordance with those terms.

(3) A collective investment scheme shall be treated as complying with subsection (2) if the formation documents require the management or investment company to ensure that a participant is able to sell his units on a licensed securities market at a price not significantly different from that mentioned in subsection (2).

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(4) The management company—

(a) may, with the prior agreement of the custodian of the collective investment scheme; or

(b) shall, if the custodian of the collective investment scheme so requires;

suspend the repurchase or redemption of units at any time for a period not exceeding 30 days if it or the custodian is of the opinion that there is good and sufficient reason to so suspend the repurchase or redemption of units having regard to the interests of the participants.

(5) The management company shall forthwith give notice in writing of any suspension under subsection (4), stating the reasons for the suspension, to the Commission.

(6) The Commission may by notice in writing to the management company require it to suspend the repurchase or redemption of units for a period specified in the notice if the Commission is satisfied that the suspension is necessary in the interests of the participants or in the public interest.

Valuation and pricing

42. (1) Offer and redemption prices should be calculated on the basis of the net asset value of the collective investment scheme divided by the number of units outstanding.

(2) Such prices may be adjusted by fees and charges for management of the collective investment scheme, which shall first be charged against investment income, next against dealing profits from the issue and redemption of units in the collective investment scheme, and lastly against the capital value of the investments of the collective investment scheme.

(3) The amount or method of calculating such fees and charges shall be clearly disclosed in the collective investment scheme particulars.

Advertising

43. (1) A collective investment scheme shall not issue, use or cause to be issued or used for any purpose any advertisement for or in connection with the collective investment scheme unless a copy of the advertisement is forwarded to the Commission, together with the fee set out in Schedule 3 to the Licence and Fee Regulations, R.R.A. S13-7, 14 days prior to the date of first use.

(2) If on receipt the Commission is not satisfied with the advertisement, it shall before the date of first use require the collective investment scheme to amend, withdraw or refrain from issuing or using the advertisement as in its discretion it may determine.

(3) For the purposes of subsections (1) and (2), "advertisement" does not include any publication of the issue, sale, repurchase or redemption prices of units.

(4) An advertisement of a collective investment scheme shall include a warning statement that—

(a) the price of units, and the income from them (if the collective investment scheme pays a dividend), may decrease or increase; and

(b) in certain circumstances a participant's right to redeem his units may be suspended.

(5) Warning statements shall be printed in type of the same size as the rest of the text in the advertisement; notwithstanding this, they may be in smaller text if printed in bold type or prominently outlined.

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Fees of custodian

44. The fees of the custodian paid out of the property of a collective investment scheme shall be calculated and accrue and be paid in the manner determined by the formation documents of the collective investment scheme.

Inclusion of performance data

45. (1) If performance data or estimated yield is quoted in any collective investment scheme particulars, advertisement or any other invitation to the public to invest, the Commission may require justification of the calculation.

(2) No forecast of the collective investment scheme's performance may be made but for this purpose the publication of a prospective yield does not constitute a forecast of performance.

Changes to collective investment scheme documentation

46. (1) Subject to subsection (2), no alteration may be made to the formation documents of a collective investment scheme except by a special or extraordinary resolution of a participant and subject to the prior approval of the Commission.

(2) The formation documents may be altered by the management company and custodian, without consulting participants, provided that the custodian certifies in writing that in its opinion the proposed alteration—

(a) is necessary to enable compliance with fiscal or other statutory or official requirements;

(b) is necessary to correct a manifest error;

(c) does not materially prejudice participants' interests;

(d) does not to any material extent release the custodian, management company or any other person from any liability to participants; or

(e) does not increase the costs and charges payable from the collective investment scheme property.

Transactions with connected persons

47. (1) No person shall enter into underwriting or sub-underwriting contracts on behalf of a collective investment scheme—

(a) without the prior consent of the custodian; and

(b) unless the collective investment scheme provides in writing that all commissions and fees payable under such contracts and all investments acquired pursuant to such contracts form part of the collective investment scheme's assets.

(2) If cash forming part of the collective investment scheme's assets is deposited with the custodian, the management company, the investment adviser or with any connected person of these companies (being an institution authorised to accept deposits), interest must be paid on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term, negotiated at arm's length.

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(3) All transactions carried out by or on behalf of the collective investment scheme must be at arm's length and, in particular, any transactions between the collective investment scheme and—

(a) the management company;

(b) the investment adviser;

(c) the directors of the collective investment scheme; or

(d) any of their connected persons as principal;

may only be made with the prior consent of the custodian.

(4) No single dealer should account for 50% or more of the collective investment scheme's transactions in value in any one financial year of the collective investment scheme.

Meetings

48. A collective investment scheme shall arrange to conduct general meetings of participants as follows—

(a) participants must be able to appoint proxies;

(b) votes should be proportionate to the number of units held, or to the value of units held where there are accumulation units;

(c) the quorum for meetings at which a special or extraordinary resolution is to be considered shall be the holders of 25% of the units in issue, and 10% if only an ordinary resolution is to be considered;

(d) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting should stand adjourned for not less than 14 days; the quorum at an adjourned meeting will be those persons present in person or by proxy;

(e) if the possibility exists of a conflict of interest between different classes of participant there should be provision for class meetings;

(f) an Extraordinary General Meeting shall be called for the following purposes—

(i) to modify, alter or add to the formation documents, except as provided in section 46,

(ii) to terminate the collective investment scheme (unless the means of termination of the collective investment scheme are stipulated in the formation documents, in which case termination shall be effected in accordance with the provisions of the formation documents),

(iii) to increase the maximum fees paid to the management company, custodian or directors of the collective investment scheme,

(iv) to impose other types of fee;

(g) the directors of the collective investment scheme, the custodian, the management company, investment adviser and their connected persons shall be prohibited from voting their beneficially owned shares at, or counted in the quorum for, a meeting at which they have a material interest in the business to be conducted;

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(h) an ordinary resolution may be passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting;

(i) a special or extraordinary resolution may only be passed by 75% or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting.

PART 9

RESTRICTIONS ON INVESTMENT POWERS OF COLLECTIVE INVESTMENT SCHEMES

Application of this Part

49. (1) This Part applies to all authorised collective investment schemes.

(2) For the purposes of this Part—

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

(a) money deposited with a licensed bank or financial institution which is in a current account, or in a deposit account provided that the money can be drawn immediately and without payment of a penalty exceeding 7 days interest calculated at ordinary commercial rates;

(b) certificates of deposit issued by a licensed bank or financial 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 2 years;

"net asset value" means the net value of the property of the securities collective investment scheme after deducting—

(a) any outstanding borrowing whether immediately due to be repaid or not;

(b) any capital sum outstanding on a mortgage of an immovable to secure money borrowed under section 63(2)(b);

"regulated market" means any stock exchange, over-the-counter market or other organised securities market that is regulated, operates regularly, is open to the international public and is recognised by the Commission;

"securities exchange" means a securities exchange licensed by the Commission.

General investment powers

50. (1) The property of a collective investment scheme may be invested only in accordance with this Part and within any relevant upper limit that is specified.

(2) The collective investment scheme particulars may restrict—

(a) the description of assets in which the property of the collective investment scheme may be invested;

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

(c) the description of transactions permitted; and

(d) the borrowing powers of the collective investment scheme;

and any such restrictions shall be observed as if they were included in this Part.

Core requirement

51. The investments of a collective investment scheme must consist solely of—

(a) transferable securities admitted to official listing on a securities exchange;

(b) transferable securities admitted to listing or traded on or under the rules of a regulated market; and

(c) recently issued securities provided that—

(i) the terms of issue include an undertaking that application will be made for admission to official listing on a securities exchange or to be admitted to listing or traded on a regulated market, and

(ii) such admission is secured within a year of issue.

Spread of investments

52. Subject to section 53, a collective investment scheme—

(a) may invest no more than 15% of its net asset value in the transferable securities issued by any single issuer;

(b) may acquire no more than 25% of a security issued by any single issuer.

Government and other public securities

53. Up to 30% of a collective investment scheme's net asset value may be invested in Government and other public securities of the same issue.

Financial futures

54. A collective investment scheme may not enter into any financial futures contracts and options except for hedging purposes.

Warrants and options

55. A collective investment scheme may invest no more than 10% of its net asset value in warrants and options in respect of transferable securities.

Investment in other collective investment schemes

56. (1) A collective investment scheme may not acquire the units of any other collective investment scheme unless that other collective investment scheme is also authorised or approved by the Commission.

(2) If a collective investment scheme's objective is to invest primarily in investments restricted by this Part, such holding must not be in contravention of the relevant limitation.

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(3) A collective investment scheme may invest in aggregate no more than 5% of its net asset value in the units of other authorised or approved collective investment schemes.

(4) A collective investment scheme may acquire no more than 10% of the units of any single authorised collective investment scheme.

(5) Notwithstanding subsections (2), (3) and (4), a collective investment scheme may invest all of its assets in a single collective investment scheme and be authorised as a feeder collective investment scheme, provided that—

(a) the underlying collective investment scheme is authorised by the Commission;

(b) the collective investment scheme particulars must state that the collective investment scheme is a feeder collective investment scheme into the underlying collective investment scheme; and

(c) the borrowing of the feeder collective investment scheme may not exceed 10% of its net asset value and shall be restricted to facilitating redemptions or defraying operating expenses.

(6) No increase in the overall total of initial charges, the management company's annual fee or any other costs and charges borne by the participants or by the collective investment scheme may result if the collective investment scheme in which a collective investment scheme invests is managed by the same management company or by a connected person of that company.

Prohibition of real estate investments

57. A collective investment scheme may not invest in any type of real estate (including buildings) or interests in real estate (including options or rights but excluding shares in real estate companies).

Restriction on lending of money

58. (1) None of the money in the property of any collective investment scheme may be lent.

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

Restriction on lending of property other than money

59. (1) None of the property of a collective investment scheme other than money may be lent by way of deposit or otherwise.

(2) Stock-lending transactions are not lending for the purposes of subsection (1).

(3) None of the property of the collective investment scheme may be mortgaged, except to secure money borrowed under section 63(2)(b).

Unlimited liability

60. A collective investment scheme may not acquire an asset that involves the assumption of a liability that is unlimited.

Limitations on securities in which directors or officers have interests

61. A collective investment scheme may not invest in any security of any class in any company or body if any director or officer of the management company owns more than one-half per cent of the total nominal amount of all issued securities of that class or collectively the directors and officers of the management company own more than 5% of those securities.

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Limitations on nil-paid or partly-paid securities

62. The portfolio of a collective investment scheme may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash or near cash by the collective investment scheme's portfolio.

Limitations on borrowing

63. (1) Subject to subsection (2), a collective investment scheme may not borrow.

(2) A collective investment scheme may borrow—

(a) up to a maximum of 10% of its net asset value provided that the borrowing is temporary; and

(b) in the case of an investment company, up to a maximum of 10% of its net assets if the borrowing is to enable the acquisition of immovable property essential for the direct pursuit of its business (and, together with any borrowing under paragraph (a), subject to the aggregate borrowing not exceeding in any case 15% of the net assets of the investment company).

Prohibition of short selling

64. A collective investment scheme may not carry out uncovered sales of transferable securities.

Applicability of restrictions to umbrella collective investment schemes

65. (1) Subject to subsection (2), this Part shall not apply to an umbrella collective investment scheme as if it were a single collective investment scheme, but shall apply to each sub-collective investment scheme of the umbrella collective investment scheme as if each separate part were a single collective investment scheme.

(2) The total collective investment by the sub-collective investment scheme in any class of security issued by any one issuer shall not exceed 10% of the net asset value of all the sub-collective investment schemes taken as a whole.

Breach of investment limits

66. If the investment limits in this Part are breached, the management company shall as a priority objective, within a reasonable period, take all steps as are necessary to remedy the situation, taking due account of the interests of the participants.

Name of collective investment scheme

67. If the name of the collective investment scheme indicates a particular objective, geographic region or market, the collective investment scheme shall invest at least 70% of its non-cash assets in securities to reflect the particular objective or geographic region or market the collective investment scheme represents.

PART 10

CITATION

Citation

68. These Regulations may be cited as the Collective Investment Schemes Regulations, Revised Regulations of Anguilla, S13-3.

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SCHEDULE 1

(Section 2)

CONTENTS OF UNIT TRUST RULES

Name of The Unit Trust

1. A statement of the name of the scheme being a name consistent with the objectives of the scheme stated in accordance with section 2.

Investment Objectives

2. If an objective of the scheme is investment—

(a) in a geographic area (including the whole world) a statement of that fact (specifying the area);

(b) in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors); and

(c) of a particular nature, a statement of that fact (specifying the particular nature).

Governing Law

3. A statement that the scheme is established under and governed by the laws of Anguilla.

Trust Deed to be Binding and Authoritative

4. A statement that the trust deed is binding on each participant as if he had been a party to it and so to be bound by its provisions and authorises and requires the custodian and the management company to do the things required of them by the terms of the deed.

Declaration of Trust

5. A declaration that—

(a) the property of the scheme (other than sums standing to the credit of the distribution account) is held by the custodian for and on behalf of the participants *pari passu*, according to the number of units held by each participant or, in a case where income units and accumulation units are both in issue, according to the number of individual shares in the property of the scheme represented by the units held by each participant; and

(b) the sums standing to the credit of the distribution account are held by the custodian for the purposes of distribution only.

Base Currency

6. A statement of what currency is the base currency of the scheme.

Annual Accounting Period

7. State the dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella scheme, be the same for all the constituent schemes.

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Annual Income Allocation Date

8. State the date in the calendar year (not being later than 2 months after the date on which the immediately preceding annual accounting period ends) that is to be the annual income allocation date that must, in the case of an umbrella scheme, be the same for all the constituent schemes.

Certificates

9. A provision as to the form, content of, and the manner of, authenticating certificates evidencing title to a holding of units.

Participant's Liability to Pay

10. A provision that a participant is not liable to make any further payment after he has paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

Duration of The Scheme

11. If the scheme is to terminate after the expiration of a particular period, a statement to that effect.

Management Company's Periodic Charge

12. (1) A statement authorising the management company to make a periodic charge payable out of the property of the scheme and specifying how it shall accrue and be paid, with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the scheme.

(2) Alternatively a statement authorising the management company to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in subsection (1) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of 3 months from the date on which the management company gives notice in writing to each participant entered on the register of its intention to do so.

Umbrella Collective Investment Schemes: Management Company's Charge on an Exchange of Units

13. A statement authorising the management company of an umbrella collective investment scheme to make a charge of a fixed amount on the exchange of units in one constituent part (other than the first exchange by a participant in any one annual accounting period) and specifying what the maximum of that amount may be.

Custodian's Remuneration

14. A statement authorising the management company to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

Custodian's Remuneration Chargeable to The Property of The Scheme

15. A statement authorising any payments to the custodian, by way of remuneration for its services, to be paid (in whole or in part) out of the property of the scheme.

Custodian's Disbursements

16. The descriptions of expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the scheme.

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Management Company's Preliminary Charge

17. A statement of the maximum percentage of the creation price of a unit in the scheme that may be included in the sale price of that unit calculated by reference to this creation price as a preliminary charge receivable by the scheme management company.

Initial Price

18. A statement of the initial price of units.

Period of The Initial Offer

19. A statement of the length of the period of the initial offer.

Investment in Collective Investment Schemes Managed by The Management Company or its Associate

20. A statement as to whether or not the property of the scheme may include units in another collective investment scheme that is—

(a) managed by the management company or by another company in the same group as the management company; or

(b) managed by any person who is a controller of the management company or of which the management company is the controller.

Accumulation Units

21. A statement as to whether under the scheme units may be accumulation units only or accumulation units as well as income units.

Interim Income Allocation Date

22. A provision authorising or requiring interim allocations of income and either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the collective investment scheme management company.

Investment Adviser

23. Where the management company may appoint an investment adviser, a statement authorising it to do so.

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SCHEDULE 2

(Section 3)

CONTENTS OF ARTICLES OF ASSOCIATION OF INVESTMENT COMPANY

Governing Law

1. A statement that the articles of incorporation are made under and governed by the laws of Anguilla.

Investment Objectives

2. If an objective of the scheme is investment—

(a) in a geographic area (including the whole world), a statement of that fact (specifying the area);

(b) in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors); and

(c) of a particular nature, a statement of that fact (specifying the particular nature).

Base Currency

3. A statement of what currency is the base currency of the scheme.

Annual Accounting Period

4. State the dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella collective investment scheme, be the same for all the constituent collective investment schemes.

Annual Income Allocation Date

5. State the date in the calendar year (not being later than 2 months after the date on which the immediately preceding annual accounting period ends) that is to be the annual income allocation date that must, in the case of an umbrella collective investment scheme, be the same for all the constituent collective investment schemes.

No Partly-Paid Shares

6. A provision that no partly-paid units may be issued.

Management or Investment Company's Periodic Charge

7. (1) A statement authorising the company to make a periodic charge payable out of the property of the scheme and specifying how it should accrue and be paid with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the scheme.

(2) Alternatively a statement authorising the company to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in subsection (1) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of 3 months from the date on which the scheme management company gives notice in writing to each participant entered on the register of its intention to do so.

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Custodian's Remuneration

8. A statement authorising the management company to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

Custodian's Remuneration Chargeable to The Property of The Collective Investment Scheme

9. A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the property of the scheme.

Custodian's Disbursements

10. The descriptions of any expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the scheme.

Initial Price

11. A statement of the initial price of units.

Accumulation Units

12. A statement as to whether under the scheme units may be accumulation units only or accumulation units as well as income units.

Interim Income Allocation Date

13. If interim allocations of income are to be authorised or required, a provision so stating and also either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the scheme management company and directors.

Investment Adviser

14. Where the management company may appoint an investment adviser, a statement authorising it to do so.

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SCHEDULE 3

(Section 4)

INFORMATION TO BE CONTAINED IN APPLICATION FOR AUTHORISATION

General details of the collective investment scheme

1. Name of the collective investment scheme.

2. Names of the sub-collective investment schemes (if any).

3. Structure of the collective investment scheme.

4. Applicable Act and the date and country of establishment/incorporation.

5. Quotation on any securities exchange and authorisation granted by other regulatory bodies.

6. Undertakings given to other regulatory bodies.

7. Launch: date and place.

8. Dealing: daily/weekly/other.

9. Valuation of assets: daily/weekly/other.

10. Pricing: forward/historic/other.

11. Investment plans to be offered in Anguilla.

For each collective investment scheme or sub-collective investment scheme

12. (1) Fee structure—

(a) level of all charges payable by participant; and

(b) level/basis of calculation of all charges payable by the collective investment scheme.

(2) For equity or bond collective investment schemes—

(a) investment objective and borrowing powers; and

(b) currency of denomination.

(3) Minimum initial subscription and the minimum subsequent holding.

Details of the parties to the collective investment scheme

13. The management company (if applicable)—

(a) Name;

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(b) Registered/business address;

(c) Name of the ultimate holding company;

(d) Previously approved by the Commission to manage authorised collective investment schemes? If no, the resumes of the directors and the most recent audited financial report; and

(e) Person(s) for contact with the Commission.

14. In the case of an investment company, the resumes of the directors of the collective investment scheme and person(s) for contact.

15. The custodian—

(a) Name;

(b) Registered/business address;

(c) Name of the ultimate holding company;

(d) Previously approved by the Commission as custodian of authorised collective investment schemes? If no, names of the directors and the most recent audited financial report;

(e) Person(s) for contact with the Commission.

16. The investment adviser (if any)—

(a) Name;

(b) Registered/business address; and

(c) Name of the ultimate holding company.

17. For the custodian, management company and investment adviser—

(a) which, if any, of these companies are connected persons; and

(b) name anyone who holds appointments, as director or officer, with more than one of these companies.

18. The auditor—

(a) Name; and

(b) Registered/business address.

19. The principal dealer (if any)—

(a) Name;

(b) Registered/business address;

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(c) The approximate percentage of the scheme's transactions in value of securities carried out by the principal broker within the latest financial year of the scheme; and

(d) Whether the custodian, the directors of the scheme, the management company or the investment adviser is a connected person of the principal broker.

20. Lawyers in Anguilla (if any)—

(a) Name;

(b) Person(s) for contact with the Commission.

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SCHEDULE 4

(Section 35(2))

INFORMATION TO BE DISCLOSED IN COLLECTIVE INVESTMENT SCHEME PARTICULARS

(Note: This list is not intended to be exhaustive. The scheme is obliged to disclose all information that may be necessary for participants to make an informed judgement.)

Constitution of the collective investment scheme

1. Name, registered address and place and date of creation of the scheme, with an indication of its duration if limited.

Investment objectives and restrictions

2. (1) Details of investment objectives and policy, including summary of the investment and borrowing restrictions.

(2) If the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Operators and principals

3. The names and registered addresses of the following parties (where applicable)—

(a) the management company and its board of directors;

(b) the custodian;

(c) the investment adviser;

(d) the auditors;

(e) the registrar;

(f) the lawyers to the scheme.

Characteristics of units

4. Minimum investment (if any).

5. A description of the different types of units, including their currency of denomination.

6. Form of certification.

7. Frequency of valuation and dealing, including dealing days.

Application and redemption procedures

8. The name(s) of the daily newspaper(s) in which prices will be published.

9. Procedure for subscribing/redeeming units, and in the case of umbrella collective investment schemes, conversion of units.

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10. The maximum interval between the request for redemption and the despatch of the redemption proceeds.

11. A summary of the circumstances in which dealing in units may be deferred or suspended.

12. It must be stated that no money should be paid to any intermediary in Anguilla who is not duly licensed by the Commission.

Distribution policy

13. The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable).

Fees and charges

14. (1) The level of all fees and charges payable by a participant, including all charges levied on subscription and redemption, and conversion (in the case of umbrella collective investment schemes).

(2) In addition the level of all fees and charges payable by the collective investment scheme, including management fees, custodian fees and start-up expenses.

15. Disclosure of entitlement to brokerage or other transaction benefits of any connected persons to the scheme.

Taxation

16. Details of Anguilla and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to participants.

Reports and accounts

17. The date of the scheme's financial year.

18. Particulars of what reports will be sent to registered participants and when. If there are bearer units in issue, information must be given on where in Anguilla reports can be obtained.

Warnings

19. The following statement and warning must be prominently displayed in the scheme particulars—

(a) "Important - if you are in any doubt about the contents of this offering document, you should consult your stockbroker, bank manager, lawyer, accountant or other financial adviser";

(b) a warning that the price of units and the income from them (where income is distributed) may go down as well as up.

General information

20. A list of formation documents and an address in Anguilla where they can be inspected free of charge or purchased.

21. The date of publication of the scheme particulars.

22. A statement that the management company accepts responsibility for the information contained in the scheme particulars as being accurate as at the date of publication.

Termination of collective investment scheme

23. A summary of the circumstances (if any) in which the scheme can be terminated.

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SCHEDULE 5

(Section 36(2))

CONTENTS OF FINANCIAL ACCOUNTS

General

1. The financial accounts must contain all the information required in this Schedule; interim reports must at least contain the Statement of Assets and Liabilities and the Investment Portfolio.

2. Where the scheme has paid or proposes to pay an interim dividend, the amount of dividend should be disclosed.

3. All accounts must contain comparative figures for the previous period except for the Investment Portfolio.

4. The items listed under the Statement of Assets and Liabilities, Revenue Statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, must be disclosed.

Statement of assets and liabilities

5. The following must be separately disclosed—

(a) total value of investments;

(b) bank balances;

(c) formation costs;

(d) dividends and other receivables;

(e) amounts receivable on subscription;

(f) bank loans and overdrafts or other forms of borrowing;

(g) amounts payable on redemption;

(h) distributions payable;

(i) total value of all assets;

(j) total value of all liabilities;

(k) net asset value;

(l) number of units in issue;

(m) net asset value per unit.

Revenue statement

6. (1) Total investment income net of withholding tax, broken down by category.

(2) Total other income, broken down by category.

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(3) Equalisation on issue and cancellation of units.

(4) An itemised list of various costs which have been debited to the scheme including—

(a) fees paid to the management company;

(b) remuneration of the custodian;

(c) amortization of formation costs;

(d) directors' fee and remuneration;

(e) safe custody and bank charges;

(f) auditors' remuneration;

(g) interest on borrowings;

(h) fees paid to investment adviser, if any;

(i) other amounts paid to any connected persons of the collective investment scheme;

(j) legal and other professional fees;

(k) any other expenses borne by the scheme.

(5) Taxes.

(6) Amounts transferred to and from the capital account.

(7) Net income to be carried forward for distribution.

Distribution statement

7. (1) Amount brought forward at the beginning of the period.

(2) Net income for the period.

(3) Interim distribution per unit and date of distribution.

(4) Final distribution per unit and date of distribution.

(5) Undistributed income carried forward.

Statement of movements in capital account

8. (1) Value of the scheme as at the beginning of the period.

(2) Number of units issued and the amounts received upon such issuance (after equalization if applicable).

(3) Number of units redeemed and the amount paid on redemption (after equalization if applicable).

(4) Any items resulting in an increase/decrease in value of the scheme including—

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(a) surplus/loss on sale of investments;

(b) exchange gain/loss;

(c) unrealised appreciation/diminution in value of investments;

(d) net income for the period less distribution.

(5) Amounts transferred to and from the revenue account.

(6) Value of the scheme as at the end of the period.

Notes to the accounts

9. The following matters shall be set out in the notes to the accounts—

(1) Principal accounting policies—

(a) the basis of valuation of the assets of the scheme including the basis of valuation of unquoted and unlisted securities;

(b) the revenue recognition policy regarding dividend income and other income;

(c) foreign currency translation;

(d) the basis of valuation of forward foreign exchange and futures contracts;

(e) the basis of amortization of formation costs;

(f) taxation;

(g) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme.

Any changes to the accounting policies and their financial effects upon the accounts should also be disclosed.

(2) Transactions with connected persons

The following transactions should be disclosed—

(a) details of all transactions entered into during the period between the scheme and the scheme management company, investment adviser, the directors of the scheme or any entity in which these parties or their connected persons have a material interest; and

(b) the name of any director of the scheme or any connected person of the director if any such person becomes entitled to profits from transactions in shares or from management of the scheme and the amount of profits to which such person becomes entitled.

(3) Borrowings.

State whether the borrowings are secured or unsecured and the duration of the borrowings.

(4) Contingent liabilities and commitments.

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Give details of any contingent liabilities and commitments of the scheme.

(5) If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

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SCHEDULE 6

(Section 36(3))

ANNUAL AND HALF-YEARLY REPORTS

A: REPORT OF THE MANAGEMENT COMPANY

The following matters must be set out in every annual and half-yearly report of the management company—

1. The names and addresses of the following—

   (a) the company;

   (b) the custodian;

   (c) any investment adviser;

   (d) the registrar;

   (e) the auditor.

2. The objectives of the scheme.

3. The company's policy for achieving the objectives of the scheme.

4. A statement that the scheme is authorised within the meaning of the law.

5. A statement as to which category of scheme the collective investment scheme belongs; and in the case of an umbrella collective investment scheme, this statement is to be made separately in relation to each constituent part.

6. A review of the company's investment activities during the period to which the report relates.

7. Particulars of any significant change in the scheme particulars made since the making of the last report by the company.

8. A statement of the amount (if any) to be distributed to participants or accumulated in respect of the period in question.

9. A statement of the total number of the units of each type in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.

10. A statement of the mid-market value per unit of the property of the scheme at the beginning of the period to which the report relates and at the end of that period.

11. A statement of any subdivision or consolidation of units that has been effected during the period to which the report relates.

12. Any other significant information that would enable participants to make an informed judgement on the development of the activities of the scheme during this period and the results of those activities as at the end of that period.

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B: PORTFOLIO STATEMENT

The following shall be set out in the portfolio statement included in the report to the company—

1. The changes in the investments in the property of the scheme since the end of the preceding accounting period showing whether they are new holdings, or changes in existing holdings, and giving a description of each holding and showing the net changes in the number of units in or the nominal value of that holding since the end of the preceding accounting period.

2. The total cost of purchases of investments since the last portfolio statement.

3. The total proceeds of sales of investments since the last portfolio statement.

C: COMPARATIVE TABLE

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

1. A comparative table covering the last 3 financial years and including, for each financial year, at the end of the financial year—

(a) the total net asset value; and

(b) the net asset value per unit.

2. A performance record over the last 10 financial years or, if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price and the lowest redemption price of the units during each of those years.

D: REPORT OF THE AUDITOR

The report of the auditor to the holders for any annual accounting period shall state—

(a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Regulations and the formation documents;

(b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period;

(c) if the auditor is of the opinion that proper accounting records have not been kept by the company or that the accounts are not in agreement with the company's accounting records, that fact together with any resulting qualification;

(d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact together with any resulting qualifications; and

(e) if the auditor is of the opinion that the information given in the report of the scheme management company for that period is inconsistent with the accounts, that fact together with any resulting qualifications.

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E: REPORT OF THE CUSTODIAN

The report of the custodian to the participants for any annual accounting period shall state whether in the custodian's opinion the company has managed the scheme in that period—

(a) in accordance with the limitations imposed on the investment and borrowing powers of the company and custodian by the formation documents, by the scheme particulars and by these Regulations; and

(b) otherwise in accordance with the provisions of the formation documents, the scheme particulars and these Regulations; and if the company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof.

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