

CAYMAN ISLANDS



Securities Investment Business Law

**SECURITIES INVESTMENT BUSINESS
(EU CONNECTED FUND (ALTERNATIVE
INVESTMENT FUND MANAGERS
DIRECTIVE)) REGULATIONS, 2016**

(SL 71 of 2016)

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SECURITIES INVESTMENT BUSINESS (EU CONNECTED FUND (ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE)) REGULATIONS, 2016

(SL 71 of 2016)

Citation and commencement

1. (1) These Regulations may be cited as the Securities Investment Business (EU Connected Fund (Alternative Investment Fund Managers Directive)) Regulations, 2016.
- (2) These Regulations shall come into force immediately after the *Securities Investment Business (Amendment) Law, 2015 [Law 13 of 2015]* comes into force.

Definitions

2. In these Regulations —

“**Cayman Islands AIFM**” means an EU Connected Manager who is not a person who carries on or purports to carry on securities investment business in relation to any of the activities set out in paragraph 7 of Schedule 2 of the Law, who is licensed under the Law in relation to any of the activities set out in paragraphs 5 or 6 of Schedule 2 of the Law and has made a notification to the Authority pursuant to section 5(2A) of the Law;

“**EU Passport**” means an authorisation from a Member State of reference facilitating the marketing and management of an AIF by an AIFM to investors within or from within the EU in accordance with the AIFMD;

“**Law**” means the *Securities Investment Business Law (2015 Revision)*;

“**Level 2**” means Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU as amended or supplemented from time to time;

“**Member State of reference**” means the Member State determined in accordance with Article 37(4) of the AIFMD;

“**non-listed company**” means a company with shares which are not traded on a regulated market, which has its registered office in the EU; and

“**Qualifying Holding**” means direct or indirect holding in the relevant entity which represents ten percent or more of the capital or of the voting rights.

Notification to Authority and information to be provided

3. (1) A person who is required to make a notification to the Authority pursuant to section 5(2) or 5(2A) of the Law and —

- (a) is not a licensee and who is an EU Connected Manager who is not a person who carries on or purports to carry on securities investment business in relation to any of the activities set out in paragraph 7 of Schedule 2 of the Law ; or
- (b) is a licensee and who is an EU Connected Manager who is not a person who carries on or purports to carry on securities investment business in relation to any of the activities set out in paragraph 7 of Schedule 2 of the Law,

shall in the form designated by the Authority provide the Authority with the following —

- (aa) the name of each Member State in which the securities investment business is being carried on and the Member State of reference under the AIFMD if as an AIFM in a Member State;
- (bb) the date on which the person commenced, or will commence, carrying on the securities investment business;
- (cc) a programme of activity setting out the organisational structure of the EU Connected Manager, including information on how the EU Connected Manager intends to comply with the person’s obligations under these Regulations;
- (dd) evidence demonstrating that the EU Connected Manager has sufficient capital, in accordance with Regulation 7;
- (ee) a declaration that the EU Connected Manager agrees to comply with the requirements of the AIFMD applicable to the EU Connected Manager



- and the requirements of the Member State of reference under the AIFMD if authorised as an AIFM in a Member State; and
- (ff) the name of each fund and the jurisdiction of incorporation or establishment of each fund managed or marketed by the EU Connected Manager.
- (2) A person who is required to comply with regulation 3(1) who intends to obtain or who has obtained an EU Passport shall further provide to the Authority the following —
- (a) the prescribed information regarding the remuneration policies and practices relating to the activities of the Cayman Islands AIFM in accordance with paragraph 6 of the Schedule; and
- (b) the prescribed information regarding the arrangements made for the delegation and sub-delegation to third parties of functions as provided in paragraph 10 of the Schedule.

Notification in relation to EU Connected Funds

4. (1) A person who has complied with regulation 3 shall, for each EU Connected Fund in relation to which the activities in paragraphs 5 or 6 of Schedule 2 of the Law are carried on, provide the Authority with the following —
- (a) the name of each fund and the jurisdiction of incorporation or establishment of each fund managed or marketed by the EU Connected Manager;
- (b) the investment strategies of the EU Connected Fund and any underlying funds if the EU Connected Fund is a fund of funds;
- (c) any disclosure offering documents provided to investors of the EU Connected Fund; and
- (d) if the EU Connected Fund is a feeder fund, details regarding the location of the establishment of the master fund.
- (2) A person who complies with regulation 4(1) who intends to obtain or who has obtained an EU Passport shall further provide to the Authority —
- (a) details of the policy of the Cayman Islands AIFM regarding the use of leverage as required under the AIFMD;
- (b) details regarding the risk profiles and any other characteristics of the EU Connected Fund as required by the Authority; and
- (c) details regarding the appointment of a depositary as prescribed in the Schedule.

Period in which notification to be made

5. The notification required pursuant to regulation 3 or regulation 4, as applicable, shall be made to the Authority —

- (a) in the case of an EU Connected Manager that has elected to be licensed pursuant to section 5(2) of the Law, within twenty-one days of the EU Connected Manager receiving its licence; or
- (b) in the case of an EU Connected Manager that is an existing licensee making a notification pursuant to section 5(2A) of the Law, within three months of the commencement of these Regulations.

Capital

6. (1) A Cayman Islands AIFM shall at all times maintain such amount of capital that is the greater of —
- (a) the amount of capital and own funds the Cayman Islands AIFM shall maintain in compliance with the Schedule; or
 - (b) the financial resource requirement the Cayman Islands AIFM shall maintain under the Securities Investment Business (Financial Requirements and Standards) Regulations (2003).
- (2) A Cayman Islands AIFM shall notify the Authority forthwith in writing where the Cayman Islands AIFM has reason to believe that the Cayman Islands AIFM is in breach of the capital requirements stipulated in paragraph (1) or anticipates being in breach within a period of one month and the notice shall specify the steps which the Cayman Islands AIFM is taking or has taken to remedy the breach.

Information required to amend licence

7. A licensee shall inform the Authority in writing within seven days of ceasing to be a Cayman Islands AIFM and shall submit the following and any other information required by the Authority to amend the licensee's licence —
- (a) the licensee's licence certificate;
 - (b) the reason why the licensee is no longer an EU Connected Manager; and
 - (c) written confirmation indicating whether the EU Connected Funds previously managed or marketed by the licensee have been wound up or transferred.

Notification of change in writing

8. A licensee shall inform the Authority in writing of a change in any of the information provided to the Authority —
- (a) pursuant to regulation 3 within seven days;
 - (b) pursuant to regulation 4 within twenty-one days;
 - (c) upon making a notification under regulation 4, within twenty-one days of commencing activities in respect of the EU Connected Fund; and



- (d) immediately upon submitting an application for an EU Passport, the information required at regulation 3(1)(ff) and regulation 4.

Declaration of compliance

- 9.** Together with the documents required to be submitted to the Authority pursuant to section 13 of the Law and the Securities Investment Business (Financial Requirements and Standards) Regulations (2003), a Cayman Islands AIFM shall, within six months of its financial year end, provide —
- (a) a declaration confirming compliance with regulations 3, 4 and 8 as at the end of the financial year;
 - (b) evidence of authorisation for the Cayman Islands AIFM from the relevant EU Member State, if applicable; and
 - (c) a declaration that the Cayman Islands AIFM is compliant with all of the requirements of the AIFMD that are applicable to the Cayman Islands AIFM and the requirements of the Cayman Islands AIFM's Member State of reference under the AIFMD if authorised as an AIFM in a Member State.

Requirement for compliance

- 10.** A Cayman Islands AIFM shall at all times comply with the requirements of the Schedule applicable to the Cayman Islands AIFM to the extent required in accordance with the AIFMD.

Fee for attestation

- 11.** A Cayman Islands AIFM may request from the Authority an attestation or confirmation of status pursuant to section 5(2G) of the Law subject to the payment of a fee of eight hundred Cayman Islands dollars.

Requirements for attestation

- 12.** An EU Connected Manager other than an EU Connected Manager who carries on or intends to carry on the activities set out in paragraph 7 of Schedule 2 of the Law that is not a licensee may request from the Authority an attestation or confirmation of status pursuant to section 5(2G) of the Law and the request for an attestation or confirmation of status shall be accompanied by —
- (a) in the case of an EU Connected Manager that is a person to which section 5(4) of the Law applies —
 - (i) confirmation that there has been no change to the person's Annual Declaration required to be filed pursuant to section 5(4)(a) of the Law;
 - (ii) a declaration that the EU Connected Manager agrees to comply with the requirements of the AIFMD applicable to the EU

- Connected Manager and to ensure that any form of marketing or management in any Member State is effected in accordance with the laws and regulations in force in the relevant Member State; (iii) the name of the Member State in which the marketing or management is to be conducted;
- (iv) if not kept by its registered office, confirmation of the location and address of where the books and records of the EU Connected Manager are kept;
 - (v) agreement that the Authority or the regulator in any EU Member State may inspect the books and records of the EU Connected Manager at any time; and
 - (vi) a fee of eight hundred Cayman Islands dollars; and
- (b) in the case of an EU Connected Manager that is not required to make a declaration pursuant to section 5(4) of the Law —
- (i) the name, principal contact and address of registered office of the EU Connected Manager;
 - (ii) details of senior management and directors of the EU Connected Manager;
 - (iii) if not kept by its registered office, confirmation of the location and address of where the books and records of the EU Connected Manager are kept;
 - (iv) a declaration that the EU Connected Manager agrees to comply with the requirements of the AIFMD applicable to the EU Connected Manager and to ensure that any form of marketing or management in any Member State is effected in accordance with the laws and regulations in force in the relevant Member State;
 - (v) agreement that the Authority or the regulator in any EU Member State may inspect the books and records of the EU Connected Manager at any time;
 - (vi) the name of the Member State in which marketing or management is to be conducted; and
 - (vii) a fee of eight hundred Cayman Islands dollars.

Notification of changes

- 13.** An EU Connected Manager referred to in regulation 12 shall notify the Authority within twenty-one days of —
- (a) any change to the information provided; and
 - (b) the EU Connected Manager ceasing to be an EU Connected Manager.



Information proving compliance

- 14.** An EU Connected Manager shall at all times when requested by the Authority provide the Authority with all information necessary for the Authority to satisfy itself that the EU Connected Manager is in compliance with the provisions of these Regulations and the AIFMD as are applicable to the EU Connected Manager.

Interpretation of Regulations

- 15.** The Authority, when giving effect to these Regulations, shall have regard to the provisions of the AIFMD and Level 2 and may, when fulfilling or enforcing any obligations created by these Regulations, use any guidance issued by the European Securities and Markets Authority in respect of the AIFMD or Level 2.

SCHEDULE

Regulations 3,4,6,10

CONDITIONS FOR ACTING AS A CAYMAN ISLANDS AIFM

Obligations for compliance

1. (1) A Cayman Islands AIFM shall comply with this Schedule only in respect of those EU Connected Funds in respect of which the Cayman Islands AIFM performs any of the activities set out in paragraphs 5 or 6 of Schedule 2 of the Law.
- (2) Unless otherwise stated in this Schedule, a Cayman Islands AIFM shall adhere to the applicable Articles of Level 2 and any guidance issued by the European Securities and Markets Authority in relation to the AIFMD when complying with this Schedule.
- (3) The Authority may request any information from a Cayman Islands AIFM which the Authority shall require to monitor compliance with this Schedule at all times and the Cayman Islands AIFM shall be obliged to comply with any such request.

Initial Capital and Own Funds

2. (1) A Cayman Islands AIFM shall have initial capital of at least one hundred and fifteen thousand Cayman Islands dollars, or the currency equivalent.
- (2) Where the value of the portfolios of EU Connected Funds managed by a Cayman Islands AIFM exceeds two hundred and twenty-five million Cayman Islands dollars (or the currency equivalent), the Cayman Islands AIFM shall provide an additional amount of the Cayman Islands AIFM's own funds equal to 0.02% of the amount by which the value of the portfolios of the Cayman Islands AIFM exceeds two hundred and twenty-five million Cayman Islands dollars (or the currency equivalent) ("additional amount").
- (3) The Cayman Islands AIFM need not provide up to 50% of the additional amount referred to in paragraph (2) if the Cayman Islands AIFM benefits from a guarantee of the same amount given by a credit institution or insurance undertaking which has a registered office in the Cayman Islands or in the EU or in another jurisdiction where the credit institution or insurance undertaking is subject to prudential rules considered by the Authority as being equivalent to the Cayman Islands or the EU.
- (4) For the purpose of paragraph 2, EU Connected Funds managed by the Cayman Islands AIFM, including EU Connected Funds for which the Cayman Islands

AIFM has delegated functions in accordance with paragraph 10 of this Schedule but excluding EU Connected Funds that the Cayman Islands AIFM is managing under delegation, are deemed to be portfolios of the Cayman Islands AIFM.

- (5) The total of the initial capital and the additional amount required to be held by a Cayman Islands AIFM pursuant to paragraphs 2(1) and 2(2) shall not be required to exceed nine million Cayman Islands dollars.
- (6) A Cayman Islands AIFM shall have additional own funds which are appropriate to cover potential liability risks arising from professional negligence or hold professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.
- (7) Amounts referred to in paragraphs 2(1) and 2(2) and any additional amounts referred to in paragraph 2(6), shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.
- (8) A Cayman Islands AIFM shall notify the Authority forthwith where the Cayman Islands AIFM has reason to believe that —
 - (a) the Cayman Islands AIFM is in breach of the requirements of paragraph 2 of this Schedule or anticipates being in breach of the requirements of paragraph 2 of this Schedule within a period of one month; such notice shall specify the steps which the Cayman Islands AIFM is taking or has taken to remedy the breach and shall be confirmed in writing;
 - (b) the Cayman Islands AIFM's auditor intends to qualify the Cayman Islands AIFM's accounts or financial statements; or
 - (c) the Cayman Islands AIFM is unable to pay its debts as they fall due in the ordinary course of business or anticipates being unable to pay its debts as they fall due in the ordinary course of business within a period of one month.

Operating Conditions

- 3. (1) A Cayman Islands AIFM shall at all times —
 - (a) act honestly, with due skill, care and diligence and fairly in conducting its activities;
 - (b) act in the best interests of the EU Connected Funds and the investors of the EU Connected Funds the Cayman Islands AIFM manages and the integrity of the market;
 - (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;



- (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the EU Connected Funds and their investors and ensure that the EU Connected Funds the Cayman Islands AIFM manages are fairly treated;
 - (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the EU Connected Funds and the investors of the EU Connected Funds the Cayman Islands AIFM manages and the integrity of the market;
 - (f) treat all EU Connected Fund investors fairly;
 - (g) ensure that no investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant EU Connected Fund offering or constitutional documents; and
 - (h) have regard to Articles 17 to 29 of Level 2.
- (2) The Authority, when assessing compliance with paragraph (1), shall have regard to Article 16 of Level 2.

Remuneration

4. (1) A Cayman Islands AIFM shall 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 profile of the Cayman Islands AIFM or of the EU Connected Funds the Cayman Islands AIFM 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 or constitutional documents of the EU Connected Funds the Cayman Islands AIFM manages and a Cayman Islands AIFM shall determine the remuneration policies and practices in accordance with paragraphs 4(2) to 4(5).
- (2) When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee 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 Cayman Islands AIFM or of EU Connected Funds the Cayman Islands AIFM manages, the Cayman Islands AIFM shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of its activities —

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risktaking which is inconsistent with the risk profiles, constitutional and offering documents of the EU Connected Funds the Cayman Islands AIFM manages;
- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the Cayman Islands AIFM and the EU Connected Fund the Cayman Islands AIFM manages and the investors of such EU Connected Funds, and includes measures to avoid conflicts of interest;
- (c) the management body of the Cayman Islands AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee; (g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or EU Connected Fund concerned and of the overall results of the Cayman Islands AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;
- (h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the EU Connected Funds managed by the Cayman Islands AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the EU Connected Funds the Cayman Islands AIFM manages and their investment risks;
- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;



- (k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the EU Connected Fund and its rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units, interests or shares of the EU Connected Fund concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of EU Connected Funds accounts for less than 50% of the total portfolio managed by the Cayman Islands AIFM, in which case the minimum of 50% does not apply and the instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the Cayman Islands AIFM and the EU Connected Funds the Cayman Islands AIFM manages and the investors of such EU Connected Funds and the Authority may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate;
- (n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the EU Connected Fund concerned and is correctly aligned with the nature of the risks of the EU Connected Fund in question and the period referred to in the preceding sentence shall be at three to five years unless the life cycle of the EU Connected Fund concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred;
- (o) the variable remuneration, including the deferred portion, is paid or vests only if the Cayman Islands AIFM is sustainable according to the financial situation of the Cayman Islands AIFM as a whole, and justified according to the performance of the business unit, the EU Connected Fund and the individual concerned. The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the Cayman Islands AIFM or of the EU Connected Fund concerned occurs, taking into account both current compensation and reductions in pay-outs of amounts previously earned, including through malus or clawback arrangements;

- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the Cayman Islands AIFM and the EU Connected Funds the Cayman Islands AIFM manages but if the employee leaves the Cayman Islands AIFM before retirement, discretionary pension benefits shall be held by the Cayman Islands AIFM for a period of five years in the form of instruments defined in paragraph (m) and in the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in paragraph (m), subject to a five year retention period;
 - (q) staff are required to undertake not to use personal hedging strategies or remuneration and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements; and (r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of these Regulations.
- (3) The principles set out in paragraph 2 shall apply to remuneration of any type paid by the Cayman Islands AIFM, to any amount paid directly by the EU Connected Fund itself, including carried interest, and to any transfer of units or shares of the EU Connected Fund, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee 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 their risk profile or the risk profiles of the EU Connected Funds that they manage.
- (4) Cayman Islands AIFMs that are significant in terms of their size or the size of the EU Connected Funds they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee which shall be constituted in a way that enables the remuneration committee to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.
- (5) The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the Cayman Islands AIFM or the EU Connected Fund concerned and which are to be taken by the management body in its supervisory function and shall be chaired by a member of the management body who does not perform any executive functions in the Cayman Islands AIFM concerned and the members of the remuneration committee shall be members of the management body who do not perform any executive functions in the Cayman Islands AIFM concerned.



Conflicts of Interest

5. (1) A Cayman Islands AIFM shall take all reasonable steps to identify conflicts of interest that arise in the course of managing EU Connected Funds between —
- (a) the Cayman Islands AIFM, including its managers, employees or any person directly or indirectly linked to the Cayman Islands AIFM by control, and the EU Connected Fund managed by the Cayman Islands AIFM or the investors in that EU Connected Fund;
 - (b) the EU Connected Fund or the investors in that EU Connected Fund, and another EU Connected Fund or the investors in that EU Connected Fund;
 - (c) the EU Connected Fund or the investors in that EU Connected Fund and another client of the Cayman Islands AIFM; or
 - (d) two clients of the Cayman Islands AIFM.
- (2) A Cayman Islands AIFM shall maintain and operate effective organisational 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 EU Connected Funds and their investors.
- (3) A Cayman Islands AIFM shall —
- (a) 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
 - (b) assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the investors of the EU Connected Funds.
- (4) Where organisational arrangements made by a Cayman Islands 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 Cayman Islands AIFM shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.
- (5) Where a Cayman Islands AIFM on behalf of an EU Connected Fund uses the services of a prime broker, the terms shall be set out in a written contract and in particular, any possibility of transfer and re-use of the assets of the EU Connected Fund shall be provided for in that contract and shall comply with any applicable requirements in the EU Connected Fund's constitutional or offering documents.
- (6) A Cayman Islands AIFM shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

Risk Management

6. (1) A Cayman Islands AIFM shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management by satisfying the conditions set out in Article 42 of Level 2.
- (2) A Cayman Islands AIFM shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each EU Connected Fund investment strategy and to which each EU Connected Fund is or may be exposed.
- (3) A Cayman Islands AIFM shall review the risk management systems with appropriate frequency, but at least annually, and adapt them whenever necessary.
- (4) A Cayman Islands AIFM shall at least —
- (a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the EU Connected Fund, according to the investment strategy, the objectives and risk profile of the EU Connected Fund;
 - (b) ensure that the risks associated with each investment position of the EU Connected Fund and their overall effect on the EU Connected Fund's portfolio can be properly identified, measured, managed and monitored on an on-going basis, including through the use of appropriate stress testing procedures; and
 - (c) ensure that the risk profile of the EU Connected Fund shall correspond to the size, portfolio structure and investment strategies and objectives of the EU Connected Fund as laid down in the EU Connected Fund's constitutional or offering documents.
- (5) A Cayman Islands AIFM shall set a maximum level of leverage which the Cayman Islands AIFM may employ on behalf of each EU Connected Fund the Cayman Islands AIFM manages as well as the extent of the right to re-use collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia —
- (a) the type of the EU Connected Fund;
 - (b) the investment strategy of the EU Connected Fund;
 - (c) the sources of leverage of the EU Connected Fund;
 - (d) any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;
 - (e) the need to limit the exposure to any single counterparty;
 - (f) the extent to which the leverage is collateralised;
 - (g) the asset-liability ratio; and



- (h) the scale, nature and extent of the activity of the Cayman Islands AIFM on the markets concerned.

Liquidity Management

7. (1) A Cayman Islands AIFM shall, for each EU Connected Fund that the Cayman Islands AIFM manages which is not an unleveraged EU Connected Fund with no redemption rights exercisable during a period of five years following the date of initial investment, employ an appropriate liquidity management system and adopt procedures which enable the Cayman Islands AIFM to monitor the liquidity risk of the EU Connected Fund and to ensure that the liquidity profile of the investments of the EU Connected Fund complies with the EU Connected Fund's underlying obligations.
- (2) A Cayman Islands AIFM shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable the Cayman Islands AIFM to assess the liquidity risk of the EU Connected Funds and monitor the liquidity risk of the EU Connected Funds accordingly.
- (3) A Cayman Islands AIFM shall ensure that, for each EU Connected Fund that the Cayman Islands AIFM manages, the investment strategy, the liquidity profile and the redemption policy are consistent.

Organisational requirements

8. (1) A Cayman Islands AIFM shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of the EU Connected Funds which the Cayman Islands AIFM manages.
- (2) A Cayman Islands AIFM, having regard to the nature of the EU Connected Funds under the Cayman Islands AIFM's management, shall have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the EU Connected Funds may be reconstructed according to the EU Connected Fund's origin, the parties to the EU Connected Fund, the EU Connected Fund's nature, and the time and place at which the EU Connected Fund was effected and that the assets of the EU Connected Funds managed by the Cayman Islands AIFM are invested in accordance with the constitutional and offering documents of the EU Connected Funds.

Valuation

9. (1) A Cayman Islands AIFM shall ensure that, for each EU Connected Fund that the Cayman Islands AIFM manages, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the EU Connected Fund can be performed in accordance with this Schedule and the constitutional and offering documents of the EU Connected Fund.
- (2) A Cayman Islands AIFM shall ensure that the net asset value per unit, interest or share of EU Connected Funds is calculated and disclosed to the investors in accordance with this Schedule and the EU Connected Fund's constitutional and offering documents.
- (3) The valuation procedures used shall ensure that the assets are valued and the net asset value per unit, interest or share is calculated at least once a year.
- (4) If the EU Connected Fund is open-ended, such valuations and calculations shall also be carried out at the frequency which is both appropriate to the assets held by the EU Connected Fund and the frequency of issuance and redemption of units, interests or shares in the EU Connected Fund.
- (5) If the EU Connected Fund is closed-ended, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant EU Connected Fund.
- (6) Investors in such EU Connected Fund shall be informed of the valuations and calculations as set out in this Schedule and in accordance with any applicable requirements in the EU Connected Fund's offering document.
- (7) The Cayman Islands AIFM shall ensure that the valuation function is either performed by —
- (a) an external valuer, being a legal or natural person, independent from the EU Connected Fund, the Cayman Islands AIFM and any other persons with close links to the EU Connected Fund or the Cayman Islands AIFM; or
- (b) the Cayman Islands AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.
- (8) Where an external valuer performs the valuation function, the Cayman Islands AIFM shall demonstrate 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 professional guarantees to be able to perform effectively the relevant valuation function in accordance with paragraphs (1) to (5); and
 - (c) the appointment of the external valuer complies with the requirements of paragraph 10(1) and with Article 73 of Level 2.
- (9) The appointed external valuer shall not delegate the valuation function to a third party.
- (10) The valuation shall be performed impartially and with all due care, skill and diligence.
- (11) Where the valuation is performed by an external valuer, the appointment of the external valuer shall be notified to the Authority which may require that another external valuer be appointed instead, where the conditions set out in paragraph (8) are not met.
- (12) Where the valuation function is not performed by an independent external valuer, the Authority may require the Cayman Islands AIFM to have valuation procedures and valuations verified by an external valuer or, where appropriate, by an auditor.
- (13) A Cayman Islands AIFM is responsible for the proper valuation of an EU Connected Fund's assets, the calculation of the net asset value and the publication of that net asset value. The Cayman Islands AIFM's liability towards the EU Connected Fund is not affected by the fact that the Cayman Islands AIFM has appointed an external valuer. Notwithstanding the foregoing and irrespective of any contractual arrangements providing otherwise, the external valuer will be liable to the Cayman Islands AIFM for any losses suffered by the Cayman Islands AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks. (14) The depositary appointed for an EU Connected Fund shall not be appointed as external valuer of that EU Connected Fund, unless the depositary 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 EU Connected Fund.

Delegation

- 10. (1) A Cayman Islands AIFM which intends to delegate to third parties the task of carrying out functions on its behalf shall notify the Authority before the delegation arrangements become effective and the following conditions shall be met —
 - (a) the Cayman Islands AIFM shall be able to justify its entire delegation structure on objective reasons;

- (b) the delegate shall dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate shall be of sufficiently good repute and sufficiently experienced;
 - (c) where the delegation concerns portfolio management or risk management, the delegation shall 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 Authority;
 - (d) the delegation shall not prevent the effectiveness of supervision of the Cayman Islands AIFM, and, in particular, shall not prevent the Cayman Islands AIFM from acting, or the EU Connected Fund from being managed, in the best interests of the EU Connected Fund's investors;
 - (e) the Cayman Islands AIFM shall be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that the delegate was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors; and
 - (f) the Cayman Islands AIFM shall review the services provided by each delegate on an on-going basis.
- (2) A Cayman Islands AIFM shall not delegate portfolio management or risk management to the depositary or a delegate of the depositary or any other entity whose interests may conflict with those of the Cayman Islands AIFM or the investors of the EU Connected Fund, unless such entity has functionally and hierarchically separated the performance of its portfolio management 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 EU Connected Fund.
- (3) The liability of the Cayman Islands AIFM to the AIF shall not be affected by the delegation by the Cayman Islands AIFM of any functions to a third party, or by any further sub-delegation.
- (4) The Cayman Islands AIFM shall not delegate functions to the extent that in essence the Cayman Islands AIFM can no longer be considered the manager of the EU Connected Fund and to the extent that the Cayman Islands AIFM becomes a letterbox entity and a Cayman Islands AIFM shall be deemed a letter-box entity and shall no longer be considered to be the manager of the EU Connected Fund in at least any of the following situations —
- (a) the Cayman Islands AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation;



- (b) the Cayman Islands AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or no longer has the power to perform senior management functions in particular in relation to the implementation of the general investment policy and investment strategies;
 - (c) the Cayman Islands AIFM loses the Cayman Islands AIFM's contractual rights to inquire, inspect, have access or give instructions to the Cayman Islands AIFM's delegates or the exercise of such rights becomes impossible in practice; or
 - (d) the Cayman Islands AIFM delegates the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the Cayman Islands AIFM itself.
- (5) The third party may sub-delegate any of the functions delegated to the third party provided the following conditions are met —
 - (a) the prior consent of the Cayman Islands AIFM to the subdelegation;
 - (b) the Cayman Islands AIFM notifies the Authority before the subdelegation arrangements become effective;
 - (c) the conditions set out in paragraph 4 are met on the understanding that all references to the 'delegate' are read as references to 'subdelegate'; and
 - (d) the relevant delegate reviews the services provided by each subdelegate on an on-going basis.
- (6) No sub-delegation of portfolio management or risk management shall be conferred on the depositary or a delegate of the depositary or any other entity whose interests may conflict with those of the Cayman Islands AIFM or the investors of the EU Connected Fund, unless such entity has functionally and hierarchically separated the performance of its portfolio management 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 EU Connected Fund.
- (7) Where the sub-delegate further delegates any of the functions delegated to the sub-delegate, the conditions set out in the preceding paragraphs shall apply *mutatis mutandis*.

Depository

- 11. (1) For each EU Connected Fund the Cayman Islands AIFM manages, the Cayman Islands AIFM shall ensure that a single depositary is appointed in accordance with this paragraph.
- (2) In addition to any other relevant laws, regulations or administrative provisions the appointment of a depositary shall be evidenced by written contract which

shall, inter alia, regulate the flow of information considered necessary to allow the depositary to perform its functions for the EU Connected Fund for which the depositary has been appointed depositary as set out in this Schedule.

- (3) For the avoidance of doubt the depositary shall be —
- (i) an entity eligible to act as depositary in accordance with Article 21 of the AIFMD; or
 - (ii) an entity established in the Islands with the approval of the Authority which the Authority determines is subject to effective prudential regulation, including minimal capital requirements, and supervision which have the same effect as EU law and are effectively enforced.

Conflicts of Interest

12. In order to avoid conflicts of interest between the depositary, the Cayman Islands AIFM and the EU Connected Fund and its investors —
- (a) a Cayman Islands AIFM shall not act as depositary;
 - (b) a prime broker acting as counterparty to an EU Connected Fund shall not act as depositary for that EU Connected Fund, unless the depositary has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the EU Connected Fund and delegation by the depositary to such prime broker of its custody tasks in accordance with paragraph 14 is allowed if the relevant conditions are met.

Depositary Duties

13. (1) The depositary shall in general ensure that the EU Connected Fund's cash flows are properly monitored, and shall in particular ensure that —
- (a) all payments made by or on behalf of investors upon the subscription of units, interests or shares of an EU Connected Fund have been received; and
 - (b) that all cash of the EU Connected Fund has been booked in cash accounts opened —
 - (i) in the name of —
 - (aa) the EU Connected Fund;
 - (bb) in the name of the Cayman Islands AIFM acting on behalf of the EU Connected Fund; or
 - (cc) in the name of the depositary acting on behalf of the EU Connected Fund, and



- (ii) at an entity that is subject to effective prudential regulation and supervision, as determined by the Authority, and
 - (c) where the cash accounts are opened in the name of the depositary acting on behalf of the EU Connected Fund, cash of the Cayman Islands AIFM and the depositary's own cash shall not be booked on such accounts.
- (2) The assets of the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund shall be entrusted to the depositary for safe-keeping, as follows —
 - (a) for financial instruments that can be held in custody —
 - (i) the depositary shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary; and
 - (ii) for that purpose, the depositary shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, opened in the name of the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund, so that they can be clearly identified as belonging to the EU Connected Fund in accordance with the applicable law at all times;
 - (b) for all other assets —
 - (i) the depositary shall verify the ownership of the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund of such assets and shall maintain a record of those assets for which the depositary is satisfied that the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund holds the ownership of such assets;
 - (ii) the assessment whether the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund holds the ownership shall be based on information or documents provided by the EU Connected Fund or the Cayman Islands AIFM and, where available, on external evidence; and
 - (iii) the depositary shall keep its record up-to-date.
- (3) In addition to the tasks referred to in paragraphs 13(1) and 13(2) the depositary shall —
 - (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units, interests or shares of the EU Connected Fund are carried out in accordance with the EU Connected Fund's constitutional and offering documents;

- (b) ensure that the value of the units, interests or shares of the AIF is calculated in accordance with the requirements of paragraph 2 of this Schedule and the EU Connected Fund's constitutional and offering documents;
 - (c) carry out the instructions of the Cayman Islands AIFM, unless they conflict with these Regulations and the EU Connected Fund's constitutional or offering documents;
 - (d) ensure that in transactions involving the EU Connected Fund's assets, any consideration is remitted to the EU Connected Fund within the usual time limits; and
 - (e) ensure that an EU Connected Fund's income is applied in accordance with these Regulations, and the EU Connected Fund's constitutional and offering documents.
- (4) A depositary —
- (a) shall act honestly, fairly, professionally, independently and in the best interest of the EU Connected Fund and the investors of the EU Connected Fund; and
 - (b) shall not engage in activities with regard to the EU Connected Fund that would create a conflict of interest between the EU Connected Fund, the investors in the EU Connected Fund, the Cayman Islands AIFM and the depositary unless the depositary has functionally and hierarchically separated the performance of the tasks of the depositary from the depositary's other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the EU Connected Fund.
- (5) The assets referred to in paragraph 13(2) of this Schedule shall not be re-used by the depositary unless the depositary has obtained consent in respect of the EU Connected Fund with which the assets are associated.

Delegation

14. (1) The depositary shall not delegate to third parties its functions as described in these Regulations, except for those referred to in paragraph 13(2) subject to compliance with the requirements of sub-paragraph (2).
- (2) The depositary may delegate to third parties the functions referred to in paragraph 13(2) provided the following conditions are satisfied —
- (a) the tasks are not delegated with the intention of avoiding the requirements of these Regulations, or Level 2;
 - (b) the depositary can demonstrate that there is an objective reason for the delegation;



- (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom the depositary wants to delegate parts of the depositary's tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom the depositary has delegated parts of the depositary's tasks and of the arrangements of the third party in respect of the matters delegated to the third party; and
- (d) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to the third party —
 - (i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund which have been entrusted to the third party;
 - (ii) for custody tasks referred to in paragraph 13(2)(a), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
 - (iii) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;
 - (iv) the third party does not make use of the assets without the prior consent of the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund and prior notification to the depositary; and
 - (v) the third party complies with the general obligations and prohibitions set out in paragraphs 13(2) and (4).
- (3) Notwithstanding sub-paragraph (2), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that paragraph, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements —
 - (a) the investors of the relevant EU Connected Fund shall be duly informed that such delegation is required due to legal constraints in the law of another third country and of the circumstances justifying the delegation, prior to their investment; and

- (b) the EU Connected Fund, or the Cayman Islands AIFM on behalf of the EU Connected Fund, shall instruct the depositary to delegate the custody of such financial instruments to such local entity. (4) The third party may, in turn, sub-delegate those functions, subject to the same requirements set out in sub-paragraph (3) and in such a case, paragraph 15 shall apply mutatis mutandis to the relevant parties.

Liability

15. (1) The depositary shall be liable to the EU Connected Fund for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with paragraph 13(2)(a) has been delegated.
- (2) In the case of such a loss of a financial instrument held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund without undue delay and the depositary will not be liable if the depositary can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.
- (3) The depositary shall also be liable to the EU Connected Fund for all other losses suffered by the EU Connected Fund as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to these Regulations and Level 2.
- (4) The depositary's liability shall not be affected by any delegation referred to in paragraph 14 but notwithstanding the foregoing, in case of a loss of financial instruments held in custody by a third party pursuant to paragraph 14, the depositary may discharge itself of liability if the depositary can prove that —
- (a) all requirements for the delegation of its custody tasks set out in paragraph 14(2) are met;
- (b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and
- (c) a written contract between the depositary and the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.
- (5) Where the law of another third country requires that certain financial instruments are held in custody by a local entity and there are no local entities



that satisfy the delegation requirements laid down in paragraph 14(2)(d)(ii), the depositary can discharge itself of liability provided that the following conditions are met —

- (a) the EU Connected Fund's constitutional documents expressly allow for such a discharge under the conditions set out in this paragraph;
 - (b) the investors of the relevant EU Connected Fund have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
 - (c) the EU Connected Fund or the Cayman Islands AIFM on behalf of the EU Connected Fund instructed the depositary to delegate the custody of such financial instruments to a local entity;
 - (d) there is a written contract between the depositary and the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund, which expressly allows such a discharge; and
 - (e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the EU Connected Fund or the Cayman Islands AIFM acting on behalf of the EU Connected Fund to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.
- (5) Liability to the investors of the EU Connected Fund may be invoked directly or indirectly through the Cayman Islands AIFM, depending on the legal nature of the relationship between the depositary, the Cayman Islands AIFM and the investors.

Transparency Requirements - Annual Report

16. (1) A Cayman Islands AIFM shall, for each EU Connected Fund, make available an annual report for each financial year no later than six months following the end of the financial year and the annual report shall be provided to investors and to the Authority, on request.
- (2) The annual report shall at least contain the following —
- (a) a balance-sheet or a 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) any material changes in the information listed in paragraph 17 of this Schedule during the financial year covered by the report;
 - (e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the Cayman Islands AIFM to its staff,

- and number of beneficiaries, and, where relevant, carried interest paid by the EU Connected Fund; and
- (f) the aggregate amount of remuneration broken down by senior management and members of staff of the Cayman Islands AIFM whose actions have a material impact on the risk profile of the EU Connected Fund.
- (3) The accounting information given in the annual report in respect of an EU Connected Fund shall be prepared in accordance with the accounting standards and with the accounting rules in force in the country where the EU Connected Fund is established, or accounting standards accepted in the Cayman Islands for funds established in the Cayman Islands and with the accounting rules specified in the EU Connected Fund's constitutional and offering documents.
- (4) The accounting information given in the annual report shall be audited by one or more persons empowered to audit accounts in accordance with the law in force in the European Union or by an auditor accepted by the jurisdiction in which the EU Connected Fund is established and the auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Transparency requirements - disclosure to investors

17. (1) A Cayman Islands AIFM shall, for each EU Connected Fund, make available to prospective investors, in accordance with these Regulations and the constitutional and offering documents of the EU Connected Fund, the following information before they invest in the EU Connected Fund, as well as any material changes thereof —
- (a) a description of the investment strategy and objectives of the EU Connected Fund, information on where any master fund is established and where the underlying funds are established if the EU Connected Fund is a fund of funds, a description of the types of assets in which the EU Connected Fund may invest, the techniques the EU Connected Fund may employ and all associated risks, any applicable investment restrictions, the circumstances in which the EU Connected Fund 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 re-use arrangements, and the maximum level of leverage which the Cayman Islands AIFM is entitled to employ on behalf of the EU Connected Fund;
 - (b) a description of the procedures by which the EU Connected Fund 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 EU Connected Fund is established;
- (d) the identity of the any manager or sub-manager, depositary, auditor and any other service providers of the EU Connected Fund and a description of their duties and the investors' rights;
 - (e) a description of how the Cayman Islands AIFM is complying with the requirements paragraph 2(6);
 - (f) a description of any delegated portfolio management or risk management function by the Cayman Islands AIFM and of any safekeeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
 - (g) a description of the EU Connected Fund's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with paragraphs 11 to 15 of this Schedule;
 - (h) a description of the EU Connected Fund'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 Cayman Islands 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, their legal or economic links with the EU Connected Fund or Cayman Islands AIFM;
 - (k) the latest annual report referred to in paragraph 16 of this Schedule;
 - (l) the procedure and conditions for the issue and sale of units, interests or shares;
 - (m) the latest net asset value of the EU Connected Fund or the latest market price of the unit, interest or share of the EU Connected Fund, in accordance with paragraph 9 of this Schedule;
 - (n) where available, the historical performance of the EU Connected Fund;
 - (o) the identity of the prime broker and a description of any material arrangements of the EU Connected Fund 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 and re-use of the EU Connected Fund assets, and information about any transfer of liability to the prime broker that may exist; and

- (p) a description of how and when the information required in subparagraphs (4) and (5) will be disclosed.
- (2) The Cayman Islands AIFM shall inform the investors before they invest in the EU Connected Fund of any arrangement made by the depositary to contractually discharge itself of liability in accordance with paragraph 15(4). The Cayman Islands AIFM shall also inform investors of any changes with respect to depositary liability without delay.
- (3) Where the EU Connected Fund is required by law to prepare and publish an offering document, only such information referred to in sub-paragraphs (1) and (2) which is in addition to that contained in the offering document needs to be disclosed separately or as additional information in the offering document.
- (4) The Cayman Islands AIFM shall, for each of EU Connected Fund, periodically disclose to investors —
 - (a) the percentage of the EU Connected Fund's assets which are subject to special arrangements arising from their illiquid nature;
 - (b) any new arrangements for managing the liquidity of the EU Connected Fund; and
 - (c) the current risk profile of the EU Connected Fund and the risk management systems employed by the Cayman Islands AIFM to manage those risks.
- (5) A Cayman Islands AIFM shall, for each EU Connected Fund employing leverage, disclose on a regular basis —
 - (a) any changes to the maximum level of leverage which the Cayman Islands AIFM may employ on behalf of the EU Connected Fund as well as any right of the re-use of collateral or any guarantee granted under the leveraging arrangement; and
 - (b) the total amount of leverage employed by that EU Connected Fund.

Reporting Obligations to the Authority

- 18. (1) A Cayman Islands AIFM shall, on request, report to the Authority on the principal markets and instruments in which the Cayman Islands AIFM trades on behalf of the EU Connected Funds the Cayman Islands AIFM manages and shall provide information on the main instruments in which the Cayman Islands AIFM is trading, on markets of which the Cayman Islands AIFM is a member or where the Cayman Islands AIFM actively trades, and on the principal exposures and most important concentrations of each of the EU Connected Funds the Cayman Islands AIFM manages.
- (2) A Cayman Islands AIFM shall, on request, provide the following to the Authority in respect of each EU Connected Fund —



- (a) the percentage of the EU Connected Fund's assets which are subject to special arrangements arising from their illiquid nature;
 - (b) any new arrangements for managing the liquidity of the EU Connected Fund;
 - (c) the current risk profile of the EU Connected Fund and the risk management systems employed by the Cayman Islands AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
 - (d) information on the main categories of assets in which the EU Connected Fund invested; and
 - (e) the results of the stress tests performed in accordance with paragraph 6(4) and paragraph 7(2) of this Schedule.
- (3) The Cayman Islands AIFM shall, on request, provide the following documents to the Authority —
 - (a) an annual report of each EU Connected Fund in accordance with paragraph 16 of this Schedule; and
 - (b) a return containing the following information in respect of each EU Connected Fund —
 - (i) name of each EU Connected Fund;
 - (ii) domicile of each EU Connected Fund;
 - (iii) number of investors in each EU Connected Fund; and
 - (iv) total net asset value for each EU Connected Fund.
- (4) A Cayman Islands AIFM managing EU Connected Funds employing leverage on a substantial basis shall, on request, make available to the Authority information about the overall level of leverage employed by each EU Connected Fund the Cayman Islands AIFM manages, a breakdown between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the EU Connected Fund's assets have been reused under leveraging arrangements and that information shall include the identity of the five largest sources of borrowed cash or securities for each of the EU Connected Funds managed by the Cayman Islands AIFM, and the amounts of leverage received from each of those sources for each of those EU Connected Funds.
- (5) Where necessary for the effective monitoring of systemic risk, the Authority may require information in addition to that described in sub-paragraphs (1) to (4), on a periodic as well as on an ad-hoc basis.

Cayman Islands AIFMs Managing Leveraged EU Connected Funds

19. (1) A Cayman Islands AIFM shall ensure that the leverage limits set by the Cayman Islands AIFM for each EU Connected Fund the Cayman Islands AIFM manages are reasonable and that the Cayman Islands AIFM complies with those limits at all times.
- (2) The Authority may impose limits on the level of leverage that a Cayman Islands AIFM is entitled to employ or other restrictions on the management of the EU Connected Fund with respect to the EU Connected Funds 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.

Obligations of Cayman Islands AIFMs managing EU Connected Funds which acquire control of Non-Listed Companies and Issuers - Scope

20. (1) This paragraph applies to the following —
- (a) a Cayman Islands AIFM managing one or more EU Connected Funds which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a nonlisted company in accordance with paragraph 16(3); and
 - (b) a Cayman Islands AIFM co-operating with one or more other alternative investment fund manager on the basis of an agreement pursuant to which the EU Connected Funds managed by those managers jointly acquire control of a non-listed company in accordance with paragraph 20(1). (2) Paragraphs 22 and paragraph 24 apply also to Cayman Islands AIFM managing EU Connected Funds that acquire control over issuers and for the purposes of those paragraphs, sub-paragraph (1) applies mutatis mutandis.
- (3) For the purpose of this paragraph, for non-listed companies, control means more than 50% or more of the voting rights of the companies and when calculating the percentage of voting rights held by the relevant EU Connected Fund, in addition to the voting rights held directly by the relevant EU Connected Fund, the voting rights of the following shall be taken into account, subject to control as referred to in the first sub-paragraph being established —
- (a) an undertaking controlled by the EU Connected Fund; and
 - (b) a natural or legal person acting in its own name but on behalf of the EU Connected Fund or on behalf of an undertaking controlled by the EU Connected Fund.
- (4) 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 thereof is suspended.



*Notification of the Acquisition of Major Holdings and Control of Non-Listed
Companies*

21. (1) When an EU Connected Fund acquires, individually or jointly, control over a non-listed company pursuant to paragraph 20(1) in conjunction with paragraph 16(3), the Cayman Islands AIFM managing such an EU Connected Fund shall notify the following of the acquisition of control by the EU Connected Fund —
- (a) the non-listed company; and
 - (b) the shareholders of the non-listed company of which the identities and addresses are available to the Cayman Islands AIFM or can be made available by the non-listed company or through a register to which the Cayman Islands AIFM has or can obtain access; and
 - (c) the Authority.
- (2) The notification required under sub-paragraph (1) 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.
- (3) In its notification to the non-listed company, the Cayman Islands AIFM shall 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 EU Connected Fund managed by the Cayman Islands AIFM and of the information referred to in sub-paragraph (2).
- (4) The Cayman Islands 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 paragraph.
- (5) The notifications referred to in the foregoing paragraphs shall be made as soon as possible, but no later than ten working days after the date on which the EU Connected Fund has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in case of acquisition of control

22. (1) When an EU Connected Fund acquires, individually or jointly, control of a non-listed company or an issuer pursuant to paragraph 20(1) in conjunction with paragraph 16(2), the Cayman Islands AIFM managing such EU Connected Fund shall make the information referred to in sub-paragraph (2) available to —
- (a) the company concerned;
 - (b) the shareholders of the company of which the identities and addresses are available to the Cayman Islands AIFM or can be made available by the company or through a register to which the Cayman Islands AIFM has or can obtain access; and
 - (c) the Authority.
- (2) The Authority may require that the information referred to in subparagraph (3) is also made available to the competent authorities of the non-listed company.
- (3) The Cayman Islands AIFM shall make available —
- (a) identity of the alternative investment fund managers which either individually or in agreement with other alternative investment fund managers manage the EU Connected Funds that have acquired control;
 - (b) the policy for preventing and managing conflicts of interest, in particular between the Cayman Islands AIFM, the EU Connected Fund and the company, including information about the specific safeguards established to ensure that any agreement between the Cayman Islands AIFM and the EU Connected Fund and the company is concluded at arm's length; and
 - (c) policy for external and internal communication relating to the company in particular as regards employees.
- (4) In its notification to the company pursuant to paragraph 16(9), the Cayman Islands AIFM shall 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 in paragraph 22(1) and the 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 paragraph.
- (5) When an EU Connected Fund acquires, individually or jointly, control of a non-listed company pursuant to paragraph 20(1), in conjunction with paragraph 20(3), the Cayman Islands AIFM managing such EU Connected Fund shall ensure that the EU Connected Fund, or the Cayman Islands AIFM acting on behalf of the EU Connected Fund, disclose 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 Cayman Islands AIFM or can be made available by the non-listed company or through a register to which the Cayman Islands AIFM has or can obtain access; and
 - (c) the Authority.
- (6) In addition, the Cayman Islands 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 the first subparagraph to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.
- (7) When an EU Connected Fund acquires control of a non-listed company pursuant to paragraph 20(1), in conjunction with paragraph 20(2), the Cayman Islands AIFM managing such an EU Connected Fund shall provide the Authority and the EU Connected Fund's investors with information on the financing of the acquisition.

*Specific provisions regarding the annual report of EU Connected Funds
exercising control of non-listed companies*

23. (1) When an EU Connected Fund acquires, individually or jointly, control of a non-listed company pursuant to paragraph 20(1), in conjunction with paragraph 21(1), the Cayman Islands AIFM managing such an EU Connected Fund 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 subparagraph (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 within the period such annual report has to be drawn up in accordance with any applicable national legislation; or
 - (b) for each such EU Connected Fund include in the annual report provided for in paragraph 16 of this Schedule the information referred to in subparagraph (2) relating to the relevant non-listed company.
- (2) The additional information to be included in the annual report of the company or the EU Connected Fund, in accordance with subparagraph (1), shall include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report and the report shall also give an 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 acquisitions of own shares.
- (3) The Cayman Islands AIFM managing the relevant EU Connected Fund 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-paragraph (1)(b) 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 paragraph 16(1); or
 - (b) make available the information referred to in sub-paragraph (1)(b) to the investors of the EU Connected Fund, in so far as already available, within the period referred to in paragraph 23 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 applicable national legislation.

Asset stripping

- 24. (1) When an EU Connected Fund, individually or jointly, acquires control of a non-listed company or an issuer pursuant to paragraph 21(3) the Cayman Islands AIFM managing such an EU Connected Fund shall for a period of 24 months following the acquisition of control of the company by the EU Connected Fund —
 - (a) not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and acquisition of own shares by the company as described in sub-paragraph (2);
 - (b) in so far as the Cayman Islands AIFM is authorised to vote on behalf of the EU Connected Fund at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption and acquisition of own shares by the company as described in paragraph 15(5); and
 - (c) in any event use its best efforts to prevent distributions, capital reductions, share redemptions and the acquisition of own shares by the company as described in sub-paragraph (2).
- (2) The obligations imposed on Cayman Islands AIFM pursuant to subparagraph (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 be not distributed under the law or the statutes, 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 subscribed capital;
- (b) any distribution to shareholders 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 the law or the statutes;
 - (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 the Cayman Islands AIFM, and shares acquired by a person acting in that person's own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in subparagraph (a).
- (3) For the purposes of sub-paragraph (2) —
- (a) the term 'distribution' referred to in sub-paragraphs (2)(a) and (2)(b) includes, in particular, the payment of dividends and of interest relating to shares; and
 - (b) the provisions on capital reductions do 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 such reserve is not more than 10% of the reduced subscribed capital.

Investment in securitisation positions

25. Investments by a Cayman Islands AIFM, on behalf of an AIF, in securitisation or other financial instruments, are subject to Articles 50 to 56 of Level 2.

Derogations

26. (1) A Cayman Islands AIFM managing an EU Connected Fund which is established outside the EU and which is not marketed to investors or potential investors in any Member State shall not be required to comply with the requirements of this Schedule in respect of such EU Connected Fund.
- (2) The Authority may in its absolute discretion by notice in writing to a Cayman Islands AIFM exclude or modify the application of any provision of these Regulations, where such exclusion or modification does not inhibit the EU Connected Manager's compliance with the AIFMD or the requirements of its Member State of reference.

Made in Cabinet the 13th day of December, 2016.

Kim Bullings
Clerk of the Cabinet.