

**VIRGIN ISLANDS**  
**MUTUAL FUNDS (RESTRICTED PUBLIC FUND) REGULATIONS, 2005**

**ARRANGEMENT OF REGULATIONS**

*Regulation*

1. . Citation.
2. . Interpretation.
3. . Restricted public fund.
4. . Condition.

SCHEDULE

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2005 NO. 24**

**MUTUAL FUNDS ACT, 1996  
(No. 6 of 1996)**

**Mutual Funds (Restricted Public Fund) Regulations, 2005**

[Gazetted 22<sup>nd</sup> April, 2005]

The Governor in Council, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by section 42 of the Mutual Funds Act, 1996 (No. 6 of 1996), makes the following Regulations:

Citation.                   **1.** These Regulations may be cited as the Mutual Funds (Restricted Public Fund) Regulations, 2005.

Interpretation.           **2.** (1) In these Regulations,

“Article” means an Article of the Directive;

“Directive” means the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as in force on the date of commencement of these Regulations and as set out in the Schedule.

Schedule

(2) For the purposes of these Regulations, a reference to “competent authority” in these Regulations or in the Directive shall, unless the context otherwise requires, be construed as a reference to the Commission.

Restricted public fund.           **3.** A public fund which meets the condition stipulated in regulation 4 shall be deemed a restricted public fund.

Conditions.                   **4.** The condition referred to in regulation 3 is that the prospectus of the public fund contains express statements that

(a) the sole object of the public fund is the collective investment in any or all of the liquid financial assets referred to in Article 19(1);

(b) the public fund shall comply with the obligations concerning investment policies set out in Articles 19, 22(1), 24(1), 24(2) and 25(2); and

- (c) the public fund shall comply with the obligations set out in Articles 36(1), 41 and 42.

## SCHEDULE

[Regulation 2]

**COUNCIL DIRECTIVE**  
**of 20 December 1985**  
**on the coordination of laws, regulations and administrative provisions**  
**relating to undertakings for**  
**collective investment in transferable securities (UCITS)**  
(85/611/EEC)  
(OJ L 375, 31.12.1985, p. 3)

Amended by:

	Official Journal		
	No	page	date
Council Directive 88/220/EEC of 22 March 1988	L 100	31	19.4.1988
European Parliament and Council Directive 95/26/EC of 29 June 1995	L 168	7	18.7.1995
Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000	L 290	27	17.11.2000
Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002	L 41	20	13.2.2002
Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002	L 41	35	13.2.2002
Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004	L 145	1	30.4.2004

**COUNCIL DIRECTIVE**  
**of 20 December 1985**  
**on the coordination of laws, regulations and administrative provisions**  
**relating to undertakings for collective investment in**  
**transferable securities (UCITS)**  
(85/611/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the laws of the Member States relating to collective investment undertakings differ appreciably from one state to another, particularly as regards the obligations and controls which are imposed on those undertakings; whereas those differences distort the conditions of competition between those undertakings and do not ensure equivalent protection for unit-holders;

Whereas national laws governing collective investment undertakings should be coordinated with a view to approximating the conditions of competition between those undertakings at Community level, while at the same time ensuring more effective and more uniform protection for unit-holders; whereas such coordination will make it easier for a collective investment undertaking situated in one Member State to market its units in other Member States;

Whereas the attainment of these objectives will facilitate the removal of the restrictions on the free circulation of the units of collective investment undertakings in the Community, and such coordination will help to bring about a European capital market;

Whereas, having regard to these objectives, it is desirable that common basic rules be established for the authorization, supervision, structure and activities of collective investment undertakings situated in the Member States and the information they must publish;

Whereas the application of these common rules is a sufficient guarantee to permit collective investment undertakings situated in Member States, subject to the applicable provisions relating to capital movements, to market their units in other Member States without those Member States' being able to subject those undertakings or their units to any provision whatsoever other than provisions which, in those states, do not fall within the field covered by this Directive; whereas, nevertheless, if a collective investment undertaking situated in one

*(1) OJ No C 171, 26. 7. 1976, p. 1.*

*(2) OJ No C 57, 7. 3. 1977, p. 31.*

*(3) OJ No C 75, 26. 3. 1977, p. 10.*

Member State markets its units in a different Member State it must take all necessary steps to ensure that unit-holders in that other Member State can exercise their financial rights there with ease and are provided with the necessary information,

Whereas the coordination of the laws of the Member States should be confined initially to collective investment undertakings other than of the closed-ended type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities (which are essentially transferable securities officially listed on stock exchanges or similar regulated markets); whereas regulation of the collective investment undertakings not covered by the Directive poses a variety of problems which must be dealt with by means of other provisions, and such undertakings will accordingly be the subject of coordination at a later stage; whereas pending such coordination any Member State may, *inter alia* prescribe those categories of undertakings for collective investment in transferable securities (UCITS) excluded from this Directive's scope on account of their investment and borrowing policies and lay down those specific rules to which such UCITS are subject in carrying on their business within its territory;

Whereas the free marketing of the units issued by UCITS authorized to invest up to 100 % of their assets in transferable securities issued by the same body (State, local authority, etc.) may not have the direct or indirect effect of disturbing the functioning of the capital market or the financing of the Member States or of creating economic situations similar to those which Article 68 (3) of the Treaty seeks to prevent;

Whereas account should be taken of the special situations of the Hellenic Republic's and Portuguese Republic's financial markets by allowing those countries and additional period in which to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

## Section I

### **General provisions and scope**

#### *Article 1*

1. The Member States shall apply this Directive to undertakings for collective investment in transferable securities (hereinafter referred to as UCITS) situated within their territories.

2. For the purposes of this Directive, and subject to Article 2, UCITS shall be undertakings:

- the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets referred to in Article 19(1) of capital raised from the public and which operates on the principle of risk-spreading and
- the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings' assets.

Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such re-purchase or redemption.

3. Such undertakings may be constituted according to law, either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of this Directive ‘common funds’ shall also include unit trusts.

4. Investment companies the assets of which are invested through the intermediary of subsidiary companies mainly otherwise than in transferable securities shall not, however, be subject to this Directive.

5. The Member States shall prohibit UCITS which are subject to this Directive from transforming themselves into collective investment undertakings which are not covered by this Directive.

6. Subject to the provisions governing capital movements and to Articles 44, 45 and 52 (2) no Member State may apply any other provisions whatsoever in the field covered by this Directive to UCITS situated in another Member State or to the units issued by such UCITS, where they market their units within its territory.

7. Without prejudice to paragraph 6, a Member State may apply to UCITS situated within its territory requirements which are stricter than or additional to those laid down in Article 4 *et seq.* of this Directive, provided that they are of general application and do not conflict with the provisions of this Directive.

8. For the purposes of this Directive, ‘transferable securities’ shall mean:

- shares in companies and other securities equivalent to shares in companies (‘shares’),
- bonds and other forms of securitised debt (‘debt securities’),
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange, excluding the techniques and instruments referred to in Article 21.

9. For the purposes of this Directive ‘money market instruments’ shall mean instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time.

#### *Article 1a*

For the purposes of this Directive:

1. ‘depository’ shall mean any institution entrusted with the duties mentioned in Articles 7 and 14 and subject to the other provisions laid down in Sections IIIa and IVa;

2. 'management company' shall mean any company, the regular business of which is the management of UCITS in the form of unit trusts/common funds and/or of investment companies (collective portfolio management of UCITS); this includes the functions mentioned in Annex II;
3. a 'management company's home Member State' shall mean the Member State, in which the management company's registered office is situated;
4. a 'management company's host Member State' shall mean the Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;
5. a 'UCITS home Member State' shall mean:
  - (a) with regard to a UCITS constituted as unit trust/common fund, the Member State in which the management company's registered office is situated,
  - (b) with regard to a UCITS constituted as investment company, the Member State in which the investment company's registered office is situated;
6. a 'UCITS host Member State' shall mean the Member State, other than the UCITS home Member State, in which the units of the common fund/unit trust or of the investment company are marketed;
7. 'branch' shall mean a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorized; all the places of business set up in the same Member State by a management company with headquarters in another Member State shall be regarded as a single branch;
8. 'competent authorities' shall mean the authorities which each Member State designates under Article 49 of this Directive;
9. 'close links' shall mean a situation as defined in Article 2(1) of Directive 95/26/EC (1);
10. 'qualifying holdings' shall mean any direct or indirect holding in a management company which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists. For the purpose of this definition, the voting rights referred to in Article 7 of Directive 88/627/EEC (1) shall be taken into account;

(1) OJ L 348, 17.12.1988, p. 62.

11. 'ISD' shall mean Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (2);

12. 'parent undertaking' shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC (3);

13. 'subsidiary' shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is the ultimate parent of those undertakings;

14. 'initial capital' shall mean capital as defined in items 1 and 2 of Article 34(2) of Directive 2000/12/EC (4);

15. 'own funds' shall mean own funds as defined in Title V, Chapter 2, Section 1 of Directive 2000/12/EC; this definition may, however, be amended in the circumstances described in Annex V of Directive 93/6/EEC (5).

#### *Article 2*

1. The following shall not be UCITS subject to this Directive:

- UCITS of the closed-ended type;
- UCITS which raise capital without promoting the sale of their units to the public within the Community or any part of it;
- UCITS the units of which, under the fund rules or the investment company's instruments of incorporation, may be sold only to the public in non-member countries;
- categories of UCITS prescribed by the regulations of the Member States in which such UCITS are situated, for which the rules laid down in Section V and Article 36 are inappropriate in view of their investment and borrowing policies.

2. Five years after the implementation of this Directive the Commission shall submit to the Council a report on the implementation of paragraph 1 and, in particular, of its fourth indent. If necessary, it shall propose suitable measures to extend the scope.

(2) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC (OJ L 290, 17.11.2000, p. 27).

(3) OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accession.

(4) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC of the European Parliament and of the Council (OJ L 275, 27.10.2000, p. 37).

(5) OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council (OJ L 204, 21.7.1998, p. 29).

*Article 3*

For the purposes of this Directive, a UCITS shall be deemed to be situated in the Member State in which the investment company or the management company of the unit trust has its registered office; the Member States must require that the head office be situated in the same Member State as the registered office.

**SECTION II**

**Authorization of UCITS**

*Article 4*

1. No UCITS shall carry on activities as such unless it has been authorized by the competent authorities of the Member State in which it is situated, hereinafter referred to as 'the competent authorities'. Such authorization shall be valid for all Member States.

2. A unit trust shall be authorized only if the competent authorities have approved the management company, the fund rules and the choice of depositary. An investment company shall be authorized only if the competent authorities have approved both its instruments of incorporation and the choice of depositary.

3. The competent authorities may not authorise a UCITS if the management company or the investment company do not comply with the preconditions laid down in this Directive, in Sections III and IV respectively. Moreover the competent authorities may not authorise a UCITS if the directors of the depositary are not of sufficiently good repute or are not sufficiently experienced also in relation to the type of UCITS to be managed. To that end, the names of the directors of the depositary and of every person succeeding them in office must be communicated forthwith to the competent authorities. Directors shall mean those persons who, under the law or the instruments of incorporation, represent the depositary, or who effectively determine the policy of the depositary.

3a. The competent authorities shall not grant authorisation if the UCITS is legally prevented (e.g. through a provision in the fund rules or instruments of incorporation) from marketing its units or shares in its home Member State.

4. Neither the management company nor the depositary may be replaced, nor may the fund rules or the investment company's instruments of incorporation be amended, without the approval of the competent authorities.

## SECTION III

### **Obligations regarding management companies**

#### Title A

#### **Conditions for taking up business**

##### *Article 5*

1. Access to the business of management companies is subject to prior official authorisation to be granted by the home Member State's competent authorities. Authorisation granted under this Directive to a management company shall be valid for all Member States.

2. No management company may engage in activities other than the management of UCITS authorised according to this Directive except the additional management of other collective investment undertakings which are not covered by this Directive and for which the management company is subject to prudential supervision but which cannot be marketed in other Member States under this Directive. The activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the functions mentioned in Annex II which are not exhaustive.

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of unit trusts/common funds and of investment companies, the following services:

(a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section B of the Annex to the ISD,

(b) as non-core services:

— investment advice concerning one or more of the instruments listed in Section B of the Annex to the ISD,

— safekeeping and administration in relation to units of collective investment undertakings.

Management companies may in no case be authorised under this Directive to provide only the services mentioned in this paragraph or to provide non-core services without being authorised for the service referred to in point (a).

4. Articles 2(2), 12, 13 and 19 of Directive 2004/EC (1) of the European Parliament and of the Council of... on markets in financial instruments (2), shall apply to the provision of the services referred to in paragraph 3 of this Article by management companies.

*Article 5a*

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless:

(a) the management company has an initial capital of at least EUR 125 000:

— When the value of the portfolios of the management company, exceeds EUR 250 000 000, the management company shall be required to provide an additional amount of own funds. This additional amount of own funds shall be equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000. The required total of the initial capital and the additional amount shall not, however, exceed EUR 10 000 000.

— For the purpose of this paragraph, the following portfolios shall be deemed to be the portfolios of the management company:

(i) unit trusts/common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

(ii) investment companies for which the management company is the designated management company;

(iii) other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

— Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in Annex IV of Directive 93/6/EEC.

— Member States may authorise management companies not to provide up to 50 % of the additional amount of own funds referred to in the first indent if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking. The credit institution or insurance undertaking must have its registered office in a Member State, or in a non-Member State provided that it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law.

— No later than 13 February 2005, the Commission shall present a report to the European Parliament and the Council on the application of this capital requirement, accompanied where appropriate by proposals for its revision;

(1) OPECE to insert reference to this Directive.

(2) OJ L

- (b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company. To that end, the names of these persons and of every person succeeding them in office must be communicated forthwith to the competent authorities. The conduct of a management company's business must be decided by at least two persons meeting such conditions;
- (c) the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the management company;
- (d) both its head office and its registered office are located in the same Member State.

2. Moreover where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions. The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

4. A management company may start business as soon as authorisation has been granted.

5. The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously unless the Member State concerned has provided for authorisation to lapse in such cases;

- (b) has obtained the authorisation by making false statements or by any other irregular means;

- (c) no longer fulfils the conditions under which authorisation was granted;

(d) no longer complies with Directive 93/6/EEC if its authorisation also covers the discretionary portfolio management service referred to in Article 5(3)(a) of this Directive;

(e) has seriously and/or systematically infringed the provisions adopted pursuant to this Directive; or

(f) falls within any of the cases where national law provides for withdrawal.

#### *Article 5b*

1. The competent authorities shall not grant authorisation to take up the business of management companies until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings. The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, they are not satisfied as to the suitability of the aforementioned shareholders or members.

2. In the case of branches of management companies that have registered offices outside the European Union and are starting or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3. The competent authorities of the other Member State involved shall be consulted beforehand on the authorisation of any management company which is:

- (a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State,
- (b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or
- (c) controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

### **Title B**

#### **Relations with third countries**

#### *Article 5c*

1. Relations with third countries shall be regulated in accordance with the relevant rules laid down in Article 7 of the ISD. For the purpose of this Directive, the expressions 'firm/investment firm' and 'investment firms' contained in Article 7 of the ISD shall be construed respectively as 'management company' and 'management companies'; the expression 'providing investment services' in Article 7(2) of the ISD shall be construed as 'providing services'.

2. The Member States shall also inform the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

## Title C

### **Operating conditions**

#### *Article 5d*

1. The competent authorities of the management company's home Member State shall require that the management company which they have authorised complies at all times with the conditions laid down in Article 5 and Article 5a(1) and (2) of this Directive. The own funds of a management company may not fall below the level specified in Article 5a(1)(a). If they do, however, the competent authorities may, where the circumstances justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

2. The prudential supervision of a management company shall be the responsibility of the competent authorities of the home Member State, whether the management company establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host country.

#### *Article 5e*

1. Qualifying holdings in management companies shall be subject to the same rules as those laid down in Article 9 of the ISD.

2. For the purpose of this Directive, the expressions 'firm/investment firm' and 'investment firms' contained in Article 9 of the ISD shall be construed respectively as 'management company' and 'management companies'.

#### *Article 5f*

1. Each home Member State shall draw up prudential rules which management companies, with regard to the activity of management of UCITS authorised according to this Directive, shall observe at all times. In particular, the competent authorities of the home Member State having regard also to the nature of the UCITS managed by a management company, shall require that each such company:

(a) has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest own funds and ensuring, *inter alia*, that each transaction involving the fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the unit trusts/common funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

(b) is structured and organised in such a way as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between one of its clients and another, between one of its clients and a UCITS or between two UCITS. Nevertheless, where a branch is set up, the organisational arrangements may not conflict with the rules of conduct laid down by the host Member State to cover conflicts of interest.

2. Each management company the authorisation of which also covers the discretionary portfolio management service mentioned in Article 5(3)(a):

— shall not be permitted to invest all or a part of the investor's portfolio in units of unit trusts/common funds or of investment companies it manages, unless it receives prior general approval from the client,

— shall be subject with regard to the services referred to in Article 5(3) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (1).

#### *Article 5g*

1. If Member States permit management companies to delegate to third parties for the purpose of a more efficient conduct of the companies' business to carry out on their behalf one or more of their own functions the following preconditions have to be complied with:

(a) the competent authority must be informed in an appropriate manner;

(b) the mandate shall not prevent the effectiveness of supervision over the management company, and in particular it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;

(c) when the delegation concerns the investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;

(d) where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;

(e) a mandate with regard to the core function of investment management shall not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;

(1) *OJ L 84, 26.3.1997, p. 22.*

(f) measures shall exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

(g) the mandate shall not prevent the persons who conduct the business of the management company to give at any time further instructions to the undertaking to which functions are delegated and to withdraw the mandate with immediate effect when this is in the interest of investors;

(h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question, and

(i) the UCITS' prospectuses list the functions which the management company has been permitted to delegate.

2. In no case shall the management company's and the depositary's liability be affected by the fact that the management company delegated any functions to third parties, nor shall the management company delegate its functions to the extent that it becomes a letter box entity.

#### *Article 5h*

Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules must implement at least the principles set out in the following indents. These principles shall ensure that a management company:

(a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;

(b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;

(c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;

(d) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated, and

(e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

## Title D

### **The right of establishment and the freedom to provide services**

#### *Article 6*

1. Member States shall ensure that a management company, authorised in accordance with this Directive by the competent authorities of another Member State, may carry on within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

2. Member States may not make the establishment of a branch or the provision of the services subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

#### *Article 6a*

1. In addition to meeting the conditions imposed in Articles 5 and 5a, any management company wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. Member States shall require every management company wishing to establish a branch within the territory of another Member State to provide the following information and documents, when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which the management company plans to establish a branch;

(b) a programme of operations setting out the activities and services according to Article 5(2) and (3) envisaged and the organisational structure of the branch;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the management company accordingly. They shall also communicate details of any compensation scheme intended to protect investors. Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the management company concerned within two months of receiving all the

information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member State.

4. Before the branch of a management company starts business, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the management company and, if necessary, indicate the conditions, including the rules mentioned in Articles 44 and 45 in force in the host Member State and the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3) and of investment advisory services and custody, under which, in the interest of the general good, that business must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and start business. From that moment the management company may also begin distributing the units of the unit trusts/common funds and of the investment companies subject to this Directive which it manages, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months — to be communicated to the competent authorities of the home Member State — that the arrangements made for the marketing of the units do not comply with the provisions referred to in Article 44(1) and Article 45.

6. In the event of change of any particulars communicated in accordance with paragraphs 2(b), (c) or (d), a management company shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change under paragraph 3 and the competent authorities of the host Member State may do so under paragraph 4.

7. In the event of a change in the particulars communicated in accordance with the first subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

#### *Article 6b*

1. Any management company wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

(a) the Member State within the territory of which the management company intends to operate;

(b) a programme of operations stating the activities and services referred to in Article 5(2) and (3) envisaged.

2. The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State. They shall also communicate details of any applicable compensation scheme intended to protect investors.

3. The management company may then start business in the host Member State notwithstanding the provisions of Article 46. When appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the management company the conditions, including the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3) and of investment advisory services and custody, with which, in the interest of the general good, the management company must comply in the host Member State.

4. Should the content of the information communicated in accordance with paragraph 1(b) be amended, the management company shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the company of any change or addition to be made to the information communicated under paragraph 3.

5. A management company shall also be subject to the notification procedure laid down in this Article in cases where it entrusts a third party with the marketing of the units in a host Member State.

#### *Article 6c*

1. Host Member States may, for statistical purposes, require all management companies with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.

2. In discharging their responsibilities under this Directive, host Member States may require branches of management companies to provide the same particulars as national management companies for that purpose. Host Member States may require management companies, carrying on business within their territories under the freedom to provide services, to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established management companies for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a host Member State ascertain that a management company that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the management company concerned to put an end to its irregular situation.

4. If the management company concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the Member State in question, the management company persists in breaching the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, insofar as necessary, to prevent that management company from initiating any further transaction within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies.

6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending management companies from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of a management company must be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity. After consulting the competent authorities of the Member States

concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorisation, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the management company concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the Contact Committee set up under Article 53.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 6a or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the Contact Committee set up under Article 53.

### SECTION IIIa

#### **Obligations regarding the depositary**

##### *Article 7*

1. A unit trust's assets must be entrusted to a depositary for safekeeping.
2. A depositary's liability as referred to in Article 9 shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.
3. A depositary must, moreover:
  - (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units effected on behalf of a unit trust or by a management company are carried out in accordance with the law and the fund rules;
  - (b) ensure that the value of units is calculated in accordance with the law and the fund rules;
  - (c) carry out the instructions of the management company, unless they conflict with the law or the fund rules;
  - (d) ensure that in transactions involving a unit trust's assets any consideration is remitted to it within the usual time limits;
  - (e) ensure that a unit trust's income is applied in accordance with the law and the fund rules.

*Article 8*

1. A depositary must either have its registered office in the same Member State as that of the management company or be established in that Member State if its registered office is in an other Member State.

2. A depositary must be an institution which is subject to public control. It must also furnish sufficient financial and professional guarantees to be able effectively to pursue its business as depositary and meet the commitments inherent in that function.

3. The Member States shall determine which of the categories of institutions referred to in paragraph 2 shall be eligible to be depositaries.

*Article 9*

A depositary shall, in accordance with the national law of the State in which the management company's registered office is situated, be liable to the management company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them. Liability to unit-holders may be invoked either directly or indirectly through the management company, depending on the legal nature of the relationship between the depositary, the management company and the unit-holders.

*Article 10*

1. No single company shall act as both management company and depositary.

2. In the context of their respective roles the management company and the depositary must act independently and solely in the interest of the unit-holders.

*Article 11*

The law or the fund rules shall lay down the conditions for the replacement of the management company and the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

**SECTION IV**

**Obligations regarding investment companies**

Title A

**Conditions for taking up business**

*Article 12*

Access to the business of investment companies shall be subject to prior official authorisation to be granted by the home Member States competent authorities. The Member States shall determine the legal form which an investment company must take.

*Article 13*

No investment company may engage in activities other than those referred to in Article 1 (2).

*Article 13a*

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to an investment company that has not designated a management company unless the investment company has a sufficient initial capital of at least EUR 300 000. In addition, when an investment company has not designated a management company authorised pursuant to this Directive:

— the authorisation shall not be granted unless the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the investment company;

— the directors of the investment company shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of business carried out by the investment company. To that end, the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities. The conduct of an investment company's business must be decided by at least two persons meeting such conditions. Directors shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company;

— moreover, where close links exist between the investment company and other natural or legal persons, the competent authorities shall grant authorisation only if those do not prevent the effective exercise of their supervisory functions. The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the investment company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions. The competent authorities shall require investment companies to provide them with the information they require.

2. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

3. An investment company may start business as soon as authorisation has been granted.

4. The competent authorities may withdraw the authorisation issued to an investment company subject to this Directive only where that company:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than 6 months previously unless the Member State concerned has provided for authorisation to lapse in such cases;

- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) has seriously and/or systematically infringed the provisions adopted pursuant to this Directive; or
- (e) falls within any of the cases where national law provides for withdrawal.

## Title B

### **Operating conditions**

#### *Article 13b*

Articles 5g and 5h shall apply to investment companies that have not designated a management company authorised pursuant to this Directive. For the purpose of this Article ‘management company’ shall be construed as ‘investment company’. Investment companies may only manage assets of their own portfolio and may not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

#### *Article 13c*

Each home Member State shall draw up prudential rules which shall be observed at all times by investment companies that have not designated a management company authorised pursuant to this Directive. In particular, the competent authorities of the home Member State, having regard also to the nature of the investment company, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, *inter alia*, that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the investment company are invested according to the instruments of incorporation and the legal provisions in force.

## SECTION IVa

### **Obligations regarding the depositary**

#### *Article 14*

1. An investment company's assets must be entrusted to a depositary for safe-keeping.

2. A depositary's liability as referred to in Article 16 shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

3. A depositary must, moreover:

(a) ensure that the sale, issue, re-purchase, redemption and cancellation of units effected by or on behalf of a company are carried out in accordance with the law and with the company's instruments of incorporation;

(b) ensure that in transactions involving a company's assets any consideration is remitted to it within the usual time limits;

(c) ensure that a company's income is applied in accordance with the law and its instruments of incorporation.

4. A Member State may decide that investment companies situated within its territory which market their units exclusively through one or more stock exchanges on which their units are admitted to official listing shall not be required to have depositaries within the meaning of this Directive. Articles 34, 37 and 38 shall not apply to such companies. However, the rules for the valuation of such companies' assets must be stated in law or in their instruments of incorporation.

5. A Member State may decide that investment companies situated within its territory which market at least 80 % of their units through one or more stock exchanges designated in their instruments of incorporation shall not be required to have depositaries within the meaning of this Directive provided that their units are admitted to official listing on the stock exchanges of those Member States within the territories of which the units are marketed, and that any transactions which such a company may effect out with stock exchanges are effected at stock exchange prices only. A company's instruments of incorporation must specify the stock exchange in the country of marketing the prices on which shall determine the prices at which that company will effect any transactions out with stock exchanges in that country. A Member State shall avail itself of the option provided for in the preceding subparagraph only if it considers that unit-holders have protection equivalent to that of unit-holders in UCITS which have depositaries within the meaning of this Directive. In particular, such companies and the companies referred to in paragraph 4, must:

(a) in the absence of provision in law, state in their instruments of incorporation the methods of calculation of the net asset values of their units;

(b) intervene on the market to prevent the stock exchange values of their units from deviating by more than 5 % from their net asset values;

(c) establish the net asset values of their units, communicate them to the competent authorities at least twice a week and publish them twice a month. At least twice a month, an independent auditor must ensure that the calculation of the value of units is effected in accordance with the law and the company's instruments of incorporation. On such occasions, the auditor must make sure that the company's assets are invested in accordance with the rules laid down by law and the company's instruments of incorporation.

6. The Member States shall inform the Commission of the identities of the companies benefiting from the derogations provided for in paragraphs 4 and 5. The Commission shall report to the Contact Committee on the application of paragraphs 4 and 5 within five years of the implementation of this Directive. After obtaining the Contact Committee's opinion, the Commission shall, if need be, propose appropriate measures.

#### *Article 15*

1. A depositary must either have its registered office in the same Member State as that of the investment company or be established in that Member State if its registered office is in an other Member State.

2. A depositary must be an institution which is subject to public control. It must also furnish sufficient financial and professional guarantees to be able effectively to pursue its business as depositary and meet the commitments inherent in that function.

3. The Member States shall determine which of the categories of institutions referred to in paragraph 2 shall be eligible to be depositaries.

#### *Article 16*

A depositary shall, in accordance with the national law of the State in which the investment company's registered office is situated, be liable to the investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.

#### *Article 17*

1. No single company shall act as both investment company and depositary.

2. In carrying out its role as depositary, the depositary must act solely in the interests of the unit-holders.

#### *Article 18*

The law or the investment company's instruments of incorporation shall lay down the conditions for the replacement of the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

## SECTION V

### **Obligations concerning the investment policies of UCITS**

#### *Article 19*

1. The investments of a unit trust or of an investment company must consist solely of:

(a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Article 1(13) of the ISD and/or;

(b) transferable securities and money market instruments dealt in on another regulated market in a Member State which operates regularly and is recognized and open to the public and/or;

(c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-member State or dealt in on another regulated market in a non-member State which operates regularly and is recognized and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the investment company's instruments of incorporation and/or;

(d) recently issued transferable securities, provided that:

— the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognized and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the investment company's instruments of incorporation;

— such admission is secured within a year of issue and/or;

(e) units of UCITS authorised according to this Directive and/or other collective investment undertakings within the meaning of the first and second indent of Article 1(2), should they be situated in a Member State or not, provided that:

— such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the UCITS' competent authorities to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;

— the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this Directive;

— the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period;

— no more than 10 % of the UCITS' or the other collective investment undertakings' assets, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings and/or;

(f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by the UCITS' competent authorities as equivalent to those laid down in Community law and/or;

(g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in subparagraphs (a), (b) and (c); and/or financial derivative instruments dealt in over-the-counter ('OTC derivatives'), provided that:

— the underlying consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS' fund rules or instruments of incorporation;

— the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the UCITS' competent authorities and;

— the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative, and/or;

(h) money market instruments other than those dealt in on a regulated market, which fall under Article 1(9), if the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:

— issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong or;

— issued by an undertaking any securities of which are dealt in on regulated markets referred to in subparagraphs (a), (b) or (c), or;

— issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law or;

— issued by other bodies belonging to the categories approved by the UCITS' competent authorities provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third

indent and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 78/660/EEC (1), is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

2. However:

(a) a UCITS may invest no more than 10 % of its assets in transferable securities and money market instruments other than those referred to in paragraph 1;

(c) an investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;

(d) a UCITS may not acquire either precious metals or certificates representing them.

4. Unit trusts and investment companies may hold ancillary liquid assets.

#### *Article 21*

1. The management or investment company must employ a risk management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio; it must employ a process for accurate and independent assessment of the value of OTC derivative instruments. It must communicate to the competent authorities regularly and in accordance with the detailed rules they shall define, the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

2. The Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits which they lay down provided that such techniques and instruments are used for the purpose of efficient portfolio management. When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Directive. Under no circumstances shall these operations cause the UCITS to

*(1) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by Directive 1999/60/EC (OJ L 162, 26.6.1999, p. 65).*

diverge from its investment objectives as laid down in the UCITS' fund rules, instruments of incorporation or prospectus.

3. A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio. The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the following subparagraphs. A UCITS may invest, as a part of its investment policy and within the limit laid down in Article 22(5), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 22. The Member States may allow that, when a UCITS invests in index-based financial derivative instruments, these investments do not have to be combined to the limits laid down in Article 22. When a transferable security or money market instrument embeds a derivative, the latter must be taken into account when complying with the requirements of this Article.

4. The Member States shall send the Commission full information and any subsequent changes in their regulation concerning the methods used to calculate the risk exposures mentioned in paragraph 3, including the risk exposure to a counterparty in OTC derivative transactions, no later than 13 February 2004. The Commission shall forward that information to the other Member States. Such information will be the subject of exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).

#### *Article 22*

1. A UCITS may invest no more than 5 % of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20 % of its assets in deposits made with the same body. The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed:

- 10 % of its assets when the counterpart is a credit institution referred to in Article 19(1)(f), or
- 5 % of its assets, in other cases.

2. Member States may raise the 5 % limit laid down in the first sentence of paragraph 1 to a maximum of 10 %. However, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets must not then exceed 40 % of the value of its assets. This limitation does not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision. Notwithstanding the individual limits laid down in paragraph 1, a UCITS may not combine:

- investments in transferable securities or money market instruments issued by,
- deposits made with, and/or

— exposures arising from OTC derivative transactions undertaken with a single body in excess of 20 % of its assets.

3. The Member States may raise the 5 % limit laid down in the first sentence of paragraph 1 to a maximum of 35 % if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its local authorities, by a non-member State or by public international bodies to which one or more Member States belong.

4. Member States may raise the 5 % limit laid down in the first sentence of paragraph 1 to a maximum of 25 % in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of these bonds must be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest. When a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph and issued by one issuer, the total value of these investments may not exceed 80 % of the value of the assets of the UCITS. The Member States shall send the Commission a list of the aforementioned categories of bonds together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in the first subparagraph, to issue bonds complying with the criteria set out above. A notice specifying the status of the guarantees offered shall be attached to these lists. The Commission shall immediately forward that information to the other Member States together with any comments which it considers appropriate, and shall make the information available to the public. Such communications may be the subject of exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).

5. The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40 % referred to in paragraph 2. The limits provided for in paragraphs 1, 2, 3 and 4 may not be combined, and thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1, 2, 3 and 4 shall under no circumstances exceed in total 35 % of the assets of the UCITS. Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC (1) or in accordance with recognised international accounting rules, are regarded as a single body for the purpose of calculating the limits contained in this Article.

*(1) Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1). Directive as last amended by the 1994 Act of Accession.*

Member States may allow cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20 %.

*Article 22a*

1. Without prejudice to the limits laid down in Article 25, the Member States may raise the limits laid down in Article 22 to a maximum of 20 % for investment in shares and/or debt securities issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the competent authorities, on the following basis:

- its composition is sufficiently diversified,
- the index represents an adequate benchmark for the market to which it refers,
- it is published in an appropriate manner.

2. Member States may raise the limit laid down in paragraph 1 to a maximum of 35 % where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

*Article 23*

1. By way of derogation from Article 22 and without prejudice to Article 68 (3) of the Treaty, the Member States may authorize UCITS to invest in accordance with the principle of risk-spreading up to 100 % of their assets in different transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, a non-member State or public international bodies of which one or more Member States are members. The competent authorities shall grant such a derogation only if they consider that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Article 22. Such a UCITS must hold securities from at least six different issues, but securities from any one issue may not account for more than 30 % of its total assets.

2. The UCITS referred to in paragraph 1 must make express mention in the fund rules or in the investment company's instruments of incorporation of the States, local authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 % of their assets; such fund rules or instruments of incorporation must be approved by the competent authorities.

3. In addition each such UCITS referred to in paragraph 1 must include a prominent statement in its prospectus and any promotional literature drawing attention to such authorization and indicating the States, local authorities and/or public international bodies in the securities of which it intends to invest or has invested more than 35 % of its assets.

#### *Article 24*

1. A UCITS may acquire the units of UCITS and/or other collective investment undertakings referred to in Article 19(1)(e), provided that no more than 10 % of its assets are invested in units of a single UCITS or other collective investment undertaking. The Member States may raise the limit to a maximum of 20 %.

2. Investments made in units of collective investment undertakings other than UCITS may not exceed, in aggregate, 30 % of the assets of the UCITS. The Member States may allow that, when a UCITS has acquired units of UCITS and/or other collective investment undertakings, the assets of the respective UCITS or other collective investment undertakings do not have to be combined for the purposes of the limits laid down in Article 22.

3. When a UCITS invests in the units of other UCITS and/or other collective investment undertakings that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company may not charge subscription or redemption fees on account of the UCITS's investment in the units of such other UCITS and/or collective investment undertakings. A UCITS that invests a substantial proportion of its assets in other UCITS and/or collective investment undertakings shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS and/or collective investment undertakings in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS and/or other collective investment undertaking in which it invests.

#### *Article 24a*

1. The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised; in this event, it must include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

2. When a UCITS invests principally in any category of assets defined in Article 19 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 22a, its prospectus and, where necessary, any other promotional literature must include a prominent statement drawing attention to the investment policy.

3. When the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used,

its prospectus and, where necessary, any other promotional literature must include a prominent statement drawing attention to this characteristic.

4. Upon request of an investor, the management company must also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main instrument categories' risks and yields.

#### *Article 25*

1. An investment company or a management company acting in connection with all of the unit trusts which it manages and which fall within the scope of this Directive may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. Pending further coordination, the Member States shall take account of existing rules defining the principle stated in the first subparagraph under other Member States' legislation.

2. Moreover, an investment company or unit trust may acquire no more than:  
— 10 % of the non-voting shares of any single issuing body;  
— 10 % of the debt securities of any single issuing body;  
— 25 % of the units of any single UCITS and/or other collective investment undertaking within the meaning of the first and second indent of Article 1(2);  
— 10 % of the money market instruments of any single issuing body.

The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.

3. A Member State may waive application of paragraphs 1 and 2 as regards:

(a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;

(b) transferable securities and money market instruments issued or guaranteed by a non-member State;

(c) transferable securities and money market instruments issued by public international bodies of which one or more Member States are members;

(d) shares held by a UCITS in the capital of a company incorporated in a non-member State investing its assets mainly in the securities of issuing bodies having their registered offices in that State, where under the legislation of that State such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that State. This derogation, however, shall apply only if in its investment policy the company from the non-member State complies with the

limits laid down in Articles 22, 24 and 25 (1) and (2). Where the limits set in Articles 22 and 24 are exceeded Article 26 shall apply *mutatis mutandis*;

(e) shares held by an investment company or investment companies in the capital of subsidiary companies carrying on only the business of management, advice or marketing in the country where the subsidiary is located, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.

#### *Article 26*

1. UCITS need not comply with the limits laid down in this section when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets. While ensuring observance of the principle of risk spreading, the Member States may allow recently authorised UCITS to derogate from Articles 22, 22a, 23 and 24 for six months following the date of their authorisation.

2. If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS must adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

### **SECTION VI**

#### **Obligations concerning information to be supplied to unit-holders**

##### A. Publication of a prospectus and periodical reports

#### *Article 27*

1. An investment company and, for each of the unit trusts and common funds it manages, a management company, must publish:

- a simplified prospectus,
- a full prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year.

2. The annual and half-yearly reports must be published within the following time limits, with effect from the ends of the periods to which they relate:

- four months in the case of the annual report,
- two months in the case of the half-yearly report.

#### *Article 28*

1. Both the simplified and the full prospectuses must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The latter shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

2. The full prospectus shall contain at least the information provided for in Schedule A, Annex I to this Directive, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the full prospectus in accordance with Article 29(1).

3. The simplified prospectus shall contain in summary form the key information provided for in Schedule C, Annex I to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it. The simplified prospectus can be used as a marketing tool designed to be used in all Member States without alterations except translation. Member States may therefore not require any further documents or additional information to be added.

4. Both the full and the simplified prospectus may be incorporated in a written document or in any durable medium having an equivalent legal status approved by the competent authorities.

5. The annual report must include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B, Annex I to this Directive, as well as any significant information which will enable investors to make an informed judgment on the development of the activities of the UCITS and its results.

6. The half-yearly report must include at least the information provided for in Chapters I to IV of Schedule B, Annex I to this Directive; where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

#### *Article 29*

1. The fund rules or an investment company's instruments of incorporation shall form an integral part of the full prospectus and must be annexed thereto.

2. The documents referred to in paragraph 1 need not, however, be annexed to the full prospectus provided that the unit-holder is informed that on request he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are placed on the market, he or she may consult them.

#### *Article 30*

The essential elements of the simplified and the full prospectuses must be kept up to date.

#### *Article 31*

The accounting information given in the annual report must be audited by one or more persons empowered by law to audit accounts in accordance with Council

Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the EEC Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (1). The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

*Article 32*

UCITS must send their simplified and full prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities.

*Article 33*

1. The simplified prospectus must be offered to subscribers free of charge before the conclusion of the contract. In addition, the full prospectus and the latest published annual and half yearly reports shall be supplied to subscribers free of charge on request.

2. The annual and half-yearly reports shall be supplied to unit-holders free of charge on request.

3. The annual and half-yearly reports must be available to the public at the places, or through other means approved by the competent authorities, specified in the full and simplified prospectus.

**B. Publication of other information**

*Article 34*

A UCITS must make public in an appropriate manner the issue, sale, re-purchase or redemption price of its units each time it issues, sells, re-purchases or redeems them, and at least twice a month. The competent authorities may, however, permit a UCITS to reduce the frequency to once a month on condition that such a derogation does not prejudice the interests of the unit-holders.

*Article 35*

All publicity comprising an invitation to purchase the units of UCITS must indicate that prospectuses exist and the places where they may be obtained by the public or how the public may have access to them.

**SECTION VII**

**The general obligations of UCITS**

*Article 36*

1. Neither:

— an investment company, nor

— a management company or depositary acting on behalf of a unit trust,

(1) OJ No L 126, 12. 5. 1984, p. 20.

may borrow. However, a UCITS may acquire foreign currency by means of a 'back-to-back' loan.

2. By way of derogation from paragraph 1, a Member State may authorize a UCITS to borrow:

(a) up to 10 %

— of its assets, in the case of an investment company, or

— of the value of the fund, in the case of a unit trust,

provided that the borrowing is on a temporary basis;

(b) up to 10 % of its assets, in the case of an investment company, provided that the borrowing is to make possible the acquisition of immovable property essential for the direct pursuit of its business; in this case the borrowing and that referred to in subparagraph (a) may not in any case in total exceed 15 % of the borrower's assets.

#### *Article 37*

1. A UCITS must re-purchase or redeem its units at the request of any unit-holder.

2. By way of derogation from paragraph 1:

(a) a UCITS may, in the cases and according to the procedures provided for by law, the fund rules or the investment company's instruments of incorporation, temporarily suspend the re-purchase or redemption of its 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 unit-holders;

(b) the Member States may allow the competent authorities to require the suspension of the re-purchase or redemption of units in the interest of the unit-holders or of the public.

3. In the cases mentioned in paragraph 2 (a), a UCITS must without delay communicate its decision to the competent authorities and to the authorities of all Member States in which it markets its units.

#### *Article 38*

The rules for the valuation of assets and the rules for calculating the sale or issue price and the re-purchase or redemption price of the units of a UCITS must be laid down in the law, in the fund rules or in the investment company's instruments of incorporation.

#### *Article 39*

The distribution or reinvestment of the income of a unit trust or of an investment company shall be effected in accordance with the law and with the fund rules or the investment company's instruments of incorporation.

*Article 40*

A UCITS unit may not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits. This provision shall not preclude the distribution of bonus units.

*Article 41*

1. Without prejudice to the application of Articles 19 and 21, neither:
  - an investment company, nor
  - a management company or depositary acting on behalf of a unit trustmay grant loans or act as a guarantor on behalf of third parties.
  
2. Paragraph 1 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Article 19(1)(e), (g) and (h) which are not fully paid.

*Article 42*

Neither:

- an investment company, nor
  - a management company or depositary acting on behalf of a unit trust
- may carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Article 19(1)(e), (g) and (h).

*Article 43*

The law or the fund rules must prescribe the remuneration and the expenditure which a management company is empowered to charge to a unit trust and the method of calculation of such remuneration. The law or an investment company's instruments of incorporation must prescribe the nature of the cost to be borne by the company.

**SECTION VIII**

**Special provisions applicable to UCITS which market their units in Member States other than those in which they are situated**

*Article 44*

1. A UCITS which markets its units in another Member State must comply with the laws, regulations and administrative provisions in force in that State which do not fall within the field governed by this Directive.
  
2. Any UCITS may advertise its units in the Member State in which they are marketed. It must comply with the provisions governing advertising in that State.

3. The provisions referred to in paragraphs 1 and 2 must be applied without discrimination.

#### *Article 45*

In the case referred to in Article 44, the UCITS must, *inter alia*, in accordance with the laws, regulations and administrative provisions in force in the Member State of marketing, take the measures necessary to ensure that facilities are available in that State for making payments to unit-holders, re-purchasing or redeeming units and making available the information which UCITS are obliged to provide.

#### *Article 46*

If a UCITS proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities of that other Member State accordingly. It must simultaneously send the latter authorities:

- an attestation by the competent authorities to the effect that it fulfils the conditions imposed by this Directive,
- its fund rules or its instruments of incorporation,
- its full and simplified prospectuses,
- where appropriate, its latest annual report and any subsequent half yearly report, and
- details of the arrangements made of the marketing of its units in that other Member State.

An investment company or a management company may begin to market its units in that other Member State two months after such communication, unless the authorities of the Member States concerned establish, in a reasoned decision taken before the expiry of that period of two months, that the arrangements made for the marketing of units do not comply with the provisions referred to in Article 44(1) and Article 45.

#### *Article 47*

If a UCITS markets its units in a Member State other than that in which it is situated, it must distribute in that other Member State, in accordance with the same procedures as those provided for in the home Member State, the full and simplified prospectuses, the annual and half-yearly reports and the other information provided for in Articles 29 and 30. These documents shall be provided in the or one of the official languages of the host Member State or in a language approved by the competent authorities of the host Member State.

#### *Article 48*

For the purpose of carrying on its activities, a UCITS may use the same generic name (such as investment company or unit trust) in the Community as it uses in the Member State in which it is situated. In the event of any danger of confusion, the host Member State may, for the purpose of clarification, require that the name be accompanied by certain explanatory particulars.

## SECTION IX

### **Provisions concerning the authorities responsible for authorization and supervision**

#### *Article 49*

1. The Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.
2. The authorities referred to in paragraph 1 must be public authorities or bodies appointed by public authorities.
3. The authorities of the State in which a UCITS is situated shall be competent to supervise that UCITS. However, the authorities of the State in which a UCITS markets its units in accordance with Article 44 shall be competent to supervise compliance with Section VIII.
4. The authorities concerned must be granted all the powers necessary to carry out their task.

#### *Article 50*

1. The authorities of the Member States referred to in Article 49 shall collaborate closely in order to carry out their task and must for that purpose alone communicate to each other all information required.
2. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law. Nevertheless, when an UCITS or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.
3. Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to UCITS or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

4. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 6 and 7 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

5. Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of UCITS or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under Article 51 (2).

6. Paragraphs 2 and 5 shall not preclude the exchange of information:

- (a) within a Member State, where there are two or more competent authorities; or
- (b) within a Member State or between Member States, between competent authorities; and

- authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organizations and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation or bankruptcy of UCITS and other similar procedures and of undertakings contributing towards their business activity,
- persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions, in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

7. Notwithstanding paragraphs 2 to 5, Member States may authorize exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of undertakings for collective investment in transferable securities (UCITS) or undertakings contributing towards their business activity and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions. Member States which have

recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law. Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement. Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph. In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent. Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph. Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9. This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent

authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

10. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

11. In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments. Such disclosures may, however, be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.

#### *Article 50a*

1. Member States shall provide at least that:

(a) any person authorized within the meaning of Directive 84/253/ EEC (1), performing in an undertaking for collective investment in transferable securities (UCITS) or an undertaking contributing towards its business activity the task described in Article 51 of Directive 78/660/EEC (2), Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:

(1) *OJ No L 126, 12. 5. 1984, p. 20.*

(2) *OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).*

- constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of undertakings for collective investment in transferable securities (UCITS) or undertakings contributing towards their business activity, or
- affect the continuous functioning of the undertaking for collective investment in transferable securities (UCITS) or an undertaking contributing towards its business activity, or
- lead to refusal to certify the accounts or to the expression of reservations;

(b) that person shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the undertaking for collective investment in transferable securities (UCITS) or an undertaking contributing towards its business activity within which he is carrying out the abovementioned task.

2. The disclosure in good faith to the competent authorities, by persons authorized within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

#### *Article 51*

1. The authorities referred to in Article 49 must give reasons for any decision to refuse authorization, and any negative decision taken in implementation of the general measures adopted in application of this Directive, and communicate them to applicants.

2. The Member States shall provide that decisions taken in respect of a UCITS pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply if no decision is taken within six months of its submission on an authorization application made by a UCITS which includes all the information required under the provisions in force.

#### *Article 52*

1. Only the authorities of the Member State in which a UCITS is situated shall have the power to take action against it if it infringes any law, regulation or administrative provision or any regulation laid down in the fund rules or in the investment company's instruments of incorporation.

2. Nevertheless, the authorities of the Member State in which the units of a UCITS are marketed may take action against it if it infringes the provisions referred to in Section VIII.

3. Any decision to withdraw authorization, or any other serious measure taken against a UCITS, or any suspension of re-purchase or redemption imposed upon it, must be communicated without delay by the authorities of the Member State in which the UCITS in question is situated to the authorities of the other Member States in which its units are marketed.

*Article 52a*

1. Where, through the provision of services or by the establishment of branches, a management company operates in one or more host Member States, the competent authorities of all the Member States concerned shall collaborate closely. They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6c(2).

2. Insofar as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 6c(6) which involve penalties imposed on a management company or restrictions on a management company's activities.

*Article 52b*

1. Each host Member State shall ensure that, where a management company authorised in another Member State carries on business within its territory through a branch, the competent authorities of the management company's home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article 52a.

2. The competent authorities of the management company's home Member State may also ask the competent authorities of the management company's host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

3. This Article shall not affect the right of the competent authorities of the host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.

## SECTION X

### Contact Committee

#### *Article 53*

1. A Contact Committee, hereinafter referred to as ‘the Committee’, shall be set up alongside the Commission. Its function shall be:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, the harmonized implementation of this Directive through regular consultations on any practical problems arising from its application and on which exchanges of views are deemed useful;

(b) to facilitate consultation between Member States either on more rigorous or additional requirements which they may adopt in accordance with Article 1 (7), or on the provisions which they may adopt in accordance with Articles 44 and 45;

(c) to advise the Commission, if necessary, on additions or amendments to be made to this Directive.

2. It shall not be the function of the Committee to appraise the merits of decisions taken in individual cases by the authorities referred to in Article 49.

3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The Chairman shall be a representative of the Commission. Secretarial services shall be provided by the Commission.

4. Meetings of the Committee shall be convened by its chairman, either on his own initiative or at the request of a Member State delegation. The Committee shall draw up its rules of procedure.

#### *Article 53a*

1. In addition to its functions provided for in Article 53(1), the Contact Committee may also meet as a Regulatory Committee within the meaning of Article 5 of Decision 1999/468/EC (1) to assist the Commission in regard to the technical modifications to be made to this Directive in the following areas:

— clarification of the definitions in order to ensure uniform application of this Directive throughout the Community,

— alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

(1) *OJ L 184, 17.7.1999, p. 23.*

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall adopt its rules of procedure.

## SECTION XI

### **Transitional provisions, derogations and final provisions**

#### *Article 54*

Solely for the purpose of Danish UCITS, *pantebreve* issued in Denmark shall be treated as equivalent to the transferable securities referred to in Article 19 (1) (b).

#### *Article 55*

By way of derogation from Articles 7 (1) and 14 (1), the competent authorities may authorize those UCITS which, on the date of adoption of this Directive, had two or more depositaries in accordance with their national law to maintain that number of depositaries if those authorities have guarantees that the functions to be performed under Articles 7 (3) and 14 (3) will be performed in practice.

#### *Article 56*

1. By way of derogation from Article 6, the Member States may authorize management companies to issue bearer certificates representing the registered securities of other companies.
2. The Member States may authorize those management companies which, on the date of adoption of this Directive, also carry on activities other than those provided for in Article 6 to continue those other activities for five years after that date.

#### *Article 57*

1. The Member States shall bring into force no later than 1 October 1989 the measures necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.
2. The Member States may grant UCITS existing on the date of implementation of this Directive a period of not more than 12 months from that date in order to comply with the new national legislation.
3. The Hellenic Republic and the Portuguese Republic shall be authorized to postpone the implementation of this Directive until 1 April 1992 at the latest. One year before that date the Commission shall report to the Council on progress in implementing the Directive and on any difficulties which the Hellenic Republic or the Portuguese Republic may encounter in implementing the Directive by the date

referred to in the first subparagraph. The Commission shall, if necessary, propose that the Council extend the postponement by up to four years.

*Article 58*

The Member States shall ensure that the Commission is informed of the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

*Article 59*

This Directive is addressed to the Member States.

*ANNEX*

**SCHEDULE A**

1. Information concerning the unit trust	1. Information concerning the management company	1. Information concerning the investment company
1.1. Name	1.1. Name or style, form in law, registered office and head office if different from the registered office.	1.1. Name or style, form in law, registered office and head office if different from the registered office.
1.2. Date of establishment of the unit trust. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.	1.2. Date of the incorporation of the company. Indication of duration, if limited.
	1.3. If the company manages other unit trusts, indication of those other trusts.	► <b>M4</b> 1.3. In the case of investment companies having different investment compartments, the indication of the compartments. ◀
1.4. Statement of the place where the fund rules, if they are not annexed, and periodic reports may be obtained.		1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.
1.5. Brief indications relevant to unit-holders of the tax system applicable to the unit trust. Details of whether deductions are made at source from the income and capital gains paid by the trust to unit-holders.		1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.
1.6. Accounting and distribution dates		1.6. Accounting and distribution dates.
1.7. Names of the persons responsible for auditing the accounting information referred to in Article 31.		1.7. Names of the persons responsible for auditing the accounting information referred to in Article 31.
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.
	1.9. Amount of the subscribed capital with an indication of the capital paid-up	1.9. Capital

1. Information concerning the unit trust	1. Information concerning the management company	1. Information concerning the investment company
<p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> <li>— the nature of the right (real, personal or other) represented by the unit,</li> <li>— original securities or certificates providing evidence of title; entry in a register or in an account,</li> <li>— characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,</li> <li>— indication of unit-holders' voting rights if these exist,</li> <li>— circumstances in which winding-up of the unit trust can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</li> </ul>		<p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> <li>— original securities or certificates providing evidence of title; entry in a register or in an account,</li> <li>— characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,</li> <li>— indication of unit-holders' voting rights,</li> <li>— circumstances in which winding-up of the investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</li> </ul>
<p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.</p>		<p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.</p>
<p>1.12. Procedures and conditions of issue and sale of units.</p>		<p>1.12. Procedures and conditions of issue and sale of units.</p>
<p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended.</p>		<p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended.</p> <p>► <b>M4</b> In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases. ◀</p>
<p>1.14. Description of rules for determining and applying income.</p>		<p>1.14. Description of rules for determining and applying income.</p>

1. Information concerning the unit trust	1. Information concerning the management company	1. Information concerning the investment company
1.15. Description of the unit trust's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialization in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the unit trust.		1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialization in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.
1.16. Rules for the valuation of assets.		1.16. Rules for the valuation of assets.
1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular: <ul style="list-style-type: none"> <li>— the method and frequency of the calculation of those prices,</li> <li>— information concerning the charges relating to the sale or issue and the re-purchase or redemption of units,</li> <li>— the means, places and frequency of the publication of those prices.</li> </ul>		1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular: <ul style="list-style-type: none"> <li>— the method and frequency of the calculation of those prices,</li> <li>— information concerning the charges relating to the sale or issue and the re-purchase or redemption of units,</li> <li>— the means, places and frequency of the publication of those prices <sup>(1)</sup>.</li> </ul>
1.18. Information concerning the manner, amount and calculation of remuneration payable by the unit trust to the management company, the depositary or third parties, and reimbursement of costs by the unit trust to the management company, to the depositary or to third parties.		1.18. Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties.

(<sup>1</sup>) Investment companies within the meaning of Article 14 (5) of the Directive shall also indicate:

- the method and frequency of calculation of the net asset value of units,
- the means, place and frequency of the publication of that value,
- the stock exchange in the country of marketing the price on which determines the price of transactions effected outwith stock exchanges in that country.

2. Information concerning the depositary:

2.1. Name or style, form in law, registered office and head office if different from the registered office;

2.2. Main activity.

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

3.1. Name or style of the firm or name of the adviser;

3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration;

3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, re-purchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in the Member State in which the UCITS is situated. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there.

5. Other investment information:

5.1. Historical performance of the unit trust/common fund or of the investment company (where applicable) — such information may be either included in or attached to the prospectus.

5.2. Profile of the typical investor for whom the unit trust/common fund or the investment company is designed.

6. Economic information:

6.1. Possible expenses or fees, other than the charges mentioned in paragraph 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or of the investment company's assets.

## **SCHEDULE B**

### **Information to be included in the periodic reports**

#### *I. Statement of assets and liabilities*

- transferable securities,
- debt instruments of the type referred to in Article 19 (2) (b),
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

#### *II. Number of units in circulation*

#### *III. Net asset value per unit*

#### *IV. Portfolio, distinguishing between:*

- (a) transferable securities admitted to official stock exchange listing;
- (b) transferable securities dealt in on another regulated market;
- (c) recently issued transferable securities of the type referred to in Article 19 (1) (d);
- (d) other transferable securities of the type referred to in Article 19 (2) (a);
- (e) debt instruments treated as equivalent in accordance with Article 19 (2) (b);

and analyzed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e. g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS should be stated.

Statement of changes in the composition of the portfolio during the reference period.

#### *V. Statement of the developments concerning the assets of the UCITS during the reference period including the following:*

- income from investments,
- other income,
- management charges,
- depositary's charges,
- other charges and taxes,
- net income,
- distributions and income reinvested,
- changes in capital account,
- appreciation or depreciation of investments,
- any other changes affecting the assets and liabilities of the UCITS.

VI. *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.

VII. *Details, by category of transaction within the meaning of Article 21 carried out by the UCITS during the reference period, of the resulting amount of commitments.*

## **SCHEDULE C**

### **Contents of the simplified prospectus**

#### *Brief presentation of the UCITS*

- when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,
- in the case of UCITS having different investment compartments, the indication of this circumstance,
- management company (when applicable),
- expected period of existence (when applicable),
- depositary,
- auditors,
- financial group (e.g. a bank) promoting the UCITS.

#### *Investment information*

- short definition of the UCITS' objectives,
- the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and by investment compartment),
- historical performance of the unit trust/common fund/investment company (where applicable) and a warning that this is not an indicator of future performance — such information may be either included in or attached to the prospectus,
- profile of the typical investor the unit trust/common fund or the investment company is designed for.

#### *Economic information*

- tax regime,
- entry and exit commissions,
- other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets.

*Commercial information*

- how to buy the units,
- how to sell the units,
- in the case of UCITS having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,
- when and how dividends on units or shares of the UCITS (if applicable) are distributed,
- frequency and where/how prices are published or made available.

*Additional information*

- statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards,
- competent authority,
- indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed,
- publishing date of the prospectus.

*ANNEX II*

*Functions included in the activity of collective portfolio management:*

- Investment management.
- Administration:
  - (a) legal and fund management accounting services;
  - (b) customer inquiries;
  - (c) valuation and pricing (including tax returns);
  - (d) regulatory compliance monitoring;
  - (e) maintenance of unit-holder register;
  - (f) distribution of income;
  - (g) unit issues and redemptions;
  - (h) contract settlements (including certificate dispatch);
  - (i) record keeping.
- Marketing.

Made by the Governor in Council this 20<sup>th</sup> day of April, 2005.

SUZETTE VANTERPOOL,  
Clerk of the Executive Council.