

VIRGIN ISLANDS

SECURITIES AND INVESTMENT BUSINESS (AIFMD) REGULATIONS, 2016

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2016 NO. 61

**SECURITIES AND INVESTMENT BUSINESS ACT, 2010
(NO. 2 OF 2010)**

Securities and Investment Business (AIFMD) Regulations, 2016

[Gazetted 29th September, 2016]

The Cabinet, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by sections 62A and 97A of the Securities and Investment Business Act, 2010 (No. 2 of 2010), makes these Regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the Securities and Investment Business (AIFMD) Regulations, 2016.

(2) These Regulations shall come into force on such date as the Minister may, by Notice published in the Gazette, appoint.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires:

“Act” means the Securities and Investment Business Act;

“AIF” (referring to Alternative Investment Fund) means a collective investment undertaking, including investment compartments thereof, which –

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of the investors, and

(b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC,

whatever its legal form, whether under a contract, by means of a trust or under statute and whether it is open or closed-ended, unless it meets one or more of the exemptions referred to in Article 3 of the AIFMD;

“AIF constitutional document” means the memorandum and articles of association, the trust deed or instrument or the partnership

agreement or other similar constitutional document, together with the relevant prospectus or information memorandum in relation to any of those documents;

“AIFM” means an alternative investment fund manager whose regular business is managing one or more AIFs and includes an approved investment manager;

“AIFMD” means Directive 2011/61/EU of the European Parliament and of the Council of 8th June, 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010;

“AIFMD Level 2” means the EC Delegated Regulation (EU) No. 231/2013 of 19th December, 2012 supplementing the AIFMD;

“approved investment manager” means a person approved as such under regulation 7 of the Investment Business (Approved Managers) Regulations;

“carried interest” means a share in the profits of an AIF accrued to the EU Qualified BVI AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the EU BVI Qualified AIFM as a return on any investment by the EU BVI Qualified AIFM into the AIF;

“close links” means a situation in which 2 or more natural or legal persons are linked

(a) by participation, namely ownership, directly or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) by control, namely the relationship between a parent undertaking and a subsidiary, as referred to in Article 1 of Directive 83/349/EEC or a similar relationship between a natural or legal person and an undertaking and, for this purpose, a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking of those subsidiaries; or

(c) permanently to the same person by a control relationship;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;

“competent authority” means the national authority of a Member State which is empowered by law or regulation to supervise AIFMs;

“control” has the meaning provided in Article 1 of Directive 83/349/EEC;

“depository” means a person who is appointed under, and is required to comply with the requirements of Article 21 of the AIFMD, but an EU Qualified BVI AIFM shall not be qualified to be appointed as a depository;

“Directive 77/91/EEC” means the European Council Directive of 13th December, 1976 relating to public liability limited companies and the maintenance and alteration of their capital;

“Directive 83/349/EEC” means the European Council Directive of 13th June, 1983 relating to consolidated accounts;

“Directive 2002/14/EC” means the Directive of the European Parliament and of the Council of 11th March, 2002 relating to the General framework for informing and consulting employees in the EU;

“Directive 2004/25/EC” means the Directive of the European Parliament and of the Council of 21st April, 2004 relating to takeover bids;

“Directive 2004/109/EC” means the Directive of the European Parliament and of the Council of 15th December, 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

“EC” means the Commission of the EU;

“EEA” means the European Economic Area;

“EU” means the European Union;

“EU AIFM” means a legal person whose

- (a) registered office is in a Member State; and
- (b) regular business is managing one or more AIFs;

“EU Qualified BVI AIF” means a company, unit trust or partnership carrying on business in or from within the Virgin Islands which issues

- (a) equity interests,

- (b) shares, trust units or partnership interests that carry an entitlement to participate in the profits or gains of the company, unit trust or partnership that are redeemable or purchasable at the option of the investor,

the purpose or effect of which is the pooling of investor funds with the aim of spreading the investment risks and enabling investors in the company, unit trust or partnership to receive profits or gains from the acquisition, holding, management or disposal of investments

- (i) managed by a person whose registered office is in a Member State and whose regular business is managing one or more AIFs as notified to the Commission as being identified to the relevant competent authority of a Member State in accordance with the relevant law implementing the AIFMD in the Member State; or
- (ii) marketed to investors or potential investors in a Member State, as notified to the Commission as being identified to the relevant competent authority of a Member State in accordance with the relevant law implementing the AIFMD in the Member State;

“EU Qualified BVI AIFM” means a legal person operating in or from within the Virgin Islands

- (a) whose regular business is managing one or more AIFs to which the AIFMD applies; and
- (b) which is approved in that capacity by the Commission pursuant to regulation 6;

“external AIFM” means an AIFM appointed by or on behalf of the AIF to manage the AIF;

“feeder AIF” means an AIF which

- (a) invests at least 85% of its assets in units or shares of another AIF (the “master AIF”);
- (b) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or

(c) has otherwise an exposure of at least 85% of its assets to such a master AIF;

“fund” means a public fund, a private fund, a professional fund, an approved fund, an incubator fund or any other type of fund established under the Act or any regulations made thereunder, and includes a closed-ended fund;

“internal AIFM” means a structure where the legal form of an AIF permits internal management and where the AIF’s governing body has chosen not to appoint an external AIFM;

“investors” means retail or professional investors or potential retail or professional investors in the Member States where the AIFs are marketed;

“issuer” means a natural person or a legal entity governed by private or public law, including a state whose securities are admitted to trading on a stock exchange and, in the case of depositary receipts admitted to trading on a stock exchange, it means the issuer of the securities represented whether or not those securities are admitted to trading on a stock exchange, where in either case the issuer has its registered office in the EU;

“leverage” means any method by which an AIFM increases the exposure of an AIF it manages, whether through borrowing of cash or securities, or leverage embedded in derivative positions, or by any other means;

“managing AIFs” means performing at least investment management functions referred to in Schedule 2 of the Act;

“marketing” means a direct or indirect offering or placement at the initiative of an EU Qualified BVI AIFM of units or shares of an EU Qualified BVI AIF it manages to or with investors domiciled or with a registered office in the EU;

“master AIF” means an AIF in which another AIF invests or has an exposure as provided in the definition of “feeder AIF”;

“Member State” means a country that is a member of the EU, and includes any EEA State in which the AIFMD is implemented;

“MOU” means the memorandum of understanding entered into between the Commission and a Member State;

“non-listed company” means a company which has its registered office in the EU and the shares of which are not admitted to trading on a stock exchange;

“qualifying holding” means a direct or indirect holding in an AIFM which represents 10% or more of the capital or of the voting rights, in accordance with Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions

- (a) regarding aggregation of the holding laid down in Article 12 (4) and (5) thereof; or
- (b) which make it possible to exercise a significant influence over the management of the AIFM in which that holding subsists.

(2) Where, in the interpretation or application of these Regulations, any provision thereof conflicts or is inconsistent with a provision of the Act or any other regulations (other than these Regulations) made thereunder, the provision of –

- (a) the Act shall be treated as disappplied in accordance with section 62A (3) (b) of the Act; and
- (b) the other regulations shall be inapplicable.

(3) Where any provision of these Regulations conflicts or is inconsistent with a provision of the AIFMD, the provision of the AIFMD shall take precedent and shall apply accordingly.

(4) Where any matter required under the AIFMD or AIFMD Level 2 in relation to an EU Qualified BVI AIF or EU Qualified BVI AIFM is not specifically or sufficiently addressed in these Regulations, the relevant provision of the AIFMD or AIFMD Level 2 that deals with the matter shall be adopted and applied as if it were a part of these Regulations and, in such case, may be modified in such manner as may be considered necessary by the Commission to ensure compliance therewith.

(5) Where a provision of the AIFMD or AIFMD Level 2, as the case may be, is not specifically addressed under these Regulations but is addressed under the Act or any other regulations, the relevant provisions of the Act or the other regulations, as the case may be, shall apply.

(6) Where in these Regulations reference is made to a provision of the Act, Financial Services Commission Act, Regulatory Code, Mutual Funds Regulations, or other enactment which relates to licensees, funds (whether public,

private, professional or otherwise), fund managers, etc., the reference shall be construed as if it were a reference to an EU Qualified BVI AIFM, EU Qualified BVI AIF, AIFM or AIF, as the case may be, and the provision shall, to the extent necessary, be modified in such manner as would be consistent with the requirements of the relevant provision of these Regulations and, where applicable, the AIFMD.

(7) Where in these Regulations provision is made for the submission of an application, a notification or a return or any similar obligation, the application, notification or return or similar obligation shall be in a form prescribed pursuant to section 41B of the Financial Services Commission Act.

Objective, scope and application.

3. (1) The object of these Regulations is to provide a legal framework to enable funds to become EU Qualified BVI AIFs and for fund managers to become EU Qualified BVI AIFMs and thereby ensure compliance with the provisions of the AIFMD and AIFMD Level 2 as applicable, including the ability to manage or market AIFs within the EU or the EEA.

(2) These Regulations apply to every EU Qualified BVI AIFM in respect of each EU Qualified BVI AIF or AIF that it manages or wishes to manage and proposes to market in one or more Member States where it wishes to opt to comply with the requirements of these Regulations and, in that regard, the Regulations also apply to an EU Qualified BVI AIF whose manager is not regulated by the Commission.

(3) Sub-regulation (2) applies irrespective of whether the AIF is recognised, licensed or otherwise authorised under the Act or any regulations made thereunder or is closed-ended so long as the option is exercised to comply with the requirements of these Regulations.

(4) These Regulations also apply to a depositary that is appointed pursuant to regulation 19.

(5) Where, prior to the effective date of the requirement to comply with the AIFMD, an AIF is being managed or marketed in the EU or EEA which is intended to be continued after that date, the AIFM responsible for the AIF shall apply under regulation 6 to become an EU Qualified BVI AIFM and for the AIF to become an EU Qualified BVI AIF.

Conditions for taking up activities as an EU Qualified BVI AIFM.

4. (1) No person shall apply for approval or take up any activity as an EU Qualified BVI AIFM under these Regulations, unless he or she is licensed under the Act to manage investments or is an approved investment manager.

(2) Any person managing a fund who, or any fund which, opts to comply with the requirements of these Regulations and is approved as an EU

Qualified BVI AIFM or an EU Qualified BVI AIF shall at all times comply with the requirements of these Regulations in relation to

- (a) an EU Qualified BVI AIFM which manages an EU fund;
- (b) an EU Qualified BVI AIF which is marketed in the EU.

(3) No EU Qualified BVI AIFM that is

- (a) an external AIFM shall engage in activities save those referred to in Schedule 2 of the Act subject to appropriate authorisation by the Commission;
- (b) an internal AIFM shall engage in activities other than the internal management of the EU Qualified BVI AIF in accordance with Schedule 2 of the Act.

(4) The Commission may at any time request any information from an EU Qualified BVI AIFM, EU Qualified BVI AIF or EU Qualified BVI AIF whose manager is not regulated by the Commission for the purposes of monitoring compliance with the requirements of these Regulations and the EU Qualified BVI AIFM, EU Qualified BVI AIF or EU Qualified BVI AIF whose manager is not regulated by the Commission, as the case may be, shall comply accordingly.

5. (1) Subject to sub-regulation (5), any person who manages a fund may submit an application in writing for approval Application for approval.

- (a) as an EU Qualified BVI AIFM; or
- (b) on behalf of the fund as an EU Qualified BVI AIF.

(2) An application under sub-regulation (1) must contain the following information in respect of the EU Qualified BVI AIFM:

- (a) information on the persons who conduct the business of the EU Qualified BVI AIFM;
- (b) information on the identities of the EU Qualified BVI AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
- (c) a programme of activity setting out the organizational structure of the EU Qualified BVI AIFM, including

information on how the EU Qualified BVI AIFM intends to comply with its obligations under these Regulations;

- (d) information on the remuneration policies and practices pursuant to regulation 13;
- (e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in regulation 18;
- (f) a written undertaking that, if granted approval and prior to commencement of business and on an ongoing basis, it will retain (if it does not already have) adequate resources, including human and technical resources, in relation to that business; and
- (g) a statement that the EU Qualified BVI AIFM meets the Commission's fit and proper criteria as outlined in Schedule 1A of the Regulatory Code.

(3) An EU Qualified BVI AIFM shall, in addition to complying with sub-regulation (2), provide the Commission with the following information on the EU Qualified BVI AIFs it intends to manage:

- (a) information about
 - (i) the investment strategies, including the types of underlying funds if the fund is a fund of funds;
 - (ii) the EU Qualified BVI AIFM's policy as regards the use of leverage;
 - (iii) the risk profiles and other characteristics of the AIFs it manages or intends to manage; and
 - (iv) the Member States or third countries in which the AIFs are established or expected to be established;
 - (v) the Member States or third countries in which the AIFs are marketed or intended to be marketed;
- (b) information on where the master AIF is established, if the AIF is a feeder AIF;
- (c) the AIF constitutional documents of each EU Qualified BVI AIF the EU Qualified BVI AIFM intends to manage;

- (d) information on the arrangements made for the appointment of the depositary in accordance with regulation 19 for each EU Qualified BVI AIF the EU Qualified BVI AIFM intends to manage, including an undertaking to ensure that the depositary complies with the requirement outlined in sub-regulation (3) of that regulation; and
- (e) any additional information referred to in regulation 21 (1) for each EU Qualified BVI AIF the EU Qualified BVI AIFM intends to manage.

(4) Where an EU Qualified BVI AIF has a manager who is not regulated by the Commission, the EU Qualified BVI AIF shall provide the Commission with the information outlined in sub-regulation (3).

(5) An application under this regulation and any document required to be filed under these Regulations shall be made or filed by a person appointed as an authorised representative under the Act.

6. (1) Subject to sub-regulations (2) and (3), the Commission may, upon receiving and evaluating an application under regulation 5, approve or refuse the application.

Granting approval of an application

(2) The Commission shall not approve an application under sub-regulation (1), unless it is satisfied that

- (a) in the case of an EU Qualified BVI AIF, the EU Qualified BVI AIF will be able to meet the conditions outlined in these Regulations; and
- (b) in the case of an EU Qualified BVI AIFM,
 - (i) the EU Qualified BVI AIFM will be able to meet the conditions outlined in these Regulations;
 - (ii) the EU Qualified BVI AIFM has sufficient initial capital and additional funds in accordance with regulation 10;
 - (iii) the persons who conduct the business of the EU Qualified BVI AIFM are of sufficiently good repute and are sufficiently experienced in relation to the investment strategies pursued by the AIFs managed by the EU Qualified BVI AIFM, the names of those

persons and of every person succeeding them in office will be communicated forthwith to the Commission and the conduct of the business of the EU Qualified BVI AIFM will be decided by at least 2 persons meeting such conditions;

- (iv) the shareholders or members of the EU Qualified BVI AIFM that have qualifying holdings are suitable, taking into account the need to ensure the sound and prudent management of the EU Qualified BVI AIF;
- (v) the EU Qualified BVI AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms; and
- (vi) the EU Qualified BVI AIFM is fit and proper in accordance with Schedule 1A of the Regulatory Code.

(3) The Commission shall not approve an application under sub-regulation (1) if it forms the opinion that the effective exercise of its supervisory functions may be impaired by

- (a) close links between the EU Qualified BVI AIFM and other natural or legal persons;
- (b) the laws, regulations or administrative provisions of a third country governing natural or legal persons with which the EU Qualified BVI AIFM has close links; or
- (c) difficulties involved in the enforcement of the laws, regulations or administrative provisions of that third country.

(4) Where the Commission approves an application under sub-regulation (1)

- (a) it shall issue the EU Qualified BVI AIFM or EU Qualified AIF a certificate of approval; and
- (b) it may, acting in accordance with the powers granted to it by section 40B of the Financial Services Commission Act, impose such conditions as it considers appropriate,

including with respect to the investment strategies of the AIFs the EU Qualified BVI AIFM is allowed to manage.

(5) Where approval is granted to an EU Qualified BVI AIFM under sub-regulation (1), the EU Qualified BVI AIFM shall ensure that it has appropriate administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms, which include, in particular, rules

- (a) for personal transactions by its employees or for the holding or management of investments in order to invest in its own account;
- (b) to ensure that each transaction involving the AIFs the EU Qualified BVI AIFM manages may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and
- (c) ensuring that the assets of the AIFs managed by the EU Qualified BVI AIFM are invested in accordance with the AIFs' constitutional documents and any other legal provisions in force in respect thereof.

7. (1) The Commission may withdraw an approval given to an EU Qualified BVI AIFM under regulation 6 if it is satisfied that the EU Qualified BVI AIFM Termination of approval

- (a) has not made use of the approval within 12 months from the date of the certificate of approval issued under regulation 6 (4) (a);
- (b) has expressly renounced the approval granted to it;
- (c) has ceased the activity covered by the AIFMD and these Regulations for the preceding 6 months;
- (d) had obtained the approval through false or misleading statements or by another means the Commission considers to be irregular;
- (e) no longer meets the conditions under which approval was granted to it;
- (f) has seriously or systematically infringed the provisions of these Regulations; or

(g) no longer meets the fit and proper criteria outlined in Schedule 1A of the Regulatory Code.

(2) Where the Commission takes enforcement action against an EU Qualified BVI AIFM in accordance with section 37 or 38 of the Financial Services Commission Act or any other enactment under which it has power to do so, it may withdraw the approval granted to the EU Qualified BVI AIFM, where it considers the breach or offence warranting the enforcement action to be of a serious nature.

(3) Where an approval granted to an EU Qualified BVI AIFM is withdrawn under sub-regulation (1) or ceases under sub-regulation (2), the EU Qualified BVI AIFM shall immediately surrender its certificate of approval to the Commission to be disposed of in such manner as the Commission considers fit.

(4) The Commission shall notify in writing the Member States in which an EU Qualified BVI AIFM, whose approval has been withdrawn or has ceased, has been carrying on business pursuant to these Regulations and the AIFMD.

(5) The question as to whether or not an EU Qualified BVI AIFM has seriously or systematically infringed the provisions of these Regulations under sub-regulation (1) (f) is a matter to be determined by the Commission in its discretion.

(6) The withdrawal or cessation of approval granted to an EU Qualified BVI AIFM under these Regulations shall not affect any other approval, recognition or licence held by the EU Qualified BVI AIFM in a different capacity at the time of the withdrawal or cessation.

Duty to notify
Commission of
changes

8. (1) Where an EU Qualified BVI AIFM wishes to effect any material change to its activities or a condition of its approval under regulation 6, it shall, prior to effecting such material change, notify the Commission in writing of the proposed material change.

(2) The Commission may, within a period of 7 days from the date of receipt of notification under sub-regulation (1) but in any case not exceeding ten days thereof, reject the proposed material change or impose such conditions in relation to the material change as it considers fit.

(3) Where the Commission rejects a proposed material change or imposes conditions in respect thereof, the EU Qualified BVI AIFM shall comply accordingly, but it need not comply with any imposed conditions if it decides to abandon the proposed material change.

(4) If the Commission does not object to the proposed material change or fails to indicate its rejection of, or imposition of conditions on, the proposed material change within the period specified in sub-regulation (2), the EU Qualified BVI AIFM may implement the proposed material change.

9. (1) An EU Qualified BVI AIFM which commences marketing to investors in the EU or EEA shall, within 21 days of commencement, notify the Commission in writing of that fact.

Notification of marketing

(2) The notification required under sub-regulation (1) shall also

- (a) identify the Member State in which marketing is to be conducted;
- (b) include the name and address of the EU Qualified BVI AIFM in respect of each EU Qualified BVI AIF or AIF;
- (c) identify the competent authorities in the Member States to which the EU Qualified BVI AIFM shall report; and
- (d) state the name and address of each EU Qualified BVI AIF or AIF which the EU Qualified BVI AIFM intends to market from within the Virgin Islands and
 - (i) indicate the manner in which it intends to market the EU Qualified BVI AIF or AIF; and
 - (ii) certify that it is permitted to market the EU Qualified BVI AIF or AIF in that manner in the Member State concerned.

(3) Where prior to the coming into force of these Regulations a person that would otherwise qualify as an EU Qualified BVI AIFM or EU Qualified BVI AIF was marketing or was being marketed in a Member State, the EU Qualified BVI AIFM managing the EU Qualified BVI AIF or the EU Qualified BVI AIF whose manager is not regulated by the Commission shall, within 6 months of the coming into force of these Regulations, notify the Commission of that fact.

10. (1) An EU Qualified BVI AIFM which is

Initial capital requirements

- (a) an internal AIFM shall have an initial capital of at least €300,000 or its equivalent in the currency of the United States of America or in any other currency; and
- (b) an external AIFM shall have an initial capital of at least €125,000 or its equivalent in the currency of the United States of America or in any other currency.

(2) Where the value of the assets under management portfolios of AIFs managed by the EU Qualified BVI AIFM exceeds €250 million, the EU Qualified BVI AIFM shall provide an additional amount that shall be equal to 0.02% of the amount by which the value of the assets under management portfolios of the EU Qualified BVI AIFM exceeds €250 million, but the required total of the initial capital and the additional amount shall not exceed €10 million.

(3) For the purposes of sub-regulation (2), AIFs managed by the EU Qualified BVI AIFM, including AIFs for which the EU Qualified BVI AIFM has delegated functions in accordance with regulation 18 but excluding AIF portfolios that the EU Qualified BVI AIFM is managing under delegation, shall be deemed to be the portfolios of the EU Qualified BVI AIFM.

(4) Without prejudice to the initial capital requirements under this regulation, every EU Qualified BVI AIFM, whether internal AIFM or external AIFM, shall comply with the financial resource requirements prescribed in sections 7 and 8 of the Act and section 181 of the Regulatory Code.

(5) Every EU Qualified BVI AIFM, whether internal AIFM or external AIFM, shall ensure that it

- (a) has additional funding that is appropriate to cover potential liability risks that may arise from professional negligence; or
- (b) holds professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(6) An EU Qualified BVI AIFM shall immediately notify the Commission in writing where it becomes aware or has reason to believe that –

- (a) it is in breach of or is likely to breach its initial capital requirements under this regulation or its capital resource requirements under section 181 of the Regulatory Code;
- (b) its auditor intends to qualify its accounts; and
- (c) the liabilities of its subsidiary or parent company exceeds the subsidiary's or parent's assets, as the case may be.

(7) For the purposes of sub-regulation (6) (a), the EU Qualified BVI AIFM shall, in providing the required notification of a breach to the Commission, specify any steps it is taking or has taken to remedy the breach.

11. (1) Every EU Qualified BVI AIFM shall comply with the requirements of Division 2 of Part VII of the Regulatory Code in relation to conduct of business. Conditions of operation.

(2) Without prejudice to sub-regulation (1), every EU Qualified BVI AIFM shall ensure that, at all times, it

- (a) acts in the best interests of the AIFs and the investors of the AIFs it manages and the integrity of the market;
- (b) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (c) takes all reasonable steps to avoid conflicts of interest and, where they arise, to adopt appropriate measures to –
 - (i) prevent them from adversely affecting the interests of the AIFs and their investors; and
 - (ii) ensure that the AIFs the EU Qualified BVI AIFM manages are fairly treated;
- (d) ensures that no investor in an AIF receives preferential treatment, unless such preferential treatment is adequately disclosed in the EU Qualified BVI AIF's constitutional documents.

(3) The provisions of Articles 16 to 29 of the AIFMD Level 2 apply in relation to this regulation.

12. (1) An EU Qualified BVI AIFM shall, in conformity with section 198 of the Regulatory Code, take reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between Duty to identify and manage conflicts of interest.

- (a) the EU Qualified BVI AIFM, including its managers, employees and any person directly or indirectly linked to the EU Qualified BVI AIFM by control, and the AIF managed by the EU Qualified BVI AIFM or the investors in that AIF;
- (b) the AIF or the investors in that AIF and another AIF or the investors in that AIF;

- (c) the AIF or the investors in that AIF and another client of the EU Qualified BVI AIFM; or
- (d) two clients of the EU Qualified BVI AIFM

(2) An EU Qualified BVI AIFM shall maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

(3) An EU Qualified BVI AIFM shall segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest and, in this regard, shall assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs.

(4) Where organizational arrangements made by the EU Qualified BVI AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the EU Qualified BVI AIFM shall –

- (a) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and
- (b) develop appropriate policies and procedures.

(5) Where the EU Qualified BVI AIFM uses the services of a prime broker on behalf of an AIF, or where an EU Qualified BVI AIF whose manager is not subject to regulation by the Commission uses the services of a prime broker, the terms of the services shall be set out in a written contract and, in that regard, any possibility of transfer and reuse of AIF or EU Qualified BVI AIF assets shall

- (a) be provided for in that contract; and
- (b) comply with the AIF's or EU Qualified BVI AIF's constitutional documents, as the case may be.

(6) The written contract referred to in sub-regulation (5) shall provide that the depositary be informed of the contract.

(7) The EU Qualified BVI AIFM shall exercise due skill, care and diligence in the selection of and appointment of prime brokers with whom a written contract is to be concluded.

(8) Every EU Qualified BVI AIFM shall maintain a record of any significant conflicts of interest that arise in the conduct of its business and the steps that it has taken to prevent or manage those conflicts of interest.

13. (1) Every EU Qualified BVI AIFM must have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the EU Qualified BVI AIFM or of the AIFs it manages, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or constitutional documents of the AIFs it manages.

Remuneration.

(2) The EU Qualified BVI AIFM shall determine the remuneration policies and practices referred to in sub-regulation (1) in accordance with Annex II of the AIFMD.

14. (1) An EU Qualified BVI AIFM shall

Risk management.

- (a) undertake and implement a risk management system that complies fully with section 26 of the Regulatory Code;
- (b) functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management; and
- (c) review with appropriate frequency, but at least once every year and within 6 months of the end of its financial year, its risk management system with a view to updating it as necessary.

(2) The Commission may at any time require an EU Qualified BVI AIFM to provide the Commission with a copy of the EU Qualified BVI AIFM's risk management system or the review of the EU Qualified BVI AIFM's risk management system so as to enable the Commission to establish whether the EU Qualified BVI AIFM has in place appropriate safeguards against conflicts of interest to allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this regulation and is consistently effective.

(3) Without derogating from the requirements of section 26 of the Regulatory Code, an EU Qualified BVI AIFM shall

- (a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, objectives and risk profile of the AIF;
- (b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures; and
- (c) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in its constitutional documents.

(4) An EU Qualified BVI AIFM shall set a maximum level of leverage which it may employ on behalf of each AIF it manages, as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account

- (a) the type of the AIF;
- (b) the investment strategy of the AIF;
- (c) the sources of leverage of the AIF;
- (d) any other interlinkage or relevant relationships with other financial institutions, which could pose systemic risk;
- (e) the need to limit the exposure to any single counterparty;
- (f) the extent to which leverage is collateralised;
- (g) the asset-liability ratio; and
- (h) the scale, nature and extent of the activity of the EU Qualified BVI AIFM on the markets concerned.

(5) An EU Qualified BVI AIF whose manager is not subject to regulation by the Commission shall provide written notification to the Commission confirming that its AIFM has established a maximum level of leverage which it may employ on behalf of the EU Qualified BVI AIF, as well as the extent of the right to use collateral or guarantee that could be granted under the leveraging arrangement, taking into account the matters set out in paragraphs (a) to (c) and (e) to (h) of sub-regulation (4).

15. (1) An EU Qualified BVI AIFM shall, for each AIF that it manages which is not an unleveraged closed-ended AIF

Liquidity management.

- (a) employ an appropriate liquidity management system and adopt procedures which enable it to monitor the liquidity risk of the AIF; and
- (b) ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

(2) An EU Qualified BVI AIFM shall

- (a) regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly; and
- (b) ensure that, for each AIF that it manages, the investment strategy, liquidity profile and redemption policy are consistent.

16. Articles 50 to 56 of AIFMD Level 2 shall apply in respect of any investment by an EU Qualified BVI AIFM on behalf of an AIF in securitisations or other financial instruments.

Investment in securitisation positions.

17. (1) An EU Qualified BVI AIFM shall be responsible for the proper valuation of the assets of the AIFs it manages, including the calculation and publication of the net asset value.

Valuation.

(2) The fact that an EU Qualified BVI AIFM has appointed an external valuer shall not affect its liability towards the AIFs it manages and their investors.

(3) An EU Qualified BVI AIFM shall ensure that for each AIF it manages

- (a) appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this regulation and the AIF's prospectus; and
- (b) valuation is performed impartially and with due skill, care and diligence.

(4) The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF shall be included in the prospectus of each AIF managed by an EU Qualified BVI AIFM as well as in the prospectus of each EU Qualified BVI AIF.

(5) An EU Qualified BVI AIFM shall ensure that the net asset value per unit or share of an AIF is calculated and disclosed to the investors in accordance with these Regulations and the AIF's prospectus.

(6) The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year.

(7) Where the AIF is of the open-ended type, the valuation and calculation shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

(8) Where the AIF is of the closed-ended type, the valuation and calculation shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.

(9) The investors shall be informed of the valuations and calculations as outlined in this regulation and the AIF's prospectus.

(10) An EU Qualified BVI AIFM shall ensure that the valuation function is performed by either

(a) an external valuer, being a legal or natural person independent of the AIF, the EU Qualified BVI AIFM and any other persons with close links to the AIF or the EU Qualified BVI AIFM; or

(b) the EU Qualified BVI AIFM itself, if

(i) the valuation task is functionally independent from the portfolio management;

(ii) the remuneration policy and other measures ensure that conflicts of interest are mitigated; and

(iii) undue influence upon the employees is prevented.

(11) Where an EU Qualified BVI AIFM appoints an external valuer, it shall notify the Commission of that fact and ensure that

- (a) the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;
- (b) the external valuer can provide sufficient guarantees to be able to perform effectively the relevant valuation function; and
- (c) the appointment of the external valuer complies with the requirements of regulation 18.

(12) Where, upon receiving notification of the appointment of an external valuer under sub-regulation (11), the Commission is not satisfied that the conditions outlined in that sub-regulation have been fully complied with, it may require that another external valuer be appointed instead.

(13) The external valuer shall not delegate the valuation function to a third party.

(14) Notwithstanding sub-regulations (1) and (2) and irrespective of any contractual arrangements providing otherwise, the external valuer is liable to the EU Qualified BVI AIFM for any losses suffered by the EU Qualified BVI AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

(15) Where the valuation function is not performed by an independent external valuer, the Commission may require the EU Qualified BVI AIFM to have valuation procedures or valuations verified by an external valuer or, where considered appropriate, by an auditor.

(16) The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

18. (1) An EU Qualified BVI AIFM shall comply with Division 5 of Part II of the Regulatory Code (irrespective of whether that Division is in effect) in relation to any functions outsourced ("delegated") and it shall, in conformity with section 29 (3) of the Regulatory Code, ensure that its internal controls extend to any delegated function.

Outsourcing or delegating functions.

(2) An EU Qualified BVI AIFM which intends to delegate to third parties the task of carrying out functions on its behalf shall notify the Commission before the delegation arrangement becomes effective.

(3) Without prejudice to the provisions of Division 5 of Part II of the Regulatory Code, an EU Qualified BVI AIFM which intends to delegate a function shall comply with the following conditions

- (a) it must be able to justify its entire delegation structure on objective reasons;
- (b) the person to whom the function is delegated (“the delegate”) must dispose of sufficient resources to perform the tasks, and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;
- (c) where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the Commission;
- (d) the delegation must not prevent the effectiveness of supervision of the EU Qualified BVI AIFM and, in particular, must not prevent the EU Qualified BVI AIFM from acting, or the AIF from being managed, in the best interests of its investors;
- (e) the EU Qualified BVI AIFM must be able to demonstrate that the delegate
 - (i) is qualified and capable of undertaking the functions in question;
 - (ii) was selected with all due care; and
 - (iii) the EU Qualified BVI AIFM is in a position to
 - (aa) monitor effectively at any time the delegated function;
 - (bb) give at any time further instructions to the delegate; and
 - (cc) withdraw the delegation with immediate effect when this is in the interest of the investors.

- (f) the EU Qualified BVI AIFM must review the services provided by each delegate on an ongoing basis; and
- (g) the EU Qualified BVI AIFM must not delegate or sub-delegate portfolio or risk management to the depositary or a delegate of the depositary or any other entity whose interests may conflict with those of the EU Qualified BVI AIFM or the investors of the AIF, unless that other entity has functionally and hierarchically separated the performance of its portfolio or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(4) The liability of an EU Qualified BVI AIFM towards the AIFs it manages and their investors shall not be affected by the fact that the EU Qualified BVI AIFM has delegated functions to a third party, or by any further sub-delegation.

(5) An EU Qualified BVI AIFM shall not delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity.

(6) A third party may sub-delegate any of the functions delegated to it if the following conditions are satisfied:

- (a) the EU Qualified BVI AIFM gives its prior consent to the sub-delegation;
- (b) the EU Qualified BVI AIFM notifies the Commission of the sub-delegation before it becomes effective;
- (c) no sub-delegation of portfolio or risk management may be conferred on a depositary or a delegate of the depositary or any other entity whose interests may conflict with those of the EU Qualified BVI AIFM or the investors of the AIF, unless that other entity has functionally and hierarchically separated the performance of its portfolio or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF;
- (d) the relevant delegate reviews the services provided by each sub-delegate on an ongoing basis; and

- (e) the conditions set out in sub-regulation (3) are satisfied and, for this purpose, references to “delegate” in that sub-regulation shall be construed as “sub-delegate”.

(7) Where the sub-delegate further delegates any of the functions delegated to it, the conditions outlined in sub-regulation (6) shall apply *mutatis mutandis*.

Appointment and duties of depositary.

19. (1) An EU Qualified BVI AIFM shall, for each AIF it manages, ensure that a single depositary is appointed in accordance with the provisions of Article 21 of the AIFMD.

(2) The appointment of the depositary shall be evidenced by written contract which shall, amongst other things, regulate the flow of information deemed necessary to allow the depositary to perform its functions for the AIF or EU Qualified BVI AIF for which it has been appointed as depositary.

(3) The depositary shall, within 14 days of its appointment or such longer period as the Commission may grant, provide the Commission with a written undertaking to submit to the Commission on a periodic basis or immediately upon request all information which the depositary obtains in relation to the performance of its duties and that the Commission considers is necessary to perform its functions in relation to an EU Qualified BVI AIFM or EU Qualified BVI AIF.

(4) Without prejudice to sub-regulation (3), the Commission may require the EU Qualified BVI AIFM or EU Qualified BVI AIF to provide it with such information as relates to the depositary’s performance of its duties which may be in the custody of the EU Qualified BVI AIFM or EU Qualified BVI AIF, including a copy of the written contract referred to in sub-regulation (2) or any other documentation or information that the Commission considers necessary to enable it to perform its regulatory functions.

(5) In all other respects concerning the depositary, including its qualifications, jurisdiction of establishment, duties and responsibilities and other obligations, conditions applicable to it, custody of assets and related matters, prohibitions and restrictions, and liability and discharge from liability, the provisions of Article 21 of the AIFMD shall apply with such modification as may be reasonably necessary to ensure compliance with the intent and requirements of the provisions of that Article and these Regulations.

Transparency obligations.

20. (1) An EU Qualified BVI AIFM shall, for each of the AIFs it manages and for each of the AIFs it markets in the EU, prepare and submit an annual report to the Commission.

(2) The annual report shall be submitted to the Commission no later than 6 months following the end of the financial year to which it relates, and shall be made available to the investors upon request.

(3) The annual report shall, at least, contain the following information:

- (a) a balance sheet or statement of assets and liabilities;
- (b) an income and expenditure account for the financial year;
- (c) a report on the activities of the financial year;
- (d) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the EU Qualified BVI AIFM to its staff, and the number of beneficiaries and, where relevant, carried interest paid by the AIF;
- (e) the aggregate amount of remuneration broken down by senior management and members of staff of the EU Qualified BVI AIFM whose actions have a material impact on the risk profile of the AIF; and
- (f) any material changes to information to be disclosed to investors and any material changes as prescribed by section 70 of the Regulatory Code.

(4) The accounting information given in the annual report in respect of an AIF shall be prepared in accordance with

- (a) the accounting standards of any of the recognised professional bodies outlined in section 56 of the Regulatory Code;
- (b) the accounting standards and accounting rules of the country in which the AIF is established; or
- (c) in accordance with the AIF's constitutional documents.

(5) An EU Qualified BVI AIF whose AIFM is not subject to regulation by the Commission shall prepare and submit an annual report to the Commission which must comply with the requirements of sub-regulation (3).

(6) The annual report referred to in sub-regulation (5) shall be submitted to the Commission no later than 6 months following the end of the

financial year to which it relates, and shall be made available to the investors upon request.

(7) Subject to sub-regulation (8), the accounting information given in an annual report pursuant to this regulation shall be audited in accordance with Division 6 of Part II of the Regulatory Code and the auditor's report, including any qualifications, shall be reproduced in full in the report.

(8) The Commission may require an EU Qualified BVI AIFM marketing non-EU AIFs to subject the annual reports of those AIFs to an audit which meets international standards in force in the countries in which those AIFs are established.

Disclosure to investors.

21. (1) An EU Qualified BVI AIFM shall, for each of the AIFs it manages and markets in a Member State, make available to prospective investors, in accordance with the AIF's national laws and constitutional documents, the following information before they invest in the AIF, including any material changes to the information thereof:

- (a) a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the EU Qualified BVI AIFM is entitled to employ on behalf of the AIF;
- (b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- (c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
- (d) the identity of the EU Qualified BVI AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;

- (e) a description of how the EU Qualified BVI AIFM is complying with the requirements of regulation 10 (5);
- (f) a description of any delegated management functions by the EU Qualified BVI AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegation;
- (g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with regulation 17;
- (h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- (i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- (j) a description of how the EU Qualified BVI AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment , a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, the legal or economic links with the AIF or AIFM;
- (k) the latest annual report referred to in regulation 20;
- (l) the procedure and conditions for the issue and sale of units or shares;
- (m) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with regulation 17;
- (n) where available, the historical performance of the AIF;
- (o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are

managed and the provision in the contract with the depositary on the possibility of transfer of liability to the prime broker that may exist; and

- (p) a description of how and when the information required under sub-regulations (2) and (3) will be disclosed.

(2) The EU Qualified BVI AIFM shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 21 (13) of the AIFMD, including informing the investors of any changes with respect to depositary liability without delay.

(3) Where the AIF is required to publish a prospectus under the Act, Mutual Funds Regulations or Public Funds Code, only such information referred to in sub-regulations (1) and (2) which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.

(4) An EU Qualified BVI AIFM shall, for each of the AIFs it manages and for each of the AIFs it markets in the EU, periodically disclose to investors –

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF; and
- (c) the current risk profile of the AIF and the risk management systems employed by the EU Qualified BVI AIFM to manage those risks.

(5) An EU Qualified BVI AIFM managing an EU AIF employing leverage shall, on a regular basis, disclose –

- (a) any changes to the maximum level of leverage which the EU Qualified BVI AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement; and
- (b) the total amount of leverage employed by that AIF.

Reporting obligations to the Commission.

22. (1) An EU Qualified BVI AIFM shall regularly report to the Commission on the principal markets and instruments in which it trades on behalf of the AIFs it manages and, in this regard, it shall specifically provide information on

- (a) the main instruments in which it is trading;
- (b) the markets of which it is a member or where it actively trades; and
- (c) the principal exposures and most important concentrations of each of the AIFs it manages.

(2) The information referred to in sub-regulation (1) shall be reported on a frequency determined by the basis set out in Article 110 (3) of AIFMD Level 2.

(3) An EU Qualified BVI AIFM shall, for each of the AIFs it manages and for each of the AIFs it markets in the EU, make available to the Commission upon request, the following information:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the EU Qualified BVI AIFM to manage the market risk, liquidity risk, counterparty risk, operational risks and other risks;
- (d) information on the main categories of assets in which the AIF is invested; and
- (e) the results of the stress tests performed in accordance with regulations 14 (3) and 15.

(4) The EU Qualified BVI AIFM shall, upon written request by the Commission, provide the Commission with the following documents:

- (a) an annual report of each EU AIF it manages and of each AIF it markets in the EU in accordance with regulation 20; and
- (b) for the end of each quarter, a detailed list of all AIFs it manages.

(5) An EU Qualified BVI AIFM managing AIFs employing leverage on a substantial basis shall include in its report

- (a) information about the overall level of leverage employed by each AIF it manages;
- (b) a breakdown between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives; and
- (c) the extent to which the AIF's assets have been reused under leveraging arrangements.

(6) The information required under sub-regulation (5) to be included in the report shall include the identity of the 5 largest sources of borrowed cash or securities for each of the AIFs managed by the EU Qualified BVI AIFM and the amounts of leverage received from each of those sources for each of the AIFs.

(7) Where the Commission considers it necessary for the purpose of effective monitoring of systemic risk, it may require the EU Qualified BVI AIFM to provide such additional information as the Commission may specify on a periodic or an ad hoc basis.

Managing leveraged AIFs.

23. (1) An EU Qualified BVI AIFM shall demonstrate that the leverage limit it sets for each AIF it manages is reasonable and that it complies therewith at all times.

(2) The Commission may impose

- (a) limits on the level of leverage that an AIFM is entitled to employ, or
- (b) other restrictions on the management of the AIF with respect to the AIFs under its management,

to limit the extent to which the use of leverage constitutes to the build-up of a systemic risk in the financial system or risks of disorderly markets.

EU Qualified BVI AIFMs managing AIFs acquiring control of non-listed companies and issuers: obligations.

24. (1) Regulations 25 to 28 apply to the following:

- (a) an EU Qualified BVI AIFM managing one or more AIFs which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with sub-regulation (5); and
- (b) an EU Qualified BVI AIFM cooperating with one or more other AIFMs on the basis of an agreement pursuant to

which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company in accordance with sub-regulation (5).

- (2) Regulations 25 to 28 do not apply where the non-listed company concerned is
 - (a) a small and medium sized enterprise; or
 - (b) a special purpose vehicle with the purpose of purchasing, holding or administering real estate.

(3) Without prejudice to sub-regulations (1) and (2), regulation 25 (1) also applies to an EU Qualified BVI AIFM managing AIFs that acquire a non-controlling participation in a non-listed company.

(4) Regulations 26 (1) to (5) and 28 apply also to an EU Qualified BVI AIFM managing AIFs that acquire control over issuers and, in relation to those regulations, sub-regulations (1) and (2) of this regulation apply *mutatis mutandis*.

(5) Subject to sub-regulation 7, for the purposes of this regulation and regulations 25 to 28, a reference to “control” in respect of non-listed companies refers to more than 50% of the voting rights of the companies.

(6) When calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following shall be taken into account, subject to control:

- (a) an undertaking controlled by the AIF, and
- (b) a natural or legal person acting in his or her or its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF,

and in this regard, the percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached, even if the exercise of the voting rights is suspended.

(7) Notwithstanding the definition of “control” in regulation 2 (1), for the purposes of regulations 26 (1) to (5) and 28 in relation to issuers, the term shall be determined in accordance with Article 5 (3) of Directive 2004/25/EC.

(8) This regulation and regulations 25 to 28 apply subject to the conditions and restrictions set out in Article 6 of Directive 2002/14/EC.

Notification of acquisition of major holdings and control of non-listed companies.

25. (1) Where an EU Qualified BVI AIF acquires, disposes or holds shares of a non-listed company, the EU Qualified BVI AIFM managing the EU Qualified BVI AIF shall notify the Commission of the proportion of voting rights of the non-listed company held by the EU Qualified BVI AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) Where an EU Qualified BVI AIF acquires, individually or jointly, control over a non-listed company pursuant to regulation 24 (1) and (5), the EU Qualified BVI AIFM managing the EU Qualified BVI AIF shall notify the following of the acquisition of control by the EU Qualified BVI AIF:

- (a) the non-listed company;
- (b) the shareholders of which the identities and addresses are available to the EU Qualified BVI AIFM or can be made available by the non-listed company or through a register to which the EU Qualified BVI AIFM has or can obtain access; and
- (c) the Commission.

(3) The notification required under sub-regulation (2) shall contain the following additional information:

- (a) the resulting situation in terms of voting rights;
- (b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held; and
- (c) the date on which control was acquired.

(4) The EU Qualified BVI AIFM shall, in its notification to the non-listed company, request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the EU Qualified BVI AIFM and of the information referred to in sub-regulation (3).

(5) In relation to sub-regulation (4), the EU Qualified BVI AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this regulation.

(6) The notifications referred to in sub-regulations (1), (2) and (3) shall be made as soon as possible, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

26. (1) Where an EU Qualified BVI AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to regulation 24 (1) and (5), the EU Qualified BVI AIFM managing the EU Qualified BVI AIF shall make the information referred to in sub-regulation (3) available to

Disclosure in case of acquisition of control.

- (a) the company concerned;
- (b) the shareholders of the company of which the identities and addresses are available to the EU Qualified BVI AIFM or can be made available by the company or through a register to which the EU Qualified BVI AIFM has or can obtain access; and
- (c) the Commission.

(2) The Commission may require that the information referred to in sub-regulation (3) is also made available to the competent authorities of the non-listed company.

(3) The EU Qualified BVI AIFM shall make available

- (a) the identity of the AIFMs which individually or in agreement with other AIFMs manage the AIFs that have acquired control;
- (b) the policy for preventing and managing conflicts of interest, in particular between the EU Qualified BVI AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the EU Qualified BVI AIFM and the AIF and the company or either of them is concluded at arm's length; and
- (c) the policy for external and internal communication relating to the company in particular as regards employees.

(4) The EU Qualified BVI AIFM shall, in its notification to the company under sub-regulation (1) (a), request the board of directors of the company to inform the employees' representatives or, where there are none, the

employees themselves, without undue delay of the information referred to sub-regulation (3).

(5) In relation to sub-regulation (4), the EU Qualified BVI AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this regulation.

(6) Where an AIF acquires, individually or jointly, control of a non-listed company pursuant to regulations 24 (1) and (5), the EU Qualified BVI AIFM managing the AIF shall ensure that the AIF, or the EU Qualified BVI AIFM acting on behalf of the AIF, discloses its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment to –

- (a) the non-listed company;
- (b) the shareholders of the non-listed company of which the identities and addresses are available to the EU Qualified BVI AIFM or can be made available by the non-listed company or through a register to which the EU Qualified BVI AIFM has or can obtain access; and
- (c) the Commission.

(7) In relation to sub-regulation (6), the EU Qualified BVI AIFM managing the relevant AIF shall request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in sub-regulation (3) to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

(8) Where an AIF acquires control of a non-listed company pursuant to regulation 24 (1) and (5), the EU Qualified BVI AIFM managing the AIF shall provide the Commission and the AIF's investors with information on the financing of the acquisition.

27. (1) Where an AIF acquires, individually or jointly, control of a non-listed company pursuant to regulation 24 (1) and (5), the EU Qualified BVI AIFM managing the AIF shall either

- (a) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with sub-regulation (2) is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves

Specific provisions regarding annual report of AIFs exercising control of non-listed companies.

within the period such annual report has to be drawn up in accordance with any applicable national law; or

- (b) for each such AIF include in the annual report provided for in regulation 20 the information referred to in sub-regulations (2) and (3) relating to the relevant non-listed company.

(2) The additional information to be included in the annual report of the company or the AIF pursuant to sub-regulation (1) shall include, at least, a review of the development of the company's business representing the situation at the end of the period covered by the annual report.

(3) The annual report shall also contain indication of

- (a) any important events that have occurred since the end of the financial year;
- (b) the company's likely future development; and
- (c) the information concerning acquisition of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

(4) The EU Qualified BVI AIFM managing the relevant AIF shall either

- (a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in sub-regulations (2) and (3) relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in regulation 20 (2); or
- (b) make available the information referred to in sub-regulations (2) and (3) to the investors of the AIF, in so far as already available, within the period specified in regulation 20 (2) and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with any applicable national law.

28. (1) Where an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to regulation 24 (1) and (5), the EU Qualified BVI AIFM managing the AIF shall, for a period of 24 months following the acquisition of control of the company of the AIF:

Asset stripping.

- (a) not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption or acquisition of own shares by the company as described in sub-regulation (2); and
- (b) in so far as the EU Qualified BVI AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption or acquisition of own shares by the company as described in sub-regulation (2); and
- (c) in any event use its best efforts to prevent distributions, capital reductions, share redemptions or acquisition of own shares by the company as described in sub-regulation (2).

(2) The obligations placed on an EU Qualified BVI AIFM pursuant to sub-regulation (1) relate to the following:

- (a) any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under law, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of the subscribed capital;
- (b) any distribution to shareholders of the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with law; and
- (c) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in paragraph (a).

(3) For the purposes of sub-regulation (2)

- (a) the term “distribution” includes the payment of dividends and of interest relating to shares;
- (b) the provisions on capital reductions shall not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of the reserve is not more than 10% of the reduced subscribed capital; and
- (c) the restriction set out in that sub-regulation shall be subject to Article 20 (1) (b) to (h) of Directive 77/91/EEC.

Made by the Cabinet this 21st day of September, 2016.

(Sgd.) Sandra Ward,
Cabinet Secretary.