UCITS Application Form

Section 3 Instrument of Incorporation ORION

**March 2023**

**Instructions Paper**

**SECTION 3 – UCITS**

**INSTRUMENT OF INCORPORATION**

Please complete the following by inserting the information requested and ticking the applicant column of boxes (to confirm compliance), unless otherwise indicated

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | | | | **Applicant** | | | | | | |  | | **Applicant** | | | | | | | | | | |  | | | |  | | |
|  |  | | | | **Article No.** | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1 | General | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1.1 | Indicate “ICAV with Variable Capital” or “ICAV with Fixed | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Capital” on the cover page | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1.2 | Provide that the sole object of the ICAV is investment in either or | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | both transferable securities and other liquid financial assets referred to in Regulation 68 of capital raised from the public and which operates on the principle of risk spreading | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1.3 | Provide that the Instrument of Incorporation cannot be | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | amended without the prior approval of the Central Bank. | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1.4 a) | Disclose the names of the States, local authorities or public | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | international bodies issuing or guaranteeing securities in which it intends to invest more than 35% of its net assets. | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | | Yes/No | | | | | | | | | | |  | | | |  | | |
| b) | Indicate if issuers other than those listed below are included: | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | If yes, confirm submission is attached justifying the inclusion of | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | the issuer for the purposes of Regulation 72. (Note: The Central Bank reserves the right to request a UCITS to justify the inclusion of a specific issuer including issuers referred to in the following list) | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | OECD countries | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Government of the People’s Republic of China | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Government of Brazil (provided the issues are of investment grade) | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Government of India (provided the issues are of investment grade) | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Government of Singapore | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | European Investment Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | European Bank for Reconstruction & Development | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | International Finance Corporation | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | International Monetary Fund | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Euratom | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | The Asian Development Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Council of Europe | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Eurofima | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | African Development Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | The World Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | The International Bank for Reconstruction & Development | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | The Inter American Development Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | European Union | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | European Central Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Federal National Mortgage Association | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Federal Home Loan Mortgage Corporation | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Government National Mortgage Association | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Student Loan Marketing Association | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Federal Home Loan Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Federal Farm Credit Bank | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Tennessee Valley Authority  Straight-A Funding LLC | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | Export-Import Bank: the following needs to be satisfied: | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | a) full name to be disclosed (as various countries have one) | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | b) how does it qualify under Regulation 72 of the UCITS Regulations? | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1.5 | Provide that the liabilities of a unitholder shall be limited to | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | the amount agreed to be contributed by him or her for the subscription of units. | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  |  | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
| 3.1.6 | Provide that the provisions of the instrument of incorporation | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | are binding on the ICAV and on the unitholders as if such persons had been party to the instrument of incorporation. | | | |  | | | | | | |  | |  | | | | | | | | | | |  | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.2 | | Share Capital | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.2.1 | | Disclose type of share. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.2.2 | | Confirm that the Instrument of Incorporation does not provide | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | that shares in the ICAV have a par value. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.2.3 | | Provide that the amount of paid-up share capital of the ICAV shall | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | at all times be equal to the net asset value of the ICAV.  *(Ensure that the wording refers to the ICAV and not to sub-funds/classes)* | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3 | | Issue/Allotment of Participating Shares | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.1 | | Provide that shares shall be issued or sold at a price arrived at by | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | dividing the net asset value of the UCITS by the number of shares outstanding (such price may be increased by duties and charges). | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.2 | | Confirm there is no reference to issuing shares at a fixed price | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | (other than the initial offer price). | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.3 | | Provide that shares may not be issued unless the equivalent of the | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | net issue price is paid into the assets of the UCITS within: | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| a) | | the usual time limits, or | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| b) | | a reasonable time. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | *(tick option provided for)* | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.4 | | Confirm that the issue of partly paid shares is not provided for. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.5 | | Provide for the issue of: | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| a) | | share certificates; | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | or/and | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| b) | | a written confirmation of entry on the register. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | (*tick option provided for)* | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.6 | | Provide that share certificates must be signed by the Depositary. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | (This signature may be reproduced mechanically) | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.7 | | Indicate the maximum subscription charge | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | Note: It is not the Central Bank’s practice to approve subscription arrangements that include subscription charges above 5% of the subscription amount | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | | Yes/No | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| 3.3.8 | | Does the Instrument of Incorporation provide for subscription in | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | specie? If yes, provide that: | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| a) | | The nature of the assets to be transferred into the UCITS would | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | qualify as investments of the UCITS in accordance with the investment objectives, policies and restrictions of the UCITS; | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| b) | | (i) Assets to be transferred must be vested with the Depositary; or | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | (ii) Arrangements are made to vest the assets with the Depositary. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| c) | | The amount of shares to be issued must not exceed the amount | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | that would be issued for the cash equivalent of the subscription in specie; and | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | |  | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
| d) | | The Depositary is satisfied that the terms of any exchange will not | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | be such as are likely to result in any material prejudice to the existing shareholders of the UCITS. | | | |  | | | | | | |  | | | | | |  | | | | |  | | | | |  | | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4 | | | Redemption/Repurchase of Participating Shares | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.1 a) | | | Provide for authorisation by the ICAV to repurchase its own shares | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | **Or** | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | Provide that action will be taken by the ICAV to ensure that the | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | stock exchange value of its shares does not significantly vary from their net asset value. | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | If the latter provision is provided for, and is being utilised, confirm | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | that a submission, setting out proposed procedures, is attached to this application for consideration by the Central Bank. | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.2 | | | Provide that shares will be redeemed or repurchased at a price | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | arrived at by dividing the net asset value of the UCITS by the number of shares outstanding: such price may be decreased by duties and charges. | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.3 | | | Repurchase Charge | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | Disclose the maximum charge relating to repurchase of shares | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | Note: The Central Bank does not approve redemption arrangements that include redemption charges above 3% of the redemption amount. | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | Disclose that the UCITS shall not increase the maximum charge | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | relating to the redemption or repurchase of units without prior approval of unitholders given on the basis of a simple majority of votes cast in a general meeting or with the prior written approval of all unitholders of the UCITS or such other majority as is specified in the Instrument of Incorporation. In the event of an increase in the redemption or repurchase charge a reasonable notification period must be provided by the UCITS to enable unitholders redeem their units prior to the implementation of the increase. | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.4 | | | Where: | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | 1. the total requests for redemption on any dealing day for a | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | UCITS or a sub fund thereof exceed 10% of the total number of units in the UCITS/sub fund or at least 10% of the net asset value of the UCITS/sub fund; and | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | 1. the responsible person decides to refuse to redeem any units in | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | excess of 10% of the total number of units in the UCITS/sub fund or such higher percentage that the responsible person may determine;  the UCITS shall reduce pro-rata any requests for redemption on that dealing day and shall treat the redemption requests as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed. | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.5 | | | Redemptions in Specie | | | | | Yes/No | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | Does the Instrument of Incorporation provide for redemptions in specie? | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | If yes, provide that | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | Redemption in specie is at the discretion of the UCITS and | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | with the consent of the redeeming shareholder; | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | (n/a for an exchange-traded fund where the original subscription was made in specie) | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | Asset allocation is subject to the approval of the Depositary; (n/a for | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | an exchange-traded fund where the original subscription was made in specie)  and | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| c) | | | Notwithstanding (a) and (b) above, where the redeeming unit-holder | | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | requests redemption of a number of units that represent 5 per cent or more of the net asset value of the UCITS, the responsible person may, without the consent of the redeeming unitholder, where utilising the discretion of the UCITS, determine to provide redemption in specie subject to such redemption being provided for in the constitutional documents and:  (i) in that event the UCITS shall, if requested to do so, sell the assets on behalf of the unitholder after the redemption has been effected; and  (ii) the cost of any sale in accordance with clause (i) can be charged to the unitholder. | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.6 | | | Distributions in Specie | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | Disclose that the UCITS can provide for distributions in specie upon | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | a winding up. | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | Disclose that an ordinary resolution, or with the prior written | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | approval of all unitholders of the relevant fund (in accordance with the Instrument of Incorporation) or a resolution passed by such majority as is specified in the Instrument of Incorporation, is required | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| c) | | | Disclose that the ICAV agrees to sell the assets if requested by a | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | shareholder (the costs of such sale can be charged to redeeming shareholders). | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.7 | | | Provide that repurchased shares are cancelled. | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.8 | | | Settlement Period | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | Indicate the maximum period for payment of redemption proceeds | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | to shareholders (period must be within 10 business days from the relevant dealing deadline). | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.4.9 | | | Temporary Suspension of Redemptions | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | List cases where repurchase of shares may be temporarily suspended; | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | Provide that the suspension can only be on a temporary basis; | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | |  | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| c) | | | Provide that the Central Bank will be notified immediately of any | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | such suspension; | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | and | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| d) | | | Confirm that there is no provision in the Instrument of | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | Incorporation permitting the Depositary to request the suspension. | | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5. | | | | Determination of Net Value Asset | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.1 | | | | Disclose the frequency of the calculation (must be at least twice per month at regular intervals) of: | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | | the issue price (i.e. net asset value); and | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | repurchase price (i.e. net asset value). | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | Specific Valuation Provisions | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.2 | | | | Listed securities | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | Provide that: | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | | Securities which are listed or traded on a regulated market may be | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | valued at the closing or last known market price. The responsible person shall determine which one of the following is to be the closing or last known market price: | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | 1. closing bid 2. last bid 3. last traded price 4. closing mid-market price 5. latest mid-market price 6. official closing price published by an exchange. | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | Where a security is listed on more than one exchange, the relevant | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | market shall be the one: | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | 1. which constitutes the main market, or | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | 1. the one which the management company/directors | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | determines provides the fairest criteria in a value for the security. | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | *(tick option provided for - only one permitted)* | | |  | | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| c) | | | | Securities listed or traded on a regulated market, but acquired at a | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | premium or at a discount outside or off the relevant market may be valued taking into account the level of premium or discount at the date of valuation. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.3 | | | | Listed securities where price is unrepresentative/not available and unlisted securities | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | Provide that: | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | | Securities which are listed or traded on a regulated market | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | where the market price is unrepresentative or not available and unlisted securities shall be valued at the probable realisation value estimated with care and in good faith. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | (i) The security shall be valued by the responsible person. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (ii) The security shall be valued by a competent person appointed | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | by the responsible person and approved for the purpose by the Depositary. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | Note: Where the “competent person” is a related party to the UCITS, the prospectus should disclose the possible conflict of interests which may arise (e.g. valuation provided by an investment adviser; the advisers fee will increase as the value of the UCITS increases). | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (iii) The security shall be valued by any other means provided that | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | the value is approved by the Depositary. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.4 | | | | Matrix pricing | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | | Provide that fixed income securities may be valued using matrix | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | pricing (i.e. valuing securities by reference to the valuation of other securities which are considered comparable in rating, yield, due date and other characteristics) where reliable market quotations are not available. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | The matrix methodology will be compiled by the persons listed in | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | 2(a)- (c) of Schedule 5 of the Central Bank UCITS Regulations. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.5 | | | | Investment Funds | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | | Provide that investment funds shall be valued at: | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | * Investment funds shall be valued at the latest available net | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | asset value as published by the investment fund; or | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | * Investment funds shall be valued at the latest bid prices as | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | published by the investment fund. | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | Valuation on a mid-price or offer price is acceptable if consistent | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
|  | | | | with valuation policy, the responsible person may in accordance with the valuation of listed securities undertake a valuation based on market prices where the investment fund in which the investment is made is listed on a regulated market. | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
| 3.5.6 | | | | Provide that cash (in hand or deposit) is valued at face/nominal | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
|  | | | | value plus accrued interest. | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
|  | | | |  | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
| 3.5.7 a) | | | | Provide that exchange traded futures and options contracts | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
|  | | | | (includingindex futures) shall be valued based on the settlement price as determined by the market where the exchange traded future/option contract is traded. | | | |  | | | | | | |  | | | | |  | | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | Provide that if settlement price is not available, the exchange | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | traded future/option contract may be valued as per unlisted securities and securities which are listed/traded on a regulated market where the price is unrepresentative/not available. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | *The following provisions may also be provided for:* | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.8 | | | | A particular/specific asset valuation may be carried out using an | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | alternative method of valuation if the responsible person deems it necessary and the alternative method must be approved by the Depositary. The rationale/methodologies used shall be clearly documented. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.9 | | | | The value of an asset may be adjusted by the responsible person | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | where such an adjustment is considered necessary to reflect the fair value in the context of currency, marketability, dealing costs and/or such other considerations which are deemed relevant. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.10 | | | | Amortised Cost (N/A for Money Market Funds) | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | The responsible person shall have in place an escalation procedure | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | to ensure that any material discrepancy between the market value and the amortised cost value of a money market instrument is brought to the attention of the personnel who are responsible for the investment management of the UCITS. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | OR | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | A review of the amortised cost valuation vis-à-vis market valuation | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | will be carried out in accordance with the requirements of the Central Bank. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.11 | | | | Where it is not the intention or objective of a responsible person to | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | apply amortised cost valuation to the portfolio of the UCITS as a whole, a money market instrument within such a portfolio shall only be valued on an amortised basis if the money market instrument has a residual maturity of less than 3 months and does not have any specific sensitivity to market parameters, including credit risk. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.12 | | | | Dual Pricing: | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | The calculation of a separate bid and offer price on units (i.e. dual | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | pricing) may be provided for. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | Disclosure in relation to the methodologies for both the bid and offer price must be clear and unambiguous. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.13 | | | | Consistency: | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | A responsible person may provide for valuation of a UCITS assets on a | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | mid-market basis, a bid basis or in the case of dual pricing on a bid and offer basis. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | Valuations on an offer basis where total subscriptions on a dealing | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | day exceed total redemption requests, or for a switch from mid-market to bid basis when total redemption requests, on a dealing day, exceed total subscriptions. Provide that valuation methodologies including provisions which allow for a switch from a mid-market to a bid or offer basis are applied on a consistent basis throughout the life of the UCITS. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.5.14 | | | | Anti-dilution levy | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | In calculating the subscription/redemption price for the UCITS the | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | responsible person may on any dealing day on which there are net subscription/redemptions adjust as relevant the subscription/redemption price by adding/deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.6 | | | | Fees and Expenses | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| 3.6.1 | | | | Provide for the following: | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| a) | | | | Preliminary expenses. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| b) | | | | The regulatory fee; and | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | The cost of winding up/liquidation. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| c) | | | | Other expenses. | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
| d) | | | | Fees and out of pocket expenses of: | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (a) Management Company | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (b) Depositary | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (c) Administrator | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (d) Investment Manager | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (e) Directors | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | | (f) Others (as applicable) | | | | |  | | | | | | |  | | | | |  | | | | |  | | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| e) | | | | Where a management company is appointed and the maximum fee is not provided for in the management agreement: | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | (a) (i) specify the maximum fee that may be charged by the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | management company; | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | (ii) specify the maximum fee that may be charged by the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | investment manager appointed by the responsible person where that fee is paid directly out of the assets of the UCITS. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | [Note: Any fee under (a) that is specified as being payable to a management company or investment manager shall include any performance related fee that a management company/investment manager (as the case may be) may charge.] | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | (b) the maximum fee that may be charged by an investment | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | company/investment manager pursuant to 3.6.1(e) shall not be increased without approval of the unitholders of the UCITS on the basis of a simple majority of votes cast in general meeting (or such other majority as is specified in the Instrument of Incorporation) or with the prior written approval of all unitholders of the fund in accordance of the Instrument of Incorporation. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | (c) if a fee that is disclosed in the prospectus is less than the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | maximum relevant fee than is permitted in the Instrument of Incorporation prior unitholder approval is required for any proposed increase in the fee that is disclosed in the prospectus, unless that the prospectus also provides that a fee greater than the fee disclosed in the prospectus may be charged. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | (d) A responsible person shall provide unitholders with reasonable | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | notice in the event of an increase of the maximum fee that may be charged by a management company/investment manager. Notice given for this purpose must be sufficient to enable a unitholder to redeem some or all of the unitholder’s units prior to the implementation of the proposed increase. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| f) | | | | Provide for the charging of fees and expenses to capital (if applicable). | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.7 | | | | Appointment of Depositary | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.7.1 (a) | | | | Provide that the ICAV appoints a Depositary who is responsible for | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | the safekeeping of all the assets of the ICAV. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| (b) | | | | Procedure for the replacement of the Depositary and the rules to | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | ensure the protection of unitholders in the event of such replacement. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.7.2 | | | | Provide that: | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| (a) | | | | The appointment of the new Depositary must be approved by the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | Central Bank in advance; | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| (b) | | | | The current depositary may not retire until a new Depositary is | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | appointed in accordance with 3.7.2 (a); | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| (c) | | | | (i) Despite attempts by the responsible person to appoint a new Depositary if no replacement for the current Depositary has been appointed in accordance with Regulation 32 and (ii) the current Depositary is unwilling or unable to act as such, then: | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | * a general meeting will be convened at which an ordinary | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | resolution, or such a resolution passed by such majority as is specified in the Instrument of Incorporation to wind up or otherwise dissolve the UCITS is so proposed; and | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | * the appointment of the current Depository may be terminated | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | only on the revocation of the authorisation of the UCITS. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.7.3 a) | | | | Confirm there are no provisions limiting the Depositary’s liability, | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | indemnities etc. (except as provided for in the depositary agreement) | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| b) | | | | A responsible person may terminate the appointment of the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | Depositary only upon the appointment of a new Depositary. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| c) | | | | A responsible person may terminate the appointment of the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | Depositary only upon the revocation of the authorisation of the UCITS. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.8 | | | | Procedure for the replacement of the management company | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.8.1 a) | | | | Disclose the conditions for the replacement of the management | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | company and the rules ensure the protection of unitholders in the event of such replacement; and | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| b) | | | | Disclose that the new management company must be approved by | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | the Central Bank. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.9 | | | | Exchanges and Markets | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.9.1 | | | | Disclose a list of the stock exchanges, markets and regulated | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | derivatives markets, in which the UCITS may invest | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | **Or** | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.9.2 | | | | Alternatively the constitutional document must incorporate the following: | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | With the exception of permitted investments in unlisted securities | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | the UCITS will only invest in those securities and derivative instruments listed or traded on a stock exchange or market (including derivative markets) which meets with the regulatory criteria (regulated, operate regularly, be recognised and open to the public) and which is listed in the prospectus. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.10 | | | | Distributions/Dividends | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.10.1 | | | | Indicate the conditions and manner of the application of income. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.10.2 | | | | Provide that distributions/dividends are payable out of: | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| a) | | | | Net income (i.e. income less expenses); | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | and/or | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| b) | | | | Realised gains net of realised and unrealised losses; or | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| c) | | | | Realised and unrealised gains net of realised and unrealised losses; | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | and/or | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| d) | | | | Capital. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.11 | | | | Borrowing Powers | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.11.1 | | | | Provide the UCITS may borrow not more than 10% of its assets, | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | provided that such borrowing is on a temporary basis. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.12 | | | | Umbrella Funds | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | Provide: | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.12.1 | | | | On cover that it is ‘an umbrella fund with segregated liability’. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.12.2 | | | | That new sub-funds can only be established with the prior approval | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | of the Central Bank. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.12.3 | | | | That separate records will be maintained for each sub-fund with | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | the assets and liabilities being allocated to the correct sub-fund. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.12.4 | | | | That the assets of each sub-fund shall belong exclusively to the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | relevant sub-fund and may not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and are not available for any such purpose. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.12.5 | | | | Details of switching provisions. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.13 | | | | Subsidiaries | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.13.1 | | | | Disclose power to establish a wholly owned subsidiary with the | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | prior approval of the Central Bank. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.13.2 | | | | Provide that the subsidiary will be established only in the cases and | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | under the conditions identified in the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (‘UCITS Regulations 2011’). | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.13.3 | | | | Provide that the shares issued by the subsidiary and all of its assets | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | will be held by the Irish Depositary. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.14 | | | | Share Classes | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | | Yes/No | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.14.1 | | | | Provide for the creation of share classes. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.14.2 | | | | Provide for the establishment of sub-funds, and share classes | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | within sub-funds. | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | | [Note: This must be clear and unambiguous.] | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
|  | | | |  | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  | |
| 3.14.3 | | | | Confirm the calculation of the net asset value per share of each | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | class is clearly provided for. | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| 3.14.4 | | | | Provide that the creation of further share classes must be; | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| a) | | | | notified to the Central Bank in advance; or | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| b) | | | | must be effected in accordance with the requirements of the Central Bank | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| 3.14.5 | | | | Hedged/Unhedged Classes | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| a) | | | | Disclose where the UCITS intends to create hedged and/or | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | unhedged share classes. | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| b) | | | | In the case of a hedged share class, disclose clear provisions for the | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | charging of the resultant costs and gains/losses to the relevant share class. | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| c) | | | | In the case of a hedged share class, provide valuation and allocation | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | provisions. | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| 3.15 | | | | Miscellaneous | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| 3.15.1 | | | | Index Funds | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | Provide that the aim of the UCITS’ investment policy is to replicate | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | the composition of a stock or debt securities index which is recognised by the Central Bank. | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | |  | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
| 3.15.2 | | | | Confirm that there are no provisions in the Instrument of | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |
|  | | | | Incorporation legally preventing the UCITS from marketing its shares in the State. | | | | | | |  | | | | | | |  | | | | |  | | | | |  | | |  |

I confirm that the information set out in this application form is correct and accurately reflects the provisions in the Instrument of Incorporation.

**Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name (in print): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Applicant Firm’s Representative: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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