



Financial Services Authority

The Financial Services  
(Regulated Schemes)  
(Amendment)  
Regulations 1999

**Rulebook  
Amendments and Additions  
Release 191**

# Financial Services Authority

## **Amendments and Additions**

### **Release 191**

Financial Services Authority made by order on 21 January 1999 the Financial Services (Regulated Schemes) (Amendment) Regulations 1999.

These regulations make amendments permitting the use of single pricing for authorised unit trusts on the same basis as for open-ended investment companies. They also make mainly technical amendments to the Financial Services (Regulated Schemes) Regulations 1991, including amendments to the regulations on stocklending, which have the effect of replacing the FSA Guidance on Stocklending by Unit Trusts (Guidance release 4/91, issued in June 1991).

The regulations which will come into effect on 1 February 1999, are made following proposals by the Financial Services Authority set out in Consultation Paper 14 (September 1998).

### **Filing instructions**

This instrument should be filed in Chapter I of volume 3 of the Rulebook, after Release 189.

The Appendix to the Schedule should be inserted after Part 4 (Pricing and Dealing (dual pricing)) of Release 148.

Guidance Release 4/91, Stocklending by Unit Trusts, issued in June 1991 should now be discarded.

Financial Services Authority  
26 January 1999

# The Financial Services (Regulated Schemes) (Amendment) Regulations 1999

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The Financial Services Authority, in exercise of the powers contained in sections 81 and 85 of the Financial Services Act 1986, and now exercisable by the Authority, hereby makes the following regulations:

**1.01 Citation and commencement**

These regulations, 'the Financial Services (Regulated Schemes) (Amendment) Regulations 1999', are made on 21 January 1999 and shall come into operation on 1 February 1999.

**1.02 Purpose**

The purpose of this instrument is to amend the Financial Services (Regulated Schemes) Regulations 1991.

**1.03 Interpretation**

In these regulations 'the principal regulations' means the Financial Services (Regulated Schemes) Regulations 1991, and a reference in the Schedule hereto to a regulation or other provision is a reference to that regulation or provision in the principal regulations.

**1.04 Miscellaneous amendments**

The amendments to the principal regulations in the Schedule hereto shall have effect.

## Schedule

### Part A

#### Single Pricing

1. In regulation 1.03 substitute for 'Part 4' in the left hand column of the Table, 'Part 4 or Parts 4A, B, C and D'.
2. After regulation 1.03, insert the following new regulation -  
**'1.03A Application of pricing and dealing provisions**
  - 1 If a trust deed of an authorised unit trust scheme contains a provision to the effect that there shall only be a single price for any unit determined by reference to any particular valuation point then from the time of effect of that provision, Parts 4A, 4B, 4C and 4D shall apply to that scheme.
  - 2 Part 4 (dual pricing) shall only apply to an authorised unit trust scheme to which Parts 4A, 4B, 4C and 4D do not apply.'
3. For the heading to Part 4 substitute 'Part 4 Pricing and Dealing (dual pricing)'.
4. After Part 4 insert the new Parts 4A, 4B, 4C and 4D contained in the appendix to this Schedule.
5. In regulation 11.03 after paragraph 2 insert the following new paragraphs -  
**'3 A modification to the trust deed may be made without the approval of a resolution of the holders if it is -**
  - a. (i) solely for the purpose of applying to the scheme (in accordance with regulation 1.03A) the provisions of Parts 4A, 4B, 4C and 4D, or
  - (ii) a modification which is necessary as a result of a modification within (i) above, and
  - b. made not less than 6 weeks after -
    - (i) the manager has given notice in writing to the holders and plan investors of the proposed modification and the date on which it is intended to take effect or how that date will be determined, and
    - (ii) the manager has revised the scheme particulars to include a statement about the proposed change from dual to single pricing.
- 4 The notice referred in paragraph 3 must include or be accompanied by suitable information on the nature and implications of the proposed change.'

### Part B

#### Miscellaneous Amendments

6. For the explanation to Section L (Stocklending) of Part 5 substitute -  
**'Explanation.** *This Section should be regarded as an extension to Section K above (efficient portfolio management). Its purpose is to allow authorised unit trust schemes to*

employ the technique known as stocklending subject to the conditions contained within this Section. The specific method of stocklending permitted is in fact not a transaction which is a loan in the normal sense, but rather an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers securities to the borrower otherwise than by way of sale and the borrower is to transfer those securities, or securities of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing collateral to the 'lender' to cover him against the risk that the future transfer back of the securities may not be satisfactorily completed.

Other forms of stocklending, whether combined with stock borrowing or by way of loan or transfer of a beneficial interest in stock, are not envisaged in this Section, and, indeed, are prohibited by regulation 5.65.'

7. For regulation 5.58 substitute -

**'5.58 Permitted stocklending**

- 1 The trustee may, at the request of the manager, enter into a stocklending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if -
  - a. all the terms of the agreement under which securities are to be reacquired by the trustee are in a form which is acceptable to the trustee and in accordance with good market practice;
  - b. the counterparty is an authorised person or a person included in the list maintained for the purposes of section 43 of the Act (listed money market institutions), and
  - c. collateral is obtained to secure the obligation of the counterparty under the terms referred to in paragraph a. and the collateral is -
    - (i) acceptable to the trustee;
    - (ii) adequate within regulation 5.60.1, and
    - (iii) sufficiently immediate within regulation 5.60.2.
- 2 The counterparty for the purpose of paragraph 1 is the person who is obliged pursuant to the agreement referred to in paragraph 1a. to transfer to the trustee the securities transferred by the trustee under the stocklending arrangement or securities of the same kind.'

8. For regulation 5.60, including its Explanation, substitute -

**'5.60 Treatment of collateral**

**Explanation.** Where a 'stocklending' arrangement is entered into, the property of the scheme remains unchanged in terms of value: the securities transferred cease to be part of the property, but there is obtained in return an obligation on the part of the counterparty to transfer back equivalent securities. The trustee will also receive collateral to set against the risk of default in transfer, and that collateral is equally irrelevant to the valuation of the property of the scheme (because it is transferred against an obligation of equivalent value by way of re-transfer). This regulation accordingly makes provision for the treatment of the collateral in that context.

- 1 Collateral is adequate only if it -
  - a. is at least equal in value, at the time of the transfer to the trustee, to the value of the securities transferred by the trustee;
  - b. is transferred to the trustee or its agent;
  - c. is the subject of an agreement for transfer of the collateral, or of assets equivalent to the collateral, by the trustee as soon as the need for it has disappeared, and
  - d. is in the form of one or more of the following -
    - (i) cash;
    - (ii) near cash;
    - (iii) Government and other public securities;
    - (iv) a certificate of deposit;
    - (v) a letter of credit, or
    - (vi) securities transferred in CREST or through the CGO system by a DBV.
- 2 Collateral is sufficiently immediate if -
  - a. it is transferred before or at the time of the transfer of the securities by the trustee, or
  - b. the trustee reasonably believes at that time that it will be transferred at the latest by the close of business on the day of the transfer.
- 3 The trustee shall take such steps as are necessary to ensure that the value of the collateral at all times is at least equal to the value of the securities transferred by the trustee.
- 4 Any agreement for transfer of securities or of collateral (or of the equivalent of either) under this Section at a future date may be regarded, for the purposes of valuation under Part 4 or this Part, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the scheme.
- 5 Collateral transferred to the trustee is part of the property of the scheme for the purposes of these regulations except in the following respects -
  - a. it does not fall to be included in any valuation for the purposes of Part 4 or this Part, because it is offset under paragraph 4 above by an obligation to transfer,
  - b. it does not count as property for any purpose of Part 5 (other than this Section).
- 6 Paragraph 4 and paragraph 5a. do not apply to any valuation of collateral itself for the purposes of this Section.
- 7 The duty in paragraph 3 may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired, where the trustee reasonably believes that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.'.

9. In regulation 5.62.4 -
- a. for 'that the borrowing of the scheme is on a temporary basis', substitute 'that any borrowing of the scheme is on a temporary basis and that borrowings are not persistent';
  - b. in sub-paragraph a. for 'may have regard' substitute 'shall have regard', and
  - c. at the beginning of sub-paragraph b., insert 'without prejudice to paragraph a.'.
10. After regulation 7.09 insert the following new regulation -
- '7.09A Duty to inform the FSA**
- 1 The trustee shall inform the FSA immediately upon becoming aware of any circumstance as a result of which the trustee is not satisfied that -
    - a. except in relation to Part 5, the scheme is managed by the manager in accordance with regulation 7.02.1, and
    - b. decisions about the constituents of the property of the scheme do not exceed the powers conferred on the manager,
 unless the trustee is satisfied that the circumstance in question is not, and is not likely to become, materially significant.
  - 2 Without prejudice to paragraph 1, if the trustee becomes aware of a circumstance which it needs to investigate in order to ascertain whether its duty to inform under paragraph 1 arises and it has not satisfied itself within 90 days of becoming aware of that circumstance that its duty under paragraph 1 has not arisen, then immediately upon the expiration of the 90 days the trustee shall inform the FSA of that circumstance.
  - 3 The trustee shall not retire voluntarily unless, prior to its retirement, it has ensured that the new trustee has been informed of any circumstance of which the retiring trustee has informed the FSA in accordance with paragraph 1 or paragraph 2 or which is being investigated for the purpose of paragraph 2.'
11. Substitute for regulation 7.14.5 -
- '5 a. Paragraph 6 also applies to a transaction ('subsequent transaction') deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an investment ('original investment') forming part of the property of the scheme, which subsequent transaction, but for this regulation, would constitute a breach of Part 5, provided that, at the time of the acquisition of the original investment, it was reasonable for the manager, on the assumption that any right attached to the original investment when it was acquired would be exercised, to expect that a breach would not be caused by the subsequent transaction.
- b. In this paragraph 5 the exercise of a right shall be deemed to include the taking effect of a right without any action by or on behalf of the trustee or the manager.'
12. For regulation 11.05.1A substitute -
- '1A Notwithstanding paragraph 1, this regulation 11.05 does not apply to a conversion.'
13. For regulation 11.06.1A substitute -
- '1A Notwithstanding paragraph 1, this regulation 11.06 does not apply to a conversion.'

14. In regulation 11.06A after paragraph 7 insert the following new paragraph -
- ‘8 Paragraphs 2 to 7 shall not apply to a conversion that is made subject to the approval of an extraordinary resolution.’.
15. For regulation 12.14.1 substitute -
- ‘1 A fund of funds shall be valued no less frequently than would be required if the fund of funds were itself a scheme within the relevant Section (out of Sections B, C, D, E, F, G or J) which is appropriate for the choice of investment by the scheme under regulation 5.46.1 and the manager of a fund of funds shall deal on the basis of forward prices if this would be applicable if it were a scheme within that relevant Section.’.
16. In regulation 12.16.1 substitute ‘regulated collective investment scheme’ for ‘recognised scheme’.
17. In regulation 12.16 after paragraph 4 insert the following new paragraph -
- ‘5 Where any regulation contained in Sections A to E of this Part 12 modifies any regulation contained in another Part, the Part 12 regulation shall be construed in accordance with the application of Table 12.1 to the modified regulation.’.
18. At the end of regulation 13.03.2 add the following new sub-paragraph -
- f. the effective date of a conversion which results in all of the property of the scheme subject to the conversion becoming the property of one or more authorised companies.’.
19. In regulation 13.04 -
- a. in paragraph 1 after ‘or 13.03.2e.’ insert ‘or 13.03.2f.’, and
- b. at the end of paragraph 1 add ‘or in accordance with the conversion’.
20. In Schedule 4 -
- a. after the definition of ‘cash’ insert -
- ‘**CGO system**’ means the computer based system operated by the Central Gilts Office of the Bank of England to facilitate the transfer of securities, without the need for a written instrument;’;
- b. delete the definition of ‘currency’;
- c. substitute for the definition of ‘delivery by value’ -
- ‘**delivery by value**’ or ‘**DBV**’ means a transaction type, described as ‘delivery by value’, used to deliver and receive securities within CREST or through the CGO system, as the case may be;’;
- d. after the definition of ‘forward price’ insert -
- ‘**FSA**’ means the Financial Services Authority;’;
- e. substitute for the definition of ‘initial offer’-
- ‘**initial offer**’ means an offer for sale of units in a scheme, or units in respect of a constituent part of an umbrella fund, (otherwise than on a unitisation) where all or part of the consideration paid to the trustee for the units is to be used to acquire the initial capital property of the scheme, or the initial capital property attributable to the constituent part of an umbrella fund;’;
- f. delete the definition of ‘TALISMAN system’.

## Part 4A Single Pricing and Dealing

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**Explanation.** Each unit in a scheme represents, in microcosm, the overall property of the scheme: so valuation of units in a scheme is achieved, in broad outline, by valuing the property in the scheme, and dividing that value by the number of units in existence.

Units come into existence when they are created by the trustee on the instruction of the manager and the manager must then pay to the trustee money (or other assets) for them.

Units may then be issued by the manager to any person who applies. Alternatively units may, on request, be sold to such a person by the manager acting as agent for the trustee.

Managers often hold units for their own account (in the 'box'): so a purchaser of units from the manager may receive units that have just been created or units that have previously been issued (and have been redeemed by the manager from a previous unitholder).

If an owner of units wishes to realise the value of them by dealing with the manager, the manager will redeem them and may then decide either to hold the units in his box or else to instruct the trustee to cancel them. Alternatively the owner may request the manager to buy from him the units as agent for the trustee.

Units cease to be in existence when they are cancelled by the trustee on the instructions of the manager. Units also cease to be in existence when a purchase by the manager as agent for the trustee is reported to the trustee at the start of the next business day after the purchase.

Under this Part, the price at which a unit is created, issued, redeemed or cancelled will be a single price and although certain additions to, or deductions from, the price are provided for and affect payments, they do not affect the single price. The single price will be determined in accordance with regulation 4A.08 and, in broad outline, will be calculated by valuing the property of the scheme attributable to the type (income or accumulation) of units in question and dividing that value by the number of those units in issue. The valuation of the property must be in accordance with Section F of this Part and the relevant provisions of the trust deed.

This Part provides the manager with the power to require, for the benefit of the scheme, the payment or deduction of a dilution levy as a recompense for the amount of dealing costs incurred, including any indirect costs resulting from differences between the buying and selling prices of dual priced investments.

The special provisions about initial creation and initial issue, at the start of a scheme's life, are stated separately from the provisions about creation and issue in an ongoing scheme.

It should be noted that the effect of regulation 12.16 is that this Part (and Parts 4 and 4B) are to be applied separately to each constituent part of an umbrella fund.

## **Section A Initial Offers**

### **4A.01 Introduction to this Part and to Section A**

- 1 This Part applies only to single priced authorised unit trust schemes.
- 2 Regulations 4A.02 and 4A.03 apply to, and to the period of, an initial offer of units.
- 3 The period of the initial offer is not to exceed 21 days and an initial offer must, subject to regulation 4A.03, be kept open for the period of the initial offer.

### **4A.02 Initial price**

- 1 The price to be paid to the trustee for a unit created during the period of the initial offer shall be the initial price of a unit as determined by the manager and notified in writing to the trustee prior to the start of the period of the initial offer.
- 2 A unit is treated as created during the period of the initial offer if the manager had agreed to issue it or received an order for it to be issued before the close of the period, and it was created only afterwards.
- 3 The manager shall, by the close of business on the fourth business day after the manager has received the price from the purchaser pay to the trustee the price of any unit agreed to be issued by the manager during the period of the initial offer, unless payment by the manager is due earlier under regulation 4A.05, but the manager may retain for its own account any preliminary charge made by it under regulation 4B.02.
- 4 During the period of the initial offer, the manager shall not agree to sell units under regulation 4A.15 at a price other than the initial price (to which may be added, for the account of the manager, any preliminary charge permitted under regulation 4B.02).
- 5 The initial price of a unit shall be expressed in the base currency of the scheme, but during the period of the initial offer the manager may agree to issue units or sell units under regulation 4A.15 in any other currency, so long as the price in that other currency, compared with the initial price, is not at the time of the agreement likely to result in any material prejudice to the interests of holders or potential holders.
- 6 Where the initial offer is made in a country outside the United Kingdom, there may be added to the initial price of units offered in that country an amount sufficient to cover additional duty or taxation leviable in that country and the cost of the remittance of money to the United Kingdom.

### **4A.03 Compulsory termination of initial offer**

- 1 If the manager has reason to believe that, if the current price of a unit were to be calculated by reference to a valuation taken forthwith, it would be likely to vary from the initial price of that unit by 2% or more of the initial price, the manager may carry out such a valuation.
- 2 If -
  - a. the manager carries out such a valuation and it shows a variation of 2% or more, or
  - b. the manager has reason to believe as mentioned in paragraph 1, but does not forthwith carry out a valuation for the purpose of that paragraph, then the period of the initial offer comes to an end and the manager must forthwith refrain from -

- (i) agreeing to issue units (or sell units under regulation 4A.15) at the initial price, and
  - (ii) instructing the trustee to create units at the initial price except to fulfil an obligation or an order for the issue of units at that price which it has already assumed or received.
- 3 The current price of a unit for the purpose of paragraph 1 shall be calculated on the basis that the number of units of each relevant type in existence immediately before the valuation is the number in respect of which the initial price has been paid or assets transferred in exchange (or treated for the purpose of the valuation as having been paid or exchanged) to the trustee before the valuation.

## **Section B Creation and Cancellation**

### **4A.04 Introduction**

- 1 Regulations 4A.05 to 4A.09 apply to the creation and cancellation of units.
- 2 In this Section, a 'valuation point' means the valuation point fixed in accordance with regulation 4A.21, whether on a periodic basis or for a particular valuation; and a 'notified point' means a subsequent moment, within two hours of a valuation point, and arrived at under paragraph 3 below.
- 3 If the manager wishes regularly to have a notified point, it may notify the trustee of its intention, indicating the period of time not exceeding two hours after the valuation point at which it wishes the notified point to occur, but any change in the period is ineffective unless agreed upon by the trustee.
- 4 Where the manager wishes new units to be created or wishes units to be cancelled and, in either case, complies with regulations 4A.08.4 and 4A.08.5, it may instruct the trustee to create or cancel units (as the case may be); and any instructions given by the manager shall state, in relation to each type of unit to be created or cancelled, the number to be created or cancelled, expressed either as a number of units or as an amount in value (or as a combination of the two).
- 5 Subject to paragraph 6 and to regulation 4A.05.1, the trustee must create or cancel units on receipt of, and in accordance with, instructions given by the manager in accordance with paragraph 4 and may not create or cancel units otherwise.
- 6 Where, on receipt of instructions to create or cancel units, the trustee is of the opinion that it is not in the interests of holders that-
- a. units should be created; or
  - b. units should be cancelled, or
  - c. units should be created or cancelled in the number required by the manager,
- the trustee must give notice to the manager stating that the trustee refuses to create or, as the case may be, cancel, all, or a specified number of, the units so requested and, on the giving of such a notice, the trustee is relieved of the obligation to create or cancel the number of units to which the notice relates.
- 7 Any instruction or notification given (or report supplied) under this Part by the manager to the trustee -
- a. must be recorded by the manager at the time when it is given or supplied;

- b. must be sent in a form which enables the trustee to know or record the time of receipt, and
  - c. may be communicated in any form other than by word of mouth.
- 8 Instructions are given within any period under this Part if they are received by the trustee within that period, and instructions received by the trustee after the expiry of any period are treated as given after that expiry.
  - 9 The manager may at any time during the period of the initial offer instruct the trustee to create units and, as soon as the period of the initial offer has come to an end, the manager must instruct the trustee to create any units issued or treated as issued during that period which it has not already instructed the trustee to create.
  - 10 Paragraph 4 (excluding the reference in it to regulation 4A.08.4 and 4A.08.5) and paragraphs 5 and 6 apply to an initial offer.
  - 11 Paragraphs 7 and 8 also apply with the necessary modifications, to any notice or notification given by the trustee to the manager.

#### **4A.05 Creation of units by trustee**

- 1 The trustee may create units in exchange for assets other than money, but its obligation to comply with an instruction to create units in such a case arises only -
  - a. if it is satisfied that the acquisition of the assets in exchange for the number of units to be created is not likely to result in any material prejudice to the interests of holders or potential holders, and
  - b. in a case governed by regulation 11.05 (amalgamation), 11.06 (reconstruction) or 11.06A (conversion), that the resolution concerned in relation to the scheme of which it is the trustee has been duly carried out or else is not required.
- 2 The manager shall by the close of business on the fourth business day next after the creation of any units -
  - a. pay the price of the units (if it remains unpaid) to the trustee in cash or in cleared funds, or
  - b. in the case of an exchange under paragraph 1, ensure transfer to the trustee of the assets to be taken in exchange.
- 3 In a case of an exchange under paragraph 1 the manager must ensure that the beneficial interest in the assets is transferred to the trustee with effect from the creation of the units, even if the legal ownership is not then transferred.
- 4 This regulation shall apply to a unit created during the period of the initial offer (and for this purpose the time of creation shall not be governed by regulation 4A.02.2).

#### **4A.06 Creation of units to meet manager's obligation to issue**

Where at any valuation point the manager has any outstanding obligation to issue units, then it must instruct the trustee before -

- a. two hours have elapsed since that valuation point, or
- b. the next valuation point (if it is to occur within two hours of the valuation point mentioned in a.),

to create units and in such number at least as will enable the manager immediately to fulfil that obligation whether from the units so created or from other units owned by it immediately before the valuation point (or notified point if there is one).

#### 4A.07

##### **Cancellation of units**

- 1 The manager shall not instruct the trustee to cancel any units if, or to the extent that, by so doing the manager would be prevented from immediately fulfilling any outstanding obligation to issue units which had been assumed before the relevant valuation point (or notified point if there is one).
- 2 For the purpose of paragraph 1 the manager shall take account of all units issued or redeemed by reference to the relevant valuation point (or notified point if there is one) and where instructions are given at a time which is less than two hours after the last valuation point and the trustee has received but not yet executed instructions previously given, the later instructions must enable the trustee to execute both or all sets of instructions simultaneously.
- 3 On the cancellation of units the trustee shall within the period specified in paragraph 4 pay the price of the units -
  - a. (except where b. applies) to, or to the order of, the holder or the manager (as the case may be), or
  - b. in the case of a relevant pension scheme, in accordance with the relevant provisions of the trust deed.
- 4 Payment need not be made prior to delivery to the trustee of such evidence of the title to the units as it may reasonably require but, subject to this, the period expires at the close of business on the fourth business day next after the cancellation of the units; however, where the manager has not ensured that the property of the scheme includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in Part 5) within that period, the period is extended, for any relevant currency, until the shortage is rectified.
- 5 Paragraph 3 does not apply where units are cancelled following a redemption for property transferred or issued under regulation 4A.18.

#### 4A.08

##### **Price of a unit**

- 1 Subject to paragraph 3, the price of a unit shall be calculated as follows -
  - a. take the value of the property of the scheme attributable to units of the type in question by reference to the most recent valuation of that property (excluding the distribution account);
  - b. compute the number of units of the relevant type in existence immediately before the valuation in a.;
  - c. divide the total at a. by the number of units at b.;
  - d. express the result in the base currency or else comply with paragraph 2,
  - e. express the price in a form that is accurate to at least four significant figures.
- 2 A currency other than a currency referred to in 1d. above may be used if the manager is satisfied that the rate of exchange between the two currencies is not likely to result in any material prejudice to the interests of holders or potential holders.

- 3 A method of calculation other than that at paragraph 1 may be used as long as the manager is sure that it is bound to produce the same result.
- 4 Where the manager gives instructions to the trustee to create or cancel units and those instructions are given less than two hours after the last valuation point and before the next valuation point, the instructions must be given by reference to the price calculated (or being calculated) for the last valuation point.
- 5 Where the manager gives instructions to the trustee to create or cancel units and those instructions are given more than two hours after the last valuation point -
  - a. the instructions must be given by reference to the price next to be calculated, and
  - b. the trustee shall create or cancel the units only after the next valuation point has been reached.

#### 4A.09 **Inadvertent error in number of units created or cancelled**

- 1 After an instruction to create or cancel units has been complied with, it may be modified, provided that -
  - a. the manager ensures that any appropriate consequential payment as between the manager and the property of the scheme is made, and
  - b. the requirements of paragraph 2 are satisfied.
- 2 The manager may make a modification under this regulation only with the agreement of the trustee, and the trustee may not agree unless it is reasonably satisfied -
  - a. that the purpose of the modification is to rectify the consequences of an error in the instruction which related to the number of units held by, or proposed to be created or cancelled in connection with the issue or redemption of units by the manager in its capacity as a holder, and
  - b. that, in view of the quality of the manager's control systems, the circumstance that resulted in the error in question is an isolated one, and is unlikely to recur.
- 3 A modification under this regulation shall be of no effect unless the consequential adjustments are completed by the end of the business day next following the relevant valuation point or, if the trustee agrees, within the payment period applicable to the original instruction under regulation 4A.05.2 or 4A.07.4.

### **Section C Sale and Redemption**

**Explanation.** *There are two main ways in which the units in an authorised unit trust scheme can be obtained by, or cashed in by, an investor. One method is by dealing with the manager as principal, in which case units will be issued or redeemed by it. The other way is when the manager is acting as agent for the trustee, in which case units will be sold (or bought) by the manager for the trustee. These regulations seek to ensure, so far as possible, that the investor receives equitable treatment whether the manager is acting as a principal or as agent for the trustee.*

#### 4A.10 **Introduction**

- 1 Regulations 4A.11 to 4A.14 and 4A.16 to 4A.18 apply, so far as the context permits, in similar manner to sales or purchases under regulation 4A.15 as to issues and redemptions by the manager as principal.

- 2 Regulations 4A.11, 4A.15 and 4A.17 apply in relation to an initial issue except that the initial price of a unit is governed by regulation 4A.02.
- 3 If the manager deals under these regulations in a currency other than the base currency, the rate of exchange as between those two currencies is to be determined by it at a rate which is fair to the relevant person or holder.

#### **4A.11 Manager's obligation to issue**

- 1 Subject to Part 13 and the scheme having units in existence, the manager must at all times during the dealing day be willing to issue units in the scheme and it must at the request in writing of any person agree to issue units to that person.
- 2 The manager's obligation to issue units pursuant to paragraph 1 above does not apply -
  - a. if the manager has reasonable grounds, relating to the circumstances of the person concerned, for refusing to issue units to him;
  - b. if the number or value of the units sought to be purchased is less than any number or value stated in the scheme particulars as the minimum number or value that may be purchased or held, or
  - c. in the case of a property fund, if the manager believes on reasonable grounds that the number or value of units sought to be issued would lead to the holding by any one person (or by any one person and any other persons appearing to the manager to be acting in concert with that person) of more units than any number or value stated in the scheme particulars as the maximum number or value to be purchased or held.
- 3 The manager shall not issue a unit for more than the price of a unit of the relevant type notified or to be notified to the trustee in respect of the last valuation point (or for an issue at a forward price, to be notified in respect of the next valuation point), to which may be added -
  - a. any preliminary charge permitted under regulation 4B.02, and
  - b. any dilution levy permitted under regulation 4A.19.
- 4 Units must be issued in the base currency, unless the person concerned requests and the manager agrees that the units should be issued in another currency.

#### **4A.12 Manager's obligation to redeem**

- 1 Except during the period of the initial offer, and subject to Part 13, the manager must at all times during the dealing day be willing to redeem units in the scheme; and, accordingly, must at the request in writing of any holder agree to redeem units owned by that holder at a price arrived at under these regulations.
- 2 Paragraph 1 does not apply -
  - a. if the number or value of the units sought to be redeemed is -
    - (i) less than the entirety of the holder's holding of units, and
    - (ii) less than any number or value stated in the scheme particulars as the minimum number or value that may be redeemed, or
  - b. if the number or value of the units sought to be redeemed would result in the holder holding less than any number or value stated in the scheme particulars as the minimum number of units that may be held; or

- c. if the manager ensures that the holder is able to sell his units on an investment exchange at a price not significantly different from the price at which they would have been redeemed, or
- d. where units are sought to be redeemed in return for property transferred or sold under regulation 4A.18 (in specie cancellation).

#### **4A.13 Payment on redemption**

- 1 On agreeing to redeem units, the manager shall, within the period specified in paragraph 2 -
  - a. (except where b. applies) pay the appropriate proceeds of redemption (less, where applicable, the cost of remitting the sum abroad) to the holder,
  - b. in the case of a manager of a relevant pension scheme, pay or arrange for the payment of the appropriate proceeds of redemption in compliance with the trust deed (including, where applicable, any time limit therein for payment which is shorter than the period specified in paragraph 2).
- 2 The period expires at the close of business on the fourth business day next after the later of -
  - a. the valuation point immediately following receipt by the manager of the request to redeem, or
  - b. the time when the manager has all duly executed instruments and authorisations as effect (or enable the manager to effect) transfer of title to the units.
- 3 Neither this regulation nor regulation 4A.14 shall apply where the manager is not redeeming units in accordance with this Part of these Regulations but is buying them as principal on an investment exchange and settlement will be in accordance with the rules of that exchange.
- 4 Nothing in this regulation shall require a manager to part with money in respect of a redemption of units where it has not yet received the money due on the earlier issue of those units, or where it considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to a statutory, regulatory or European Community obligation.

#### **4A.14 Proceeds of redemption**

The amount to be paid by the manager as the proceeds of redemption of a unit shall not be less than the price of a unit of the relevant type notified or to be notified to the trustee in respect of the last valuation point (or, for a redemption at a forward price, to be notified in respect of the next valuation point) less -

- a. any redemption charge permitted under regulation 4B.04;
- b. any dilution levy permitted under regulation 4A.19, and
- c. any stamp duty or stamp duty reserve tax permitted to be retained by the manager by regulation 4B.07.

#### **4A.15 Sale and purchase by the trustee through the manager as agent**

- 1 This regulation applies where the trustee has appointed the manager (with the manager's consent) to act as agent for the trustee in connection with the sale or

purchase by the trustee of units, either generally or in relation to any particular person or class of persons.

- 2 At the request of any person to whom the appointment relates, the manager is obliged to sell units under this regulation in any case where it is obliged to issue them under regulation 4A.11, unless the manager has not received payment on account of an amount estimated by it to be sufficient to meet the price of the units.
- 3 At the request of any person to whom the appointment relates, the manager is obliged to buy units under this regulation in any case where it is obliged to redeem them under regulation 4A.12.
- 4 The price of a unit sold or bought under this regulation must be the price of a unit of the relevant type notified to the trustee in respect of the next valuation point after the request referred to in paragraph 2.
- 5
  - a. In the case of a sale by the trustee, the manager may require to be paid in addition to the price under paragraph 4 -
    - (i) for the account of the scheme, any dilution levy permitted under regulation 4A.19, and
    - (ii) for the account of the manager, any preliminary charge permitted under regulation 4B.02;
  - b. In the case of a purchase by the trustee, the manager may require to be deducted from the proceeds otherwise payable -
    - (i) for the account of the scheme, any dilution levy permitted under regulation 4A.19;
    - (ii) for the account of the manager, any redemption charge permitted under regulation 4B.04, and
    - (iii) any stamp duty or stamp duty reserve tax to be paid in relation to the purchase.
- 6 The manager shall not make any charge in connection with the sale or purchase of units under this regulation which is not contemplated by it.
- 7 Where the manager buys or sells any unit for the trustee, it must, at the start of the next business day, supply a report of its transactions to the trustee, who shall then treat that report as if it were an instruction to create or cancel the relevant number of units with effect at the valuation point by reference to which the price of those units was calculated and as if the units to be cancelled following the purchase were being transferred to the manager.
- 8 The manager shall pay to the trustee in accordance with regulation 4A.05.2 the price of any units sold under this regulation 4A.15 whether or not the manager has received the same from the investor.

#### **4A.16 Notification of price to the trustee**

- 1 Forthwith upon completion of a valuation under Section F (whether regular or otherwise) the manager shall notify the trustee of the price of a unit or unit of each type (as the case may be) as determined for the relevant valuation point and of the amount or rate of any dilution levy applicable in respect of any creation or cancellation of units.

- 2 Each notification under paragraph 1 shall include a statement of the number of units (or units of each type) owned by the manager at that valuation point (or notified point if there is one).

#### 4A.17 **Publication of prices**

- 1 Where the manager holds itself out as willing to issue or redeem units, it must make public the price of a unit (or the prices of each type of unit).
- 2 The price or prices to be made public under paragraph 1 must be published in at least one national newspaper in the United Kingdom.
- 3 Where the manager holds itself out as willing to issue and redeem units in any other member State, it must also comply with paragraph 1 in the manner provided for by the law of that member State.
- 4 The price or prices made public under paragraph 1 are to be the price or prices last notified to the trustee under regulation 4A.16 or, in the case of publication in a newspaper, last notified before the relevant newspaper ceased to accept material for publication in the relevant edition.
- 5 Paragraphs 1 to 4 do not apply in respect of units in relation to which the manager is excused from dealing with the public.

#### 4A.18 **In specie cancellation**

- 1 If a holder requests the redemption or cancellation of units the manager may arrange that in lieu of payment of the price for the units in cash the trustee shall cancel the units and transfer property of the scheme or, if required by the holder, the net proceeds of sale of the relevant property of the scheme to the holder, provided that -
  - a. the scheme particulars contain a statement describing the circumstances in which the manager is permitted to arrange for, and describing the procedures for, a cancellation of units in the manner described above;
  - b. the manager gives written notice to the holder before any payment of the proceeds of the cancellation would otherwise become payable in cash, that in lieu of such payment the trustee will transfer property of the scheme (or the net proceeds of the sale of the relevant property of the scheme) to the holder;
  - c. the property of the scheme to be transferred (or sold) is selected by the manager in consultation with the trustee and the selection is made with a view to achieving no more advantage or disadvantage to the holder requesting cancellation of his units than to the continuing holders, and
  - d. the property of the scheme to be transferred or the proceeds of the sale of the relevant property of the scheme shall be subject to the retention by the trustee of property of the scheme or cash of a value or amount equivalent to any stamp duty or stamp duty reserve tax to be paid in relation to the cancellation of the units.
- 2 Notwithstanding paragraph 1, the manager shall not, acting as a principal, cancel units other than for payment in cash.
- 3 This regulation does not apply so as to enable units in a relevant pension scheme to be redeemed otherwise than in accordance with that scheme.

## Section D Dilution Levy

**Explanation.** A scheme may suffer dilution (reduction) in the value of the property of the scheme as a result of the costs incurred in dealing in the underlying investments and of any spread between the buying and selling prices of such investments. With a view to countering this, a manager is permitted to require the payment of a dilution levy, as an addition to the price of units on their creation (or sale) by the trustee or issue by the manager, and as a deduction on their cancellation (or purchase) by the trustee or redemption by the manager.

There are provisions to prevent the levy being imposed twice on both the creation (or sale) and issue of a unit, or redemption and cancellation (or purchase) of a unit.

### 4A.19 Dilution levy

- 1 The manager shall have the power to require either or both of -
  - a. the payment of a dilution levy in respect of the creation (including a sale by the trustee under regulation 4A.15) or issue of units, and
  - b. the deduction of a dilution levy in respect of the redemption or the cancellation (including a purchase by the trustee under regulation 4A.15) of units.
- 2 Any such payment or deduction shall become due at the same time as payment becomes due in respect of the relevant creation, issue, redemption or cancellation.
- 3 A dilution levy may be imposed only in a manner that is, so far as practicable, fair to all holders and potential holders, but the imposition of a dilution levy (or a higher dilution levy) in respect of large deals in a manner described in the scheme particulars current at the time of the deal shall not be considered unfair.
- 4 If the manager receives a dilution levy in respect of any unit issued, or to be issued by it, it shall forthwith upon receipt of that dilution levy pay it to the trustee to become part of the property of the scheme, except to the extent that a dilution levy has already been, or will be, paid by the manager to the trustee on the creation of that unit.
- 5 If the manager deducts a dilution levy from the proceeds of redemption of a unit redeemed by it, it shall forthwith pay it to the trustee to become part of the property of the scheme, except to the extent that a dilution levy has already been, or will be, deducted from the payment by the trustee to the manager on the cancellation of that unit.

## Section E Forward and Historic pricing

**Explanation.** There are two different ways in which a manager may issue or redeem units; these are at forward and historic prices. A forward price is one to be fixed at the next valuation point, while a historic price is one fixed on the basis of the last valuation.

The two pricing systems have different characteristics. The investor knows that a forward deal will be fairly priced at the next valuation point, but if he is investing a specified sum, he does not know until then how many units he will receive (or, if he is seeking to redeem, how much he will receive in cash). The investor knows, by contrast, that a historic deal may well represent an outdated price (though not by more

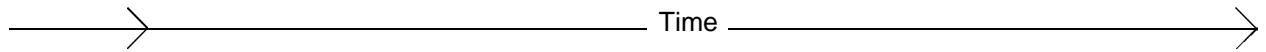
than 2%), but is able to know at the time of the deal how much he must pay (or will receive) or the time of the relevant valuation which will be relevant to that price.

The regulations generally express a preference for forward pricing in that there are numerous occasions when a price must be forward, whether the manager chooses to deal in that way or not. Sales or purchases by the manager as agent for the trustee under regulation 4A.15 are always at a forward price.

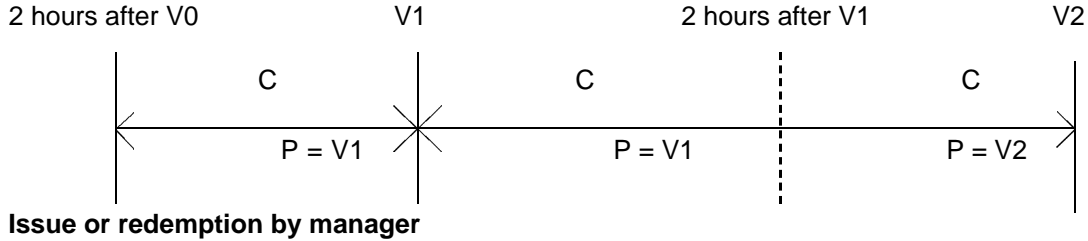
The following diagram sets out the arrangements for creation prices and issue prices in the period between one valuation point and the next. In doing so, it takes account of Table 4A.1 below, and also of earlier provisions in this Part, including regulation 4A.08.

# EXPLANATORY DIAGRAM: PRICING AT AND AFTER VALUATION POINT

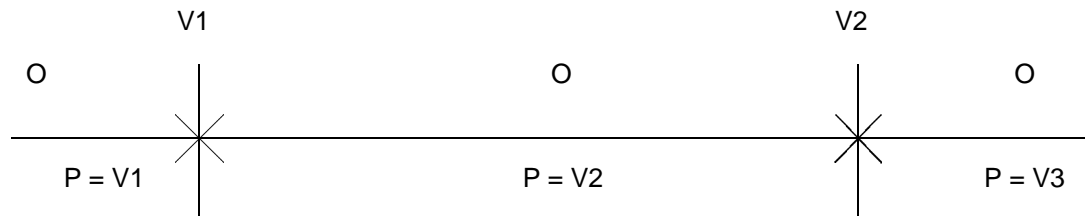
Note 1 below provides a key to the symbols used in the diagram



## Creation or cancellation (whether F or H)

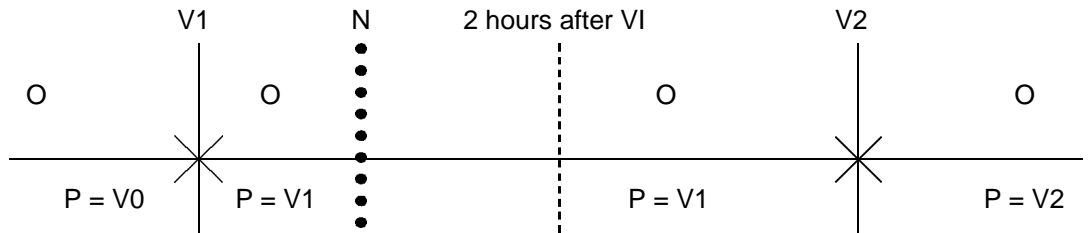


## Case A – Manager on forward

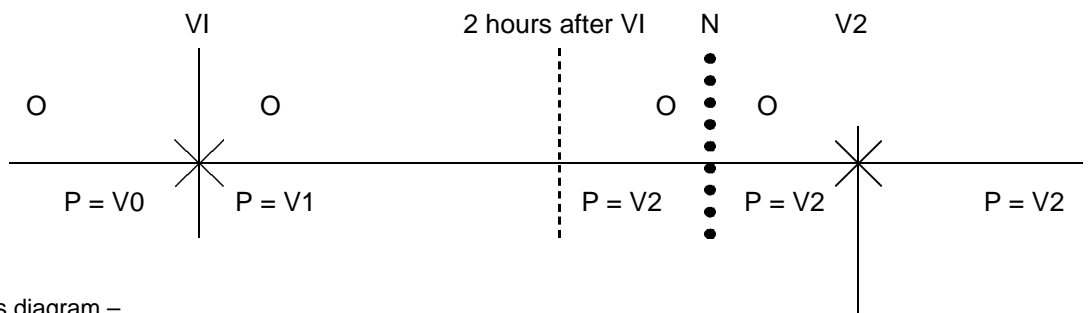


## Case B – Manager on historic

(i)  $N < V + 2 \text{ hours}$



(ii)  $N > V + 2 \text{ hours}$



**Note 1** In this diagram –

- C = (moment of) creation instructions to the trustee
- F = forward price basis
- H = historic price basis
- N = (moment of) notification to trustee of price
- O = (period of accrual of) obligation to issue units
- P = price
- V = valuation point

- Note 2** Case A applies whether the valuation is completed within 2 hours or not.
- Note 3** Case B applies provided that –
- a. the manager has not elected to change to forward dealing under Table 4A.1 rule 5, or
  - b. the value of the property of the scheme has not varied by 2% or more.
- Note 4** This diagram ignores some additional complexity, including the (voluntary) ‘notified point’ system for determining the amount of creations or cancellations required.
- 

#### 4A.20 **Forward and historic pricing**

- 1 In relation to the issue and redemption of units, the manager may, subject to this regulation, operate on the basis of forward prices or on the basis of historic prices, and its power to choose, or its duty to operate on one basis only, is conditioned by Table 4A.1.
  - 2 If the prices for the issue and redemption of units related to any constituent part of an umbrella fund are on a forward basis (other than in order to comply with Section 2 or Section 3 of Table 4A.1), the prices for the issue and redemption of units related to each other constituent part of that umbrella fund shall also be on a forward basis.
  - 3 Prices for the issue and redemption of units in a scheme which is a geared futures and options fund, a property fund, a warrant fund or an umbrella fund which includes a constituent part which, if it was the subject of a separate authorisation under section 78 of the Act, would be a scheme of one of those categories, are to be on a forward basis only.
- 

#### **Table 4A.1 – Forward or Historic Pricing**

##### **RULES**

**Note 1** In this Table ‘F Only’ means that any price agreed upon must be a forward price; ‘H’ means that any price agreed upon must be an historic price unless the manager is required by the table to deal at a forward price. ‘General dealing’ means in relation to all sales and redemptions agreed upon during the remainder of the relevant dealing period (except those that are agreed upon individual deviations); and an ‘individual deviation’ is a decision, in relation to a particular transaction, covered by the rules in Section 3 of the Table.

**Note 2** This Table does not apply to an initial offer.

##### **Section 1 General dealing**

- 1 Manager’s choice. The scheme particulars must state the manager’s choice for H or else for F Only.
- 2 If the manager’s current choice under 1 is F Only, all its deals must be at a forward price.
- 3 A manager may not choose H if its normal arrangements for valuation envisage valuations more than one business day apart.

- 4 The remainder of this table applies to a manager with a current choice of H.
- 5 It may at any time elect for F Only in respect of the rest of the then current dealing period.
- 6 If the manager binds itself to switch from H to F Only at a certain point in each dealing period, this must be stated in the scheme particulars.
- 7 An election for (or switch to) F Only will last until the end of the dealing period and will then lapse.
- 8 For general dealing purposes, redemptions must be on the same basis as issues.

**Section 2 General dealing: duty to adopt forward pricing**

- 9 **Market movement.** F Only applies once the manager knows or has reason to believe that there would be a 2% or greater difference between the current value of the property of the scheme, if immediately valued, and the last calculated value of the property of the scheme (taking that as 100% for this purpose), but decides not to carry out an additional valuation under regulation 4A.21.
- 10 **Valuation taking over 2 hours.** F Only applies if a new price for units has not been notified to the trustee after 2 hours (or such longer period as the trustee may agree with the manager generally or in any specific case) from the valuation point.
- 11 F Only under rules 9 and 10 will start when the relevant moment arrives, will last until the end of the dealing period and will then lapse.

**Section 3 Individual deviations**

- 12 Rules 13 to 16 apply in relation to an individual transaction without affecting the general position arrived at under Sections 1 and 2 above.
- 13 **Request.** F Only applies if the applicant for issue or redemption so requests.
- 14 **Large deals.** F Only applies, if the manager so decides, in the case of a large deal.
- 15 **Postal deals.** F Only applies if the order or offer reaches the manager through the post or any similar form of one-way communication.
- 16 **Sale or purchase by the trustee.** F Only applies in the case of a sale or purchase under regulation 4A.15.

**Section 4 Notification to trustee**

- 17 The manager must notify the trustee of the fact and time of any adoption of F Only under rule 5 or Section 2.
-

## Section F Valuation

**Explanation.** *This Section includes provisions which relate to valuation of the property of a scheme for the purposes of determining the price of a unit.*

*Part 12 provides additional requirements relating to the frequency of valuation of the property of schemes of certain categories.*

### 4A.21 Valuation of the property of the scheme

- 1 **Regular Valuation.** For the purposes of determining in accordance with these regulations the price at which units may be created, cancelled, issued or redeemed, the manager shall carry out a valuation of the property of the scheme or constituent part of an umbrella fund (as the case may be) at each valuation point for the scheme or constituent part (as the case may be).
- 2 An investment included in the property of the scheme or constituent part of an umbrella fund for which different prices are quoted according to whether it is being bought or sold shall be valued at its mid-market price.
- 3 Subject to Section C of Part 12 (property funds), any part of the property of the scheme that is not an investment shall be valued at a fair value.
- 4 For the purposes of the preceding paragraphs, there shall be excluded from the value of an investment or other part of the property of the scheme any fiscal charges or commissions or other charges that were paid or would be payable on the acquisition or disposal of the investment or other part of the property of the scheme.
- 5 There must be at least two valuation points in each calendar month and if there are only two valuation points in any calendar month they must be two weeks or more apart.
- 6 The frequency of regular valuation points shall be specified in the scheme particulars.
- 7 Notwithstanding paragraph 5 and regulations 12.04.3 and 12.11.3 no valuation points are required during the period of any initial offer (but see regulation 4A.03).
- 8 **Additional Valuation.** The manager may determine to have an additional valuation point and to carry out an additional valuation of the property of the scheme (or the constituent part of an umbrella fund) at any time if it considers it desirable to do so.
- 9 Prior to any additional valuation point the manager shall inform the trustee of it.
- 10 Subject to the requirements of these regulations and without prejudice to regulation 7.02, the value of the property of a scheme shall be determined in accordance with the relevant provision of its trust deed.

## Section G Income Equalisation

### 4A.22 Income equalisation on reissue

- 1 Where the manager issues a unit that it has already redeemed, it must pay to the trustee an income equalisation amount.
- 2 That amount is the element that would represent income included in the price of a unit if it were created by reference to the same valuation point as was relevant to the issue in question.

- 3 The amount to be paid under paragraph 1 -
- a. must be paid to the trustee not later than the next date on which sums are distributed to holders, and
  - b. be allocated for distribution, unless the unit issued was an accumulation unit, in which case the amount must be treated as part of the capital property of the scheme.

## Part 4B Charges and Duties

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**Explanation.** *This Part contains provisions relating to charges of the manager that are not payable out of the property of the scheme, but may be payable upon the acquisition or disposal of the units. It also provides when a manager may be indemnified in respect of stamp duty or stamp duty reserve tax relating to transactions in units.*

### 4B.01 Introduction

- 1 This Part applies only to single priced authorised unit trust schemes.
- 2 This Part applies, so far as the context permits, to permit the manager to make a charge in respect of sales and purchases by the trustee under regulation 4A.15 as if they were issues and redemptions by the manager as principal.

### 4B.02 Preliminary charge

- 1 If the trust deed so permits the manager may make a charge ('preliminary charge') upon an issue of units.
- 2 The preliminary charge may be expressed either as a fixed amount or calculated as a percentage of the price and shall not exceed an amount or rate calculated in accordance with a statement in the scheme particulars as to the current charge.
- 3 The manager shall not make any charge or levy in connection with the issue of units except a preliminary charge in accordance with this regulation and a dilution levy in accordance with regulation 4A.19.
- 4 Paragraph 1 does not apply on an exchange of units within an umbrella fund, but nothing in this regulation shall prevent the manager from making a charge on such an exchange in accordance with regulation 4B.06.

### 4B.03 Increase in preliminary charge

The manager may not introduce a preliminary charge or increase (within the maximum stated in the trust deed) the current amount or rate of a preliminary charge payable under regulation 4B.02 unless the introduction or increase would not cause an infringement of regulation 4B.05 and not less than 90 days before the introduction or increase -

- a. the manager gave notice in writing of that introduction or increase and of the date of its commencement to the trustee and to all the persons who ought reasonably to be known to the manager to have made an arrangement for the purchase of units at regular intervals, and
- b. the manager has revised the scheme particulars to reflect the introduction or new current amount or rate of preliminary charge and the date of its commencement and has made the revised scheme particulars available.

### 4B.04 Redemption charge

- 1 If the trust deed so permits, the manager may make a charge for its own benefit upon a redemption of units ('redemption charge').

- 2 a. A redemption charge shall not exceed the amount stated in, or the amount calculated by reference to the rate stated in, the scheme particulars current at the date when the relevant units were issued and, if there was no such statement, the redemption of those units shall not be subject to any redemption charge, and
  - b. the amount or rate referred to in a. may be expressed as diminishing over the time during which the holder has held the units, but may not be expressed as liable to vary in any other respect.
- 3 The manager may not introduce a redemption charge or change the rate or method of calculation of a current redemption charge in a manner which is adverse to holders unless the introduction or change would not cause an infringement of regulation 4B.05 and not less than 90 days before the introduction or change -
  - a. the manager gave notice in writing of that introduction or change and of the date of its commencement to the trustee and to all the persons who ought reasonably to be known to the manager to have made an arrangement for the purchase of units at regular intervals, and
  - b. the manager has revised the scheme particulars to reflect the introduction or change and the date of its commencement and has made the revised scheme particulars available.
- 4 Where the trust deed of a scheme, whenever executed, is modified so as to include the provision enabled by paragraph 11A of Schedule 1 (manager's charge on redemption) the modification must be expressed so as to apply only to units issued after the date on which the modification takes effect.
- 5 A modification of the rate or method which is adverse to redeeming unitholders (or unitholders selling under regulation 4A.15) must be limited so as to apply only to units which have been issued (whether at the request of the current unitholder or otherwise) after the date on which the modification takes effect.
- 6 In deciding whether and to what extent a charge is deductible for the purposes of this regulation, units held by a holder are to be taken to be redeemed in the order in which they were issued (whether at the request of the current holder or otherwise), unless -
  - a. the manager has the holder's instructions to the contrary; or
  - b. the manager selects as the units first to be redeemed units which are not subject to the deduction, or
  - c. the manager and the trustee have agreed on another way of deciding the order in which units are redeemed which appears to them unlikely materially to prejudice the holder concerned.
- 7 In paragraph 2 and 6, 'issued', in the case of units in a scheme which has absorbed the whole or part of the property of another scheme, is (when relevant) a reference to the issue of units in that other scheme so far as it is practicable for the manager to ascertain the timing of that issue in relation to the issue of other units held by that holder.
- 8 Nothing in this regulation shall enable the manager to reduce the proceeds of redemption to an extent which might reasonably be regarded as fettering the right of redemption.

**4B.05 Control over maximum charges on issue and redemption.**

- 1 In the circumstance envisaged by paragraph 2, no introduction of, or change to, either of the charges permitted by regulation 4B.02 (preliminary charge) or 4B.04 (redemption charge) shall take effect unless the trust deed is modified under regulation 11.02 (modification of trust deed: with meeting) or, as the case may be, the scheme particulars are amended following approval of the introduction or change by an extraordinary resolution at a meeting of the holders called for the purpose.
- 2 The circumstance envisaged by paragraph 1 is that (in respect of any individual unit notionally issued and redeemed on the same day) the maximum amount or percentage of any preliminary charge and of any redemption charge would in aggregate exceed the maximum amount or percentage for the preliminary charge alone which is stated in the trust deed.

**4B.06 Exchange of units in umbrella funds**

In the case of an umbrella fund, the manager may not make any charge on an exchange of units -

- a. if the exchange is the first to be made by the holder during any annual accounting period; or
- b. in the case of a second or subsequent exchange, unless -
  - (i) such a charge is authorised by the trust deed, and
  - (ii) the amount of the charge is within the maximum for charging on such an exchange stated in the most recently published scheme particulars.

**4B.07 Stamp duty and stamp duty reserve tax**

- 1 The manager shall be entitled to be paid or reimbursed any stamp duty or stamp duty reserve tax paid, or to be paid, by it in respect of the cancellation (or purchase by the trustee) or redemption of a unit.
- 2 Such payment or reimbursement may be made either -
  - a. by retention of the amount of the stamp duty or stamp duty reserve tax by the manager out of the proceeds of the redemption of the unit that would otherwise be paid by it, or
  - b. by payment by the trustee to the manager of any stamp duty or stamp duty reserve tax paid, or to be paid, by the manager insofar as that duty or tax has been deducted or retained by the trustee pursuant to regulations 4A.15.5b.(iii) or 4A.18.1d..

# Part 4C Single Pricing Adaptation of Regulations

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**Explanation.** All the Parts of these regulations, other than Parts 4, 4A, 4B, 4C and 4D, and Part 14, apply to both single and dual priced authorised unit trust schemes but, in the case of single priced schemes, they apply subject to the adaptations set out in this Part 4C and in Part 4D.

Parts 4A and 4B contain regulations which apply to single priced authorised unit trust schemes in lieu of the regulations in Part 4, which apply only to dual priced schemes.

## 4C.01 Introduction

- 1 This Part applies only to single priced authorised unit trust schemes.
- 2 Without prejudice to regulation 1.03A these regulations shall apply to a scheme within paragraph 1 as if -
  - a. references to 'creation price', 'issue price', 'sale price', 'selling price', 'cancellation price', 'redemption price' and 'purchase price' were references to 'price';
  - b. 'unitisation' were defined to mean an arrangement of the type described in regulation 4.05.1, and
  - c. the modifications set out in Table 4C.1 had been made.

## TABLE 4C.1: ADAPTATION OF REGULATIONS FOR SINGLE PRICED SCHEMES

### Part 5 Investment and Borrowing Powers

#### Section A Explanation.

In the third sentence for 'on a cancellation basis' substitute 'in accordance with Part 4A'.

#### 5.03 Valuation

Substitute for regulation 5.03 -

##### '5.03 Valuation

- 1 For the purpose of this Part, the value of the property of the scheme means the net asset value of that property, that is the net value of the property of the scheme determined in accordance with regulation 4A.21 after deducting any outstanding borrowings (including, in the case of a property fund, any capital outstanding on a mortgage of an immovable), whether immediately due to be repaid or not.

- 2 In valuing the property of the scheme for the purposes of this Part -
  - a. the time as at which the valuation is being carried out ('the relevant time') is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of Part 4A;
  - b. initial outlay is regarded as remaining part of the property of the scheme, and
  - c. if the manager reasonably believes that the scheme will become entitled to any unrealised profit which has been made on account of a derivatives transaction, that prospective entitlement is regarded as part of the property of the scheme.'

**5.04 Part to be construed as a whole**

Substitute for sub-paragraph 1b. -

'b. that the value of the property of the scheme is ascertained in the normal manner.'

**5.21 Permitted transactions (derivatives and forwards)**

Delete from sub-paragraph 7a. 'on a buying and selling basis'.

Substitute for sub-paragraph 7b. -

'b. that he will, at the request of the manager, enter into a further transaction to close out that transaction at a reasonable price.'

**Part 7 Powers and Duties of the Manager and Trustee**

**7.09 Oversight by the trustee of the manager**

In sub-paragraph 1a. after 'except in relation to Part 5,' insert 'and subject to paragraph 4,'.

Substitute for paragraph 2 -

- '2 The trustee must satisfy itself on reasonable grounds and on a continuing basis that -
  - a. the manager is adopting procedures and methods which are appropriate to ensure that the price of a unit is calculated for each valuation point in accordance with Part 4A, and
  - b. the manager has maintained sufficient records to show compliance with Part 4A.'

After paragraph 3 add the following new paragraph -

- '4 a. The trustee shall take reasonable care to ensure that -
  - (i) the manager considers whether or not to exercise the power provided by regulation 4A.19.1 and the amount or rate of any dilution levy that is imposed, and;

(ii) in that consideration the manager has, so far as the trustee is aware, taken account of all factors that are material and relevant to the manager's decision, and

b. subject to a. of this paragraph 4, the trustee shall not have any duty in respect of the manager's exercise or omission to exercise the power provided by regulation 4A.19.1.'.

## **Part 8 Payments and benefits to Manager and Trustee**

### **8.02 Manager's periodic charge**

In sub-paragraph 3b. for 'the average of the creation and cancellation valuations' substitute 'the value'.

In sub-paragraph 3c. for 'the average at b.' substitute 'that value'.

## **Part 9 Income**

### **9.02 Accounting Periods**

Substitute for paragraph 4 -

'Each annual accounting period shall end either at the end of the day arrived at under paragraph 5 or, if the manager so determines, at the valuation point last preceding the end of that day.'.

### **9.04 Annual allocation of income**

In regulation 9.04.5g. -

- a. for 'those parts of the cancellation' substitute 'the amounts included in the';
- b. for 'final valuation under regulation 9.02.4', substitute 'final valuation point of that period', and
- c. for 'the addition of income property to the calculation at regulation 4.11' substitute 'the inclusion of income property in the calculation under regulation 4A.08'.

## **Part 11 Meetings and Modifications**

### **11.04 Resolution to change scheme particulars**

After paragraph 4 add the following new paragraph -

- '5 Any change to the statement of the manager's policy on dilution levy required by paragraph 10e. of Schedule 2 shall require the prior approval of an extraordinary resolution unless the change is required -
- a. solely to fulfil a requirement resulting from a change in the law or these regulations, or
  - b. solely to reflect a modification to the trust deed made either in accordance with regulation 11.03.1h. or by a supplemental trust deed entered into with the approval of an extraordinary resolution.'.

## **Part 12 Special Provisions for Certain Categories of Scheme**

### **12.04 Special rules for pricing (geared futures and options funds)**

In paragraph 3 for 'rules 3 and 4 in Table 4.2 do not apply' substitute 'regulation 4A.21.5 does not apply'.

### **12.07 Special rules for pricing (property funds)**

In paragraph 2 for 'for the purposes of ascertaining the value of immovables under Part 4 above' substitute 'and for the purposes of regulation 4A.21.3 shall be the fair value of the immovable property concerned'.

### **12.08 Failure to obtain minimum subscriptions**

Substitute for sub-paragraphs 1a. and b. -

- 'a. the manager may not make any preliminary or redemption charge or any periodic charge in respect of any units (or the property of the scheme related to any units) issued or sold by the trustee under regulation 4A.15 on or after that expiry;
- b. the manager must pay to the holder or to the trustee for the account of the scheme (as the case may be) any preliminary, redemption or periodic charge paid by the holder or out of the property of the scheme in respect of units (or the property of the scheme related to units) issued or sold by the trustee under regulation 4A.15 during that period, and'.

Substitute for paragraph 2 -

- '2 Paragraph 1 applies, where there is no initial offer, as if the period of 21 days after the date on which persons are first invited to become participants was the period of the initial offer.'

### **12.11 Special rules for pricing (warrant funds)**

In paragraph 3 for 'rules 3 and 4 in Table 4.2 do not apply' substitute 'regulation 4A.21.5 does not apply'.

## **Table 12.1 Umbrella schemes: application of regulations**

In the first column for 'Part 4' substitute 'Parts 4, 4A and 4B'.

## **Schedule 1 The Trust Deed**

Delete from paragraph 9a. 'to be included in the issue price of a unit'.

After paragraph 21 insert the following new paragraph -

### **'21A Single priced authorised unit trust schemes**

- a. a provision that there shall only be a single price for any unit determined by reference to any particular valuation point; and
- b. provisions additional to, but subject to the requirements of, these regulations stating how the value of the property of the scheme is to be determined, and

- c. if provisions in a. and b. do not take effect when the deed or (as the case may be) supplemental deed takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.’.

## **Schedule 2 Information to be contained in the Scheme Particulars**

### **Paragraph 10 Valuation of property**

Substitute

‘State -

- a. how frequently and at what time or times of the day the property of the scheme will be regularly valued for the purpose of determining the price at which units in the scheme may be purchased from or redeemed by the manager and a description of any circumstance in which the property of the scheme may be specially valued;
- b. the basis on which the property of the scheme will be valued;
- c. how the price of units will be determined;
- d. what is meant by dilution, by dilution levy and by large deal,
- e. the manager’s policy on imposing a dilution levy including its policy on large deals.’.

### **Paragraph 11 Preliminary charge**

Substitute -

‘If the manager makes a preliminary charge state -

- a. the current rate or amount of preliminary charge, and
- b. if notice has been given to holders of the manager’s intention to introduce a preliminary charge or to increase the rate or amount currently charged, particulars of that introduction or increase and when it will take effect.’.

### **Paragraph 15 The issue and redemption of units in the scheme**

#### **Sub-paragraph 15b.**

Substitute -

- ‘b. the procedures for effecting the issue and redemption of units and the settlement of transactions including the circumstances in which the manager may arrange for, and the procedures for, a cancellation of units in specie;’.

#### **Sub-paragraph 15f.**

Substitute -

- ‘f. where and when the most recent price will be published;’.

#### **Sub-paragraph 15h.**

Delete.

## Schedule 3 Annual and Half-Yearly Reports

### Part III Comparative Table

#### Paragraph 1

Insert after 'during each of those years' -

'(or, in respect of any year during which the scheme has been single priced, the highest and lowest prices),'

## Schedule 4 Glossary

Insert after the definition of 'derivative transaction' -

'**dilution**' means the amount of dealing costs incurred, or expected to be incurred, for the account of a single priced authorised unit trust scheme to the extent that they may reasonably be expected to result, or to have resulted, from the acquisition or disposal of investments for the account of a single priced authorised unit trust scheme as a consequence (whether or not immediate) of the increase or decrease in the scheme's cash resources resulting from the creation or cancellation of units over a period. For the purpose of this definition, dealing costs include both the costs of dealing in an investment, professional fees incurred or expected to be incurred, in relation to the acquisition or disposal of approved immovables and, where there is a spread between the buying and selling prices of the investment, the indirect cost resulting from the differences between such prices;

'**dilution levy**' means a charge of such amount or at such rate as is determined by the manager of a single priced authorised unit trust scheme to be made for the purpose of reducing the effect of dilution;'

Substitute for the definition of 'large deal' -

'**large deal**' means a transaction of units of such size or description as is stated in the scheme particulars;'

Insert after the definition of 'previous regulations' -

'**price**' in relation to a unit of a single priced authorised unit trust scheme, means the price of the unit calculated in accordance with regulation 4A.08 of these regulations;'

Insert after the definition of 'securities fund' -

'**single priced authorised unit trust scheme**' means an authorised unit trust scheme to which, pursuant to regulation 1.03A, Parts 4A, 4B, 4C and 4D of these regulations apply and Part 4 does not apply;'

Substitute for the definition of 'valuation point' -

'**valuation point**': see regulation 4A.21.6 and 8;'

# Part 4D Single Pricing: Adaptation of Cross References

## 4D.01 Introduction

- 1 This Part applies only to single priced authorised unit trust schemes.
- 2 Each of the regulations listed in column 1 of Table 4D.1 shall apply as if for the adjacent cross-reference in column 2 of that Table there were substituted the cross-reference in column 3 of that Table.

**Table 4D.1**

<b>Column 1 Regulation</b>	<b>Column 2 Cross Reference</b>	<b>Column 3 Substituted Cross Reference</b>
5.60.4, 5.60.5 (previously 5.60.2 and 5.60.3)	Part 4	Part 4A
6.16.6	Part 4	Parts 4A and B
7.02.4, 7.02.5	Part 4	Part 4A
7.16.6	4.28 (in specie redemption)	4A.18 (in specie cancellation)
Part 8 Explanation	Part 4	Part 4B
9.08.3	Part 4	Part 4A
10.05.1	4.24	4A.17
11.03.1dd.	4.21A	4B.05
11.05.4, 11.06.3	4.08.2	4A.05.1
12.03A.1	Part 4	Part 4A
12.03A.2	4.15.1 4.18.1	4A.11.1 4A.12.1
12.04.1, 12.04A.1, 12.07.1	Part 4	Part 4A
12.07.6a.(iii)	4.04	4A.03
12.07.6a.(v)	Table 4.1	Table 4A.1
12.10.7	4.15 4.18	4A.11 4A.12
12.11.1, 13.02.6, 13.03.1	Part 4	Part 4A
15.02.2	4.25	4A.04.7, 8 and 10

**Schedule 1  
The Trust Deed**

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Paragraph 22	4.19.3	4A.13.3
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**Schedule 4  
Glossary**

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Current preliminary charge	4.17.3	4B.02
Initial price of units	4.03	4A.02.1
Notified point	4.06.2	4A.04.2
Period of the initial offer	4.01.3	4A.01.3
Periodic valuation	4.29.1	4A.21.1

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