



IRISH FINANCIAL SERVICES
REGULATORY AUTHORITY

NU SERIES OF NOTICES

conditions imposed in relation to

**COLLECTIVE INVESTMENT SCHEMES
OTHER THAN UCITS**

August 2003

EXPLANATORY MEMORANDUM

Collective investment schemes other than UCITS may be established as unit trusts, under the Unit Trusts Act, 1990, investment companies under the Companies Act, 1990 Part XIII and investment limited partnerships under the Investment Limited Partnerships Act, 1994. Under these Acts the Central Bank and Financial Services Authority of Ireland ("the Bank") is responsible for the authorisation and supervision of unit trusts, investment companies and investment limited partnerships and has the power to impose conditions on them. The functions of the Bank that are provided for in the Acts are to be performed by the Irish Financial Services Regulatory Authority, ("the Authority"), pursuant to Section 33C (1)(a) of the Central Bank and Financial Services Authority of Ireland Act 2003.

The conditions which the Authority is imposing are contained in this NU series of notices which supersede all previous ones. The notices must be read in conjunction with the Acts which contain, inter alia, detailed provisions on the operation of schemes.

The following points should be noted:

- (1) the Authority has issued a separate set of notices in respect of UCITS schemes i.e. unit trusts, common contractual funds and investment companies which are authorised by the Authority under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003.
- (2) these NU notices apply to collective investment schemes other than UCITS which have been authorised by the Authority and which may be in the form of
 - a unit trust
 - a designated investment company (i.e. one which may raise capital by promoting its shares to the public)or
 - an investment limited partnership.

A notice in respect of non-designated investment companies (i.e. which may not raise capital by promoting the sale of its shares to the public) has been issued and is available separately.

- (3) these NU notices also apply to the marketing, in Ireland, of a scheme (other than a UCITS) established in another jurisdiction.
- (4) notices NU 3 and NU 13 set out the general borrowing and investment restrictions which the Authority imposes on all schemes. These restrictions will apply to each scheme unless
 - the general restrictions are modified or replaced in the notice applicable to a particular type of scheme (e.g. NU 22 [Feeder Funds] - general restrictions in respect of investment in other collective investment schemes are relaxed)or
 - a specific derogation is granted by the Authority
- (5) Collective investment schemes may be established with mixed investment objectives e.g. a scheme which proposes to invest 50 per cent of its portfolio in equities and 50 per cent in derivatives. In these circumstances the investment restrictions applicable to a particular type of scheme apply pro rata to that proportion of net assets which it is intended to invest in that particular type of scheme.

(6) **Interpretation:**

For the purposes of these notices the following interpretations and definitions shall apply:

Associated company: This term has the same meaning as is given to “associated undertaking” in the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992). In general this states that companies are associated where a significant influence may be exercised by

one company over the operating and financial policy of another. This is deemed to be the case where 20 per cent or more of the voting rights in one company are owned directly or indirectly by another.

Best execution: The best price available in the market, exclusive of any charges but taking account of any other exceptional circumstances such as counterparty risk, order size or client instructions.

Credit ratings: References to credit ratings are made in some of the notices. The ratings referred to are Standard and Poors/IBCA and Moodys. An “**equivalent rating**” for the purposes of these notices is one which has been provided by an internationally recognised rating agency and which is deemed equivalent to the rating stipulated in the notice. An “**implied rating**” arises where a decision on an unrated entity is made by a scheme on the basis of a relationship between an issuer and its rated parent, or where an issuer has a senior debt/long term rating but no short term rating

Group companies: Members companies of a group of associated or related companies (see other definitions).

Investment objectives/Investment policy: Some of the notices refer to investment objectives and/or investment policy. By investment objective the Authority means the purpose for which the scheme was established. Investment policy is the means through which the objective will be achieved.

Related company: This term has the same meaning as in the Companies Act, 1990 [Section 140(5)]. In general this states that companies are related where 50 per cent of the paid up share capital of, or 50 per cent of the voting rights in, one company are owned directly or indirectly by another.

Trustee: The trustee function in respect of a unit trust scheme, an investment company and an investment limited partnership includes the custodian function.

Unitholder: This term applies to a shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and unitholder in the case of a unit trust scheme.

Units: This term applies to shares of an investment company, interests of the partners in an investment limited partnership and units of a unit trust scheme.

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COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Fund of funds schemes

A collective investment scheme, the principal object of which is investment in units of other collective investment schemes, is subject to the following rules in addition to the general rules for all collective investment schemes which are not disapplied below:

1. Subject to the provisions of paragraph 7(aa) NU 13, schemes in which the fund of funds scheme invests must be authorised in Ireland, or in another jurisdiction authorised by a supervisory authority set up in order to ensure the protection of unitholders and which, in the opinion of the Authority, provides an equivalent level of investor protection as that provided under Irish laws, regulations and conditions governing collective investment schemes.
2. The scheme may not invest more than 20 per cent of net assets in the units of any one scheme. However, the scheme may provide that this limit shall be raised to 30 per cent for one of the schemes in which it invests.
3. The scheme may invest up to 10 per cent of net assets directly in transferable securities other than units of collective investment schemes.
4. The scheme may not invest in units of another fund of funds scheme.
5. Where the scheme invests in units of a collective investment scheme managed by the same management company or by an associated or related company, the manager of the scheme in which the investment is being made must waive the preliminary/initial charge which it is entitled to charge for its own.

Where a commission is received by the manager of the scheme by virtue of an investment in the units of another collective investment scheme, this commission must be paid into the property of the scheme.

6. The prospectus must disclose, and quantify to the extent possible, the types of charges and other costs relating to the underlying collective investment schemes which will be borne by the scheme.

NU 2.3**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Dealings by promoter, manager, partner, trustee, investment adviser and group companies**

1. Any transaction carried out with a collective investment scheme by a promoter, partner, manager, trustee, investment adviser and/or associated or group companies of these must be carried out as if effected on normal commercial terms negotiated at arms length. Transactions must be in the best interests of the unitholders.
2. Transactions permitted are subject to:
 - (i) certified valuation by a person approved by the trustee as independent and competent; or
 - (ii) execution on best terms on organised investment exchanges under their rules; or
 - (iii) where (i) and (ii) are not practical, execution on terms which the trustee is satisfied conform to the principle outlined in 1. above .

The trustee may hold funds for a scheme subject to the provisions of Section 30 of the Central Bank Act 1989. Funds held by a trustee for a scheme must be held on terms which comply with paragraph 1 above.

3. Where it is envisaged that such transactions may be entered into, there must be full disclosure in the scheme's prospectus.
4. This notice specifies the extent of the disapplication by the Authority of Section 13(1) of the Unit Trusts Act, 1990, in accordance with its powers under Section 13(3) of that Act.

NU 3.3**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Borrowing powers**

1. Subject to the provisions of the trust deed, memorandum and articles of association, or partnership agreement, a collective investment scheme may borrow, which borrowing may be secured on the assets of the scheme.
2. Borrowings may not exceed 25 per cent of the net assets of a scheme at any time. Credit balances (e.g. cash) may not be offset against borrowings when determining the percentage of borrowings outstanding.
3. A scheme which invests across a range of currencies may borrow foreign currency by means of a back-to-back loan agreement. Foreign currency obtained in this manner is not classed as borrowings for the purposes of the Authority's borrowing restriction in paragraph 2 above, provided that the offsetting deposit:
 - (a) is denominated in the base currency of the scheme; and
 - (b) equals or exceeds the value of the foreign currency loan outstanding.

However, where foreign currency borrowings exceed the value of the back-to-back deposit, any excess is regarded as borrowing for the purposes of paragraph 2 above.

4. Where it is envisaged that borrowing may be undertaken there must be full disclosure in a scheme's prospectus.

5. This notice specifies the extent of the disapplication by the Authority of Section 13(2)(a) and Section 13(2)(c) of the Unit Trusts Act, 1990, in accordance with its powers under Section 13(3) of that Act.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Information and document requirements of the Irish Financial Services Regulatory Authority in support of an application for authorisation as a unit trust, investment company or investment limited partnership

General Information Required for all Schemes:

An application for authorisation of a collective investment scheme shall be made in writing to the Authority. Applications must contain the following information:

1. the name of the scheme
2. a statement of the general nature of the investment objectives of the scheme
3. the prospectus
4. the full name and address of the promoter of the scheme. Sufficient information concerning the promoter to enable the Authority to be satisfied as to its expertise, integrity and adequacy of financial resources. This information should include, inter alia, details of shareholders, latest audited accounts and details of overseas regulatory status (if any)
5. where a scheme proposes to employ the services of a management company the following information is to be supplied in respect of that company:
 - full name and address;
 - memorandum and articles of association;
 - the names of the directors, the company secretary, and the shareholders;
 - sufficient information in respect of all directors and shareholders to enable the Authority to be satisfied that they have appropriate expertise and

are of good reputation and, in the case of shareholders, that they have appropriate financial resources. This information should include inter alia, a curriculum vitae in the case of each director and latest audited accounts and details of overseas regulatory status (if any) in the case of each shareholder of a management company

6. the full name and address of the proposed trustee
7. the full name and address of the proposed investment adviser, if it is different from the management company, investment company or general partner and a copy of the relevant agreement with the adviser. Sufficient information concerning the investment adviser to enable the Authority to be satisfied as to its expertise, integrity and adequacy of financial resources. This information should include, inter alia, details of shareholders, latest audited accounts and details of the overseas regulatory status (if any)
8. the full name and address of the auditor
9. the full name and address of any third party which has been contracted by the scheme, or management company acting for the scheme, to carry out its work and copies of the relevant agreements with the third party. Sufficient information concerning any third party involved to enable the Authority to be satisfied as to its expertise, integrity and adequacy of financial resources. This information should include, inter alia, details of shareholders, latest audited accounts and details of overseas regulatory status (if any)
10. such additional information as the Authority may specify in the course of determining individual applications.

Unit Trusts:

An application for authorisation of a unit trust scheme shall be made in writing to the Authority by the management company and trustee under the scheme. Applications must contain the following additional information:

11. the trust deed

Investment Companies:

An application for authorisation of an investment company shall be made in writing to the Authority by the investment company. Applications must contain the following additional information:

12. the full name and address of the investment company and the memorandum and articles of association
13. the names of the directors and the company secretary. Sufficient information in respect of all directors to enable the Authority to be satisfied that they have appropriate expertise and are of good reputation. This information should include, inter alia, a curriculum vitae in the case of each director
14. a copy of the agreement between the company and the trustee.

Investment Limited Partnerships:

An application for authorisation of an investment limited partnership shall be made in writing to the Authority by the proposed general partner(s). Applications must contain the following additional information:

15. the partnership agreement
16. the address of the registered office and the principal place of business of the investment limited partnership

17. the term, if any, for which the investment limited partnership is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement
18. the full name and address of the person proposed under the partnership agreement as general partner and, if more than one, of each of them

In the case of a general partner which is a body corporate:

- the memorandum and articles of association of the Irish incorporated general partner as referred to in NU 5;
 - where relevant, latest audited accounts, or in the case of a newly established Irish incorporated general partner, confirmation that the Authority's capital requirements have been complied with;
 - names of the directors and shareholders. Sufficient information in respect of all directors and shareholders to enable the Authority to be satisfied that they have appropriate expertise and are of good reputation and, in the case of shareholders, that they have appropriate financial resources. This information should include, inter alia, a curriculum vitae in the case of each director and latest audited accounts and details of overseas regulatory status (if any) in the case of each shareholder;
 - a statement that the proposed general partner has complied with the requirements of Section 352 of the Companies Act, 1963 and its registration number where the body corporate is not incorporated under the laws of the State
19. a copy of the agreement between the partnership and the trustee.

Applications:

All applications should be addressed to:

The Manager
IFSC and Funds Supervision Department
Irish Financial Services Regulatory Authority
P.O. Box 9138
College Green
Dublin 2

**IFSC and Funds Supervision Department
Irish Financial Services Regulatory Authority
August 2003**

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Supervisory conditions for non-UCITS collective investment schemes authorised by the Irish Financial Services Regulatory Authority and certain firms providing services to such schemes

The following obligations are derived directly from provisions of the Unit Trusts Act, 1990, the Companies Act, 1990 Part XIII and the Investment Limited Partnerships Act, 1994.

1. A management company, in the case of a unit trust scheme, or an investment company must have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.
2. A management company, in the case of a unit trust scheme, or an investment company which temporarily suspends the repurchase or redemption of its units must inform the Authority immediately, and in any event within the working day on which such suspension took effect.
3. The management company in the case of a unit trust scheme may not be replaced without the approval of the Authority. The trust deed shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the management company with another management company (including such a replacement by the Authority) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.
4. No alteration in the trust deed of an authorised unit trust scheme or change in the name of such scheme shall be made without the approval of the Authority.

5. The partnership agreement shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of a general partner to the partnership with another general partner (including a replacement by the Authority) and the admission of additional general partners and shall contain provision to ensure the protection of limited partners in the event of any such replacement.
6. A general partner of an investment limited partnership may not be replaced by another general partner nor may additional general partners be admitted to such partnership, without the prior approval of the Authority.
7. No alteration in the partnership agreement or change in the name of the investment limited partnership shall be made or take effect without the prior approval of the Authority.

The following supervisory requirements of the Authority are imposed as conditions under Section 5 of the Unit Trusts Act, 1990, Section 257 of the Companies Act, 1990 Part XIII, Section 7 of the Investment Limited Partnerships Act, 1994, Section 92 of the Central Bank Act, 1989 and Section 14 of the Investment Intermediaries Act, 1995.

Conditions relating to certain firms providing services to schemes i.e. management/administration companies of unit trust schemes and investment companies and the general partner of an investment limited partnership:

At least one general partner of an investment limited partnership must have a registered office and its head office in the State. The supervisory requirements in this section apply to that general partner.

8. The firm must, at all times, maintain a minimum capital requirement equivalent to €25,000 ('financial resources requirement') or one quarter of its preceding year's fixed overheads ('expenditure requirement'), whichever is higher. The firm's minimum capital requirement must be held as eligible assets in a form which is easily accessible and must be free from any liens or charges.

A firm, which is a member of a group, must maintain its minimum capital requirement outside the group. The firm must be in a position to demonstrate its ongoing compliance with this requirement.

The form of any subordinated loan or capital contribution incorporated in the calculation of Financial Resources, (including repayment), is subject to the approval of the Authority.

Specific details and supplementary guidance in relation to these requirements are contained in the 'Capital Compliance Requirement'. This document, which may be amended from time to time, includes the Compliance with Minimum Capital Requirement Report and forms part of the NU Series of Notices.

9. Appointments to the office of director of the firm require the prior approval of the Authority. Departures from the office of director must be notified to the Authority immediately.
10. The board of directors of the firm should not have directors in common with the board of directors of the trustee of the scheme for which it acts.
- 10A. Directors are required to disclose to their board any concurrent directorships which they hold on boards of authorised collective investment schemes and/or related entities which supply services to such schemes.
11. A minimum of two directors of the firm must be Irish residents.
12. Approval of the Authority is required in respect of any proposed change in ownership or in significant shareholdings. A significant shareholding for the purpose of this condition is defined as a shareholding of 10 per cent or more in the firm.

13. Half-yearly financial and annual audited accounts of the firm must be submitted to the Authority. The half-yearly accounts must be submitted within two months and the annual accounts within four months of the relevant reporting period. Annual audited accounts of the corporate shareholder(s) of the firm must also be submitted.
14. The firm must maintain appropriate internal control systems to ensure that records clearly identify client funds and the assets in which they have been invested.
15. The firm is obliged to satisfy the Authority on a continuing basis that it has sufficient management resources to effectively conduct its business. In addition, its directors and managers should be persons of integrity and have an appropriate level of knowledge and experience. The firm must organise and control its internal affairs in a reasonable manner, with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised. There should be well defined procedures in place to ensure compliance with regulations and the firm should deal with regulators in an open and co-operative manner. The firm must notify the Authority as soon as it becomes aware of any breaches of the Authority's supervisory or reporting requirements.
16. Review meetings will be held by the Authority with the firm as required by the Authority. A firm is required, for the purposes of such meetings, to supply any additional material as may be specified by the Authority, including internal auditors' reports, operating procedures and management letters issued by the firm's auditors and by the auditors of collective investment schemes under management/administration. In addition, the Authority may conduct inspections of the operations of the firm if these are deemed necessary or appropriate.
17. The firm must ensure that any references in publicity material to the role of the Authority in relation to its supervision of the firm's activities are not misleading.

18. The firm is required to consult with the Authority before engaging in significant new activities.
19. The firm is not permitted to manage non-Irish collective investment schemes.
20. Firms providing administration services to a collective investment scheme not authorised by the Authority are required to submit in respect of such a scheme:
 - a copy of any agreements which the firm has entered into in relation to the scheme;
 - a copy of the prospectus or similar document issued by the scheme. The firm must seek to ensure that the prospectus does not give the impression that the scheme is authorised or supervised in any way in Ireland;
 - a copy of the annual audited report issued to unitholders;
 - a monthly return containing the following aggregate information for all schemes under administration within each base currency category:
 - domicile of the schemes
 - number of schemes
 - number of unitholders
 - total net asset value.

The Authority may request information on non-Irish schemes in order to effectively perform its role as supervisor of Irish service providers. Such requests do not imply any regulatory or supervisory role for the Authority in respect of non-Irish schemes.

Conditions relating directly to the collective investment scheme - unit trust, investment company and investment limited partnership:

21. Appointments to the office of director of the investment company require the prior approval of the Authority. Departures from the office of director must be notified to the Authority immediately.

22. The board of directors of the investment company should not have directors in common with the board of directors of its trustee.
- 22A Directors are required to disclose to their board any concurrent directorships which they hold on boards of authorised collective investment schemes and/or related entities which supply services to such schemes.
23. An investment company which does not employ the services of a management company or fund administration company must:
- have a minimum paid up share capital equivalent to €125,000 within 3 months of authorisation
 - satisfy the Authority on a continuing basis that it has sufficient management resources to effectively conduct its business and otherwise comply with the provisions of paragraph 15 above
 - meet with the Authority for review meetings as required by the Authority. An investment company is required, for the purposes of such meetings, to supply any additional material as may be specified by the Authority, including operating procedures and management letters issued by the company's auditors.
24. The management company, in the case of a unit trust scheme, investment company or investment limited partnership must submit monthly, half-yearly and annual reports to the Authority and any other reports which the Authority may from time to time request. The contents of monthly, half-yearly and annual reports are set out in separate notices.
25. The annual audited accounts of the promoter and investment adviser must be submitted to the Authority.
26. An investment limited partnership which temporarily suspends the repurchase or redemption of its units must inform the Authority immediately, and in any event within the working day on which such suspension took effect.

27. The management company, in the case of a unit trust scheme, an investment company or an investment limited partnership must notify the Authority on receipt of approval to market units in another jurisdiction.
28. The Authority must be notified in advance of proposed amendments to the following documentation:
- prospectus
 - memorandum and articles of association of an investment company
 - material agreements entered into with third parties.
- The Authority may object to the amendments notified to it and amendments objected to by the Authority may not be made.
29. The Authority must be notified in advance of any proposal to replace third parties which have contracted (directly or indirectly) with the unit trust, investment company or investment limited partnership to carry out services. The Authority may object to the proposals and replacements objected to by the Authority may not proceed.
30. The Authority requires a scheme to be audited at the date of replacement of a management, administration or trustee company.

Minimum activities of collective investment schemes authorised by the Authority to be undertaken in the State:

31. The calculation of each scheme's net asset value and dealing price, including the updating/confirmation of the prices of the underlying securities, must be undertaken in the State. The calculation of income and expense accruals must also be undertaken in the State.
32. All accounting records, i.e. income, expenses, assets and liabilities must be maintained in and updated in the State. Semi-annual and annual accounts must be prepared in the State. All detailed reconciliation i.e. stock, custody, register must be performed in the State; these are important elements of the books and records of a scheme. Dividends must be issued from the State. In

addition, the reconciliation of all bank accounts relating to schemes including those relating to dividends must be carried out in the State.

33. Maintenance and servicing of the unitholders' register including input, alteration and deletion of records must be carried out in the State. Unitholders' certificates or their equivalent must be issued in the State.
34. Correspondence to unitholders of the scheme, including completed application forms from investors, any other instructions from investors and all dividend/income distributions, must originate from and be retained within the State. Unit certificates or their equivalent must be issued in the State, as must the processing and issue of redemption requests.
35. All the back-up documents underlying the books and records of a scheme must be held in the State where they can be audited and, in addition, be subject to inspection by the Authority. The staff who maintain and prepare these books and records must be located in the State.
36. The conditions in paragraphs 31-35 do not preclude overseas hardware and software facilities being availed of by Irish fund managers/administrators/trustees by means of direct access. However, the substantive administration and control of a scheme must occur in the State.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Trustees - eligibility criteria

As the duties and obligations of a trustee under the Unit Trusts Act, 1990 and the Companies Act, 1990 Part XIII and of a custodian under the Investment Limited Partnerships Act, 1994 are essentially the same, the term “trustee” only is used throughout this notice in respect of all schemes.

1. The trust deed in the case of a unit trust scheme, the articles of association in the case of an investment company and the partnership agreement in the case of an investment limited partnership must provide that the assets of a unit trust scheme, investment company or investment limited partnership be entrusted to a trustee for safe keeping .
2. The trustee under a unit trust scheme may not be replaced without the approval of the Authority. The trust deed in the case of a unit trust scheme shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the trustee under the scheme with another trustee (including such a replacement by the Authority) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.
3. The trustee of an investment company may not be replaced without the approval of the Authority. The articles of association in the case of an investment company shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the trustee of the company with another trustee (including such a replacement by the Authority) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.

4. The trustee of an investment limited partnership may not be replaced without the approval of the Authority. The partnership agreement in the case of an investment limited partnership shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the trustee to the partnership with another trustee (including such a replacement by the Authority) and shall contain provisions to ensure the protection of limited partners in the event of any such replacement.

5. Entities eligible to act as a trustee are:

Note: the Directive referred to below is the First Council Directive of 12 December 1977 on the Co-ordination of Laws, Regulations and Administrative Provisions relating to the Taking up and Pursuit of Business of Credit Institutions.

- (a) a credit institution authorised in Ireland with a minimum paid-up share capital of IR£5 million or its equivalent in foreign currency;
- (b) a branch, established in Ireland, of a credit institution with a minimum paid-up share capital of IR£5 million or its equivalent in foreign currency and to which the Directive applies;
- (c) a company incorporated in the State which
 - (i) is wholly owned by a credit institution to which the Directive applies, provided the liabilities of the trustee are guaranteed by the credit institution and the credit institution has paid-up share capital of IR£5 million or its equivalent in a foreign currency;
or
 - (ii) is wholly owned by an institution in a non-Member State which is deemed by the Authority to be the equivalent of a credit institution to which the Directive would apply, provided the liabilities of the trustee are guaranteed by the parent institution

and the parent institution has a paid-up share capital of IR£5 million or its equivalent in a foreign currency; or

- (iii) is wholly owned by an institution or company either in a Member State or in a non-Member State which is deemed by the Authority to be an institution or company which provides unitholders with protection equivalent to that provided by a trustee under (a), (b), (c)(i) and (c)(ii) above and provided the liabilities of the company acting as trustee are guaranteed by the institution or company and the institution or company has a paid-up share capital of IR£5 million or its equivalent in a foreign currency.

6. A trustee must satisfy the Authority that it has the appropriate expertise and experience to carry out its functions, which functions the Authority has set out in a notice on the duties and conditions applicable to a trustee (NU 7). The trustee must satisfy the Authority that it has sufficient management resources to effectively conduct its business. In addition its directors and managers should be persons of integrity and have an appropriate level of knowledge and experience. The trustee must organise and control its internal affairs in a reasonable manner with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised. There should be well defined procedures in place to ensure compliance with regulations and the trustee should deal with regulators in an open and co-operative manner.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Trustees - duties and conditions

As the duties and obligations of a trustee under the Unit Trusts Act, 1990 and the Companies Act, 1990 Part XIII and of a custodian under the Investment Limited Partnerships Act, 1994 are essentially the same, the term “trustee” is used throughout this notice in respect of all schemes.

1. The trustee must ensure that the sale, issue, repurchase, redemption and cancellation of units effected on behalf of a unit trust scheme by a management company or by an investment company or contributions and withdrawals of contributions of partners’ capital in the case of an investment limited partnership are carried out in accordance with the Unit Trusts Act, 1990, the Companies Act, 1990 Part XIII or the Investment Limited Partnerships Act, 1994, including conditions imposed by the Authority, and in accordance with the trust deed, articles of association or partnership agreement.
2. The trustee must ensure that the value of units is calculated in accordance with the trust deed, articles of association or partnership agreement.
3. The trustee must carry out the instructions of the management company unless they conflict with the Unit Trusts Act, 1990 or the trust deed.

The trustee must carry out the instructions of the investment company unless they conflict with the Companies Act, 1990 Part XIII or the memorandum and articles of association of the investment company or the agreement entered into between the trustee and the investment company.

The trustee must carry out the instructions of the general partner unless they conflict with the Investment Limited Partnerships Act, 1994 or the partnership agreement or the agreement entered into between the trustee and the investment limited partnership.

4. *Deleted*
5. The trustee must ensure that in transactions involving a scheme's assets, any consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction.
6. The trustee must ensure that a scheme's income is applied in accordance with the trust deed, articles of association or partnership agreement.
7. The trustee must enquire into the conduct of the management company, investment company or general partner in each annual accounting period and report thereon to the unitholders. The trustee's report shall be delivered to the management company, investment company or general partner in good time to enable the management company, investment company or general partner to include a copy of the report in the Annual Report of the scheme. The trustee's report shall state whether in the trustee's opinion the unit trust, investment company or investment limited partnership has been managed in that period:
 - (i) in accordance with the limitations imposed on the investment and borrowing powers of the scheme by the trust deed, memorandum and articles of association or partnership agreement and by the Authority under the powers granted to the Authority by the Unit Trusts Act, 1990, the Companies Act, 1990 Part XIII and the Investment Limited Partnerships Act, 1994; and
 - (ii) otherwise in accordance with the provisions of the trust deed, memorandum and articles of association or partnership agreement and the Unit Trusts Act, 1990, the Companies Act, 1990 Part XIII or the Investment Limited Partnerships Act, 1994.

If the management company, investment company or general partner has not complied with (i) or (ii) above, the trustee must state why this is the case and outline the steps which the trustee has taken to rectify the situation.

8. The duties provided for in paragraphs 1 - 7 may not be delegated by the trustee to a third party. These duties must be carried out in the State.
9. A trustee company may not also act as a management company, investment company or general partner.
10. The board of directors of the trustee acting for a scheme must not have directors in common with the board of directors of the management company/administration company, the general partner or the investment company.
11. The management company, investment company or general partner and the trustee must act independently and solely in the interests of the unitholders or partners.
12. A trustee must send to the Authority any information and returns which are specified by the Authority .
13. The trustee may issue registered certificates or bearer securities, representing one or more portions of the scheme, or alternatively, in accordance with the provisions of the trust deed, articles of association or partnership agreement, written confirmations of entry in the register of units or fractions of units without limitation as to the splitting-up of units.
14. The trust deed in the case of a unit trust scheme or the trustee agreement in the case of an investment company or investment limited partnership must state that the trustee must exercise due care and diligence in the discharge of its duties and will be liable to the management company, investment company or general partner and the unitholders for any loss arising from negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties.

Unitholders may enforce this liability either directly or indirectly through the management company, depending on the legal nature of the relationship between the trustee, the management company and the unitholders.

15. The trust deed in the case of a unit trust scheme or the trustee agreement in the case of an investment company or investment limited partnership must state that the liability of a trustee will not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping.

In order to discharge its responsibility under this notice, the trustee must exercise care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The trustee must maintain an appropriate level of supervision over the safe-keeping agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.

16. The trustee must:
 - ensure that there is legal separation of non-cash assets held under custody and that such assets are held on a fiduciary basis. In jurisdictions where fiduciary duties are not recognised the trustee must ensure that the legal entitlement of the scheme to the assets is assured;
 - maintain appropriate internal control systems to ensure that records clearly identify the nature and amount of all assets under custody, the ownership of each asset and where documents of title to that asset are located.

Where the trustee utilises the services of a sub-custodian the trustee must ensure that these standards are maintained by the sub-custodian.

17. Where the trustee utilises the services of a global sub-custodian the trustee must ensure that:

- the non-cash assets are held on a fiduciary basis by the global sub-custodian's network of custodial agents. This should be confirmed by those agents on a regular basis;
- the trustee must maintain records of the location and amounts of all securities held by each of the custodial agents;
- the relationship between the trustee and the global sub-custodian should be set out in a formal contract between the two entities.

18. A trustee company which is not a credit institution must comply with the following conditions:

- The firm must, at all times, maintain a minimum capital requirement equivalent to €125,000 ('financial resources requirement') or one quarter of its preceding year's fixed overheads ('expenditure requirement'), whichever is higher. The firm's minimum capital requirement must be held as eligible assets in a form which is easily accessible and must be free from any liens or charges.

A firm, which is a member of a group, must maintain its minimum capital requirement outside the group. The firm must be in a position to demonstrate its ongoing compliance with this requirement.

The form of any subordinated loan or capital contribution incorporated in the calculation of Financial Resources, (including repayment), is subject to the approval of the Authority.

Specific details and supplementary guidance in relation to these requirements are contained in the 'Capital Compliance Requirement'. This document, which may be amended from time to time, includes the Compliance with Minimum Capital Requirement Report and forms part of the NU Series of Notices.

- Appointments to the office of director of the company require the prior approval of the Authority. Departures from the office of director must be notified to the Authority immediately.
- A minimum of two directors of the company must be Irish residents.

- Approval of the Authority is required in respect of any proposed change in ownership or in significant shareholdings. A significant shareholding for the purpose of this condition is defined as a shareholding of 10 per cent or more in the company.
 - Half-yearly financial and annual audited accounts of the company must be submitted to the Authority. The half-yearly accounts must be submitted within two months and the annual accounts within four months of the relevant reporting period. Annual audited accounts of the corporate shareholder(s) of the company must also be submitted.
19. The trustee is obliged to satisfy the Authority on a continuing basis that it has sufficient management resources to effectively conduct its business. In addition, its directors and managers should be persons of integrity and have an appropriate level of knowledge and experience. The trustee must organise and control its internal affairs in a reasonable manner, with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised. There should be well defined procedures in place to ensure compliance with regulations and the trustee should deal with regulators in an open and co-operative manner.
20. Review meetings will be held by the Authority with the trustee as required by the Authority. A trustee is required, for the purposes of such meetings, to supply any additional material as may be specified by the Authority, including internal auditors' reports, operating procedures and management letters issued by the trustee's auditors.
21. The Authority requires a scheme to be audited at the date of replacement of a trustee. In addition the Authority requires confirmation from both the retiring trustee and new trustee that they are satisfied with the transfer of assets.
22. Trustees providing trustee/custodial services to collective investment schemes not authorised by the Authority are required to submit in respect of such

schemes, to the extent that they have not been submitted by a management/administration company:

- a copy of any agreements which the trustee has entered into in relation to the scheme;
- a copy of the prospectus or similar document issued by the scheme. The trustee must seek to ensure that the prospectus does not give the impression that the scheme is authorised or supervised in any way in Ireland;
- a copy of the annual audited report issued to unitholders;
- a monthly return containing the following aggregate information for all schemes to which services are provided, within each base currency category:
 - domicile of the schemes
 - number of schemes
 - number of unitholders
 - total net asset value.

The Authority may request information on non-Irish schemes in order to effectively perform its role as supervisor of Irish service providers. Such requests do not imply any regulatory or supervisory role for the Authority in respect of non-Irish schemes.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Collective investment schemes - general conditions

1. The trust deed in the case of a unit trust scheme and articles of association in the case of an investment company shall lay down the conditions for the creation and cancellation of units.

The partnership agreement of an investment limited partnership shall lay down conditions for contributions and withdrawal of contributions of partners' capital.

2. The assets of a collective investment scheme, including any techniques or instruments used for the purposes of efficient portfolio management (Ref. NU 16), will be valued by a method clearly defined in the trust deed, articles of association or partnership agreement and approved by the Authority. The method of valuation used will be disclosed in the prospectus.
3. The assets of a collective investment scheme may only be purchased and sold at prices which are in conformity with the method defined in the trust deed, articles of association or partnership agreement.
4. Units of a collective investment scheme shall be issued or sold at a price arrived at by dividing the net asset value of the scheme (calculated on the approved basis) by the number of units outstanding; such price may be increased by duties and charges. The prospectus must disclose the charges relating to the sale or issue of units.

Units may not be issued, or if issued must be cancelled, unless the equivalent of the net issue price is paid into the assets of the scheme within a reasonable

time, which is specified in the prospectus. This shall not preclude the distribution of bonus units.

5. Units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the scheme (calculated on the approved basis) by the number of units outstanding; such price may be decreased by duties and charges. The prospectus must disclose the charges relating to the redemption or repurchase of units. The maximum charge relating to the redemption or repurchase of units as provided for in the trust deed, articles of association or partnership agreement may not be increased without approval on the basis of a majority of votes cast at general meeting. In the event of an increase in the redemption or repurchase charge a reasonable notification period must be provided by the scheme to enable unitholders redeem their units prior to the implementation of the increase.

The prospectus must disclose the period within which redemption proceeds will normally be paid or discharged to investors

6. The trust deed, articles or partnership agreement shall determine the frequency of the calculation of the issue and repurchase prices. These prices must be made available with similar frequency.
7. The management company or the investment company or the trustee shall issue registered certificates or bearer securities, representing one or more portions of the collective investment scheme which it manages, or alternatively, in accordance with the provisions of the trust deed or articles, written confirmation of entry in the register of units or fractions of units without limitation as to the splitting of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units.

The certificates and bearer securities shall be signed by the trustee. This signature may be reproduced mechanically.

8. The trust deed or partnership agreement shall prescribe the remuneration and the expenditure which the management company or general partner and trustee are empowered to charge to a unit trust or investment limited partnership and the method of calculation of such remuneration and the costs to be borne by the unit trust or investment limited partnership.

The articles of association shall prescribe the nature of the costs to be borne by the investment company.

The maximum annual fee charged by a management company of a unit trust or investment company or a general partner of an investment limited partnership as provided for in the trust deed, management agreement or partnership agreement may not be increased without approval on the basis of a majority of votes cast at general meeting. In the event of an increase in the annual fee a reasonable notification period must be provided by the scheme to enable unitholders redeem their units prior to the implementation of the increase.

9. The trust deed, articles of association or partnership agreement shall lay down the conditions and manner of application of income.
10. Collective investment schemes may not grant loans or act as a guarantor on behalf of third parties. This is without prejudice to the right of a scheme to acquire debt securities. It will not prevent schemes from acquiring securities which are not fully paid.
11. A change to the investment objectives, or a material change to the investment policies of a collective investment scheme, as disclosed in the prospectus, may not be effected without approval on the basis of a majority of votes cast at general meeting. "Material" shall be taken to mean, although not exclusively: *"changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the scheme"*.

In the event of a change of investment objectives and/or investment policy a reasonable notification period must be provided by the scheme to enable unitholders redeem their units prior to implementation of these changes.

12. Where managers, general partners or administrators of collective investment schemes enter into soft commission arrangements they must ensure that:
 - the broker or counterparty to the arrangement has agreed to provide best execution to the scheme;
 - benefits provided under the arrangement must be those which assist in the provision of investment services to the scheme;
 - there is adequate disclosure in the prospectus and in the periodic reports issued by the scheme.

13. An investment limited partnership may in the cases and according to the procedure provided for in the partnership agreement, temporarily suspend the calculation of the net asset value and redemption of units. Suspension may be provided for only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the partners. The general partner must inform the Authority immediately, and in any event within the working day on which such suspension took effect.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Prospectus

Publication

1. A collective investment scheme must publish a prospectus, which must be dated and the essential elements of which must be kept up to date.
2. The prospectus must be offered to investors free of charge before the conclusion of a contract.
3. The prospectus must contain sufficient information for investors to make an informed judgement of the investment proposed to them.
4. Material changes to the content of a prospectus must be notified to unitholders in the subsequent periodic report.
5. The prospectus may be translated into other languages provided that any such translation shall only contain the same information and shall have the same meaning as in the prospectus submitted to the Authority.

Advertising

6. All publicity comprising an invitation to purchase the units of a collective investment scheme must indicate that a prospectus exists and the places where it may be obtained.

7. Advertising must not contain information which is false or misleading or presented in a manner which is deceptive. Advertising should refer to the scheme's prospectus and must not be inconsistent with it.

8. Collective investment schemes marketing their units in Ireland or marketing their units in jurisdictions with no statutory regulation of marketing must comply with the following advertising standards:
 - All advertisements should be prepared with care and with the conscious aim of ensuring that potential investors fully grasp the nature of any commitment into which they may enter. The fact that the complexities of finance may well be beyond many of those to whom the opportunity being offered will appeal should be taken into account and accordingly advertisements must not take advantage of inexperience or credulity.

 - When an advertisement contains any forecast or projection, whether of a specific growth rate or of a specific return or rate of return it should make clear the basis upon which that forecast or projection is made, explaining for instance
 - whether reinvestment of income is assumed
 - whether account has been taken of the incidence of any taxes or duties and if so, how
 - whether the forecast or projected rate of return will be subject to any deductions other than upon premature realisation or otherwise.

 - Advertisements leading to the employment of money in anything the value of which is not guaranteed should clearly indicate that the value of the investment can go down as well as up and that the return upon the investment will therefore necessarily be variable. Where values are guaranteed sufficient detail should be included to give the reader a fair view of the nature of the guarantee.

- All advertisements making claims, whether specific or not, as to anticipated growth in value or rate of return should include a note, to be given due prominence, to the effect, as appropriate, that neither past experience nor the current situation are necessarily accurate guides to the future.
- When any advertisement quotes past experience in support of a forecast or projected growth in the value or rate of return it should not mislead in relation to present prospects and should indicate the circumstances in which and the period over which such experience has been gained in a way that is fair and representative.
- When investors are offered the facility of planned withdrawal from capital as an income equivalent (e.g. by cashing in units of schemes) the advertiser should ensure that the effect of such withdrawals upon the investment is clearly explained.
- When claims to investment skill are based upon an asserted increase in the value of particular items purchased or recommended for purchase by the advertiser in the past he should be able adequately to substantiate that the purchase or recommendation upon which his assertion is based was made at the time claimed and that the present value asserted for the investment corresponds to the price actually obtained for identical items when sold in the open market in the period immediately preceding the appearance of the advertisement. No claim to an increase in the value of investments or collectibles should be based upon the performance within a given market of selected items only unless substantiation for the claim can be provided in the form set out above.
- Phrases such as tax-free, tax-paid should not be used
 - unless it is made clear which particular tax(es) and/or duties are involved and
 - the advertiser states as clearly as possible what liabilities may arise and by whom they will be paid.

- When the achievement or maintenance of the return claimed or offered for a given investment is in any way dependent upon the assumed effects of tax or duty this should be clearly explained and the advertisement should make it clear that no undertaking can be given that the fiscal system may not be revised with consequent effect upon the return offered.

Contents

9. The prospectus must contain at least the following information:

(1) **Information concerning the scheme**

Name, form in law, and, if applicable, registered office and head office if different from the registered office.

Date of establishment or incorporation of the scheme and indication of duration, if limited.

Statement of the place where the trust deed, articles of association or partnership agreement, if not annexed, and periodic reports may be obtained.

Brief indications relevant to unitholders of the tax system applicable to the scheme. Details of whether deductions are made at source from the income and capital gains paid by the scheme to unitholders.

Accounting and distribution dates. The time limit (if any) after which entitlement to dividend lapses and procedure in this event.

In the case of investment companies: - names and positions in the company of the directors. Their experience both current and past, which is relevant to the

scheme. Details of their main activities outside the company where these are of significance with respect to that company.

Authorised share capital.

Name and address of auditor.

Details of the types and main characteristics of the units and in particular:

- the nature of the right (real, personal or other) represented by the unit,
- original securities or certificates providing evidence of title; entry in a register or in an account,
- characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,
- indication of unitholders' voting rights
- circumstances in which winding-up of the scheme can be decided on and winding-up procedure, in particular as regards the rights of unitholders.

Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.

Procedures and conditions of issue and sale of units.

Procedures and conditions for repurchase or redemption of units, including the period within which redemption proceeds will normally be paid or discharged to investors; circumstances in which repurchase or redemption may be suspended.

Description of rules for determining and applying income.

Description of the scheme's investment objectives (e.g. capital growth or income) and investment policy (e.g. specialisation in geographical or industrial sectors). The description must be comprehensive and accurate, readily comprehensible to investors and sufficient to enable investors make an informed judgement on the investment proposed to them. The description should include any limitations on that investment policy, and borrowing powers which may be used in the management of the scheme.

Description of the scheme's intentions regarding techniques and instruments which may be used for the purposes of efficient portfolio management, including its objectives (e.g. for hedging purposes or performance enhancement or both) and policy including a description of the different techniques and instruments which it can utilise and the risks inherent in these, if applicable.

Rules for the valuation of assets.

Determination of the sale or issue price and the repurchase or redemption price of units, in particular:

- the method and frequency of the calculation of those prices,
- information concerning the charges relating to the sale or issue and the repurchase, or redemption of units,
- the means, places and frequency of the publication of those prices.

In the case of umbrella schemes the charges, if any, applicable to switching of investments from one sub-fund to another.

The manner, amount and calculation of remuneration payable by the scheme to the management company, directors of the investment company, general partners, the trustee or third parties, and reimbursement of costs by the scheme

to the management company, directors of the investment company, general partners, the trustee or to third parties. All other costs and expenses which will be borne by the scheme, including costs of establishment.

All information on remuneration, costs and expenses to be borne by the scheme must be contained in the same section of the prospectus and in a form that can be easily understood and analysed.

(2) **Information concerning a management company or general partner**

Name, form in law, registered office and head office if different from the registered office. If the company is part of a group, the name of that group and the ultimate parent. Date of incorporation of the company and indication of duration if limited.

Names and positions in the company of the members of the administrative, management and supervisory bodies. Their experience, both current and past, which is relevant to the scheme. Details of their main activities outside the company where those are of significance with respect to that company.

Amount of the prescribed capital with an indication of the capital paid-up.

(3) **Information concerning a trustee**

Name, form in law, registered office and head office if different from the registered office.

Main activity.

(4) **Information concerning investment advisers**

Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the scheme:

Name of the firm or adviser;

Material provisions of the contract with the management company, general partner or investment company which may be relevant to the unitholders, excluding those relating to remuneration.

Other significant activities.

(5) **General information**

The prospectus must state that the authorisation of the scheme is not an endorsement or guarantee of the scheme by the Authority nor is the Authority responsible for the contents of the prospectus and must incorporate the following statement:

“The Irish Financial Services Regulatory Authority shall not be liable by virtue of its authorisation of this scheme or by reason of its exercise of the functions conferred on it by legislation in relation to this scheme for any default of the scheme. Authorisation of this scheme does not constitute a warranty by the Authority as to the credit worthiness or financial standing of the various parties to the scheme.”

The prospectus issued by all schemes must identify, and describe in a comprehensive manner, the risks applicable to investing in that particular scheme. In particular schemes should make reference to:

- (i) the fact that prices of units may fall as well as rise;
- (ii) the desirability of consulting a stockbroker or financial adviser about the contents of the prospectus; and
- (iii) where relevant, the fact that the difference at any one time between the sale and repurchase price of units in the scheme means that the investment should be viewed as medium to long term.

Schemes with investment objectives which involve a higher than average degree of risk (e.g. schemes investing in emerging markets or warrant schemes) must recommend that an investment in the fund should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors. This warning must be inserted and highlighted at the beginning of the prospectus and the prospectus must contain a full description of the risks involved.

Details of the persons who accept responsibility for information contained in the prospectus.

In the event that a stated minimum viable size is not reached within a specified period the prospectus must state that the scheme will return any subscriptions to the unitholders and apply to the Authority for revocation of its authorisation.

A description of the potential conflicts of interest which could arise between the management company, general partner and investment adviser and the scheme, with details, where applicable, of how these are going to be resolved.

A description of soft commission arrangements which may be entered into by a management/administration company or a general partner of a collective investment scheme.

The name of any third party which has been contracted by the management company, general partner or investment company to carry out its work.

Material provisions of the contracts between third parties and the management company, general partner or investment company which may be relevant to unitholders, excluding those relating to remuneration.

NU 10.3**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Information to be included in the monthly returns**

1. Total gross asset value of the scheme at end-month.
2. Total net asset value of the scheme at end-month.
3. Number of units in circulation at end-month.
4. Net asset value per unit at end-month.
5. Net proceeds from the issues of units during month.
6. Payments made for the repurchase of units during month.
7. Net amount from issues and repurchases during month.

This return must be submitted to the Authority within 20 working days of the end-month to which it refers.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Publication of annual and half-yearly reports

1. A collective investment scheme must publish an annual report for each financial year and a half-yearly report covering the first six months of the financial year.

Dates for the initial reports issued by a collective investment scheme will be agreed with the Authority at the time of authorisation.

The accounting information given in the annual report must be audited by one or more persons empowered to audit accounts in accordance with the Companies Acts. The auditor's report to unitholders, including any qualifications, shall be reproduced in full in the annual report.

2. The annual and half-yearly report must be published within the following time-limits, with effect from the ends of the periods to which they relate:
 - (a) four months in the case of the annual report
 - (b) two months in the case of the half-yearly report.
3. The annual report must contain the information outlined in Appendix A to this notice. The half-yearly report must contain the information outlined in Appendix B to this notice.
4. The annual and half-yearly reports must be sent to the Authority.
5. The latest annual report and any subsequent half-yearly report published must be offered to investors free of charge before the conclusion of a contract.

6. The annual and half-yearly reports must be available to the public at the places specified in the prospectus.
7. The annual and half-yearly reports shall be supplied to unitholders free of charge on request.
8. The Authority may exempt an investment limited partnership from the provisions of the European Communities (Accounts) Regulations, 1993 where its sole business is the investment of its funds in property with the aim of spreading investment risk and giving its partners the benefit of the management of its assets.

Appendix A

Information to be contained in the annual report

The annual report must include the following as well as any significant information which will enable investors to make an informed judgement on the development of the scheme and its results.

1. A balance sheet or statement of assets and liabilities.
2. Number of units in circulation.
3. Net asset value per unit.
4. A portfolio statement, distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in the light of the investment policy of the scheme (e.g., in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the investments the proportion it represents of the total net assets of the scheme should be stated.
5. A statement of changes in the composition of the portfolio during the reference period. To ensure that unitholders can identify significant changes in the disposition of the assets of the scheme only material changes are required to be included in the published statement. These are defined as aggregate purchases of a security exceeding one per cent of the total value of purchases for the period and aggregate disposals greater than one per cent of the total value of sales. At a minimum the largest 20 purchases and 20 sales must be given. As an alternative, schemes may include a declaration that a complete statement of changes will be made available to unitholders on request free of charge. The complete statement must, in any event, be sent to the Authority.

6. Where a scheme holds more than 10 per cent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions must be provided. Schemes holding less than 10 per cent of assets in deposits or other accounts with credit institutions must submit the relevant details to the Authority with their reports.
7. A description of soft commission arrangements affecting the scheme during the period.
8. A description on how techniques and instruments relating to transferable securities permitted for the purposes of efficient portfolio management, under Notice NU 16, have been utilised during the reporting period. This description should identify the specific techniques and instruments used during the period and indicate the purposes for the use of such techniques and instruments to allow unitholders assess their nature and the risk relating to them.

Open derivative positions at reporting date should be marked to market and specifically identified in the portfolio statement. Information on open option positions should include the strike price, final exercise date and an indication whether such positions are covered or not.

Treatment of realised and unrealised gains or losses arising from efficient portfolio management transactions should be explained in a note to the accounts.

Collective investment schemes which have engaged in stock-lending should disclose, in a note to the accounts, the aggregate value of securities on loan at reporting date, together with the value of collateral held by the scheme in respect of these securities. Where a scheme has entered into a stocklending programme in accordance with paragraph 17A of NU 16, the name of the Central Securities Depository System must be disclosed

9. A description of any material changes in the prospectus during the reporting period.

10. A list of exchange rates used in the report.
11. A statement of the developments concerning the assets of the scheme during the reference period including the following:
 - income from investments,
 - other income,
 - management charges,
 - trustees charges,
 - other charges and taxes,
 - net income,
 - distributions and income reinvested,
 - changes in capital account,
 - appreciation or depreciation of investments,
 - any other change affecting the assets and liabilities of the scheme.
12. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
 - the total net asset value
 - the net asset value per unit.
13. Reports on the activities of the financial year.
14. Trustee's report.

Appendix B

Information to be contained in the half-yearly report

1. A balance sheet or statement of assets and liabilities.
2. Number of units in circulation.
3. Net asset value per unit.
4. A portfolio statement, distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in the light of the investment policy of the scheme (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the investments the proportion it represents of the total assets of the scheme should be stated.
5. A statement of changes in the composition of the portfolio during the reference period. To ensure that unitholders can identify significant changes in the disposition of the assets of the scheme only material changes are required to be included in the published statement. These are defined as aggregate purchases of a security exceeding one per cent of the total value of purchases for the period and aggregate disposals greater than one per cent of the total value of sales. At a minimum the largest 20 purchases and 20 sales must be given. As an alternative, schemes may include a declaration that a complete statement of changes will be made available to unitholders on request free of charge. The complete statement must, in any event, be sent to the Authority.

6. Where a scheme holds more than 10 per cent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions must be provided. Schemes holding less than 10 per cent of assets in deposits or other accounts with credit institutions must submit the relevant details to the Authority with their reports.
7. A description of soft commission arrangements affecting the scheme during the reference period.
8. A description on how techniques and instruments relating to transferable securities permitted for the purposes of efficient portfolio management, under Notice NU 16, have been utilised during the reporting period. This description should identify the specific techniques and instruments used during the period and indicate the purposes for the use of such techniques and instruments to allow unitholders assess their nature and the risk relating to them.

Open derivative positions at reporting date should be marked to market and specifically identified in the portfolio statement. Information on open option positions should include the strike price, final exercise date and an indication whether such positions are covered or not.

Treatment of realised and unrealised gains or losses arising from efficient portfolio management transactions should be explained in a note to the accounts.

Collective investment schemes which have engaged in stock-lending should disclose, in a note to the accounts, the aggregate value of securities on loan at reporting date, together with the value of collateral held by the scheme in respect of these securities. Where a scheme has entered into a stocklending programme in accordance with paragraph 17A of NU 16, the name of the Central Securities Depository System must be disclosed.

9. A description of any material changes in the prospectus during the reporting period.

10. A list of exchange rates used in the report.

11. Where a scheme has paid or proposes to pay an interim dividend, the half-yearly report must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Schemes marketing solely to professional investors

1. The conditions and restrictions set out in the Authority's notices for collective investment schemes other than UCITS, in particular those related to investment and borrowing, may be disapplied in the case of schemes marketing their units to professional investors only. Notices may be disapplied in whole or in part on a case by case basis.

2. To qualify for such derogation, a scheme must have a minimum subscription requirement of €125,000 or its equivalent in other currencies. The aggregate of an investor's investments in the sub-funds of an umbrella scheme can be taken into account for the purposes of determining this requirement. The amounts of subsequent subscriptions from investors who have already subscribed the minimum subscription of €125,000 are unrestricted.

An exemption from the minimum subscription requirement can be granted to the following:

- (a) the management company or general partner;
- (b) a company appointed to provide investment management or advisory services to the scheme;
- (c) a director of the management company, investment company or general partner or a director of a company appointed to provide investment management or advisory services to the scheme;
- (d) an employee of the management company, investment company or general partner, or an employee of a company appointed to provide investment management or advisory services to the scheme, where the employee:
 - is directly involved in the investment activities of the scheme,or

- is a senior employee of the company and has experience in the provision of investment management services.

In the case of investments by employees¹ as set out in (d) above, the management company, investment company or general partner, as appropriate, must be satisfied² that prospective investors fall within the criteria outlined. The investors must certify that they are availing of the exemption provided and that they are aware that the scheme is marketed solely to professional investors who are normally subject to a minimum subscription of €125,000.

3. The prospectus must indicate, in a prominent position, that it has been authorised by the Authority to market solely to professional investors. It must specify its minimum subscription requirements and add the following:

“Accordingly, the requirements of the Irish Financial Services Regulatory Authority which are deemed necessary for the protection of retail investors, in particular the conditions set down by the Irish Financial Services Regulatory Authority in relation to investment and leverage, do not apply to the scheme.”

4. The prospectus must describe the investment objectives of the scheme and this description must be comprehensive and accurate, readily comprehensible to investors and be sufficient to enable investors make an informed judgement on the investment proposed to them.
5. The prospectus must contain quantitative parameters which limit the extent of leverage which will be engaged in by the scheme and the extent to which the investments of the scheme will be concentrated in a single or narrow range of exposures. These limits should be relevant to the investment policies of the

¹ An employee who is primarily involved in the provision of clerical, secretarial or administrative functions may not avail of this exemption.

² This may entail a provision in the investment management/advisory agreement which will require the investment management/advisory company to confirm the status of the employee in question.

scheme. Where the scheme may employ more than one investment policy different limits may apply to each such policy.

6. Schemes marketing solely to professional investors are not required to make public the issue and redemption prices of their units; however, these must be made available to unitholders on request.
7. The periodic reports issued by a scheme marketing solely to professional investors must, where relevant, disclose if distributions have been made out of the capital of the scheme.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

General investment restrictions

The investment restrictions set out in this notice apply to all collective investment schemes except where they are disapplied by notices relating to schemes with specific investment and/or marketing objectives. Schemes may derogate from the investment restrictions contained in this notice for six months following the date of their launch provided they observe the principle of risk spreading.

The investment objectives and policies of a scheme must be clearly defined in the prospectus with sufficient information to enable unitholders to be fully aware of the risks they are entering into.

1. A scheme may not invest more than 10 per cent of its net assets in securities which are not traded in or dealt on a market which is provided for in the trust deed, articles of association or partnership agreement. Restrictions in respect of markets may be imposed by the Authority on a case by case basis.
2. A scheme may invest no more than 10 per cent of its net assets in securities issued by the same institution.

Where a scheme has as a sole objective, investment in Irish equities, it may derogate from this limit as follows:

- An investment of up to 15 per cent of net assets may be made in an equity which has a weighting in excess of 10 per cent in the ISEQ index;
- An investment of up to 12.5 per cent of net assets may be made in an equity which has a weighting of between 8 per cent and 10 per cent in the ISEQ index.

No more than 10 per cent of the net assets of a scheme may be kept on deposit with any one institution; this limit is increased to 30 per cent for deposits with or securities evidencing deposits issued by or securities guaranteed by the following:

- (i) An EU credit institution
 - (ii) A bank authorised in a Member State of the European Economic Area (EEA) (Norway, Iceland, Liechtenstein,)
 - (iii) A bank authorised by a signatory state, other than an EU Member State, or a Member State of EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States)
 - (iv) The trustee
 - (v) A bank which is an associated or related company of the trustee, on a case by case basis.
3. Related companies/institutions are regarded as a single issuer for the purpose of paragraph 2. above.
- 3A. In the case of an equity exchange index tracking scheme the limit of 10 per cent in paragraph 2 may be increased to 20 per cent subject to the following conditions:
- The investment objective of the scheme must be to replicate a particular index. The weighting of securities of a specific issuer in the scheme's portfolio must closely correspond to the weighting of those securities in the relevant index. Deviations should be temporary and related to operational difficulties. Deviations in excess of 0.5 per cent of the net asset value of the scheme must be rectified without delay;
 - The index must be sufficiently diversified and represent an adequate benchmark for the market to which it refers;
 - The index must be published and be freely available;
 - The prospectus must clearly set out these conditions.
4. A scheme may not hold more than 10 per cent of any class of security issued by any single issuer. This requirement does not apply to investments in other collective investment schemes of the open-ended type.
5. An investment company, or a management company acting in connection with all of the schemes which it manages, may not acquire any shares carrying

voting rights which would enable it to exercise significant influence over the management of an issuing body.

6. A scheme may, subject to authorisation by the Authority, invest up to 100 per cent of its assets in transferable securities issued or guaranteed by any State, its constituent states, its local authorities, or public international bodies of which one or more States are members. Full disclosure must be made in the prospectus indicating the States, local authorities and public international bodies in the securities of which it is intended to invest more than 10 per cent of the assets in accordance with the provision of the preceding sentence.
7. A scheme may acquire the units of other open-ended collective investment schemes subject to the following:
 - (a) a scheme may not invest more than 20 per cent of net assets in such schemes
 - (aa) a scheme may not invest more than 10 per cent of net assets in unregulated schemes³
 - (b) where a scheme invests in units of a collective investment scheme managed by the same management company or by an associated or related company, the manager of the scheme in which the investment is being made must waive the preliminary/initial charge which it is entitled to charge for its own account in relation to the acquisition of units
 - (c) where a commission is received by the manager of the scheme by virtue of an investment in the units of another collective investment scheme, this commission must be paid into the property of the scheme.
8. The Authority may allow derogations from the limits laid down in this notice to a scheme investing in other collective investment schemes or companies which are authorised or incorporated in a non- EU state and where such collective investment schemes or companies invest their assets in the securities of issuing bodies which have their registered offices in that state and where

³ A regulated scheme is defined in the Authority's Guidance Note 1/01.

under the legislation of that state such a holding represents the most effective way in which the scheme can invest in the securities of that state.

9. The Authority may authorise a scheme to wholly own the shares of a limited company which would, in turn, invest in investments which are permitted under these notices for reasons which the Authority is satisfied are justified as being in the interests of unitholders.
10. The limits on investments contained in this and other notices are deemed to apply at the time of purchase of the investments. If the limits laid down in this notice are subsequently exceeded for reasons beyond the control of a scheme or as a result of the exercise of subscription rights, the scheme must adopt as a priority objective the remedying of that situation, taking due account of the interests of its unitholders.
11. A scheme may employ techniques and instruments for the purposes of efficient portfolio management and to provide protection against exchange rate risks under the conditions and within the limits laid down by the Authority (Ref. NU 16).
12. A scheme is permitted to engage, to a limited extent, in leverage through the use of techniques and instruments permitted for the purposes of efficient portfolio management under the conditions contained in NU 16. The net maximum potential exposure created by such techniques and instruments or created through borrowing, under the conditions and within the limits contained in NU 3, or through both of these together, shall not exceed 25 per cent of the net asset value of a scheme.

The prospectus must disclose a scheme's intention to engage in leverage.

13. A scheme may hold ancillary liquid assets.
14. A scheme may not carry out sales of transferable securities when such securities are not in the ownership of the scheme.

15. A scheme may invest in warrants on transferable securities which warrants are traded in or dealt on a market which is provided for in the trust deed, articles of association or partnership agreement.

A scheme, an objective of which is to invest in such warrants must include the following risk warning in a prominent place in the prospectus:

“an investment in the scheme should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors”.

Other schemes may invest no more than 5 per cent of their net assets in such warrants.

NU 14.6**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Venture or development capital schemes**

A collective investment scheme, which invests in venture or development capital investments, is subject to the following rules in addition to the general rules for all collective investment schemes which are not disapplied below:

1. The title must make clear that the scheme is a venture or development capital scheme.
2. The scheme must have a minimum subscription requirement of €12,500 or its equivalent in foreign currency.
3. The scheme may not invest more than 20 per cent of that proportion of net assets which is intended to be invested in venture or development capital investments in any one company or group of companies. The scheme may derogate from this restriction for one year following the date of its launch provided it observes the principle of risk spreading.
4. The provisions of paragraphs 4 and 5 of NU 13 - general investment restrictions - are disapplied in respect of that proportion of net assets which is invested in venture or development capital. The prospectus must indicate the intention of the scheme regarding the exercise of legal and management control over underlying investments.
5. The scheme may provide for the issue of partly paid units in the trust deed, articles of association or partnership agreement. The prospectus must fully disclose the nature of the commitment which investors will enter into. Where the scheme provides for partly paid units investment restrictions apply in terms of uncalled capital and net asset value combined.

6. The redemption procedure as described in the trust deed, articles of association or partnership agreement must be fully disclosed in a prominent position in the prospectus.
7. Before authorising a venture or development capital scheme, the Authority must be satisfied that the management company, general partner, and/or, where applicable, investment advisory company, have specific experience in the area of investment in venture or development capital.
8. The annual and half-yearly reports must contain:
 - (i) a report on the development of the companies in which the scheme has invested (indicating inter alia the nature of the companies profits/losses in the period); and
 - (ii) where an investment has been sold, the scheme must show separately for each investment the amount of profit or loss. These requirements are in addition to the requirements set down in the Authority's notice NU 11 - Publication of annual and half-yearly reports.
9. The prospectus must contain a description of the risks involved in this type of scheme and a prominent risk warning which will make reference to the following:
 - (i) the above average risk involved;
 - (ii) the suitability of this type of investment only for people who are in a position to take such a risk;
 - (iii) the likelihood that because the scheme is invested in unquoted companies, delays may arise in meeting redemption requests from unitholders; and

- (iv) a recommendation that not more than 5 per cent of an investor's portfolio be invested in the scheme.

The prospectus must also contain a description of the potential conflicts of interest which could arise between the management company and investment adviser and the scheme.

10. Where the scheme invests principally in venture or development capital investments, issue and redemption prices must be made available after a valuation of the portfolio has taken place and at least twice a year.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS**Umbrella schemes**

1. Where a collective investment scheme is constituted as an umbrella scheme, each sub-fund of the scheme must comply with the laws, regulations and conditions governing collective investment schemes.
2. The prospectus of an umbrella scheme must clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.
3. A unit trust scheme constituted as an umbrella scheme must provide for segregation of liability between sub-funds in the trust deed.
4. The prospectus of an investment company constituted as an umbrella scheme, must clearly disclose the potential risks to investors arising from the absence of the segregation of liability between sub-funds.
5. Investment companies which have as an investment objective the employment of leverage may not be established in the form of an umbrella scheme unless the scheme has taken measures to ensure that the liabilities of the sub-fund are limited to the net assets of that sub-fund.
6. A unit trust scheme constituted as an umbrella scheme may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from the management company.

7. In accordance with company law, an investment company must include accounts for all sub-funds of that company in the periodic reports issued by the company.

8. An umbrella scheme which has been authorised by the Authority must obtain the Authority's prior approval for each sub-fund. Details of proposed sub-funds, and the amendment or supplement to the prospectus which will set out the investment objectives and policy for the new sub-funds, must be submitted for approval. Where a supplement to the prospectus is issued the supplement must state that the scheme is constituted as an umbrella scheme and name the other existing sub-funds.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Techniques and instruments for the purpose of efficient portfolio management

General Conditions

1. Techniques and instruments utilised for the purposes of efficient portfolio management may be used only in accordance with the investment objectives of a collective investment scheme.
2. Any such technique or instrument must be one which (alone or in combination with one or more other techniques or instruments) is reasonably believed by the manager to be economically appropriate to the efficient portfolio management of a scheme.
3. The prospectus must disclose a scheme's intention to utilise these techniques and instruments and the periodic reports must indicate how they have been utilised.
4. The use of techniques and instruments contained in this notice is subject to the following conditions and limits. Use of any other techniques and instruments may be considered by the Authority, as appropriate, on a case by case basis.

Derivative Contracts

5. Call options may be purchased on condition that the exercise value of the option is at all times held by a scheme in cash or securities with a maturity of three months or under. However, uncovered call options may be purchased on the condition that the exercise value of the call options purchased in this way does not exceed 10 per cent of the net asset value of a scheme.

6. Generally, call options may be written (sold) on condition that a scheme at all times maintains ownership of the security which is the subject of the call option. Index call options may be written provided that all of the assets of a scheme, or a proportion which may not be less in value than the exercise value of the call option written, can reasonably be expected to behave in terms of price movement in the same manner as the options contract. However, uncovered call options may be written on the condition that the aggregate exercise value of all call options sold in this way does not exceed 10 per cent of the net asset value of a scheme.
7. Put options may be purchased on condition that the security which is the subject of the put option remains at all times in the ownership of a scheme. Index put options may be purchased provided that all of the assets of a scheme, or a proportion of such assets, which may not be less in value than the exercise value of the put option purchased, can reasonably be expected to behave in terms of price movement in the same manner as the options contract. Uncovered put options may be purchased on the condition that the exercise value of the put options purchased in this way does not exceed 10 per cent of the net asset value of a scheme.
8. Put options may be written (sold) on condition that the exercise value of the option is at all times held by a scheme in cash or securities with a maturity of three months or under.
9. Futures contracts may be sold on condition that either the security which is the subject of the contract remains at all times in the ownership of a scheme, or on condition that all of the assets of a scheme or a proportion of such assets, which may not be less in value than the exercise value of the futures contracts sold, can reasonably be expected to behave in terms of price movement, in the same manner as the futures contract.

10. Futures contracts may be purchased on condition that the exercise value of the contract is at all times held by a scheme in cash or securities with a maturity of three months or under. However, a scheme which invests directly in both the fixed income and equity markets may purchase futures contracts on condition that the aggregate net exposure of the scheme is not greater than that which would be achieved through the direct investment of all of the scheme's assets in the underlying securities. In such cases the scheme must clearly provide for such an active asset allocation strategy in its investment objectives.
11. The total amount of premium paid or received for options together with the amount of initial margin paid for futures contracts may not exceed 10 per cent of the net asset value of a scheme.
12. Conditions 5 to 11 above do not apply to a transaction which is being effected to close out an existing position.
13. Option, interest rate swap and exchange rate swap contracts transacted over the counter (OTC contracts) are permitted subject to the following additional requirements:
 - (a) the counterparty has shareholders' funds in excess of €125 million or equivalent in foreign currency;
 - (b) the name of the counterparty is disclosed in the subsequent half-yearly or annual report issued by a scheme;
 - (c) the manager is satisfied that the counterparty (i) has agreed to value the transaction at least weekly, and (ii) will close out the transaction at the request of the manager at a fair value; and
 - (d) initial outlay in respect of OTC derivatives to any one counterparty must not exceed 5 per cent of the net asset value of a scheme.

Other OTC contracts may be permitted by the Authority on a case by case basis.

14. The net maximum potential exposure created by such techniques and instruments or created through borrowing, under the conditions and within the limits contained in NU 3, or through both of these together, shall not exceed 25 per cent of the net asset value of a scheme.

Use of Repurchase/Reverse Repurchase and Stocklending Agreements

For the purposes of this section, “relevant institutions” refers to those institutions specified in paragraphs 2(i), (ii) and (iii), NU 13.

15. Repurchase / reverse repurchase agreements, (“repo contracts”) and stocklending agreements may only be effected in accordance with normal market practice.
16. Collateral obtained under a repo contract or stocklending agreement must be in the form of one of the following:
- (i) cash;
 - (ii) government or other public securities;
 - (iii) certificates of deposit issued by relevant institutions;
 - (iv) bonds/commercial paper issued by relevant institutions;
 - (v) letters of credit with a residual maturity of three months or less, which are unconditional and irrevocable and which are issued by relevant institutions;
 - (vi) DBVs (deliveries by value) within the Crest clearing system, or comparable Central Securities Depositories Systems instruments, provided that:
 - they are subject to a concentration limit;
 - the subject securities fall into one of the categories listed under (ii) to (v) above, or the securities are a constituent part of a recognised index such as the FTSE 100; and
 - the subject securities are consistent with the investment objectives and policies of the scheme.
17. Until the expiry of the repo contract or stocklending transaction, collateral obtained under such contracts or transactions
- (i) must equal or exceed, in value, at all times the value of the amount invested or securities loaned;

- (ii) must be transferred to the trustee, or its agent;
- (iii) must be held at the credit risk of the counterparty; and
- (iv) must be immediately available to the scheme, without recourse to the counterparty, in the event of a default by that entity.

Non-cash collateral:

- (i) cannot be sold or pledged;
- (ii) must be marked to market daily;
- (iii) must be issued by an entity independent of the counterparty; and
- (iv) must be diversified such that no more than 10 per cent of the collateral may be represented by the securities of any one issuer. This limit will not apply to government or other public securities. Such limit is increased to 30 per cent in respect of securities of, or instruments issued by, or other obligations of relevant institutions. Where appropriate, the credit quality of the non-cash collateral must be consistent with the investment objectives and policies of the scheme.

Cash collateral:

Cash may not be invested other than in the following:

- (i) deposits, which are capable of being withdrawn within 5 working days, or such shorter time as may be dictated by the repo contract or stocklending agreement. The holding of cash on deposit is subject to the provisions of paragraph 2, NU 13. Cash may not be held on deposit with the counterparty or with a related institution;
- (ii) government or other public securities;
- (iii) certificates of deposit as set out in paragraph 16 (iii) above;
- (iv) letters of credit as set out in paragraph 16 (v) above;
- (v) repurchase agreements, subject to the provisions herein;
- (vi) daily dealing money market funds which have and maintain a rating of Aaa or equivalent. If investment is made in a linked fund, as described in paragraph 7(b), NU 13, no subscription or redemption charge can be made by the underlying money market fund.

17A. Notwithstanding the provisions of paragraph 17, a scheme may enter into stocklending programmes organised by generally recognised Central Securities Depositories Systems provided that the programme is subject to a guarantee from the system operator.

18. The counterparty to a repo contract or stocklending agreement must have a minimum credit rating of A2/P2 or equivalent, or must be deemed by the scheme to have an implied rating of A2/P2. Alternatively, an unrated counterparty will be acceptable where the scheme is indemnified against losses suffered as a result of a failure by the counterparty, by an entity which has and maintains a rating of A2/P2.
19. A scheme must have the right to terminate the stocklending agreement at any time and demand the return of any or all of the securities loaned. The agreement must provide that, once such notice is given, the borrower is obligated to redeliver the securities within 5 business days or other period as normal market practice dictates.
20. Repo contracts or stocklending agreements do not constitute borrowing or lending for the purposes of NU 3 or NU 8 respectively.

Protection against Exchange Rate Risk

21. A scheme may employ techniques and instruments intended to provide protection against exchange rate risks, including cross-currency hedging, in the context of the management of its assets and liabilities provided that:
 - (i) the exposure of the scheme to foreign currency risk must not be leveraged in any way;
 - (ii) the intention to enter into such transactions should be fully disclosed in the scheme's prospectus, including disclosure regarding the currencies into which the scheme's currency exposure may be transformed; and
 - (iii) the periodic reports should indicate how these transactions have been utilised.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS**Money market schemes**

A collective investment scheme, the sole object of which is the investment in money market instruments, is subject to the following rules in addition to the general rules for all collective investment schemes which are not disapplied below.

1. At least 80 per cent of the assets of the scheme must consist of securities or deposits which have a maturity at date of acquisition of not greater than one year.
2. No more than 5 per cent of the net asset value of the scheme may be invested in the debt securities of companies, other than banks, with a credit rating of less than A1/P1.
3. The prospectus of the scheme must contain a risk warning drawing attention to the difference between the nature of a deposit and the nature of an investment in a money market scheme with particular reference to the risk that the principal invested in a money market scheme is capable of fluctuation.

NU 18.3**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Property schemes**

A collective investment scheme, which invests in property or property related assets, is subject to the following rules in addition to the general rules for all collective investment schemes which are not disapplied below.

“Property” is defined as a freehold or leasehold, with a minimum unexpired lease of seventy years, interest in any land or building.

“Property related assets” refer to securities issued by a body corporate (e.g. shares, debentures, warrants or certificates representing these) whose main activity is investing in, dealing in, developing or redeveloping property.

1. Before authorising the scheme, the Authority must be satisfied that the management company, general partner and/or, where applicable, investment advisory company, have specific experience in the area of investment in property.
2. The scheme may provide for the issue of partly paid units in the trust deed, articles of association or partnership agreement. The prospectus must fully disclose the nature of the commitment which investors will enter into. Where the scheme provides for partly paid units investment restrictions apply in terms of uncalled capital and net asset value combined.

Valuations

3. The management company of the scheme must appoint a qualified independent valuer or valuer(s) selected on a basis approved by the Authority. Details of the appointment(s) must be included in the prospectus and in the periodic reports issued by the scheme. The Authority must be notified in advance of a valuer’s appointment and resignation.

4. The scheme must be valued at open market value at least twice yearly, with provision being made for more frequent valuations to be undertaken if market conditions warrant it. Issue and redemption prices must be made available after a valuation of the portfolio has taken place.

Investment Restrictions

5. Before a property is acquired for the scheme it must be valued. The valuation report must confirm that if the property was acquired for the scheme it could be disposed of at that valuation within a reasonable period. The property must be acquired within six months from the date of the report and at a price which is within 5 per cent of the valuation price.
6. Property related assets must be traded in or dealt on a market which is provided for in the trust deed, articles of association or partnership agreement. However, up to 15 per cent of the scheme's net assets may consist of property related assets which are not traded in or dealt on such a market provided that these assets are acquired under the same conditions as for properties above.
7. Not more than 20 per cent of the scheme's net assets may be invested in any single property. This restriction is effective from the date of acquisition; however, a property whose economic viability is linked to another property is not considered as a separate item of property for this purpose. The scheme may derogate from this restriction for two years following the date of its launch provided it observes the principle of risk spreading. Schemes existing prior to August 1991, which had properties valued at more than 20 per cent of net assets do not have to dispose of such property.
8. There are no restrictions on the amount of cash or short term securities which can be held by the scheme when the purpose of such holdings is to meet redemption requirements or where this is otherwise reasonably necessary.

9. Not more than 25 per cent of the scheme's net assets may be invested in properties which are vacant, in the process of development or requiring development.
10. Not more than 25 per cent of the scheme's net assets may be invested in properties which are subject to a mortgage. (This provision does not affect the ability of a scheme to secure its borrowing generally on the properties of the scheme.) The amount of the outstanding mortgage on any property must not represent more than 50 per cent of the value of that property.
11. The scheme may not grant any person an option to acquire any property included in the scheme.

Borrowing

12. The scheme is allowed to borrow up to an amount equal to 25 per cent of the value of the net assets of the scheme, which borrowing may be generally secured on the properties of the scheme.

Redemption Procedures

13. The redemption procedure as described in the trust deed, articles of association or partnership agreement must be fully disclosed in a prominent position in the prospectus.

Other Requirements

14. The prospectus must contain a description of the risks involved in this type of scheme and a prominent risk warning which will make reference to circumstances in property markets which can cause difficulties in meeting redemptions .

15. The scheme must have reached a minimum viable size within a specified period after the launch. The minimum viable size and specified period must be defined in the prospectus. No property may be purchased or contracted until this minimum amount has been reached. In the event that the minimum viable size is not reached within the specified period, the scheme must return any subscriptions received to the unitholders and apply to the Authority for revocation of its authorisation.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Inward marketing of schemes established in other jurisdictions

1. Collective investment schemes which propose to market their units in Ireland must be authorised by a supervisory authority set up in order to ensure the protection of unitholders and which, in the opinion of the Authority, provides a similar level of investor protection to that provided under Irish laws, regulations and conditions governing collective investment schemes. Alternatively, the Authority must be satisfied that the management and trustee/custodial arrangements, constitution and investment objectives of any scheme which it is proposed to market in Ireland provide a similar level of investor protection to that provided by schemes authorised under the Irish laws, regulations and conditions governing collective investment schemes.
2. A scheme situated in another jurisdiction which proposes to market its units in Ireland must make application to the Authority in writing, enclosing the following information and documentation:

Information

- The full name of the scheme.
- The full name and address of the operator.
- The full name and address of any supervisory authority or authorities to which the operator is subject in the state in which the operator is established.
- The full name and address of the trustee or custodian.
- The jurisdiction in which the scheme is authorised.
- Details of the arrangements for the marketing of units in Ireland.

- The full name and address of the establishment in Ireland (hereafter “facilities agent”) where facilities will be maintained where:
 - unitholders can obtain payment of dividends and redemption or repurchase proceeds;
 - the instrument(s) constituting the scheme, the prospectus, the annual and half-yearly reports can be examined, free of charge, and copies obtained if required; and
 - complaints can be made for forwarding to the head office of the operator.

Documentation

- A statement or certificate from the supervisory authority of the scheme confirming that it is authorised.
- A certified copy of the fund rules or instruments of incorporation .
- The prospectus and any amendments thereto.
- The latest annual report and any subsequent half-yearly report.
- A copy of any other document affecting the rights of unitholders in the scheme.
- Confirmation from the facilities agent that it has agreed to act for the scheme.

Documentation submitted to the Authority must be in English or Irish or must be accompanied with a translation in English or Irish.

3. **Collective Investment Schemes Established in Certain Jurisdictions**

Collective investment schemes which are one of the following:

- established in Guernsey and authorised as Class A schemes
- established in Jersey and authorised as recognised funds
- established in the Isle of Man as authorised schemes

will receive approval to market their units in Ireland on completion of the information and documentation requirements.

4. Marketing of units in Ireland may not take place until the scheme has received a letter of approval from the Authority.

5. The following statement must be included in a prominent position in each copy of the scheme's prospectus and in any marketing material distributed in Ireland for the purposes of promoting the scheme:

“While this scheme has been approved to market its units to the public in Ireland by the Irish Financial Services Regulatory Authority, the scheme is not supervised or authorised in Ireland. It is incorporated/established in _____ and is supervised by _____.”
6. The prospectus must provide the following information for Irish investors:
 - details of the facilities agent and the facilities maintained;
 - provisions of Irish tax laws, if applicable;
 - details of the places where issue and repurchase prices can be obtained or are published;
 - the minimum subscription requirement in the case of schemes which market solely to professional investors.
7. A scheme constituted as an umbrella scheme must seek approval before marketing units of additional sub-funds in Ireland. Applications must be made to the Authority, in writing, enclosing the following:
 - a statement or certificate from the supervisory authority of the scheme confirming that the sub-fund is authorised;
 - the revised prospectus for the scheme; and
 - details of any changes in the operation of the scheme since the initial approval.
8. Schemes marketing their units in Ireland must comply with the provisions of the Code of Advertising Standards for Ireland. The code is available from the Advertising Standards Authority for Ireland, 35/39 Shelbourne Road, Dublin 4. The standards are also outlined in NU 9, under “Advertising”.
9. Schemes marketing their units in Ireland must comply with the law, regulations and administrative provisions in force in Ireland.

10. The annual and half-yearly reports issued by schemes marketing their units in Ireland must be submitted to the Authority as soon as they are available.

11. When a scheme has received approval from the Authority to market units in Ireland the name of the scheme and the name and address of the facilities agent will be placed on a list of schemes marketing in Ireland, which will be made available to the public on request.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Futures and options schemes - capital protected

A collective investment scheme which invests in futures, options and other derivative instruments and which provides for the protection of capital invested in the scheme over a given period of time (not greater than seven years) is subject to the following rules, in addition to the general rules for all collective investment schemes which are not disapplied below:

1. The property of the scheme may consist of futures and options (or other derivative instruments which are disclosed in the prospectus and approved by the Authority), deposits or short term securities which may include securities with a maturity of up to 7 years.
2. Measures undertaken for the protection of capital, particularly those dealing with the segregation of assets, are subject to the approval of the Authority. If necessary the Authority may relax the investment restrictions contained in this notice in order to provide for the protection of capital.
3. Not more than 5 per cent of the net asset value of the scheme may be invested in the debt securities of companies, other than banks, with a credit rating of less than A1/P1.
4. Futures and options must be traded on an organised exchange. Option, interest rate swap and exchange rate swap contracts transacted over the counter (OTC contracts) are permitted provided that:

- (a) the counterparty has shareholders' funds in excess of €25 million or equivalent in foreign currency;
- (b) the name of the counterparty is disclosed in the subsequent half-yearly or annual report issued by the scheme;
- (c) the manager is satisfied that the counterparty (i) has agreed to value the transaction at least weekly, and (ii) will close out the transaction at the request of the manager at a fair value; and
- (d) initial outlay in respect of OTC derivatives to any one counterparty must not exceed 5 per cent of the net asset value of the scheme.

Other OTC contracts may be permitted by the Authority on a case by case basis.

5. The scheme must not hold an open position in any one futures or options contract for which the margin or premium requirement represents 5 per cent or more of net assets.

The scheme must not hold an open position in contracts concerning a single commodity or single financial instrument for which the margin or premium requirement represents 10 per cent or more of net assets.

Where the investment objective of the scheme envisages tracking the performance of a securities index, the Authority may permit a derogation from the limits in this paragraph to enable the objective to be achieved subject to paragraph 2 above.

Foreign exchange transactions with credit institutions are permitted subject to the restrictions in this paragraph.

6. The scheme is permitted to borrow, for temporary purposes, up to 10 per cent of the net asset value of the scheme. However, the intention to borrow must not form part of the investment objectives of the scheme.
7. Before authorising a futures and options scheme the Authority must be satisfied that the directors of the management company, general partner and/or, where applicable, investment advisory company have specific experience in this area of investment.
8. The prospectus must contain a full description of the risks involved in this type of scheme.
9. The prospectus shall disclose what steps the scheme has taken to ensure that the liabilities of the scheme are limited to the net assets of the scheme, or in the case of a sub-fund of an umbrella scheme, to the net assets of that sub-fund.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Leveraged futures and options schemes

A collective investment scheme which invests in futures and options and other derivative instruments, which does not provide for the protection of capital invested in the scheme and which does not fall within the terms of the Authority's notice dealing with the subject of efficient portfolio management, is subject to the following rules, in addition to the general rules for all collective investment schemes which are not disapplied below:

1. The property of the scheme may consist of futures and options (or other derivative instruments which are disclosed in the prospectus and approved by the Authority), deposits or short term securities which may include securities with maturities of up to 7 years.
2. Not more than 5 per cent of the net asset value of the scheme may be invested in the debt securities of companies, other than banks, with a credit rating of less than A1/P1.
3. Futures and options must be traded on an organised exchange. Option, interest rate swap and exchange rate swap contracts transacted over the counter (OTC contracts) are permitted provided that:
 - (a) the counterparty has shareholders' funds in excess of €125 million or equivalent in foreign currency;

- (b) the name of the counterparty is disclosed in the subsequent half-yearly or annual report issued by the scheme;
- (c) the manager is satisfied that the counterparty (i) has agreed to value the transaction at least weekly, and (ii) will close out the transaction at the request of the manager at a fair value; and
- (d) initial outlay in respect of OTC derivatives to any one counterparty must not exceed 5 per cent of the net asset value of the scheme.

Other OTC contracts may be permitted by the Authority on a case by case basis.

4. The property of the scheme must include liquid assets which have a total minimum value, at all times, at least equal to the sum of all margin deposited and all premiums paid, in respect of transactions which have not been closed out.
5. The scheme must not hold an open position in any one futures or options contract for which the margin or premium requirement represents 5 per cent or more of net assets.

The scheme must not hold an open position in contracts concerning a single commodity or single financial instrument for which the margin or premium requirement represents 10 per cent or more of net assets.

Where the investment objective of the scheme envisages tracking the performance of a securities index, the Authority may permit a derogation from the limits in this paragraph to enable the objective to be achieved.

Foreign exchange transactions with credit institutions are permitted subject to the restrictions in this paragraph.

6. The scheme is permitted to borrow, for temporary purposes, up to 10 per cent of the net asset value of the scheme. However, the intention to borrow must not form part of the investment objectives of the scheme.
7. Before authorising a scheme the Authority must be satisfied that the directors of the management company, general partner and/or, where applicable, investment advisory company have specific experience in this area of investment.
8. The prospectus must contain a full description of the risks involved in this type of scheme and a prominent risk warning which will make specific reference to the following:
 - (i) the above average risk involved;
 - (ii) the suitability of this type of investment only for people who are in a position to take such a risk; and
 - (iii) a recommendation that not more than 5 per cent of an investor's portfolio be invested in the scheme..
9. The prospectus shall disclose what steps the scheme has taken to ensure that the liabilities of the scheme are limited to the net assets of the scheme, or in the case of a sub-fund of an umbrella scheme, to the net assets of that sub-fund.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Feeder Schemes

A collective investment scheme, the principal object of which is investment in a single collective investment scheme (the underlying scheme), is subject to the following rules, in addition to the general rules for all collective investment schemes which are not disapplied below:

1. The underlying scheme must be authorised in Ireland, or authorised in another jurisdiction by a supervisory authority established in order to ensure the protection of unitholders and which, in the opinion of the Authority, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing collective investment schemes.
2. The prospectus must contain sufficient information relating to the underlying scheme to enable investors make an informed judgement of the investment proposed to them. The periodic reports of the underlying scheme must be attached to the periodic reports of the feeder scheme.
3. The scheme must make appropriate disclosures in its prospectus regarding the relationship between it and the underlying scheme including comprehensive information relating to charges and expenses in respect of the underlying scheme.
4. The manager of the underlying scheme must waive the preliminary/initial charge which it is entitled to charge for its own account in relation to the acquisition of units by the feeder scheme.

5. Where a commission is received by the manager of the scheme by virtue of an investment in the units of the underlying scheme, this commission must be paid into the property of the scheme.

6. The scheme may employ techniques and instruments for the purposes of efficient portfolio management and to protect against exchange rate risk under the conditions and within the limits laid down by the Authority in Notice NU 16.

NU 23.3**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Closed-ended schemes**

1. An applicant who wishes to establish a closed-ended scheme must satisfy the Authority that the nature of the scheme as reflected, inter alia, in the investment objectives, the nature of the potential investors, the life or period of closure of the scheme, the intention regarding the listing of the scheme and any proposals from the manager to arrange for a market to be made, or otherwise to provide liquidity in the units, is such that it would be appropriate and prudent to approve the scheme as a closed-ended scheme.
2. The scheme must have a finite closed-ended period, the duration of which must be provided for in the trust deed, articles of association or partnership agreement.
3. The Authority may permit the scheme to derogate from paragraph 4 of NU 8 - Collective investment schemes - general supervisory conditions, and provide for the issue of units other than at net asset value. The scheme must demonstrate that unitholders will not be prejudiced by such a provision. The conditions under which units will be issued are subject to approval by the Authority.
4. The prospectus for the scheme must make appropriate reference to the fact that the scheme will not redeem its units and to the availability, or otherwise, of other mechanisms through which unitholders can dispose of units during the closed period.

5. This notice specifies the extent of the disapplication by the Authority of Section 12(1) of the Unit Trusts Act, 1990 and Section 253(2)(b)(ii) of the Companies Act, 1990 Part XIII, in accordance with its powers under Section 12(2) of the Unit Trusts Act, 1990 and Section 253(2A)(a) of the Companies Act, 1990 Part XIII, as amended.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS

Schemes which market solely to Qualifying Investors¹ and which are not bound by the limits relating to Investment Objectives and Policies as set out in these Notices.

1. The conditions and restrictions related to investment objectives and policies and leverage set out in the Authority's notices, in particular NU 3, NU 13 and NU 16, are disapplied in full in respect of schemes marketing solely to qualifying investors. A detailed list of these conditions and restrictions is attached in Appendix 1 to this notice. All provisions contained in notices which do not relate to investment objectives, investment policies or to the level of leverage employed apply in full to these schemes, unless specific derogations are granted by the Authority.
2. Investment companies marketing solely to qualifying investors must confirm in writing to the Authority that the scheme will maintain the aim of spreading investment risk as required under section 253 2(a) of the Companies Act, 1990 Part XIII. Periodic reports issued by the investment company, which are required under notice NU 11, must confirm that the aim of spreading of investment risk has been maintained.
3. To qualify for a derogation, as in paragraph 1 above, a scheme must have the following characteristics :

¹ As defined in paragraph 3 of this Notice

Minimum Subscription

A minimum subscription of €250,000 or its equivalent in other currencies. The aggregate of an investor's investments in the sub-funds of an umbrella scheme can be taken into account for the purposes of determining this requirement. The amounts of subsequent subscriptions from investors who have already subscribed the minimum subscription of €250,000 are unrestricted.

Institutions may not group amounts of less than €250,000 for individual investors.

Qualifying Investors

Any natural person with a minimum net worth (which excludes main residence and household goods) in excess of €1,250,000.

or

Any institution (an entity other than a natural person) :

- a) which owns or invests on a discretionary basis at least €25,000,000 or its equivalent in other currencies or
- b) the beneficial owners of which are qualifying investors in their own right.

An exemption from the minimum subscription requirement and qualifying investor criteria can be granted to the following:

- (a) the management company or general partner;
- (b) a company appointed to provide investment management or advisory services to the scheme;
- (c) a director of the management company, investment company or general partner or a director of a company appointed to provide investment management or advisory services to the scheme;
- (d) an employee of the management company, investment company or general partner, or an employee of a company appointed to provide investment management or advisory services to the scheme, where the employee;
 - is directly involved in the investment activities of the scheme,
 or

- is a senior employee of the company and has experience in the provision of investment management services.

In the case of investments by employees², the management company, investment company or general partner, as appropriate, must be satisfied³ that prospective investors fall within the criteria outlined. The investors must complete the certification requirements set out in paragraph 4 below. In addition investors must certify to the scheme that they are availing of the exemption provided for in this sub-paragraph and that they are aware that the scheme is normally marketed solely to qualifying investors who (a) meet a high net worth test and (b) are subject to a minimum subscription of €250,000.

4. Qualifying investors must certify in writing to the investment company, management company in the case of a unit trust, or general partner in the case of an investment limited partnership that they meet the minimum criteria listed in paragraph 3 and that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investments is the potential to lose all of the sum invested.
5. The prospectus must indicate, in a prominent position, that a scheme has been authorised by the Authority for marketing solely to qualifying investors. It must specify its minimum subscription requirements and add the following:

“Accordingly, while this scheme is authorised by the Irish Financial Services Regulatory Authority, the Authority has not set any limits or other restrictions on the investment objectives, the investment policies or on the degree of leverage which may be employed by the scheme.”

In the case of investment companies the following sentence must be added to the above statement:

² An employee who is primarily involved in the provision of clerical, secretarial or administrative functions may not avail of this exemption.

³ This may entail a provision in the investment management/advisory agreement which will require the investment management/advisory company to confirm the status of the employee in question.

“The scheme must comply with the aim of spreading investment risk in accordance with Section 253(2) (a) of the Companies Act, 1990 Part XIII”

6. The prospectus must describe the investment objectives and investment and borrowing policies of the scheme and these descriptions must be comprehensive and accurate, readily comprehensible to investors and be sufficient to enable investors make an informed judgement on the investment proposed to them. The prospectus must contain quantitative parameters on the extent of leverage which will be engaged in by the scheme.
7. The prospectus must contain a prominent risk warning which will make specific reference to the following:
 - (i) the potential for above average risk involved and
 - (ii) the suitability of this type of investment only for people who are in a position to take such a risk.
8. Schemes marketing solely to qualifying investors are not required to make public the issue and redemption prices of their units; however, these must be made available to unit-holders on request.
9. The periodic reports issued by a scheme marketing solely to qualifying investors must, where relevant, disclose if distributions have been made out of the capital of the scheme.

Appendix 1 :
Automatic derogations from provisions contained in the Non-UCITS NOTICES
for schemes authorised under Notice NU 24

A : AUTOMATIC DEROGATIONS

- NU 1 Fund of funds schemes - **Paragraphs 1, 2, 3 and 4.**
- NU 3 Borrowing powers - **Paragraphs 2 and 3.**
- NU 8 Collective investment schemes - general conditions - **Paragraph 6.**
- NU 12 Schemes marketing solely to professional investors - **Not relevant.**
- NU 13 General investment restrictions - **Paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 15.**
- NU 14 Venture or development capital schemes - **Paragraphs 2, 3, 4 and 9.**
- NU 16 Techniques and instruments for the purpose of efficient portfolio management -
Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 23.
- NU 17 Money market schemes - **Paragraphs 1 and 2.**
- NU 18 Property schemes - **Paragraphs 5, 6, 7, 9, 10, 11 and 12.**
- NU 20 Futures and options schemes - capital protected - **Paragraphs 1, 2, 3, 4, 5 and 6.**
- NU 21 Leveraged futures and options schemes - **Paragraphs 1, 2, 3, 4, 5, 6 and 8.**
- NU 22 Feeder schemes - **Paragraph 6.**
- NU 25 Funds of unregulated funds schemes

B : NO DEROGATIONS IN RESPECT OF THE FOLLOWING NOTICES

- NU 2 Dealings by promoter, manager, partner, trustee, investment adviser and associates
- NU 4 Information and document requirements of the Irish Financial Services Regulatory Authority in support of an application for authorisation as a unit trust, investment company or investment limited partnership
- NU 5 Supervisory conditions for non-UCITS collective investment schemes authorised by the Irish Financial Services Regulatory Authority and certain firms providing services to such schemes
- NU 6 Trustees - eligibility criteria
- NU 7 Trustees - duties and conditions
- NU 9 Prospectus
- NU 10 Information to be included in the monthly returns
- NU 11 Publication of annual and half-yearly reports
- NU 15 Umbrella schemes
- NU 19 Inward marketing of schemes established in other jurisdictions - **Not relevant**
- NU 23 Closed-ended schemes

NU 25.2**COLLECTIVE INVESTMENT SCHEMES OTHER THAN UCITS****Funds of unregulated funds schemes**

Funds of funds schemes, authorised pursuant to the provisions of Notice NU 1, may invest no more than 10% of their net asset value in unregulated schemes. A scheme which proposes to invest more than 10% in unregulated schemes, including investments in hedge funds and other alternative investment funds, is subject to the following rules. These rules are in addition to the general rules for all collective investment schemes which are not disapplied below:

Diversification

1. Investment in regulated schemes¹ is subject to the provisions of NU 1.
2. Investment in schemes other than those falling under paragraph 1 is subject to the following:
 - The scheme may not invest more than 5% of net assets in the units of any one scheme or more than 10% in the units of schemes managed by the same management company.
 - The limits set out in the first indent may be raised to 10% and 20% respectively, if the management company of the underlying scheme is authorised to provide investment management services in an OECD jurisdiction.
 - Related companies/institutions are regarded as a single management company for the purposes of this paragraph.

Underlying schemes

3. The underlying schemes
 - must be subject to independent audit in accordance with generally accepted international accounting standards;
 - must have arrangements in place such that all assets are held by a party/parties independent of the manager of the schemes.

¹ A regulated scheme is defined in the Authority's Guidance Note 1/01.

Minimum subscription

4. The scheme must have a minimum subscription requirement of €12,500 or its equivalent in other currencies. This requirement may be disapplied where acceptable arrangements are in place to provide full protection to the capital subscribed by investors.

Disclosure

5. The prospectus must include the following risk warning, in bold, in a prominent position on the cover of the prospectus and on the application form attached to the prospectus:

“This scheme will invest in unregulated collective investment schemes which may not be subject to the same legal and regulatory protection as afforded by collective investment schemes authorised and regulated in the European Union or equivalent jurisdictions. Investment in unregulated schemes involves special risks that could lead to a loss of all or a substantial portion of such investment.

An investment in this scheme is not suitable for all investors. A decision to invest in this scheme should take into account your own financial circumstances and the suitability of the investment as a part of your portfolio. You should consult a professional investment advisor before making an investment.”

6. In addition to the normal information provided, the prospectus must include information on the special risks referred to in paragraph 5. It must provide specific information drawing attention to:
 - the investment policies of underlying schemes in which the scheme proposes to invest and the relevant risks associated with such policies;
 - the levels of leverage employed by the underlying schemes;
 - the expected impact of fees charged at both the level of the scheme and the underlying schemes on overall performance;
 - cumulative effect of performance fees, which may arise at both the scheme and underlying scheme level;
 - potential liquidity problems;

- potential valuation difficulties.
7. The prospectus must provide an explanation, in plain English, including a glossary of terms if necessary, of the alternative investment strategies which the underlying schemes may employ.

The prospectus must describe the diversification policies of the scheme including information on the extent to which the scheme will diversify between trading strategies and also the extent to which it will invest in underlying schemes which have demonstrated a high volatility of return.

8. The periodic reports must list the names of the underlying schemes, their managers and their domicile. The annual report must provide information on the impact of fees, including performance fees, on returns to unitholders.

Management

9. The management of the scheme and its delegate(s), where applicable, must demonstrate appropriate experience and expertise in relation to alternative investment schemes.

Detailed information must be submitted to enable the Authority to be satisfied that appropriate controls and systems are in place to monitor constantly the activities of the underlying schemes, their managers and risk assessment procedures. This will include, inter alia, information on the extent to which the management of the scheme and its delegate(s) will:

- review the background, expertise and experience of the underlying managers;
- review, on an ongoing basis, the risks of the underlying schemes and the risks of the strategies being employed, including the amount of gearing inherent in these strategies and counterparty risk;
- monitor overall leverage of the scheme.

The management of the scheme must be able to provide the Authority, on request, with a detailed report on the risk profile and recent performance of the scheme's investments.

10. The scheme may not invest in units of another fund of funds scheme.
11. Where the scheme invests in units of a collective investment scheme managed by the same management company or by an associated or related company, the manager of the scheme in which the investment is being made must waive the preliminary/initial/redemption charge which it would normally charge.
12. Where a commission is received by the manager of the scheme by virtue of an investment in the units of another collective investment scheme, this commission must be paid into the property of the scheme.

Redemption policies

13. Where the scheme is open-ended it must provide at least one dealing day per month. The maximum interval between submission of a redemption request and payment of settlement proceeds must not exceed 95 calendar days.

The scheme may retain up to 10% of redemption proceeds, where this reflects the redemption policy of the underlying scheme(s) until such time as the full redemption proceeds from the underlying scheme(s) is received.

CAPITAL COMPLIANCE REQUIREMENT

Part A

1. Financial Resources Requirement may be calculated as the aggregate of:
 - (i) Equity capital fully paid up, including paid up ordinary share capital¹
 - (ii) Perpetual non-cumulative preference shares
 - (iii) Qualifying Subordinated Loan Capital (see Part B below)
 - (iv) Share premium account
 - (v) Disclosed revenue and capital reserves (excluding revaluation reserves)
 - (vi) Externally verified interim net profits

LESS:

- (vii) Losses in the current year
2. The firm must, at all times, maintain a minimum capital requirement equivalent to €125,000 ('financial resources requirement') or one quarter of its preceding year's fixed overheads ('expenditure requirement'), whichever is higher. Fixed overheads include all expenses incurred by the firm with the following exceptions:
 - exceptional and extraordinary items which have previously been agreed with the Authority;
 - shared commissions paid, other than to officers and staff of the firm;
 - profit shares, bonuses, etc;
 - losses arising on the translation of foreign currency balances;
 - depreciation;
 - any other non-fixed expense which has been previously agreed with the Authority.

The expenditure figure used should be taken from the most recent audited accounts of 12 months duration. However, the Authority reserves the right to adjust this should it be deemed not to reflect accurately the current position of the firm. Where the firm proposes to deduct an expense requiring the prior approval of the Authority as specified above, the firm should consult and agree this deduction with the Authority prior to the submission of the firm's return for the relevant period. Supporting documentation should be provided for any deductions from fixed overhead, which are not easily identified in the profit and loss account and balance sheet submitted.

3. The firm's minimum capital requirement, calculated in accordance with 2 above, must be held in the form of eligible assets which are easily accessible and which are free from any liens or charges. Eligible assets may be calculated as follows:

¹ Capital contributions are acceptable for inclusion here provided they are executed in the Authority's approved format

Total Assets (fixed assets and current assets) less the following ineligible assets

- Fixed Assets
- Cash or cash equivalents held with Group companies
- Debtors
- Bad debt provisions
- Prepayments
- Intercompany amounts (gross figure)
- Loans
- Collective investment schemes which are not daily dealing
- Any other assets which are not easily accessible²

A firm, which is a member of a group, must maintain its minimum level of capital outside the group. The firm must be in a position to demonstrate its ongoing compliance with this requirement.

Part B

As indicated in Part A, the Authority may permit subordinated loans to be used by a firm to satisfy part of its financial resources capital requirement as follows:

Conditions for use of perpetual subordinated loan capital:

- (a) it may not be repaid on the bearer's initiative or without the prior agreement of the Authority;
- (b) the debt agreement must provide for the firm to have the option of deferring the payment of interest on the debt;
- (c) the lender's claims on the firm must be wholly subordinated to those of all non-subordinated creditors;
- (d) the documents governing the issue of the securities must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the firm in a position to continue trading;
- (e) only fully paid-up amounts shall be taken into account; and
- (f) agreements must be in a form acceptable to the Authority.

Conditions for use of redeemable subordinated loan capital:

To qualify for inclusion, the subordinated loans must have an original maturity of at least 5 years and have the following characteristics:

- (a) only fully paid-up loans may be taken into account;
- (b) the extent to which they rank as Financial Resources will be reduced on a straight-line basis over the last five years before repayment date;

² When a firm invests all or part of its capital in one or more collective investment schemes, the Authority reviews the relationships linking the scheme(s) and the firm. It is the Authority's view that it is likely that where the firm invests in collective investment schemes promoted by other group companies or to which other group companies provide services, its access to those schemes is likely to be restricted in the event that the related firm gets into difficulty. Accordingly, investments in such collective investment schemes will not rank as eligible assets for the purposes of satisfying the firm's capital requirement

- (c) the loan agreement must not include any clause providing that in specified circumstances, other than the winding up of the firm the debt will become repayable before the agreed repayment date;
- (d) amounts may not be repaid without prior approval of the Authority;
- (e) the lender's claims on the firm must be wholly subordinated to those of all other non-subordinated creditors;
- (f) agreements must be in a form acceptable to the Authority.

Compliance with Minimum Capital Requirement Report

Name of Company: _____

Period Under Review: _____ Currency: _____

This report must be submitted by the firm at the reporting interval advised to it on authorisation

FINANCIAL RESOURCES

Equity capital fully paid up, including ordinary share capital _____

Perpetual non-cumulative preference shares _____

Eligible capital contribution (Authority's approved format) _____

Qualifying subordinated loan capital (Authority's approved format – see note 1) _____

Share premium account _____

Disclosed reserves and capital reserves (excluding revaluation reserves (last audited figures) _____

Other reserves _____

Less: Current year losses _____

TOTAL FINANCIAL RESOURCES

EXPENDITURE REQUIREMENT

Total expenditure _____

LESS (see note 2) _____

- Exceptional and extraordinary items previously agreed with the Authority _____
- Shared commissions paid, other than to officers and staff of the firm _____
- Profit shares, bonuses etc. _____
- Losses arising on translation of foreign currency balances _____
- Depreciation _____
- Any other non-fixed expense previously agreed with the Authority _____

Net qualifying expenditure

EXPENDITURE REQUIREMENT (ONE QUARTER OF NET QUALIFYING EXPENDITURE)

MINIMUM CAPITAL REQUIREMENT (HIGHER OF €125,000 AND EXPENDITURE REQUIREMENT)

Compliance with Minimum Capital Requirement cont'd

ELIGIBLE ASSETS

Total fixed assets _____

Total current assets _____

Total assets _____

Less: ineligible assets:

- Fixed assets _____
- Cash held with group companies _____
- Debtors _____
- Bad debt provisions _____
- Prepayments _____
- Intercompany amounts (gross) _____
- Loans _____
- Collective investment schemes which are not daily dealing _____
- Any other assets which are not easily accessible (see note 3) _____

Total ineligible assets _____

TOTAL ELIGIBLE ASSETS

COMPLIANCE

 Is minimum capital requirement held in eligible assets YES / NO

 Is firm in compliance at reporting date? YES / NO

 Was firm in compliance throughout the period under review? YES / NO

 Where are eligible assets held?
 (attach recent independent statement evidencing location)

Notes:

1. Only the qualifying amount of subordinated debt, executed in the Authority's approved format may be included here. The qualifying amount should be calculated as set out below:

| | |
|-----------------------------------|--|
| Remaining term to Maturity | |
| | |
| Gross Amount | |
| Less Amortisation | |
| = Qualifying amount | |

2. Where the firm proposes to deduct an expense requiring the prior approval of the Authority, the firm should consult and agree this deduction with the Authority prior to the submission of the firm's return for the relevant period. Supporting documentation should be provided for any deductions from fixed overhead, which are not easily identified in the profit and loss account and balance sheet submitted.
3. When a firm invests all or part of its capital in one or more collective investment schemes, the Authority reviews the relationships linking the scheme(s) and the firm. It is the Authority's view that it is likely that where the firm invests in collective investment schemes promoted by other group companies or to which other group companies provide services, its access to those funds is likely to be restricted in the event that the related firm gets into difficulty. Accordingly, investments in such collective investment schemes will not rank as eligible assets for the purposes of satisfying the firm's capital requirement.