

*The Directors of the Company whose names appear on page 74 of this Offering Memorandum accept responsibility for the information contained herein. To the best of the knowledge and belief of the Directors (who have taken all reasonable care to ensure that such is the case) the information contained in this Offering Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information as of the date hereof. The Directors accept responsibility accordingly.*

# Offering Memorandum

20 August, 2018

relating to the offering of non-voting participating Investor Shares in Sub-Funds of

## Himalaya SICAV p.l.c.

an open-ended self-managed collective investment scheme organised as a multi-fund public limited liability company with variable share capital registered under the laws of Malta

**Gamma Capital Markets Limited**  
(Investment Manager)

**Calamatta Cuschieri Fund Services Limited**  
(Administrator)

**Company Registration Number: SV218**

**Malta Financial Services Authority PIF Licence Number: PIF218**

**A P P R O V E D** by the  
Malta Financial Services Authority  
in terms of section 11 of the  
Investment Services Act, 1994

Signature... 

Name... Antonios Samaras

Date... 20<sup>th</sup> August 2018

**Important Notice:** This Offering Memorandum may not be distributed unless accompanied by, and is to be read in conjunction with, the Offering Supplement relating to the Investor Shares being offered in a particular Sub-Fund.

**Himalaya SICAV p.l.c. (the "Company") is licensed by the Malta Financial Services Authority ("MFSA") as a self-managed Professional Investor Fund ("PIF") which is available to investors qualifying as Qualifying Investors. PIFs are non-retail collective investment schemes, therefore, the protection normally arising as a result of the imposition of the MFSA's investment and borrowing restrictions and other requirements for retail collective investment schemes do not apply. Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund's failure. The MFSA has made no assessment or value judgement on the soundness of the Company and its Sub-Funds or for the accuracy or completeness of the statements made or opinions expressed with regard to them.**

Revised and updated version of the offering memorandum dated 28 April, 2016.

# IMPORTANT NOTICES

## Restricted Offer

This Offering Memorandum does not constitute, and may not be used for the purposes of an offer or solicitation to anyone in any jurisdiction in which such offer or solicitation is not authorised, or to any person to whom it is unlawful to make such offer or solicitation. The distribution of this Offering Memorandum and the offering of Investor Shares in certain jurisdictions are restricted. Persons to whose attention this Offering Memorandum may come are required to inform themselves about, and to observe such restrictions. Prospective investors should inform themselves as to: (a) the legal requirements within their own jurisdictions for the purchase, holding or disposal of Investor Shares, (b) any foreign exchange restrictions which may affect them, and (c) the income and other tax consequences which may apply in their own jurisdictions relevant to the purchase, holding or disposal of Investor Shares. The Directors may from time to time declare other categories of persons who do not qualify under applicable laws to purchase Investor Shares.

## Authorised Persons

No person is authorised to give any information or to make any representation in connection with the issue of Investor Shares which is not contained or referred to in this Offering Memorandum, the Offering Supplement(s) or the documents referred to herein. Neither the delivery of this Offering Memorandum and/or the Offering Supplement(s) nor the offer, issue or sale of Investor Shares shall constitute a representation that the information given in this Offering Memorandum and/or the Offering Supplement(s) is correct as of any time subsequent to the date hereof.

## Reliance on Offering Memorandum/ Offering Supplements

The Investor Shares are offered solely on the basis of the information and representations contained in this Offering Memorandum and the Offering Supplement(s) and any further information given or representations made by any person may not be relied upon as having been authorised by the Company or its Directors. Neither the delivery of this Offering Memorandum, the Offering Supplement(s) nor the offer, issue or sale of Investor Shares shall constitute a representation that the information given in this Offering Memorandum and/or the Offering Supplement(s) is correct as of any time subsequent to the date hereof. No person receiving a copy of this Offering Memorandum and/or the Offering Supplement(s) in any territory may treat the same as constituting an invitation to him unless, in the relevant territory, such an invitation could lawfully be made to him without compliance with any registration or other legal requirements. It is the responsibility of any person wishing to acquire Investor Shares to fully observe all the laws of the relevant territory in connection therewith, including obtaining any governmental or other consents which may be required or observing any other formalities needing to be observed in such territory.

Founder Shares are not being offered for subscription pursuant to this Offering Memorandum.

## Licensed in Malta

The Company is licensed by the MFSA under the ISAct as a Professional Investor Fund targeting Qualifying Investors and is constituted as a multi-fund public limited company with variable share capital under the Companies Act.

## Qualifying Investors

This offer is an offer only to the person to whom a copy of this document has been furnished and on the basis that the person falls within the definition of a Qualifying Investor as defined in this Offering Memorandum.

The Company is not authorised and does not intend to offer Investor Shares to the general public.

## AIFM Directive

On 22 July, 2013 the majority of the provisions of Directive 2011/61/EU of the European Parliament and the Council on alternative investment fund managers ("AIFM Directive") came into force. The AIFM Directive applies to: (i) alternative investment fund managers ("AIFMs") and (ii) internally managed alternative investment funds ("Self-Managed AIFs") based in the EU and prohibits these from managing any alternative investment fund ("AIF") and marketing shares in AIFs (including Self-Managed AIFs) to investors in the EU unless appropriately authorized in terms of the AIFM Directive. The Company qualifies as a Self-Managed AIF in terms of the AIFM Directive.

The Company qualifies for and has availed itself of an exemption from the obligation to apply for full AIFM Directive authorization under Article 3(1)(a) of the AIFM Directive ("De Minimis Exemption"). As a De Minimis Self-Managed AIF, the Company is not subject to the provisions of the AIFM Directive in its management of the portfolio of the Sub-Funds and the protections for investors provided by the AIFM Directive may therefore not be available to investors in the Sub-Funds. Similarly this Offering Memorandum may not include all the disclosures required pursuant to the AIFM Directive. The Company is obliged to regularly provide the MFSA with information in relation to its assets under management ("AuM") as well as to notify the MFSA of occasional breaches of the AuM thresholds entitling it to the De Minimis Exemption.

It is the intention of the Directors of the Company to strive to remain within the De Minimis Exemption indefinitely such that the Company continues to qualify as a De Minimis Self Managed AIF. In the event that full AIFM Directive authorization is required in future it should be noted that the responsibilities of the Company and certain arrangements regarding the operation of the Company including the terms of appointment by the Company of certain service providers including the Custodian and the Administrator may need to change. Further, the Company and its Sub-Funds may in the circumstances need to satisfy various additional obligations which may create significant compliance costs that would be ultimately be borne by the Company and its Sub-Funds.

## Restrictions on Distribution

### Malta

On the basis of Article 89(c) of the Companies Act, Chapter 386 of the Laws of Malta, the Company is not subject to the provisions relating to the requirement to issue a prospectus under the Companies Act,

### United Kingdom

The Company is not a recognised collective investment scheme for the purposes of the Financial Services and Markets Act 2000 of the United Kingdom (the "FSMA"). The promotion of the Company and the distribution of this Offering Memorandum in the United Kingdom is accordingly restricted by law.

Whilst this Offering Memorandum may also be issued outside the United Kingdom directly by the Company, and the Directors of the Company are responsible for its contents, wherever issued, it is being issued inside and outside the United Kingdom to and/or is directed at persons who are of a kind to whom the Company may lawfully be promoted by a person authorised under the Act by virtue of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes (Exemptions) Order 2001) and the FSA's Conduct of Business Sourcebook or as otherwise permitted by applicable law and regulation.

This Offering Memorandum is exempt from the scheme promotion restriction of section 238 of the FSMA on the communication of invitations or inducements to participate in unrecognised collective investment schemes on the grounds that it is being issued to and/or directed at only the types of person referred to above.

Any recipient of this Offering Memorandum who is an authorised person may, if and to the extent it is permitted to do so by the FSA rules applicable to it, distribute it or otherwise promote the Company in accordance with section 238 of the FSMA but not otherwise. Any recipient of this Offering Memorandum who is not an authorised person may not distribute it to any other person.

Since the Company is not a recognised collective investment scheme under the FSMA, investors in the Company will not benefit from the rules and regulations made under that FSMA for the protection of investors, nor from the Financial Services Compensation Scheme.

The Investor Shares are not dealt in on a recognised or designated investment exchange for the purposes of the FSMA, and it may therefore be difficult for an investor to dispose of his Investor Shares otherwise than by way of redemption or to obtain reliable information about the extent of the risks to which his investment is exposed.

Investor Shares sold after the date of this Offering Memorandum will be sold on the basis of the information contained in this Offering Memorandum and any further information given or made by any dealer, salesman or other persons must be regarded as unauthorised. In particular, no person has been authorised to make any representations concerning the Company or the Investor Shares which are inconsistent with or in addition to those contained in this Offering Memorandum and neither the Company nor the Directors accept responsibility for any representations so made.

This Offering Memorandum is based on the law and practice in force in Malta at the relevant time, and is subject to changes therein.

Persons interested in acquiring Investor Shares should inform themselves as to:

- (a) the legal requirements within the countries of their nationality, residence, ordinary residence or domicile for such acquisition;
- (b) any foreign exchange restrictions or exchange control requirements which they might encounter on acquisition or disposal of Investor Shares; and
- (c) the income tax and other taxation consequences which might be relevant to the acquisition, holding or disposal of Investor Shares.

### **United States of America**

There will be no public offering of Investor Shares in the United States. The Investor Shares will not be available to US persons, unless they are, among other things, "accredited investors" (as defined in Rule 501(a) of Regulation D under the Securities Act) and "qualified purchasers" (as defined in Section 2(a)(51) of the Investment Company Act).

The Investor Shares have not been and will not be registered under the Securities Act or the securities laws of any of the states of the United States, nor is such registration contemplated. The Investor Shares may not be offered, sold or delivered directly or indirectly in the United States or to or for the account or benefit of any US Person except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable US state laws. Any re-offer or resale of any of the Investor Shares in the United States or to US Persons may constitute a violation of US law.

There is no public market for the Investor Shares in the United States and no such market is expected to develop in the future. The Investor Shares offered hereby are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Articles of Association, the Securities Act and applicable state securities law pursuant to registration or exemption therefrom. The Investor Shares are being offered outside the United States pursuant to the exemption from registration under Regulation S under the Securities Act and inside the United States in reliance on Regulation D promulgated under the Securities Act and Section 4(2) thereof.

The Company has not been and will not be registered under the Investment Company Act pursuant to the provisions of Section 3(c)(7) of the Investment Company Act. Under Section 3(c)(7), a privately offered fund is excepted from the definition of “investment company” if US Person security holders consist exclusively of “qualified purchasers” and the Investor Shares are only offered in the US on a private placement basis.

While the Company may trade commodity futures and/or commodity options contracts, the Investment Manager is currently exempt from registration with the CFTC as a commodity pool operator (a “CPO”) pursuant to CFTC Rule 4.13(a)(4). Therefore, unlike a registered CPO, the Investment Manager is not required to deliver a CFTC disclosure document to prospective Shareholders, nor is it required to provide Shareholders with certified annual reports that satisfy the requirements of CFTC rules applicable to registered CPOs.

The Investment Manager qualifies for the exemption under CFTC Rule 4.13(a)(4) with respect to the Company on the basis that, among other things (I) each Shareholder is a Non-United States Person as defined under CFTC rules or is either: (A) a natural person who is a “qualified purchaser” as defined under SEC rules or otherwise a “qualified eligible person” as defined in CFTC rule 4.7(a)(2) or (B) a non-natural person that is either an “accredited investor” as defined under SEC rules or a “qualified eligible person” as defined in CFTC rule 4.7(a)(2); and (II) Investor Shares in the Company are exempt from registration under the Securities Act and offered and sold without marketing to the public in the United States.

The Company will not accept any subscriptions from investors that are employee benefit plans subject to Title I of ERISA, certain tax qualified plans subject to Section 4975 of the United States Internal Revenue Code or other entities deemed to hold assets of such plans (together, “Benefit Plan Investors”) if, after such subscription Benefit Plan Investors would hold 25% (or such greater percentage as may be provided in regulations promulgated by the US Department of Labor) or more of the value of any class of Investor Shares of a Sub-Fund. If Benefit Plan Investors held 25% (or such greater percentage as may be provided in regulations promulgated by the US Department of Labor) or more of the value of any class of Investor Shares of a Sub-Fund, the assets of such Sub-Fund might be treated as “plan assets” under ERISA, which could result in adverse consequences to the Company, the Investment Manager and the fiduciaries of the Benefit Plan Investors. This Offering Memorandum has been prepared solely for the information of the person to whom it has been delivered by or on behalf of the Company, and should not be reproduced or used for any other purpose. Notwithstanding anything to the contrary herein, each Shareholder (and each employee, representative, or other agent of such Shareholder may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of (i) the Company and (ii) any of its

transactions, and all materials of any kind (including opinions or other tax analyses) that are provided to the Shareholder relating to such tax treatment and tax structure.

The Investor Shares have not been filed with or approved or disapproved by any regulatory authority of the United States or any state thereof, nor has any such regulatory authority passed upon or endorsed the merits of this offering or the accuracy or adequacy of this Offering Memorandum. Any representation to the contrary is unlawful.

This Offering Memorandum has been prepared solely for the information of the person to whom it has been delivered by or on behalf of the Company, and should not be reproduced or used for any other purpose. Notwithstanding anything to the contrary herein, each Shareholder (and each employee, representative, or other agent of such Shareholder may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of (i) the Company and (ii) any of its transactions, and all materials of any kind (including opinions or other tax analyses) that are provided to the Shareholder relating to such tax treatment and tax structure.

### **Switzerland**

Shares may be offered in Switzerland exclusively to “Qualified Investors” as defined by Article 10 § 3 of the Collective Investment Scheme Act (“CISA”) and Article 6 of the Collective Investment Scheme Ordinance (“CISO”) (“Qualified Investors”). The Company has not been and will not be registered with the Swiss Financial Market Supervisory Authority (“FINMA”). This Offering Memorandum and/or any other offering materials relating to the Shares may be made available in Switzerland solely to Qualified Investors.

#### **Information for Swiss based Qualified Investors**

- The domicile of the Company is Malta.
- The representative of the Company in Switzerland is:  
OpenFunds Investment Services AG  
Selnaustrasse 5, CH-8001 Zurich  
Tel +41 44 500 3108, Fax +41 44 500 3106, [www.open-funds.ch](http://www.open-funds.ch)

(the “Swiss Representative”).

The statutory documents of the Company such as the Offering Memorandum, the Memorandum and Articles, the annual and semi-annual reports and/or any other legal documents as defined in Article 15 of the CISA in conjunction with Article 13a of the CISO may be obtained free of charge from the Representative.

The place of performance and jurisdiction for Shares offered or distributed in or from Switzerland are the registered office of the Representative.

- The paying agent in Switzerland is:  
Banca Zarattini & Co. SA  
Via Pretorio 1, 6900 Lugano  
Tel : +41 91 260 8585, fax +41 91 260 8590, [www.zarattini.ch](http://www.zarattini.ch)

(the “Paying Agent”).

Subscriptions and redemptions of Shares as well as distributions may be made through the Paying Agent. A handling commission of CHF400 per transaction will be charged by the Paying Agent and deducted from the subscription or redemption amount paid or received. If a subscription or

redemption is made through the Paying Agent, instructions and money must be received by the Paying Agent at least 24 hours before the appropriate dealing cut-off time.

Publications to Swiss investors in respect of the Shares of the Company are effected on the electronic platform [www.fundinfo.com](http://www.fundinfo.com).

The disclaimer on OpenFunds Investment Services AG acting as Swiss Representative has been drawn up in the English language. In case of any discrepancy between the English text version and any translation thereof, the English version shall prevail and be regarded as the binding one.

### **Remuneration of Distributors, Retrocessions and Rebates**

This section is based on the “Guidelines on Duties Regarding the Charging and Use of Fees and Costs (Transparency Guidelines)” issued by SFAMA on 22 May 2014, entered into force on 1 June 2014, as may be amended from time to time, and deemed as a minimum standard by FINMA on 6 June 2014 (the “Guidelines”).

For the purposes of these Guidelines, retrocessions are deemed to be payments and other soft commission paid by fund management companies, SICAVs and SICAFs and other type of fund structures and their agents (all defined as "Financial Intermediaries") for distribution activities in respect of fund units.

The Financial Intermediaries may pay retrocessions as remuneration for distribution activity in respect of Fund units in or from Switzerland to the distributors and sales partners listed below:

- distributors subject to authorization as defined in Article 19§ 1bis of the CISA (Swiss or foreign distributors regulated in their home jurisdiction);
- distributors that are not required to obtain an authorization as defined under Article 19§ 1bis of the CISA and Article 8 of the CISO (financial intermediaries regulated by FINMA, banks, insurances, fund managers and representatives);
- sales partners who place shares in funds/sub-funds with their customers exclusively through a written commission-based asset management mandate (independent asset managers), i.e. the customer has to be transparently informed that the sales partner is receiving retrocessions from the Company and/or the Investment Manager and/or the Distributor.

This remuneration may be deemed payment for the following services in particular:

- introduction to potential investors; relationship management of existing investors, support for marketing material and roadshows.

Retrocessions are not deemed to be rebates even if they are ultimately passed on, in full or in part, to the investors. The recipients of the retrocessions must ensure transparent disclosure and inform investors, unsolicited and free of charge, about the amount of remuneration they may receive for distribution. On request, the recipients of retrocessions must disclose the amounts they actually receive for distributing the collective investment schemes of the investors concerned.

### **Rebates**

For the purposes of the present Guidelines, rebates are defined as payments by the Financial Intermediaries directly to investors from a fee or cost charged to the fund with the purpose of reducing the said fee or cost to a contractually agreed amount.

In respect of distribution in or from Switzerland, the Financial Intermediaries do not pay any rebates to reduce the fees or costs incurred by the investor and charged to the Company.

## Information Available to all Investors

Prospective purchasers and their representatives, if any, are invited to ask questions of and to obtain additional information from the Investment Manager concerning the investment, the terms and conditions of the Offering and other matters (including additional information to verify the accuracy of the information in this Offering Memorandum). A copy of the Offering Memorandum and Supplements thereto are available from the Administrator and the Investment Manager.

## Right to Refuse Any Subscription Agreement

The Company may reject a Subscription Agreement for any reason and is not obliged to disclose the reason, or reasons, for rejecting any Subscription Agreement.

## No Application to List Investor Shares on any Stock Exchange

No application has been made for a listing on any stock exchange for any of the Investor Shares of the Company or for the grant of permission for any Investor Shares in the Company to be traded on any other exchange. Notwithstanding, the Directors may, following the launch of a Sub-Fund, list one or more Classes of Investor Shares of that Sub-Fund on any stock exchange.

## Applicable Law

This Offering Memorandum, the Offering Supplements and any statements made therein are based on and subject to Maltese law.

## Investment Risk

Investment in the Company and its Sub-Funds carries substantial risk. Investment in the Company and its Sub-Funds is only suitable for those investors who qualify as Qualifying Investors as defined in this Offering Memorandum. There can be no assurance that the Company's investment objective (or those of any Sub-Fund) will be achieved and investment results may vary substantially over time. Prospective investors should be aware that the value of investments, as reflected in the Net Asset Value per Share, can go down as well as up and the attention of investors is drawn to "Section 3 | Risk Factors" hereof. Prospective investors should carefully consider whether an investment in Investor Shares is suitable for them in the light of their circumstances and financial resources and should consult persons who are authorised to provide advice on this kind of investment.

**INVESTMENT IN THE COMPANY AND THE SUB-FUNDS IS ONLY SUITABLE FOR QUALIFYING INVESTORS AS DEFINED IN THIS OFFERING MEMORANDUM. PROSPECTIVE INVESTORS SHOULD BE AWARE THAT THE VALUE OF INVESTMENTS, AS REFLECTED IN THE NAV PER SHARE, CAN GO DOWN AS WELL AS UP AND THE ATTENTION OF INVESTORS IS DRAWN TO RISK FACTORS BELOW. IF YOU ARE IN ANY DOUBT ABOUT THE CONTENTS OF THIS OFFERING MEMORANDUM AND/OR THE OFFERING SUPPLEMENT IN RESPECT OF A SUB-FUND OR YOU ARE CONSIDERING SUBSCRIBING FOR INVESTOR SHARES, YOU SHOULD CONSULT YOUR FINANCIAL ADVISOR.**



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## Section 1 | INTERPRETATION

### Definitions

The following words shall, unless the context otherwise requires or implies, have the meanings set opposite them when used in this Offering Memorandum:

<b>Accounting Currency</b>	Euro (€).
<b>Accounting Period</b>	Unless otherwise determined by the Directors, a financial period of the Company commencing in the case of the first such period on the date of the registration of the Company and terminating on the 31 <sup>st</sup> December, 2012 and in any other case thereafter commencing on the 1 <sup>st</sup> January and ending on 31 <sup>st</sup> December in the same year.
<b>Administrator</b>	Calamatta Cuschieri Fund Services Limited or such other person occupying the post of administrator of the Company from time to time.
<b>Auditors</b>	PricewaterhouseCoopers or such other person occupying the post of auditor of the Company from time to time.
<b>Base Currency</b>	The currency in which a particular class of Investor Shares is denominated. In relation to any particular Sub-Fund, see the related Offering Supplement for details.
<b>Benefit Plan Investor</b>	A “benefit plan investor” as defined in Section 3(42) of ERISA and any regulations promulgated by the US Department of Labor thereunder, being “employee benefit plans” as defined in Section 3(3) of ERISA that are subject to Title I of ERISA, “plans” that are subject to the prohibited transaction provisions of Section 4975 of the Internal Revenue Code, and entities the assets of which are treated as “plan assets” under Section 3(42) of ERISA and any regulations promulgated thereunder.
<b>Benchmarks Regulation</b>	Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.
<b>Board</b>	The Board of Directors of the Company or its delegates.
<b>Business Day</b>	Any day that is a normal business day and not a national or bank holiday in Malta or such other day as the Directors may

	from time to time determine.
<b>CFTC</b>	The US Commodity Futures Trading Commission.
<b>CHF / Fr / Swiss Franc</b>	The lawful currency of the Swiss Confederation (Switzerland).
<b>Closing Date</b>	The date on which the Initial Offering Period for a particular Sub-Fund ends. The Closing Date for each Sub-Fund will be set forth in the related Offering Supplement.
<b>Companies Act</b>	The Companies Act (Cap. 386, Laws of Malta).
<b>Company</b>	Himalaya SICAV p.l.c.
<b>Company Secretary</b>	E2S Monitoring Ltd. or such other person occupying the post of secretary of the Company from time to time.
<b>Data Protection Legislation</b>	The data protection and information privacy laws of Malta, including the Data Protection Act (Cap. 440, laws of Malta) and any subsidiary and replacement legislation, including regulation (EU) 2016/679 known as the General Data Protection Regulation (“GDPR”), which comes into force on 25 May 2018.
<b>Dealing Day</b>	Any Business Day that is a Subscription Day and/or a Redemption Day.
<b>Directors</b>	The directors of the Company.
<b>ERISA</b>	The US Employee Retirement Income Security Act of 1974, as amended.
<b>EUR / € / Euro</b>	The currency of the participating member states of the European Union that have adopted a single currency in accordance with the Treaty on European Union of 7 <sup>th</sup> February, 1992.
<b>Executing Broker</b>	Such executing brokers that may be appointed by the Company from time to time responsible for amongst others the execution of orders and the safekeeping of the assets of the Company entrusted to them.
<b>FATF</b>	The Financial Action Task Force.
<b>Founder Shares</b>	Ordinary voting non-participating Shares with no nominal value in the Company.
<b>GBP / £ / Pound Sterling</b>	The lawful currency of the United Kingdom.
<b>Initial Offering Period</b>	The period during which Investor Shares in any Sub-Funds are offered at the Initial Offering Price. In relation to any particular Sub-Fund, see the related Offering Supplement for

	details.
<b>Initial Offering Price</b>	The price at which Investor Shares may be purchased during the Initial Offering Period. In relation to any particular Sub-Fund, see the related Offering Supplement for details.
<b>Investment Advisor</b>	Such investment advisor that may be appointed by the Investment Manager from time to time.
<b>Investment Advisory Fee</b>	The investment advisory fee which may be payable by the Investment Manager to the Investment Advisor.
<b>Investment Committee</b>	The committee set up by the Directors responsible for the management of the assets of the Company and the Sub-Funds.
<b>Investment Company Act</b>	The US Investment Company Act of 1940, as amended.
<b>Investment Distributor</b>	Such investment distributor or distributors that may be appointed by the Company and/ or the Investment Manager from time to time.
<b>Investment Management Fee</b>	The investment management fee which may be payable by the Company to the Investment Manager, as set forth in the relevant Offering Supplement.
<b>Investment Manager</b>	Gamma Capital Markets Limited.
<b>Investor Shares</b>	Non-voting participating Shares of no par value in the capital of the Company, which may be divided into different classes and which classes may, alone or together with other classes of Investor Shares, constitute Sub-Funds of the Company.
<b>ISAct</b>	The Investment Services Act (Cap. 370, Laws of Malta).
<b>Memorandum and Articles</b>	The Memorandum and Articles of Association of the Company.
<b>MFSA</b>	The Malta Financial Services Authority and/or any successor competent authority under the ISAct exercising supervisory and regulatory powers over the Company.
<b>MFSA Rules</b>	Any rules, licensing conditions, guidelines or guides issued by the MFSA in terms of the ISAct and which may be applicable to the Company and its Sub-Funds.
<b>Minimum Additional Subscription</b>	Following the initial subscription, the minimum amount or value of Investor Shares that must be subscribed by the same Shareholder in the same Sub-Fund. In relation to any particular Sub-Fund, see the related Offering Supplement.
<b>Minimum Holding</b>	The minimum amount or value of Investor Shares that must be held in the Company and/or a Sub-Fund by any investor

	at all times. In relation to any particular Sub-Fund, see the related Offering Supplement.
<b>Minimum Initial Subscription</b>	The minimum amount or value of Investor Shares that must be invested in a Sub-Fund by any investor on first becoming a Shareholder. In relation to any particular Sub-Fund, see the related Offering Supplement.
<b>Minimum Redemption</b>	The minimum amount or value of Investor Shares that may be redeemed. In relation to any particular Sub-Fund, see the related Offering Supplement.
<b>NAV</b>	The Net Asset Value of a Sub-Fund.
<b>NAV Per Share</b>	The NAV attributable to a class of Investor Shares of a Sub-Fund divided by the number of Investor Shares in issue in that class.
<b>OECD</b>	The Organisation for Economic Co-operation and Development.
<b>Offering</b>	The offering of Investor Shares for subscription as described in this Offering Memorandum and, in relation to a particular Sub-Fund, in the related Offering Supplement.
<b>Offering Memorandum</b>	All constituent parts of this Offering Memorandum, including all relevant appendices, amendments, supplements and exhibits thereto, as the same may, from time to time be consolidated, together with any Offering Supplement which may be issued from time to time.
<b>Offering Period</b>	The period during which Investor Shares in a Sub-Fund will be made available at the Offering Price. In relation to any particular Sub-Fund, see the related Offering Supplement for details.
<b>Offering Price</b>	The price at which Investor Shares may be purchased after the Closing Date. This will be the NAV per Share at the last preceding Valuation Day. In relation to any particular Sub-Fund, see the related Offering Supplement.
<b>Offering Supplement</b>	An offering document in relation only to Investor Shares in a particular Sub-Fund of the Company, including all relevant appendices, amendments and exhibits thereto, if any, as the same may from time to time be consolidated.
<b>Officers</b>	In relation to the Company, includes a director, manager or company secretary of the Company but does not include the auditor.
<b>Performance Fee</b>	The performance fee, if any, which may be payable to the Investment Manager. In relation to any particular Sub-Fund,

see the related Offering Supplement for details.

### Qualifying Investor

A potential investor who meets one or more of the following criteria:

- (1) a body corporate which has net assets in excess of €750,000 (or its equivalent expressed in other currencies) or which is part of a group which has net assets in excess of €750,000 (or its equivalent expressed in other currencies);
- (2) an unincorporated body of persons or association which has net assets in excess of €750,000 (or its equivalent expressed in other currencies);
- (3) a trust where the net value of the trust's assets is in excess of €750,000 (or its equivalent expressed in other currencies);
- (4) an individual, or in the case of a body corporate, the majority of its board of directors or in the case of a partnership its general partner who has reasonable experience in the acquisition and/or disposal of :-
  - funds of a similar nature or risk profile to that of; or
  - property of the same kind as the property, or a substantial part of the property,of the Sub-Fund in question;
- (5) an individual whose net worth or joint net worth with that person's spouse, exceeds €750,000 (or its equivalent expressed in other currencies);
- (6) a senior employee or Director of service providers to the Company;
- (7) a relation or close friend of the holders of the Founder Shares limited to a total of 10 persons;
- (8) an entity with (or which are part of a group with) €3.75 million (or its equivalent in other currencies) or more under discretionary management, investing on its own account;
- (9) an entity which qualifies as a Professional Investor Fund promoted to Qualifying or Extraordinary Investors in terms of the MFSA Rules; or
- (10) an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment

vehicle by such persons or entities.

<b>Redemption Day</b>	A Business Day on which requests for the redemption of Investor Shares which have been accepted by the Company will be effected. In relation to any particular Sub-Fund, see the related Offering Supplement for details.
<b>Redemption Notice</b>	Subject to the discretion of the Directors to accept other forms of notice, the notice a specimen of which is available from the Administrator which has to be submitted to the Company by a Shareholder wishing to redeem all or some of its Investor Shares.
<b>Redemption Price</b>	The price at which Investor Shares accepted for redemption will be redeemed. This will be the NAV per Share at the last preceding Valuation Day. In relation to any particular Sub-Fund, see the related Offering Supplement.
<b>Redemption Proceeds</b>	The Redemption Price multiplied by the number of Investor Shares being redeemed by the redeeming Shareholder, net of any applicable charges as may be stated in the related Offering Supplement.
<b>Remitting Bank</b>	The bank or financial institution from which a subscriber's subscription monies are sent to the Company.
<b>Shareholder</b>	A registered holder of Investor Shares.
<b>Shares</b>	The Ordinary shares in the capital of the Company.
<b>Sub-Fund</b>	The class or classes of Investor Shares which the Directors may from time to time declare to constitute a Sub-Fund being a separate patrimony of assets and liabilities to be maintained and invested in accordance with the Investment Objectives and Policies applicable to such Sub-Fund.
<b>Sub-Investment Manager</b>	Such sub-investment manager appointed by the Investment Manager from time to time.
<b>Sub-Investment Management Fee</b>	The sub-investment management fee which may be payable by the Investment Manager to the Sub-Investment Manager.
<b>Subscriber</b>	A person who has completed and submitted a Subscription Agreement for Investor Shares in a Sub-Fund of the Company.
<b>Subscription Agreement</b>	The form, a specimen of which is available from the Administrator, which has to be submitted to the Company by a prospective investor for the purposes of subscribing to Investor Shares.

<b>Subscription Day</b>	A Business Day on which the Company will issue new Investor Shares to Subscribers who have been accepted. In relation to any particular Sub-Fund, see the related Offering Supplement for details.
<b>USD / \$ / United States Dollars</b>	The lawful currency of the United States of America.
<b>Valuation Day</b>	The Business Day immediately preceding a Subscription Day or Redemption Day and/or such other Business Day as the Directors may from time to time determine and/or such other Business Day as may be specified in the related Offering Supplement in respect of a Sub-Fund.

## Rules of Construction

For the purposes of this Offering Memorandum, unless the context otherwise requires or implies:

- (a) words importing the **singular** include the plural and vice versa;
- (b) words which are **gender** neutral or gender specific include each gender;
- (c) other **parts of speech and grammatical forms** of a word or phrase defined in the Offering Memorandum has a corresponding meaning;
- (d) an expression importing a **natural person** includes a company, partnership, joint venture, association, corporation or other body corporate and a government agency;
- (e) a reference to “**includes**” means to include without limitation;
- (f) a reference to a **law** is a reference to that law as amended, consolidated or replaced;
- (g) a reference to a **document** includes all amendments or supplements to that document, or replacements or novations of it;
- (h) a reference to a **Section, Part, Paragraph** or **Appendix** refers to a Section, Part, Paragraph or Appendix of this Offering Memorandum;
- (i) a reference to a **entity** in the Offering Memorandum (as the context requires) includes that entity’s successors and permitted assigns;
- (j) a reference to **redeem** shall include repurchase;
- (k) a reference to acts done by a Sub-Fund is a reference to the Company acting in respect of that Sub-Fund in view of the fact that a Sub-Fund does not have a separate and distinct legal personality from that of the Company; and
- (l) all references to **currencies** shall include any successor currency.

## Structure of this Document

Due to the structure of the Company and the fact that several classes of Investor Shares in the Sub-Funds may be offered, the Company has issued this Offering Memorandum which includes general information in connection with the Company and several Offering Supplements, one for each Sub-Fund.



The Offering Memorandum covers all the matters which are generally relevant and/or common to the Sub-Funds. The Offering Supplements contain specific information directly related to a Sub-Fund and the classes of Investor Shares constituting that Sub-Fund. Each Offering Supplement forms an integral part of this Offering Memorandum.

In the case of the Company constituting a new Sub-Fund, a new Offering Supplement, dedicated to the particulars of that Sub-Fund, will be issued.

An investor will be provided by the Company with both the Offering Memorandum and the relevant Offering Supplement for the specific Sub-Fund. Any Offering Supplement should be read in conjunction with this Offering Memorandum.

An Offering Supplement may modify, supplement or exclude any terms or conditions stated in this Offering Memorandum in relation to a particular Sub-Fund as well as include terms and conditions which, although not included in this Offering Memorandum, shall apply to the related Sub-Fund. In the event of any incompatibility between the Offering Memorandum and any Offering Supplement, the latter shall prevail with respect to the related Sub-Fund.

## Section 2 | PRINCIPAL FEATURES

The following should be read in conjunction with the full text of this Offering Memorandum and is qualified in its entirety by and subject to the detailed information contained elsewhere in this document.

### Company Structure

**Himalaya SICAV p.l.c.** is a self-managed collective investment scheme established as a multi-fund investment company with variable share capital (SICAV) incorporated with limited liability under the laws of Malta and licensed by the MFSA under the ISAct as a Professional Investor Fund targeting Qualifying Investors. The day to day management of the assets of the Company and its Sub-Funds will be undertaken through the Investment Committee and the Investment Manager.

The Company may establish Sub-Funds, whether comprised of a single class or multiple classes of Investor Shares, which constitute segregated patrimonies.

At the date hereof the Company has established the following Sub-Fund:

- Alpha Risk Performance Sub-Fund
- All Weather Allocation Sub-Fund
- Campo Base Sub-Fund
- ROAM Private Equity Sub-Fund

The investment objectives, policies, restrictions and other features of each Sub-Fund are outlined in the relevant Offering Supplement.

In future, new Sub-Funds may be established and others may be closed. An up-to-date list of the Sub-Funds available for investment can be obtained from the Company, the Investment Manager or the Administrator.

### Management of the Company

Since the Company operates as a self-managed PIF in terms of the MFSA Rules, the management of its business and activities will be carried out internally through an Investment Committee appointed by the Board of Directors of the Company. The Directors are also generally responsible for the safekeeping of the assets of the Company and the proper administration of the Company. The Company has however delegated various functions, including safekeeping, administration, registrar services and the day to day portfolio management. The Board has in this regard engaged the Executing Brokers, the Administrator and the Investment Manager.

### The Investment Committee

The Board of Directors retains overall responsibility for the implementation of the investment objective of the Company in respect of each Sub-Fund, directing the investment management of its assets and in the management and monitoring of risk. In this regard, the Board has established and receives support from the Investment Committee. Details of the Investment Committee appointed in respect of a Sub-Fund are set out hereunder and in the Offering Supplement relating to that Sub-Fund.

## The Investment Manager

The Board has also appointed the Investment Manager to undertake the day to day management of the assets of the Company and its Sub-Funds. As long as the Investment Manager acts within the investment objectives, policies and restrictions of the Sub-Fund concerned, as well as any other conditions, including the strategic investment parameters set by the Investment Committee of the Company, that may have been specifically communicated to it, the Investment Manager will have full discretion in the manner, method and timing of investments and transactions with respect to the assets of the Company and its Sub-Funds.

## Segregated Assets

The Company is structured with segregated liability between its Sub-Funds pursuant to Maltese law and accordingly, the assets of one Sub-Fund will not generally be available to meet the liabilities of another.

Under Maltese law, the creditors of that Sub-Fund whose liabilities exceed its assets shall have no claim or right of action against the assets of the other Sub-Funds and of the Company and the legal status of each Sub-Fund as having segregated assets and liabilities from each of the other Sub-Funds should be respected in any proceedings under the Companies Act related to either the dissolution and consequential winding-up of the Company or its reconstruction. Furthermore such proceedings instituted under the Companies Act should apply in the same way to each Sub-Fund as though it were a distinct legal entity and with such modifications as are necessary in view of the fact that a Sub-Fund is not a company. Any such proceedings in relation to any one Sub-Fund should not have any effect on the assets of any other Sub-Fund or of the Company.

The Directors will hold or cause to be held such separate accounts, records, statements and other documents as may be necessary to evidence the liabilities and assets of each Sub-Fund as distinct and separate from the assets and liabilities of all the other Sub-Funds. If classes of Investor Shares are issued in the same Sub-Fund, all assets and liabilities of each such class of Investor Shares would form part of the total assets and liabilities of the Sub-Fund of which such a class of Investor Shares forms part.

Notwithstanding the foregoing, the Company is a single legal entity which may operate or have assets held on its behalf or be subject to claims in other jurisdictions which may not necessarily recognise such segregation and in such circumstances the assets of one Sub-Fund may be exposed to the liabilities of another. There is no guarantee that the courts of any jurisdiction outside Malta will respect the limitations on liability associated with segregated account companies.

## New Classes of Investor Shares

The Company may issue new classes of Investor Shares which may be constituted as segregated Sub-Funds or new classes of Investor Shares within existing Sub-Funds, which may be designated in various currencies. The assets of the said Sub-Funds may be managed utilising different strategies or methodologies, or by investing in different markets.

This Offering Memorandum is to be at all times accompanied by an Offering Supplement for the Sub-Fund which is the subject of the Offering. Offerings in other Sub-Funds may be made again in the future. Information about Sub-Funds other than the ones referred to herein may be obtained from the Company, the Investment Manager or the Administrator.

## Investment Objective and Policies

The investment objective and policies of a Sub-Fund are set out in the Offering Supplement in respect of that Sub-Fund.

There is no guarantee that the investment objective will be met.

## Investment Restrictions, Borrowing and Leverage

Save as may be specifically stated in the Offering Supplement applicable to any particular Sub-Fund, there shall be no restriction in the manner and extent to which a Sub-Fund may deploy, pledge or otherwise give as security, its assets, or assume liabilities, borrow or otherwise engage in leverage, in pursuit of its specific investment objective. A Sub-Fund may also borrow money to meet requests for the redemption of its Investor Shares.

## Alterations to the Investment Objective, Policies and Restrictions

Subject to the below requirements, the Directors may, at their sole discretion, alter the Investment Objective, Policies and Restrictions of a Sub-Fund.

Any alteration to the Investment Objective shall be notified to the holders of the Investor Shares in that Sub-Fund by mail at least thirty (30) Business Days before such alterations to the Investment Objective are to come into effect. These changes will only become effective after all redemption requests received during such notice period have been satisfied.

Any material alterations to the Investment Policies and Restrictions of a Sub-Fund shall be notified to the holders of the Investor Shares in that Sub-Fund before such material alterations are to come into effect.

## Cross Sub-Fund Investment

Subject to any additional restrictions stated in the Offering Supplement applicable to any particular Sub-Fund or in MFSA Rules, a Sub-Fund shall be permitted to invest in Shares of other Sub-Funds of the Company ("**Cross-Sub-Fund Investment**") under the following conditions and restrictions:

- (a) a Sub-Fund may not invest more than fifty percent (50%) of its assets in any one other Sub-Fund of the Company;
- (b) a Sub-Fund which is the subject of a Cross-Sub-Fund Investment may not invest back into a Sub-Fund which invested in it;
- (c) the Investment Manager will, to the extent of the Cross-Sub-Fund Investment, only charge one Investment Management Fee (but excluding any Performance Fees) and one subscription or redemption fee; and
- (d) to the extent applicable, Shares held by another Sub-Fund will not have any voting rights or be counted when thresholds for consent of Investor Shareholders.

## Redemption

Redemptions of Investor Shares may be made on any Redemption Day, at the Redemption Price, if a valid Redemption Notice is received by the Company at the office of the Administrator with such prior notice and other conditions as may be stated in the related Offering Supplement.

Redemption requests received after such date will be processed on the next following Redemption Day, provided that the Directors may accept, at their sole discretion, a shorter notice. Redemption Proceeds due will be paid out as soon as practicable after final calculation of the Redemption Price on the relevant Valuation Day and after receipt of the proceeds of the sale of any investments sold to fund the redemption.

### **Publication of Net Asset Value**

Information regarding the NAV per Share, as determined on each Valuation Day, will ordinarily be made available at the office of the Administrator.

### **Minimum Initial Subscription and Minimum Holding**

Subject to the discretion of the Directors to permit a lesser investment where deemed appropriate or unless otherwise stated in the related Offering Supplement, Subscribers and/or Shareholders are required to observe the Minimum Initial Subscription and the Minimum Holding requirements details of which will be set out in the related Offering Supplement.

The Minimum Holding requirement applies at all times to all Shareholders; however, no obligations shall arise upon a Shareholder should the total value of its relevant holdings decline to less than the Minimum Holding as a result of any fluctuation in the value of any of the underlying assets.

### **Minimum Additional Subscription and Minimum Redemption**

Subject to the Minimum Holding requirement and subject to the discretion of the Directors to permit a lesser additional subscriptions or redemptions where deemed appropriate or unless otherwise stated in the related Offering Supplement, Shareholders are required to observe the Minimum Additional Subscription and the Minimum Redemption requirements details of which will be set out in the related Offering Supplement.

### **European Benchmarks Regulation**

The Company will, where relevant, work with the applicable benchmark administrator for each benchmark used by a Sub-Fund to confirm that the benchmark administrators are, or intend to procure that they are, included in the register maintained by ESMA under the Benchmarks Regulation.

Furthermore, where relevant, a plan has been adopted or will be adopted by the Company to address the contingency of a benchmark used by a Sub-Fund changing materially or ceasing to be provided in accordance with the Benchmarks Regulation.

### **Accounting Currency**

For the purposes of the compilation of the annual financial statements of the Company, the reporting currency for the Company shall be the Accounting Currency. The accounts of each Sub-Fund may be maintained in the Base Currency of a class of Investor Shares constituting that Sub-Fund.

## Section 3 | RISK FACTORS

In evaluating the potential and suitability of an investment in one or more Sub-Funds of the Company, careful consideration should be given by prospective investors to the following risk factors which relate to the management of the Sub-Funds and the underlying markets in which the Sub-Funds' assets will be invested.

An Offering Supplement may also supplement the below list of risk factors with additional risks particular to an investment in the relevant Sub-Fund.

The summary below describes in general terms some of the risk factors that need to be considered in connection with an investment in the Company and its Sub-Funds. These risk factors should be regarded as general information and may not be a complete list of all relevant risk factors. It is accordingly recommended that, besides carefully considering the risk factors below, prospective investors also consult their own advisors on any legal, tax and financial issues that are relevant to their specific situation before investing in the Company and its Sub-Funds.

The attention of prospective investors is also drawn to the notice on the cover page of this Offering Memorandum regarding the fact that the Company and its Sub-Funds are licensed as a Professional Investor Fund targeting Qualifying Investors and are therefore subject to a lower level of supervision and regulatory oversight by the MFSA than retail collective investment schemes.

### General Risks of Investing

An investment in the Company and its Sub-Funds is subject to all risks incidental to investment in securities and other assets which the Company and its Sub-Funds may own. These factors include without limitation, changes in government rules and fiscal and monetary policies, changes in laws and political and economic conditions throughout the world and changes in general market conditions. There can be no guarantee that any profits will be realised by the Company or a Sub-Fund and, therefore, by the Shareholders.

### Risks of Multi-Fund Structure

The Company can establish an unlimited number of separate Sub-Funds each represented by one or more classes of Investor Shares. In terms of regulations issued under the Companies Act, a Shareholder's interest will be limited to the assets and liabilities represented by the class of Investor Shares in which the Shareholder invests. Investors should, however, be aware that in the event a claim is made against the Company, if the assets attributable to a Sub-Fund in respect of which the claim is made are insufficient to cover such claim, then the creditor may if, a non-Maltese court refuse to apply the protection afforded to Shareholders under Maltese law, nonetheless be allowed by such non-Maltese court to have recourse to the assets attributable to other Sub-Funds.

The Directors are not aware of any such existing or contingent liabilities. Furthermore it is the standard requirement of the Company that any persons dealing with the Company expressly acknowledge the fact that they have no recourse against the Company and the Sub-Funds except to the extent of the assets of the Sub-Fund in relation to which they have had dealings.

The Directors are not aware of any instances where the treatment of segregated assets under Maltese law, as described above, has been successfully challenged, against the Company and any Sub-Funds, in Malta or in any jurisdiction where the Investor Shares have been distributed.

## Limited Transferability

Since the Directors may decline to register a transfer of Investor Shares at their sole and absolute discretion, Shareholders may not be able to sell their investments and therefore, would have to utilise the Company's redemption or repurchase programme, which itself may be subject to restrictions – see “Section 10 | Redemption of Investor Shares”.

## Illiquidity of Investor Shares

There will be no secondary market for the Investor Shares, and consequently, Shareholders can dispose of the Investor Shares only by means of redemption or by transferring Investor Shares to a third party. There is no assurance that, in order to meet redemptions, a Sub-Fund will be able to liquidate its portfolio without losses. These losses might have an adverse effect on the NAV of the relevant Sub-Fund and thus on the Redemption Proceeds that will be received by the redeeming investor. In the event of unsettled market conditions, or if for any reason Sub-Fund is unable to liquidate its investments or is otherwise obliged to suspend dealings in its Investor Shares, the Company may be unable to redeem Investor Shares.

Kindly also refer to “Section 10 | Redemption of Investor Shares” which provides detailed provisions on deferral of redemption arrangements, redemptions in specie, temporary suspension in redemptions and on suspension of redemptions requests.

These arrangements have a direct effect on the liquidity of the Investor Shares.

## Substantial Redemptions

Substantial redemptions of Investor Shares could require a Sub-Fund to liquidate positions more rapidly than would otherwise be desirable, which could adversely affect the value of the Investor Shares. Substantial redemptions might also cause the liquidation of the Company and/or a Sub-Fund.

Illiquidity in certain markets could also make it difficult for a Sub-Fund of the Company to liquidate positions on favourable terms, thereby resulting in a decrease in the value of the assets. In these circumstances, the non-redeeming Shareholders will bear a disproportionate risk of any decline in the value, liquidity and quality of a Sub-Fund's assets subsequent to the redemptions.

In any of the circumstances described above, the Company may defer, suspend or limit the redemption of Investor Shares in such Sub-Fund – see “Section 10 | Redemption of Investor Shares”.

## Compulsory Redemptions

The Company reserves the right to require a Shareholder to redeem its total shareholding, within one (1) Business Day of a notice of intent to do so in the event that the holding of Investor Shares by the Shareholder concerned may result in regulatory, pecuniary, legal, taxation or material administrative disadvantage for the Company or the Shareholders as a whole, if such Shareholder ceases to qualify as a Qualifying Investor or, if on any Valuation Day, the total value of the Investor Shares held by the Shareholder is less than the Minimum Holding for the Company or a Sub-Fund. Such compulsory redemptions will take place at the prevailing Redemption Price on the day that such redemption takes place. Should the Company exercise this right, it will not be liable for any loss

that an investor may suffer as a result of such compulsory redemption. The Company reserves the right not to give any reason for such an action.

## Indemnities

The Company's Directors and Officers, the members of the Investment Committee, the Investment Manager, the Investment Advisor, the Sub-Investment Manager, the Executing Broker and the Administrator and each of their directors, officers, employees and agents may be indemnified in certain circumstances. As a result, there is a risk that the Company's assets will be used to indemnify such persons, companies or their employees or satisfy their liabilities as a result of their activities in relation to the Company or a Sub-Fund.

## Interest Rate Changes

Interest rate risk includes, but is not limited to:

- (a) the risk that debt obligations will decline in value because of changes in interest rates. Generally, debt securities will decrease in value when interest rates rise and increase in value when interest rates decline. The value of a Sub-Fund's investments may fluctuate with the level of prevailing interest rates from time to time.
- (b) the risk that the cost of any borrowing by the Company, or by a Sub-Fund, on which interest is payable at a variable rate will increase if the relevant rate of interest moves higher. Conversely, assets which earn interest at a variable rate will suffer a decline in income if the relevant rate of interest declines.

## Confidential Information

The Investment Committee and/ or the Investment Manager may, in connection with its other business activities, acquire material non-public confidential information that may restrict the Investment Committee and/ or the Investment Manager from purchasing assets or selling assets for itself or its clients (including the Company) or otherwise using such information for the benefit of its clients or itself.

## Credit Risk

Some of the assets held by a Sub-Fund may derive an important part of their value from the credit quality of an issuer or an underlying entity. In the eventuality of a credit event related to that issuer or related entity, such as a bankruptcy, obligation acceleration, obligation default, failure to pay, repudiation, moratorium or restructuring, or in the eventuality of a general deterioration of credit conditions, the Sub-Funds could be subject to important losses on credit related positions.

In addition, with regards to the credit risk of the Company towards the potential investors or Shareholders, monies subscribed in advance of a Subscription Day and held pending investment on the Subscription Day, or proceeds of redemptions held pending payment to investors, may be viewed by the courts as assets of the Company in the event of the insolvency of the Company prior to that relevant Dealing Day.



## **Borrowing and Leverage Risks**

A Sub-Fund may not be able to repay borrowings or may be forced to sell investments at a disadvantageous time in order to repay borrowings. Costs incurred in connection with the use of leverage may not be recovered by income or appreciation in the investments purchased, and may be lost in the event of a decline of the market value of such investments. In the event of a precipitous drop in the value of its assets, a Sub-Fund might not be able to liquidate assets quickly enough to repay its margin debt. A Sub-Fund might elect to sell its more liquid assets to repay borrowings, or to meet redemptions, thus increasing its concentration in less liquid securities.

## **Strategy**

In any Sub-Fund, strategy related losses can result from excessive concentration in the same investment policy or in the general economic events that adversely affect particular strategies. Furthermore, policies employed may evolve over time, and perhaps change materially, in ways that would be difficult (if not impossible) for the Investment Committee and/ or the Investment Manager to detect or follow. There can be no assurance that any trading method employed by the Investment Committee and/ or the Investment Manager will produce profitable results. Moreover, past performance is not necessarily indicative of future profitability.

## **Trading Risks**

Substantial risks are involved in alternative strategies, including the trading of options and futures. Market movements can be volatile and are difficult to predict. Politics, recession, inflation, employment levels, trade policies, international events, war and other unforeseen events can also have significant impact upon the prices of the investment instrument used. A variety of possible actions by various government agencies also can inhibit the profitability of a Sub-Fund's policies or can result in losses. Such events, which can result in large market movements and volatile market conditions, create the risk of catastrophic losses on the assets and the trading entities in which a Sub-Fund will invest.

A Sub-Fund is also subject to the risk of the failure of any of the exchanges on which its positions trade or of their clearing houses.

## **Liquidity of Investments**

At various times, the markets for securities in which a Sub-Fund may invest in may be "thin" or illiquid, making purchases or sales of securities at desired prices or in desired quantities difficult or impossible. The liquidity of the market may also be affected by a halt in trading on a particular futures or securities exchange or exchanges. Illiquid markets may make it difficult for a Sub-Fund to get an order executed at a desired price. All of the above could result in delays in the calculation of the NAV and/or payment of any Redemption Proceeds. Under certain circumstances, the Sub-Fund may be unable to liquidate portfolio investments due to the absence of a liquid market, and consequently, may not be able to redeem Investor Shares.

## **Hedging Transactions**

The Investment Manager may employ various techniques to attempt to reduce a portion of the risks inherent in its investment strategies. The ability to achieve the desired effect through a particular technique is dependent upon many factors, including the liquidity of the market at the desired time of execution. Thus such techniques cannot always be implemented or effective in reducing losses.

Hedging transactions, including the use of derivative contracts, which may be used by the Investment Manager have risks associated with them, including possible default by the other party to the transaction, illiquidity, a lack of regulation in certain over-the-counter markets and, to the extent that the view of the Investment Manager as to certain market movements is incorrect, the risk that the use of hedging transactions could result in losses greater than if they had not been used. Use of put and call options may result in losses. The use of currency transactions can result in losses being incurred as a result of a number of factors including the imposition of exchange controls, suspension of settlements, or the inability to deliver or receive specified currency.

The use of options and futures transactions entails certain other risks. In particular the variable degree of correlation between price movements of futures contracts and price movements in the related portfolio position of a Sub-Fund creates the possibility that losses on the hedging instrument may be greater than gains in the value of that position. In addition, futures and options markets may not be liquid in all circumstances. As a result, in certain markets, a Sub-Fund might not be able to close out a transaction without incurring substantial losses, if at all. Although the use of futures contracts and options transactions for hedging should tend to minimise the risk of loss due to a decline in the value of the hedged position, at the same time they tend to limit any potential gain which might result from an increase in value of such position. Finally, the daily variation margin requirements for futures contracts could create a greater ongoing potential financial risk than could purchases of options, where the exposure is limited to the cost of the initial premium. Losses resulting from the use of hedging transactions could reduce Net Asset Value, and possibly income and such losses can be greater than if the hedging transactions had not been utilised.

### **Investment in unregulated collective investment schemes**

One or more Sub-Funds of the Company may invest in unregulated collective investment schemes. It should be noted that unregulated collective investment schemes do not afford the same level of protection towards investors generally afforded by regulated collective investment schemes.

### **Derivatives**

One or more Sub-Funds of the Company may from time to time utilise both exchange-traded and over-the-counter derivatives including, but not limited to futures, forwards, swaps, options and contracts for differences as part of its investment policy. These instruments can be highly volatile and expose investors to a high risk of loss. The low initial margin deposits normally required to establish a position in such instruments permit a high degree of leverage. As a result, depending on the type of instrument, a relatively small movement in the price of a contract may result in a profit or a loss which is high in proportion to the amount of funds actually placed as initial margin and may result in unquantifiable further loss exceeding any margin deposited. In addition, daily limits on price fluctuations and speculative position limits on exchanges may prevent prompt liquidation of positions resulting in potentially greater losses. Transactions in over-the-counter contracts may involve additional risk as there is no exchange market on which to close out an open position. It may be impossible to liquidate an existing position, to assess the value of a position or to assess the exposure to risk. Contractual asymmetries and inefficiencies can also increase risk, such as break clauses, whereby a counterparty can terminate a transaction on the basis of a certain reduction in Net Asset Value, incorrect collateral calls or delays in collateral recovery.

A Sub-Fund employing over-the-counter derivatives will also be dependent on the willingness of counterparties to enter into off-exchange contracts with it. Failure to identify or delay in identifying such counterparties could limit the ability of that Sub-Fund to carry on its business.

## Futures

The low margins normally required in futures trading permit a very high degree of leverage. As a result, a relatively small movement in the price of a futures contract may result in a profit or loss which is high in proportion to the amount of funds actually placed as margin and may result in unquantifiable further loss exceeding any margin deposited.

Futures trading in many contracts on futures exchanges (although generally not in currencies) is subject to daily price fluctuation restrictions, commonly referred to as “daily limits”, which prohibit the execution of futures trades on any given day outside a prescribed price range based on the previous day’s closing prices. Daily limits do not limit ultimate losses but may make it costly or impossible for the Investment Manager to liquidate a futures position against which the market is moving. A series of “limit moves”, in which the market price moves the “daily limit” with little or no trading taking place, could subject a Sub-Fund to major losses.

The “gearing” or “leverage” often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small movement can lead to a proportionately much larger movement in the value of a Sub-Fund’s investment, and this can work against that Sub-Fund as well as for it. Futures transactions have a contingent liability, and the implications of this, in particular the margining requirements, described below under “Contingent Liability Transactions” below.

## Options

The seller (writer) of an option has the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position with cash. The buyer of an option has the right (but not the obligation) to exercise the option, thereby making or taking delivery of the underlying asset of the contract at a future date, or in some cases settling the position with cash. Options carry a high degree of risk. The “gearing” or “leverage” often obtainable in options trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small movement can lead to a proportionately much larger movement in the value of a Sub-Fund’s investment, and this can work against the Sub-Fund as well as for it. Options transactions have a contingent liability, and the implications of this, in particular the margining requirements, described below under “Contingent Liability Transactions”.

## European Benchmarks Regulation

The Benchmarks Regulation was published in the Official Journal of the European Union on 29 June 2016 and entered into force on 30 June 2016. It is directly applicable law across the European Union. The majority of its provisions applied from 1 January 2018. The Benchmarks Regulation applies principally to “administrators” and also, in some respects, to “contributors” and certain “users” of “benchmarks” which in certain circumstances can include investment funds such as the Company.

The Benchmarks Regulation will among other things: (i) require benchmark administrators to be authorised (or, if non-EU-based, to be subject to an equivalent regulatory regime) and make significant changes to the way in which benchmarks falling within scope of the Benchmarks Regulation are governed (including reforms of governance and control arrangements, obligations in relation to input data, certain transparency and record-keeping requirements and detailed codes of conduct for contributors); and (ii) prevent certain uses of “benchmarks” provided by unauthorised administrators by supervised entities in the EU. The scope of the Benchmarks Regulation is wide and, in addition to so-called “critical benchmark” indices, could also potentially apply to many interest

rate and foreign exchange rate indices, equity indices and other indices (including “proprietary” indices or strategies) where used to determine the amount payable under or the value or performance of certain financial instruments traded on a trading venue, financial contracts and investment funds.

Potential effects of the Benchmarks Regulation include (among other things): an index which is a “benchmark” could not be used by a Sub-Fund in certain ways if such index’s administrator does not obtain authorisation or, if based in a non-European Union jurisdiction, the administrator is not otherwise recognised as equivalent; and the methodology or other terms of the “benchmark” could be changed in order to comply with the terms of the Benchmarks Regulation, and such changes could (among other things) have the effect of reducing or increasing the rate or level, or affecting the volatility, of the published rate or level of the benchmark. If any proposed changes change the way in which the benchmarks are calculated or a benchmark is discontinued or is not otherwise permitted to be used by the Company, this could adversely affect a Sub-Fund and its Net Asset Value.

### **Contingent Liability Transactions**

Contingent liability transactions, which are margined, require a Sub-Fund to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.

If a Sub-Fund trades in futures, options or contracts for differences, it may sustain a total loss of the margin deposited to establish or maintain a position. If the market moves against the related Sub-Fund, it may be called upon to pay substantial additional margin at short notice to maintain the position. If the related Sub-Fund fails to do so within the time required, its position may be liquidated at a loss and that Sub-Fund will be responsible for the resulting deficit. Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when that Sub-Fund entered the contract.

### **Securities Borrowing**

Borrowed securities may need to be returned on short notice. If the securities borrowed cannot be returned, a Sub-Fund could be required to cover the short sale by borrowing the security elsewhere or by purchasing securities at a higher price than the short sale transaction thereby creating a loss. Also, if a broker (or Executing Broker) were to recall funding facilities, the Sub-Fund would be forced to sell securities at disadvantageous conditions.

### **Dependence on Key Individuals**

The Company's success depends to a significant extent, upon the role of the Investment Committee, the Investment Manager and/ or the Sub-Investment Manager in the management of the assets of the Company and its Sub-Funds. To the extent that such activities relate to the operations of the Company, the Company may be adversely affected if any of the members of the Investment Committee or those officers of the Investment Manager and/ or Sub-Investment Manager responsible for these activities cease to participate in the management of the assets of the relevant Sub-Funds.

The loss of such a key individual's services (e.g. through death, disability, retirement or leaving the employment of the Investment Manager and/ or the Sub-Investment Manager) could cause the Company to suffer losses.

### **Fee Structure**

The Company will bear the fee paid to the Investment Manager and other service providers. Further, certain strategies employed in the Sub-Funds, or in investments made by the Sub-Funds, may require frequent changes in trading positions and consequent portfolio turnover. This may involve brokerage commission expenses exceeding significantly those of other investment schemes of comparable size. Performance Fees may also be payable by the Sub-Funds. The existence of Performance Fee arrangements, especially where no capped amount is imposed, may potentially encourage any person benefiting therefrom (such as the Investment Manager) to make investments that are riskier or more speculative than would be the case in the absence of Performance Fees. The increase in NAV used as a basis for the calculation of performance fee may include both realised and unrealised gains as the end of the calculation period. Therefore, the Performance Fee may be paid out on unrealised gains which may subsequently never be realised by the respective sub-fund.

Any fees payable to the Investment Committee will be deducted from the Investment Management Fee payable to the Investment Manager.

## Leverage

Investors should be aware that an investment programme utilising leverage is inherently more speculative, with a greater potential for losses, than a programme which does not utilise leverage. The premium normally required in options trading and the low margin deposits normally required in futures trading result in an extremely high degree of leverage. Therefore, a relatively small price movement in an unfavourable direction in a commodity or security futures contract or in the interest underlying an option contract could result in immediate and substantial losses in the Company's investments.

## Exchange Rate Fluctuations

The Company's accounts will be denominated in Euro however the classes of Investors Shares constituting a Sub-Fund and the investments made directly or indirectly by a Sub-Fund may be denominated in any currency as may be specified in the relevant Offering Supplement. Shareholders bear all risks of exchange rate fluctuations between their base currency and the Base Currency of the Investor Shares held by them. The Company may hedge the exchange rate risk between the Base Currency of the classes of Investors Shares in a Sub-Fund and the currency of the assets in which the relevant Sub-Fund invests. All costs and profits and/or losses relating to the hedging instrument will be allocated to the relevant class of Investor Shares in a Sub-Fund to which the hedging instrument relates.

## Side Agreements

The Company may negotiate and enter into agreements ("**Side Agreements**") with certain Shareholders that will result in different terms of an investment in the Sub-Funds than the terms applicable to other Shareholders generally. As a result of such Side Agreements, certain Shareholders may receive additional benefits which other Shareholders will not receive. Except as described in this Offering Memorandum or as required by law, in general, the Company will be required to notify any or all of the other Shareholders of any such Side Agreements or any of the rights and/or terms or provisions thereof, nor will the Company be required to offer such additional and/or different rights and/or terms to any or all of the other Shareholders. Any Side Agreement to be entered into by the Company will be subject to the approval of the Board of Directors. All Side Agreements entered into by the Company will be retained in at the registered office of the Company will be made available for inspection by the MFSA during compliance visits.

## Conflicts of Interest

Conflicts of interest may arise between the Company and the persons or entities involved in the management of the Company or offering services to it including the members of the Investment Committee, the Investment Manager, the Administrator, the Executing Broker and other service providers which may be appointed in respect of a Sub-Fund or counterparties thereof. The Directors, members of the Investment Committee, Investment Manager, the Sub-Investment Manager, the Investment Advisor, the Executing Broker and the Administrator which may be appointed in respect of a Sub-Fund (including their respective principals, shareholders, members, directors, officers, agents or employees) may from time to time act as Directors, members of the Investment Committee, Investment Manager, Sub-Investment Manager, Investment Advisor, Executing Broker or Administrator in relation to, or otherwise be involved in, other funds established by parties other than the Company, which have similar objectives and which make investments similar to those made on behalf of a Sub-Fund. Such clients could thus compete for the same trades or investments, and whilst available investments or opportunities for each client are generally expected to be allocated in a manner believed to be equitable to each, certain of the allocation procedures may adversely affect the price paid or received for investments or the size of positions obtained or disposed. Similarly, the Investment Manager, the Sub-Investment Manager, the Investment Advisor, the Administrator, the Executing Broker, and their principals and the Directors and members of the Investment Committee may trade for their own accounts in any of the types of assets in which a Sub-Fund invests or intends to invest.

Conflicts may also arise as a result of the other services provided by affiliates of the Investment Manager which may provide advisory, custody or other services to the Investment Manager. Similarly the Directors and members of the Investment Committee may also be directors of service providers to the Company or of companies in which the Company may invest, which could result in conflicts of interest.

The Directors or members of the Investment Committee in their personal capacities, or entities in which the Directors or members of the Investment Committee may have a management or financial interest, may also from time to time invest in the Sub-Funds and may increase or decrease such holdings without notice.

Generally, there may be conflicts of interest between the interests of the Company and the interests of the Investment Manager, the Sub-Investment Manager, the Investment Advisor, the Executing Broker, the Administrator and their respective affiliates and the Directors and members of the Investment Committee to generate fees, commissions and other revenues. In the event that such a conflict of interest arises, the Directors will endeavour to ensure that it is resolved in the best interest of the Company. It should be noted that the Investment Manager as well as its affiliates, may at any time also be offering their services to one or more of the investors in the Sub-Funds.

Furthermore, the Investment Manager may have equity stakes in the funds (or fund managers) to which they are providing their services, or own or have an interest in one or more assets that are also owned by such funds. Conflicts of interest can therefore not be ruled out.

See “Section 7 | Conflicts of Interests” for further details on the conflict of interests applicable to the Company.

## Significant Investor / Shareholder

It is expected that at any time investors in a Sub-Fund of the Company may include individual investors (“**Significant Investors**”) with significant holdings in the outstanding Investor Shares in a

particular Sub-Fund. The presence of a large investor helps to mitigate the burden of the fixed costs of a Sub-Fund, by effectively spreading the impact of such costs over a larger NAV than would otherwise be the case. By the same token, any large redemptions by such an investor will raise the impact of such fixed costs on remaining investors. Large orders to purchase or sell Investor Shares in a Sub-Fund by Significant Investors may, individually or on a combined basis, also result in parallel investment / disinvestment transactions by the Sub-Fund concerned in one or more of its underlying assets. This could in turn possibly impact on the value of such investments thereby affecting the NAV of the Sub-Fund concerned, as well as that of other Sub-Funds investing in the same underlying assets.

### **Segregated Assets**

The Company is a single legal entity which may operate or have assets held on its behalf or be subject to claims in other jurisdictions which may not necessarily recognise such segregation and in such circumstances the assets of one Sub-Fund may be exposed to the liabilities of another. There is no guarantee that the courts of any jurisdiction outside Malta will respect the limitations on liability associated with segregated account companies.

### **Total Redemption**

If at any time the continuation of the Sub-Fund is no longer viable or desirable owing to:

- i. the termination of the engagement of the Investment Manager; or
- ii. the Investment Manager recommending the closure of the Sub-Fund on the basis that the outlook and the potential of the investment strategy or strategies available for the management of the assets of the Sub-Fund may in the light of certain developments, no longer be attractive or viable; or
- iii. other factors that may prejudice the successful pursuit of such strategies or the adequate fulfilment of the investment objective of the Sub-Fund; or

the Company may, by not less than four (4) nor more than six (6) weeks' notice (expiring on a Dealing Day) to all interested Shareholders, redeem all the relevant Investor Shares not previously redeemed. Subject to the conditions set out in this Offering Memorandum and in the Memorandum and Articles, as well as any set out in the relevant Offering Supplement, the holders of the relevant Investor Shares may be required to receive redemptions *in specie*.

**THE FOREGOING LIST OF RISK FACTORS DOES NOT PURPORT TO BE A COMPLETE ENUMERATION OR EXPLANATION OF THE RISKS INVOLVED IN AN INVESTMENT IN THE COMPANY OR ITS SUB-FUNDS. PROSPECTIVE INVESTORS SHOULD READ THIS ENTIRE OFFERING MEMORANDUM AS WELL AS ANY RELEVANT OFFERING SUPPLEMENT AND CONSULT THEIR OWN COUNSEL AND ADVISORS BEFORE DECIDING TO INVEST IN THE COMPANY OR ITS SUB-FUNDS.**

## Section 4 | THE INVESTMENT COMMITTEE AND THE INVESTMENT MANAGER

### The Investment Committee

The Board of Directors retains overall responsibility for the implementation of the investment objective of the Company in respect of each Sub-Fund, directing the investment management of its assets and in the management and monitoring of risk. In this regard, the Board has established and will receive support from the Investment Committee.

Under its terms of reference, the Investment Committee shall:

1. establish and review guidelines for investment by the Company and its Sub-Funds and issue rules for stock selection.
2. carry out or procure appropriate and timely assessments of the investment strategies of the Company, and of the investment performance achieved, in the light of market conditions, and the Company's investment objectives, stated policies and restrictions;
3. lay down the investment allocation criteria, in line with MFSA Rules and the Licence Conditions, in the form of strategic investment parameters for the Company;
4. review the investment actions taken, and the positions held, to ensure that the investment management has been conducted in line with applicable limits and restrictions, including strategy guidelines or parameters set by the Investment Committee;
5. Monitor the activities of the Investment Manager.

Meetings of the Investment Committee shall be held at least four times a year with at least a majority of such meetings being physically held in Malta.

The Investment Committee is composed of:

#### **Mr. Nicholas Calamatta**

Mr. Nicholas Calamatta holds a Bachelor of Arts (Hons) in Financial Services from the University of Bournemouth (UK) and is specialised in Wealth Management. He is Director and Co-CEO of Calamatta Cuschieri Group and is part of the company's management team, where his main focus is on group strategy. Mr. Calamatta joined Calamatta Cuschieri Investment Services Ltd. in 2005 and during his first 9 years with the company, he provided personalised investment advice and wealth management services to a large number of clients. In 2013 Mr Calamatta spearheaded the setting up of the Capital Markets team within Calamatta Cuschieri, where he has assisted with the launch of a number of IPO issues in Malta. Mr. Calamatta also sits on the main Investment Committee of Calamatta Cuschieri as well as various investment committees and board of third party hedge funds.

#### **Mr. Mario Bugeja**

Mr. Mario Bugeja is a previous Central Bank of Malta employee with forty-two years of investment management experience. As Head of the Investments Department, he played a leading role in strengthening the Bank's reserve management operations including embarking on new instruments for investment and risk management operations, developing strategic and tactical positions as well



as hedging fixed income portfolios and foreign currency positions. As an active member in investment and managerial committees, Mr. Bugeja showed leadership and organisational skills and executed his responsibilities in a highly professional manner. Mr. Bugeja has a postgraduate diploma in Management from the University of Reading.

**Mr. Anthony V. Xuereb**

Mr. Anthony V. Xuereb, worked for 15 years at three investment management firms in New York City, the last being Alliance Capital, where apart from his fundamental research coverage of technology equities, he was also fund co-manager of the Alliance Select Technology Portfolio. Prior thereto, he was a research analyst at Neuberger & Berman covering the telecommunications/networking equipment, software, paper and forest products industries and he also managed the Research Fund during 1997. Previously, he was a research analyst at Fiduciary Trust Company International. He became a CFA charterholder in 1991 and is also credentialed as a Professional Risk Manager.

### **The Investment Manager**

Pursuant to an amended and restated investment management agreement (the "Investment Management Agreement") dated 4<sup>th</sup> June, 2014 between the Company and **Gamma Capital Markets Limited**, the Company has engaged the latter to undertake the portfolio and risk management relating the assets of the Company and its Sub-Funds, in pursuit of the investment objectives and subject to the investment restrictions described in this Offering Memorandum and related Offering Supplements. The Investment Manager may from time to time engage one or more Sub-Investment Manager to undertake the day to day portfolio management of the assets of a Sub-Fund. The Investment Manager shall oversee the activities of the Sub-Investment Managers and shall also issue risk guidelines and parameters to be followed by the Sub-Investment Managers when undertaking the day to day portfolio management of the assets a Sub-Fund.

The Investment Manager is a company incorporated in Malta (Company registration number C51103) and is duly licensed by the MFSA as a fund management company.

The Directors of the Investment Manager are Mr. Enzo L. Filippini, Mr. Michael Galea, Mr. Eros Lombardo and Mr. Alex Vella.

The Investment Manager shall undertake the management of the assets of the Company and its Sub-Funds. Under the Investment Management Agreement, as long as the Investment Manager acts within the investment objectives, policies and restrictions of the Sub-Fund concerned, as well as any other conditions, including the strategic investment parameters set by the Investment Committee of the Company, that may have been specifically communicated to it, the Investment Manager will have full discretion in the manner, method and timing of investments and transactions with respect to the assets of the Company and its Sub-Funds.

The Investment Management Agreement between the Company and the Investment Manager provides, inter alia, that the agreement may be terminated at any time by either party upon not less than ninety (90) days prior written notice, that the Investment Manager shall not be liable to the Company for any loss arising in connection with the subject matter of the Investment Management Agreement, howsoever any such loss may have occurred unless: (i) such loss arose because of the Investment Manager acting in bad faith and in a manner which is not in the best interests of the Company or the Sub-Fund; and (ii) the Investment Manager's conduct constituted actual fraud, wilful misconduct, gross negligence, or material breach of its obligation under the Investment Management Agreement.

In terms of the Investment Management Agreement, the Investment Manager may engage Investment Advisors, Sub-Investment Managers and Investment Distributors (the “Delegates”) whether in relation to particular Sub-Funds or generally in order to assist it in the fulfilment of its duties. The Delegates will be remunerated by the Investment Manager.

The Investment Management Agreement is regulated by the laws of Malta and is subject to the jurisdiction of the Maltese courts.

The fees payable to the Investment Manager are set out in “Section 11 | Fees, Charges and Expenses” hereunder.

## Section 5 | THE ADMINISTRATOR

Pursuant to an administration agreement (the “Administration Agreement”) dated 9<sup>th</sup> March, 2012 and entered into between the Company and **Calamatta Cuschieri Fund Services Limited**, the Company has appointed the latter as the administrator, registrar and transfer agent of the Company.

The Administrator was incorporated in Malta on the 2nd December, 2008, as a subsidiary of Calamatta Cuschieri & Co. Limited, in order to provide services as an administrator, registrar and transfer agent to collective investment schemes. The Administrator is regulated by the MFSA in terms of the ISA and is also recognised as a fund administrator.

In terms of the Administration Agreement, the Administrator is responsible under the overall supervision of the Board of Directors for, inter alia, the general administration of the Company and the Sub-Funds, which includes keeping the register of Shareholders of the Company, the proper book-keeping of the Company, arranging for the issue and redemption of Investor Shares of the Company, and calculating net asset valuations of the Investor Shares of the Company.

In calculating the net asset value, the Administrator may, pursuant to the Administration Agreement, rely solely upon such automatic pricing services as it will determine and will (in the absence of fraud, gross negligence or wilful default on the part of the Administrator) not be liable for any loss suffered by the Company, the Directors, the Investment Manager or any Investor and/or third party by reason of any error thereto resulting from any inaccuracy in the information provided. In circumstances where the Administrator uses pricing services, brokers, market makers or other intermediaries it will not be liable for any loss suffered by the Company, the Directors, the Investment Manager or any Shareholder and/or third party by reason of any error in the calculation of the net asset value resulting from any inaccuracy in the information provided.

The Administration Agreement stipulates that with regard to investments of the Company that include investments in collective investment schemes and or unlisted /unquoted securities, the Administrator is entitled to rely on the price (including estimated prices) provided by the directors, the manager, or the valuation agent (including fund administrator) of such scheme or any other third party valuer, and in such circumstances the Administrator will not be liable for any loss suffered by the Company, the Directors, the Investment Manager or any Investor and/or third parties by reason of any incorrect or inaccurate valuation of the underlying assets and/or error in the price provided. Furthermore, the Administrator shall not be responsible for the selection, oversight or monitoring of any external agent or valuer appointed by the Company and shall not be liable for any losses incurred by the Company, the Directors, the Investment Manager, any Investor and/or third parties due to any act or omission of such external agent or valuer.

Further, the Administrator is not responsible and has not been delegated the role of monitoring the adherence by the Company with any investment objective, investment policy, investment restriction, borrowing restriction, operating guideline or other restrictions established for or imposed upon the Company and disclaims any liability in this regard.

The Administrator is entitled to be indemnified by the Company, in respect of its relevant Sub-Funds, against all liabilities, damages, loss, claims and expenses (including without limitation legal fees on a full indemnity basis and amounts reasonably paid in settlement) arising out of any claims asserted or threatened against the Administrator (other than those as a direct result of the Administrator’s own gross negligence, fraud, wilful misconduct or, reckless or wilful disregard of its duties) in performing its obligations or duties. The Administrator has agreed to indemnify the Company against any losses or damage suffered solely as a direct result of the Administrator’s own gross negligence, fraud, wilful

misconduct or, reckless or wilful disregard of its duties under the Administration Agreement.

The Administration Agreement is entered into for a fixed period until 31<sup>st</sup> December, 2013 (the “**Initial Date**”). Following the Initial Date, the Administration Agreement may be terminated by either party upon not less than ninety (90) days' prior written notice (or such other shorter period as the parties may agree). In all cases including during the Initial Date, the Administration Agreement may be terminated without notice in the case of material breaches, liquidation of a party, breach of representations and warranties and/or if it ceases to be lawful for the Administrator to continue to provide its services.

The Administration Agreement is regulated by the laws of Malta and subject to the jurisdiction of the Maltese courts.

The fees payable to the Administrator are set out in “Section 11 | Fees, Charges and Expenses” hereunder.

The Administrator is not responsible for the preparation or issue of this Offering Memorandum other than with respect to information concerning the Administrator including the above summary details.

## Section 6 | OFFICERS OF THE COMPANY

The Directors and other Officers of the Company are:

<b>Mr. Nicholas Calamatta</b>	-	Director
<b>Mr. Claudio Pereira</b>	-	Director
<b>Mr. Eros Lombardo</b>	-	Director
<b>E2S Monitoring Ltd.</b>	-	Company Secretary

The address of the Directors, for the purposes of the Company, is the registered office of the Company.

### **Mr. Nicholas Calamatta**

Please see “Section 4 | The Investment Committee and the Investment Manager” for further details.

### **Mr. Claudio Pereira**

Mr. Claudio Pereira’s main area of expertise is in finance. In 2010 he obtained a Bachelor of Arts degree in Economics, passing with Honours. In 2014 he also achieved an Honours Major in Banking and Finance. During the course of his studies, Mr. Pereira was also involved in real estate where he obtained additional extensive knowledge of the sector. He then spent two more years working as an accountant and in 2013 he joined Oftrader, a financial fiduciary company, where he expanded his own knowledge in relation to financial products, financial markets and asset management.

### **Mr. Eros Lombardo**

Mr. Eros Lombardo has extensive experience in the financial sector mainly in the field of accounting and fiscal matters thanks both to his educational background and his work experience. Eros has been a Director of OF Trader Group (of whom Gamma Capital Markets forms part of) for the past 15 years where he has acquired a good knowledge of the financial markets. Working in strict conjunction with the Chairman of the company he has been able to develop good expertise in investment management including derivatives, securities and forex. Apart from the Investment Committee and Portfolio Manager role held by Mr. Lombardo in Gamma Capital Markets, he has also recently been appointed the CEO of the Group OF Trader.

## Section 7 | CONFLICTS OF INTEREST

Potential investors should be aware that there may be situations in which each and any of the Directors, the members of the Investment Committee, the Investment Manager, the Sub-Investment Manager, the Investment Advisor, the Executing Broker and the Administrator (together the “**Interested Parties**”), could encounter a conflict of interest in connection with the Company. Should a conflict of interest actually arise, the Directors and the Investment Manager will endeavour to ensure that it is resolved fairly. In particular, potential investors should be aware of the following:

- (a) Certain Directors, members of the Investment Committee or entities in which they may have a financial or managerial interest, may purchase Investor Shares of the Company and receive a portion of each, or all, of the advisory fees or management fees paid by the Company as attributable to such purchasers' Investor Shares. Thus, to the extent of such purchases, such Directors or members of the Investment Committee may have a conflict of interest between their duty to act for the benefit of the Shareholders in limiting expenses of the Company and the Sub-Funds and their interest in receiving such fees.
- (b) The Investment Manager may make investments for other clients without making the same available to the Company.
- (c) The Company may affect the sale or purchase of investments through a broker who is associated with the Investment Manager or a member of the Investment Committee (or entities in which they may have a financial or managerial interest), provided that the amount of commission payable to such broker is not in excess of that which would have been payable had the sale or purchase been effected through a broker who is not so associated.
- (d) Mr. Eros Lombardo, Director of the Company, is also involved in the Investment Manager. Similarly Mr. Nicholas Calamatta, Director of the Company is also involved in the Administrator. As a result, it could be said that the Investment Management Agreement and Administration Agreement were not negotiated on arms length terms. However, the Directors have fiduciary duties to the Company and consequently have exercised and will exercise good faith and integrity in handling all the Company's affairs.
- (e) Mr. Anthony V. Xuereb, member of the Investment Committee of the Company, is indirectly involved with Banca Zarattini & Co SA, the Executing Broker appointed in respect of certain Sub-Funds of the Company, since he is a director of related entities in the Banca Zarattini group of companies.

## Section 8 | ORGANISATION OF THE COMPANY

The Company was incorporated in Malta on 2<sup>nd</sup> March, 2012 with registration number SV218. The Company is licensed by the MFSA as a Professional Investor Fund.

### Capitalisation of the Company

The holders of the Founder Shares retain all the voting rights of the Company including the right to appoint all the Directors of the Company. Accordingly, the holders of the Founder Shares are also entitled to amend the Memorandum and Articles. The Memorandum and Articles empower the Directors to create different classes of shares from time to time.

The share capital of the Company shall be equal to the value of the issued share capital of the Company. The Company may issue up to a maximum of five billion (5,000,000,000) fully-paid up Investor Shares without any nominal value assigned to them.

The initial share capital of the Company is €1,000 divided into 1,000 Founder Shares with no nominal value, which shares constitute a separate class of shares of the Company but do not constitute a separate sub-fund.

In terms of this Offering Memorandum and the Offering Supplement in respect of each Sub-Fund the Company is offering non-voting Investor Shares with no nominal value. The Company may issue non-voting Investor Shares as may be specified in the Offering Supplement relating to a Sub-Fund. The actual value of the paid up share capital of any Sub-Fund shall be at all times equal to the value of the assets of any kind of the particular Sub-Fund after the deduction of that Sub-Fund's liabilities..

The Company may, in due course, issue additional classes of Investor Shares, constituting other Sub-Funds, which may be designated in other currencies, and the assets of which may be managed utilising different methodologies or investing in different markets. Such other class(es) of Investor Shares will be offered by means of other offering memoranda in the form of an Offering Supplement for the specific Sub-Fund. When making an Initial Offering of Investor Shares in a newly established Sub-Fund the Directors shall establish the number of Investor Shares on offer, the rights if any attached to such shares, and the Initial Offering Price for such Investor Shares at the time of offer and this shall be stated in the Offering Supplement for the specific Sub-Fund.

The Company may, in due course, also issue additional classes of Investor Shares forming part of existing Sub-Funds of the Company.

All Investor Shares of a Sub-Fund participate equally in the net assets of that Sub-Fund as are represented by the appropriate class(es) of Investor Shares on liquidation and in any dividends and other distributions attributable to that Sub-Fund as may be declared. Except to the extent that they have the right to a return of paid up capital on winding-up, the Founder Shares do not participate in the assets of the Company. The holder of each Founder Share is entitled to one vote per share on all matters which may arise for consideration by the holders of the issued and outstanding Founder Shares of the Company. Each Investor Share and each Founder Share, when issued will be fully paid and non-assessable. Other than as stated above, no shares in the Company have preferential, pre-emptive, conversion or exchange rights and there are no outstanding options or any special rights relating to Investor Shares or Founder Shares.

## Duration of the Company

The duration of the Company is indefinite but Sub-Funds may be issued for a fixed duration, after which, unless alternative arrangements are applicable as may be described in the related Offering Supplement, they shall be wound up and all assets distributed to the holders of Investor Shares. Generally however, a Sub-Fund will have a continuous Offering Period that shall remain open until the Directors determine otherwise. In relation to any particular Sub-Fund, see the related Offering Supplement for details.

## Holder of the Founder Shares

999 Founder Shares have been issued as fully paid to Enzo L. Filippini and 1 Founder Share has been issued as fully paid to Eros Lombardo. The holders of the Founder Shares hold all the voting rights with respect to the affairs of the Company.

## Alterations to the Company's Share Capital

The Company may increase or reduce its authorised share capital by an extraordinary resolution of the holders of the Founder Shares (i.e. a resolution notice of which has been given prior to the meeting, and which is approved by in excess of 50% of the holders of the Founder Shares who are entitled to vote thereon at the meeting).

## Amendments to Memorandum and Articles

Subject to as provided herein, the Memorandum and Articles may only be altered or amended by the passing of an extraordinary resolution of the holders of the Founder Shares to such effect. In terms of the Memorandum and Articles, any such resolution amending the Memorandum and Articles is to be, prior to adoption, notified to the Board of Directors and approved by the MFSA.

## Variation of Class Rights

If at any time the share capital is divided into classes of shares, the rights attached to any then existing class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of not less than three-fourths ( $\frac{3}{4}$ ) of the issued shares of that class and of any other class of shares which may be affected by such variation or by a special resolution (i.e. a resolution passed by a three-fourths ( $\frac{3}{4}$ ) majority of those persons present and entitled to vote in favour of the resolution) passed at a separate class meeting of the holders of the shares of such class or by unanimous written resolution of such separate class. It shall not be deemed to be a variation of the rights attaching to any particular class of shares for the Company to, *inter alia*, (i) create, allot or issue further Investor or Founder Shares ranking *pari passu* with, in priority to or subsequent to the existing Investor or Founder Shares respectively, (ii) amend or vary the investment objective of one or more Sub-Funds, (iii) liquidate the Company or any Sub-Fund and distribute its assets to Shareholders in accordance with their rights, (iv) vest the assets in, or in trustees for, the Shareholders in specie or (v) purchase or redeem its Investor Shares.

## Further Issues of Investor Shares

The Company may, by resolution of the Board, at any time decide to offer further non-voting Investor Shares up to a maximum amount of five billion (5,000,000,000) shares in issue at any time and, without prejudice to any special rights previously conferred on the holders of existing Investor



Shares, to allot, issue, grant options over or otherwise dispose of the Investor Shares or any other classes of Investor Shares (including fractions of Investor Shares) with or without preferred, deferred or other special rights or restrictions, whether with regard to dividend or otherwise and to such persons, at such times and on such other terms as the Board shall think proper, but not in a manner to reduce the financial rights of Shareholders without their consent.

### **Repurchase of Investor Shares**

Under the Companies Act, the Company is permitted to repurchase or redeem its Investor Shares without restriction. Repurchased or redeemed Investor Shares shall be treated as cancelled and deemed never to have been issued for the purpose of calculation of the maximum number of Investor Shares which may be issued, and shall be available for reissue by the Company at any time in the future. Redemptions of Investor Shares will be made at the Redemption Price.

### **Closure of a Sub-Fund**

Apart from cases where the assets of a Sub-Fund are not sufficient to meet the liabilities in respect of such Sub-Fund, in which case the rules on insolvency will apply to the Sub-Fund in question, Sub-Funds may be closed from time to time and their licence surrendered to the MFSA. In cases where there are no outstanding Investor Shares in a Sub-Fund, as a result of redemptions or exchanges of Investor Shares with Investor Shares in another Sub-Fund, the Directors may resolve to close the Sub-Fund in question and surrender its licence to the MFSA. Without prejudice to what is stated in the part entitled "Total Redemption" under "Section 10 | Redemption of Investor Shares", where there are outstanding Investor Shares in a Sub-Fund then the consent in writing of three-fourths ( $\frac{3}{4}$ ) of the Shareholders in that Sub-Fund will be required in terms of applicable law.

### **Liquidation**

The Company, and the Sub-Funds except where otherwise provided in the related Offering Supplement, have been incorporated for an indefinite period and unless closed or liquidated as described hereunder will exist in perpetuity.

#### **Of a Sub-Fund**

Apart from the rules applicable to the closure of a Sub-Fund which are outlined in the Memorandum and Articles and in this Offering Memorandum (see "Closure of a Sub-Fund" above), and any conditions stated in the related Offering Supplement, a Sub-Fund may be wound up and dissolved either voluntarily or under supervision or by the Court. Upon the winding up or dissolution (whether the liquidation is voluntary or under supervision or by the Court) of any Sub-Fund, the assets of such Sub-Fund available for distribution (after satisfaction of creditors' claims) amongst the Shareholders of such Sub-Fund shall be distributed to the Shareholders of such Sub-Fund pro rata to their respective shareholding. Amounts which have not been claimed by Shareholders at the close of the liquidation of any Sub-Fund will be deposited in an account in the Shareholder's name with a trustee selected by the liquidator. Any such amount not claimed within a period of seven (7) years will be donated to a Maltese enrolled voluntary organisation selected at the discretion of the trustee.

#### **Of the Company**

Subject to all Sub-Funds in the Company being closed, the Company may be dissolved and wound up either voluntarily or under supervision or by a competent Court. The Company may be placed in voluntary liquidation at any time by a resolution adopted by the holders of the Founder Shares in the same manner as that required for amending the Memorandum and Articles. Any voluntary liquidation of the Company shall be carried out pursuant to applicable Maltese laws and the Memorandum and

Articles. Amounts which have not been claimed by Shareholders at the close of the liquidation will be deposited in an account in the Shareholder's name with a trustee selected by the liquidator. Any such amount not claimed within a period of seven (7) years will be donated to a Maltese enrolled voluntary organisation selected at the discretion of the trustee. Any proceedings in relation to the Company shall respect the legal status of each Sub-Fund as a patrimony separate from the assets and liabilities of each other Sub-Fund and the Company and proceedings under the Companies Act shall apply mutatis mutandis to each Sub-Fund as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that a Sub-Fund is not a company. Any proceedings in relation to any one Sub-Fund shall not have any effect on the assets of any other Sub-Fund or of the Company itself. The term 'proceedings' as used herein refers to any proceedings whatsoever including in terms of Title II of Part V and of Part VI of the Companies Act.

## Section 9 | ACQUISITION OF INVESTOR SHARES

The Investor Shares of the Company can only be acquired, and at all times held, by persons, whether corporate or unincorporated, being Qualifying Investors. In order to acquire Investor Shares in the Company, all Qualifying Investors must satisfy the conditions set out in this Offering Memorandum.

### Subscription Procedures

Purchases of Investor Shares can be made at the prevailing Offering Price (or at the Initial Offering Price during the Initial Offering Period) on the relevant Subscription Day, by submission to the Company at the office of the Administrator of the documents referred to below.

In order to purchase Investor Shares in the Company, a prospective investor must:

- i. Complete and sign the Subscription Agreement which includes the Qualifying Investor Declaration Form a copy of which is available from the Company, the Administrator and/ or the Investment Manager;
- ii. Pay the subscription amount to the Company's bank account by bank transfer. To ensure prompt receipt and identification of the subscription payment - the Subscriber should use the "Bank Transfer Instruction Letter" form which forms part of the Subscription Agreement;
- iii. Send the signed and completed Subscription Agreement and Qualifying Investor Declaration Form, together with a copy of the Bank Transfer Instruction Letter, to the Company c/o the Administrator enclosing those documents required in the Anti-Money Laundering Supplement (the "AML Supplement"), which forms part of the Subscription Agreement; and
- iv. Comply with the relevant Minimum Initial Subscription and the Minimum Holding limits.

**The Company will only issue Investor Shares to applicants upon receipt, at the offices of the Administrator and within the deadlines specified in the related Offering Supplement, of a properly executed Subscription Agreement and other required documentation, and of cleared payments.**

A copy of the Subscription Agreement and Qualifying Investor Declaration Form should be completed and retained by the applicant for the applicant's personal reference and records.

The Company may accept, in its sole and absolute discretion, investments in other currencies under the following conditions: (i) each currency will be converted to the Base Currency of the respective Investor Share, at the sole cost and expense of the Subscriber (and the cost will be deducted from the Subscriber's gross subscription amount); (ii) each Subscriber will bear all currency fluctuation risks between the Base Currency of the respective Investor Share and their base currency; and (iii) all distributions (including Redemption Proceeds) will be made in the Base Currency of the respective Investor Share, unless the Subscriber requests in writing in advance that distributions to be made in a different currency, in which event the Subscriber will bear the cost of converting the distribution to its base currency and such cost shall be deducted from such distribution.

## Subscribers' Undertakings and Warranties

Subscribers should take notice that by completing and executing the Subscription Agreement and Qualifying Investor Declaration Form the subscriber is entering into a number of undertakings and giving a number of warranties as specifically set out in this Offering Memorandum and in the Subscription Agreement and Qualifying Investor Declaration Form.

Subscribers should also take notice that no share certificates will be issued.

## Subscriptions in Specie

The Company shall, at its option, be entitled to receive securities or other investments, to the satisfaction of the Company, from a prospective Shareholder for the issue of Investor Shares in the Company in accordance with the provisions of the Memorandum and Articles and in accordance with applicable law.

The Company shall appoint a valuer which may be the Investment Manager or an appointed third party, to draw up a valuer's report. Such report shall include:

- a description of each of the assets comprising the consideration;
- the value of each asset and a description of the method of valuation used; and,
- a confirmation that the value of the consideration is at least equal to the net asset value of the shares to be issued in return for such consideration.

The Company shall only issue Investor Shares in the relevant Sub-Fund once the assets referred to in the valuer's report have been transferred in favour of the Company to the satisfaction of the Directors.

All valuer reports issued by the appointed valuer shall be kept in Malta at the registered office of the Company.

## Exchange of Investor Shares

Unless otherwise states in the Offering Supplement relating to a Sub-Fund a holder of Investor Shares may exchange all or part of his Investor Shares (the "**Original Shares**") into Investor Shares in another Sub-Fund or in a different class of the same Sub-Fund (the "**New Shares**"). The Sub-Funds of the Original Shares and of the New Shares must have coinciding Dealing Days.

An irrevocable request to exchange Investor Shares shall be construed as being a request for the repurchase of the stated number of Original Shares (save that the repurchase monies shall not be released to the investor, but shall be deemed to be paid to the Company for the purpose of acquiring the New Shares) and a simultaneous request for the proceeds from such repurchase to be applied in the purchase of New Shares as may be indicated. The exchange of Shares shall take place on the same Dealing Day at the relevant Redemption Price and Offering Price.

Absent any other arrangements between the holder of the Original Shares and the Company, if for any reason whatsoever the repurchase of the Original Shares and the purchase of the New Shares cannot both be completed on the same Dealing Day, then the request to exchange Shares shall be processed on the next Dealing Day when such repurchase and purchase can both be completed.

The number of New Shares to be issued on exchange shall be determined by the Administrator in accordance (or as nearly as may be in accordance) with the following formula: -

$$NS = \frac{[(A \times B) - C] \times D}{E}$$

where:-

- NS = the number of New Shares which will be issued;  
 A = the number of Original Shares to be exchanged;  
 B = the Redemption Price of such Original Shares on the relevant Dealing Day;  
 C = any applicable transaction costs (including any relevant fees set out in the Offering Supplement);  
 D = if applicable, the rate of exchange determined by the Administrator for converting the Base Currency of the Original Shares into the Base Currency of the New Shares; and  
 E = the Offering Price of the New Shares on the relevant Dealing Day (including any commissions payable).

## Transfer of Investor Shares

### General

Any attempt to sell or transfer Investor Shares without the prior approval of the Directors may subject such Investor Shares to a compulsory redemption. There is no independent market for the purchase or sale of Investor Shares, and none is expected to develop. Prior to considering any request to permit a transfer of Investor Shares, the Company shall require the submission by the proposed transferee of a certification as to eligibility as a Qualifying Investor as well as such other documents as the Directors considers necessary.

A Shareholder desiring to transfer his Investor Shares must make available to the Company the certificate(s), if issued, representing the Investor Shares that such Shareholder desires to transfer, together with a written instrument of transfer executed by or on behalf of the proposed transferor setting forth:

- i. the names and addresses of the proposed transferor and transferee;
- ii. the number of Investor Shares to be transferred;
- iii. such other information as the Company may require, including information necessary to satisfy the Company that the proposed transfer complies with applicable laws and appropriate identification documentation is provided as required by the Company or the Administrator on its behalf to comply with applicable anti-money laundering regimes.

The proposed transferee must, in the above-mentioned instrument of transfer, agree to take such Investor Shares subject to the same conditions and restrictions pursuant to which the Investor Shares were held by the transferor.

The Memorandum and Articles provide that the Directors may, in their absolute discretion, decline to give effect to the proposed transfer of any Investor Share and may withhold approval for any reason.

Furthermore, the Directors may decline to register any transfer of Investor Shares:

- i. unless the instrument of transfer is deposited to the Company at the office of the Administrator or such place as the Directors may reasonably require and such other evidence as the Directors may reasonably require to prove the right of the transferor to make the transfer;
- ii. if the Company has any lien on the Investor Shares being transferred; or
- iii. if the registration of transfers has been suspended by the Directors in accordance with the Memorandum and Articles.

If the Directors decline to register a transfer, they shall send notice to the transferee of such refusal within two (2) months. If after two (2) months of receipt by the Company of an acceptable instrument of transfer the Directors do not deny permission for the transfer, the Company shall be deemed to have approved the transfer, and shall be obliged to register the transfer forthwith.

**Eligible Investors**

The investor must meet all suitability requirements described herein and in the Subscription Agreement.

The Directors shall not be bound to register more than four (4) persons as joint holders of any Investor Shares and Investor Shares may not be transferred to persons under the age of eighteen (18).

Each investor must represent and warrant to the Company that, amongst other things, he is a Qualifying Investor and is able to acquire Investor Shares without violating applicable laws. The investor must also complete and provide the Company with a completed Qualifying Investor Declaration Form. The Company will not knowingly offer or sell Investor Shares to any investor to whom such offer or sale would be unlawful.

**Minimum Holding Requirements for Registration of Transfers**

Should it appear to the Administrator that the effect of a transfer will result, after the transfer, in the transferor or the transferee holding in aggregate less than the Minimum Holding required in this Offering Memorandum, the Administrator shall immediately inform the applicant that the request for registration of a transfer has been suspended until the request is amended to result in observance of the Minimum Holding of Investor Shares after the transfer of Investor Shares by the transferor and transferee.

## Section 10 | REDEMPTION OF INVESTOR SHARES

### Procedure

Subject to the restrictions appearing in this Offering Memorandum, the Memorandum and Articles, or, in relation to a particular Sub-Fund, the related Offering Supplement, a Shareholder may cause any or all of his Investor Shares to be redeemed by the Company on a Redemption Day at the Redemption Price.

Redemptions of Investor Shares may be made on any Redemption Day, at the Redemption Price, if a valid Redemption Notice is received by the Company at the office of the Administrator with such prior notice as may be stated in the related Offering Supplement. Redemption requests received after such time and date will not be processed on the next Redemption Day but on the first one thereafter.

Subject to any conditions which may be stated in a Redemption Notice, Redemption Proceeds due will be paid out as soon as practicable after final calculation of the NAV per Share, and after receipt of the proceeds of the sale of any investments sold to fund the redemption.

Except as discussed above and below, all requests for redemption in the proper form will be honoured and the Sub-Fund's investments will be liquidated to the extent necessary (if any) to discharge its liability on the date of redemption.

Redemption Notices sent by the Shareholder to the Company at the office of the Administrator will be deemed not to have been received by the Company at the office of the Administrator unless receipt is acknowledged in writing by the Administrator. Exceptions are made where the delivery of the communication has been acknowledged by a signed receipt.

### Redemption Price

The Redemption Price per share on the relevant Redemption Day is the NAV per Share calculated to four (4) decimal places as at the close of business on the relevant Valuation Day.

### Redemption in Specie

Apart from the circumstances described under "Total Redemptions" below, the Memorandum and Articles provide that the Directors may determine that the payment of the Redemption Proceeds to any Shareholder may, subject to the conditions specified hereunder being satisfied, be made wholly or partially *in specie*. This will be done by transferring to the Shareholder, from the portfolio of assets allocated to the class or classes of Investor Shares being redeemed, assets with a value equal – as of the Valuation Day on which the Redemption Price is calculated – to the whole, or (where applicable) the appropriate portion, of the Redemption Proceeds.

With regard to the conditions referred to above, the Directors shall request the Investment Manager to ensure that the Company shall only carry out such redemption *in specie*:

- i. where the Shareholder has consented in writing to such redemption *in specie*; and
- ii. equal treatment is afforded to all Shareholders, of the same class of Investor Shares, being offered a redemption *in specie* on the same Redemption Day; and

- iii. the nature and type of assets to be transferred are determined on a fair and reasonable basis and without prejudicing the interests of the other holders of Investor Shares of the relevant class or classes of shares.

Any costs resulting from such redemption in specie shall be borne by the relevant Sub-Fund.

### **Deferral of Redemptions**

The Directors may in their exclusive discretion, set out in the Offering Supplement relating to a Sub-Fund, a limit on total amount of redemptions that may be affected on any Redemption Day. The limit will generally be a percentage of the Investor Shares in a given Sub-Fund in issue on that day (in each case before giving effect to sales of Investor Shares or requests for redemption for such Redemption Day) as set out in the Offering Supplement relating to that Sub-Fund. In such circumstances the Company or its authorised agent may scale down pro rata the number of Investor Shares to be redeemed in response to each request for redemption to the extent necessary to ensure that the said limit is not exceeded, and shall carry forward the balance for redemption as at the next Redemption Day and so on to each succeeding Redemption Day until each request has been complied with in full. Requests for redemption carried forward from an earlier Redemption Day shall have priority over later requests.

### **Temporary Suspension in Redemptions**

The Company may suspend the calculation of the NAV of the Sub-Fund and the right of any Shareholder to require redemption of any Investor Share and the issue of Investor Shares during; (a) any period when any stock exchange on which a significant proportion of the investments of the Sub-Fund is quoted is closed otherwise than for ordinary holidays or during which dealings thereon are restricted or suspended; (b) any period when disposals of investments by the Sub-Fund cannot be effected normally or without seriously prejudicing the interests of Shareholders; (c) any period when there is a breakdown in the means of communication normally employed in determining the price or value of any of the investments or the current price or values on any stock exchange; or (d) any period when the Sub-Fund is unable to repatriate funds for the purpose of making payments on the redemption of Investor Shares or during which any transfer of funds involved in the realisation or acquisition of investments or payments due on redemption of Investor Shares cannot, in the opinion of the Directors, be effected at normal rates of exchange. Notice of any such suspension will be given to all Shareholders in the relevant Sub-Fund, including any Shareholder tendering his Investor Shares for redemption. Shareholders will be promptly notified upon the termination of such suspension.

### **Compulsory Redemption**

The Company reserves the right to require a Shareholder to redeem its total shareholding, within one (1) Business Day of a notice of intent to do so, at the prevailing Redemption Price on the day that the requested redemption takes place in the event that the holding of Shares by the Shareholder concerned may result in regulatory, pecuniary, legal, taxation or material administrative disadvantage for the Company or the Shareholders as a whole, if such Shareholder ceases to qualify as a Qualifying Investor or, if on any Valuation Day, the total value of the Investor Shares held by the Shareholder is less than the Minimum Holding for the Company or a Sub-Fund. Such compulsory redemptions will take place at the prevailing Redemption Price on the day that such redemption takes place. Should the Company exercise this right, it will not be liable for any loss that an investor may suffer as a result of such compulsory redemption. The Company reserves the right not to give any reason for such an action.



## Suspension of Redemption Requests

Should it appear to the Administrator that the effect of a Redemption Notice will result, after the redemption, in the Shareholder holding in aggregate less than the minimum required in this Offering Memorandum or (where applicable) in the related Offering Supplement, the Administrator shall immediately inform the applicant that the request for redemption has been suspended until the Notice is amended either to result in observance of the Minimum Holding of Investor Shares, after redemption, or to request the redemption of all of the outstanding Investor Shares in the name of the Shareholder.

## Total Redemption

If at any time the continuation of the Sub-Fund is no longer viable or desirable owing to:

- iv. the termination of the engagement of the Investment Manager; or
- v. the Investment Manager recommending the closure of the Sub-Fund on the basis that the outlook and the potential of the investment strategy or strategies available for the management of the assets of the Sub-Fund may in the light of certain developments, no longer be attractive or viable; or
- vi. other factors that may prejudice the successful pursuit of such strategies or the adequate fulfilment of the investment objective of the Sub-Fund; or

the Company may, by not less than four (4) nor more than six (6) weeks' notice (expiring on a Dealing Day) to all interested Shareholders, redeem all the relevant Investor Shares not previously redeemed. Subject to the conditions set out above and in the Memorandum and Articles as well as any set out in the relevant Offering Supplement, the holders of the relevant Investor Shares may be required to receive redemptions *in specie*.

## Section 11 | FEES, CHARGES AND EXPENSES

### Investment Management Fees

Under the terms of the Investment Management Agreement, each Sub-Fund is bound to pay an Investment Management Fee as specified in the related Offering Supplements of each Sub-Fund.

The Company may apply different fees to different Sub-Funds and to different classes of Investor Shares in any Sub-Fund of the Company.

The Investment Manager may waive or allocate any of its management fees to investors and third parties including Investment Advisors, Sub-Investment Managers and Investment Distributors.

The Investment Manager shall bear its own overhead and other internal operating costs, but shall be reimbursed by the Company or the Sub-Fund concerned for such reasonable out-of-pocket expenses which the Investment Manager incurs on behalf of the Company and/or the Sub-Fund.

Any fees payable to the Investment Committee shall be deducted from the Investment Management Fees.

### Performance Fees

There may be performance fees due to the Investment Manager in relation to each Sub-Fund and these are disclosed in full in the Offering Supplement for the particular Sub-Funds.

The Company may apply different fees to different Sub-Funds and to different classes of Investor Shares in any Sub-Fund of the Company.

The Investment Manager may waive or allocate any of its performance fees to investors and third parties including Investment Advisors, Sub-Investment Managers and Investment Distributors.

### Alterations to the Investment Management and Performance Fees

The Directors may, at their sole discretion, agree to any changes to the Investment Management Fees or the Performance Fees applicable to any Sub-Fund provided that notice of any material alterations to the said fees as may apply to a Sub-Fund or class of Investor Shares and of the date when and the method how the said alterations shall come into force shall be given to the Shareholders holding Investor Shares in the particular Sub-Fund.

Where the introduction of such alterations will effectively result in higher costs to investors and/or the Sub-Fund, they shall only come into force only after a period of at least thirty (30) Business Days from the date of such notice. In all other cases the changes may be brought into effect immediately.

### Administration and Company Secretarial Fee

Under the terms of the Administration Agreement, each Sub-Fund is bound to pay an Administration fee as specified in the related Offering Supplements of each Sub-Fund. In addition, the Administrator will receive a fee for company secretarial services.

The Administrator will be reimbursed for all properly incurred and approved out-of-pocket expenses.

### **Executing Brokerage Fee**

Each Sub-Fund is bound to pay a fee to the Executing Brokers as specified in the related Offering Supplements of each Sub-Fund. The Executing Brokers may charge a transaction based fee as well as a fee for safekeeping the assets of a Sub-Fund.

The Executing Broker will be reimbursed for all properly incurred and approved out-of-pocket expenses.

### **Directors and Officers Fees and Expenses**

The Directors will be paid annual fees for acting as Directors of the Company. The Company will meet all travel, accommodation and other reasonable expenses incurred by the Directors in holding Board meetings and in relation to the business of the Company and when the Directors personally pay for any costs they will also be reimbursed for out-of-pocket expenses. The maximum sum which can be paid to any one Director of the Company shall not exceed €30,000 per annum and such sum shall be maintained unless modified by the members of Company entitled to attend and vote at the general meeting of the Company.

### **Other Fees and Expenses**

All costs and expenses associated with the launch of the Company and the Sub-Funds, including government incorporation charges, MFSA application and licensing fees and professional fees and expenses in connection with the preparation of this Offering Memorandum and the agreements referred to herein, will be paid by the Sub-Funds. Such costs and expenses are expected to amount to not more than €100,000 and may be amortised over a period of five (5) years at the sole discretion of the Directors solely for the purpose of the Sub-Funds' NAV calculation.

The Sub-Funds may also bear all other expenses incidental to the Company's operations and business, including subscription and redemption fees with respect to investments in other funds, transactional costs including all brokerage, banking, sales and purchase commissions and charges and exchange fees, fees and charges of clearing agencies, interest and commitment fees on loans and debit balances, income taxes, withholding taxes, transfer taxes and other governmental charges and duties, any costs incurred in respect of meetings of the Directors (including its committees) and meetings, if any, of Shareholders, fees of the Company's legal advisors and the Auditors at such rates as may be agreed from time to time between the Company and the Auditors, Directors' fees and expenses, the costs of maintaining the Company's registered office in Malta and its registration with the MFSA and the costs of printing and distributing any offering materials and any reports and notices to Shareholders.

Fees and charges which are identifiable with a particular Sub-Fund shall be charged to such Sub-Fund. Fees and charges which are not identifiable to a particular Sub-Fund or apply to the Company generally will be borne pro-rata to the net assets in each Sub-Fund.

### **Subscription and Redemption Fees**

The Directors reserve the right to charge investors a subscription or redemption fee or charge as may be set out in the Offering Supplement in respect of a Sub-Fund.

## Section 12 | AML AND DATA PROTECTION

### Anti-Money Laundering (Maltese Law)

The Investment Manager and the Administrator are contractually bound by the Company to observe their obligations under the Prevention of Money Laundering Act (“PMLA”), which makes provision for the prevention and prohibition of money laundering in Malta. The PMLA establishes the foundations for the legal framework by introducing basic legal definitions, laying down the procedures for the investigation and prosecution of money laundering offences, and establishing the Financial Intelligence Analysis Unit (“FIAU”).

The obligations under the PMLA include the identification of customers, the retention of the relevant identification and transaction documentation and the reporting of transactions suspected of involving money laundering to the FIAU. In this regard, the Administrator has established appropriate internal procedures to fulfil these obligations which it monitors on a regular basis.

The Prevention of Money Laundering and Funding of Terrorism Regulations (the “PML Regulations”), issued in terms of the PMLA, serve to flesh out the systems and procedures to be adopted by subject persons in the course of their business activities. They also provide high level requirements for identification and customer due diligence, internal record keeping, reporting of suspicious transactions, internal and external reporting and employee instruction and training. The PML Regulations require that the identification documents/certificates obtained must be satisfactory and must be verified. The level and type of documentation required to identify a customer and the level of verification required may vary according to the investor’s Anti-Money Laundering (“AML”) risk profile. In this regard, the Regulations, in line with international standards, outline the various levels of due diligence required according to the level of risk posed by a particular customer and/or situation. The Regulations incorporate all applicable EU Directives to date.

### Anti-Money Laundering (Maltese Requirements)

The specific requirements include, inter alia, the fundamental requirement to conduct suitable investor due diligence, including the requirement to “know-your-client” (and to verify the identity thereof), which extends, for any ‘non-individual’ investor, to the ultimate beneficial owner(s) of the monies invested. This requirement is principally (though not exclusively) satisfied through documentary evidence, as listed in the AML Supplement which forms part of the Subscription Agreement. It should be noted that the Administrator may request further information, in order to satisfy its regulatory obligations.

The Administrator is also obliged to obtain information on the purpose and intended nature of the business relationship, in order to be in a position to establish the business and the AML risk profile of the investor. The Administrator is also obliged at law to carry out ongoing monitoring in the case of an existing business relationship, which includes the scrutiny of transactions undertaken throughout the course of the relationship in order to ensure that the transactions being undertaken are consistent with the Administrator’s knowledge of the investor and of his business and risk profile, including, where necessary, the source of funds as well as ensuring that the documents, data or information held by the Administrator are kept up-to-date.

The usual documents and information required are listed in the AML Supplement. Completion of the Subscription Agreement, serves as confirmation that the Subscriber understands and agrees to furnish the requested documents and other information to the Administrator. Where, following receipt

of cleared funds by the Executing Broker and prior to the issuance of Investor Shares, the Administrator is not satisfied with the AML documentation, the money may be held in the account to which it was remitted and the subscriber will bear all associated risks. The Administrator determines whether, in the light of its AML obligations, it has sufficient documentation in hand to allow the issuing of Investor Shares.

If any documents requested are not received within a reasonable time following submission of the Subscription Agreement, the Administrator will send a request to the Shareholder, informing it that these documents are still due. If, within a reasonable time after this reminder, the Administrator still has not received the documents requested, further requests will be sent to the Shareholder. For these further requests there will be a charge imposed on the Shareholder of €100, which will be charged directly against the Shareholder's interest in the Company.

It must also be noted that, in the event that a redemption request is received from a Shareholder who in the opinion of the Administrator has failed to submit all the required AML documents, although the redemption will be acted upon, Redemption Proceeds cannot be remitted to the Shareholder until all documents requested have been received or necessary verifications made. The Redemption Proceeds will be held by the Executing Broker and the Shareholder will bear all associated risks. Further, please note that it is a regulatory requirement to report suspicious transactions to the competent authorities, and any relevant data in this regard may need to be transferred to the relevant regulators.

The Company or the Administrator also reserve the right to refuse to return money remitted to the Company prior the issue of Investor Shares, and to make any redemption payment or distribution to a Shareholder, if any of the Directors of the Company or the Administrator suspects or is advised that the payment of any redemption or distribution moneys to such Shareholder might result in a breach or violation of any applicable AML laws or the laws, regulations, and Executive Orders administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other laws or regulations by any person in any relevant jurisdiction (collectively, "AML/OFAC obligations").

There is also a requirement to know the source of the funds, such requirement normally limited to knowing the bank and account from which the monies were remitted. A further requirement is that such monies invested may and will only be redeemed to the account of remittance, except as otherwise agreed with the Administrator.

Each Subscriber and Shareholder will be required to make such representations to the Company as the Company, the Investment Manager or the Administrator will require in connection with applicable AML/OFAC obligations, including, without limitation, representations to the Company that such Subscriber and Shareholder is not (i) an individual or entity named on any available lists of known or suspected terrorists, terrorist organisations or of other sanctioned persons issued by the United States government and the government(s) of any jurisdiction(s) in which the Company is doing business, including the "List of Specially Designated Nationals" and "Blocked Persons" administered by OFAC as such list may be amended from time to time; (ii) an individual or entity otherwise prohibited by the OFAC sanctions programs; or (iii) a current or former senior foreign political figure<sup>1</sup>

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<sup>1</sup> A "senior foreign political figure" is defined as (a) a current or former senior official in the executive, legislative, administrative, military or judicial branches of a non-U.S. government (whether elected or not), a current or former senior official of a major non-U.S. political party, or a current or former senior executive of a non-U.S. government-owned commercial enterprise; (b) a corporation, business, or other entity that has been formed by, or for the benefit of, any such individual; (c) an immediate family member of any such individual; and (d) a person who is widely and publicly known (or is actually known) to be a close associate of such individual. For purposes of this definition, a "senior official" or "senior executive" means an individual with substantial authority over policy, operations, or the use of government-

or politically exposed person<sup>2</sup>, or an immediate family member or close associate of such an individual. Further, such Subscriber or Shareholder must represent to the Company that it is not a prohibited foreign shell bank<sup>3</sup>.

Such Subscriber and Shareholder will also be required to represent to the Company that amounts contributed by it to the Company were not directly or indirectly derived from activities that may contravene U.S. Federal, state or international laws and regulations, including, without limitation, of such subscriber or Shareholder, either by prohibiting additional investments from the subscriber or Shareholder, declining any withdrawal requests from the subscriber or Shareholder, suspending the payment of withdrawal proceeds payable to the subscriber or Shareholder, and/or segregating the assets in the account in compliance with governmental regulations. The Company may also be required to report such action and to disclose the Subscriber and Shareholder's identity to OFAC or other applicable governmental and regulatory authorities.

Finally as the aforementioned legislation is subject to change, any additional requirements imposed on the Investment Manager, the Company or the Administrator will be reflected in the requirements requested of the Subscriber or Shareholder.

## Data Protection

In the course of business the Company and/or any of its delegates and/or service providers may collect, record, store, adapt, transfer and otherwise process information by which prospective investors may be directly or indirectly identified ("personal data"). The Company and/or any of its delegates is a "data controller", within the meaning of Data Protection Legislation, and undertakes to hold any personal information provided by investors in confidence and in accordance with Data Protection Legislation.

The Company and/or any of its delegates may process an investor's personal data for any one or more of the following purposes and legal bases:

- (a) Operating the Sub-Funds, including managing and administering an investor's holding in the relevant Sub-Fund and any related accounts on an on-going basis (i.e. for the performance of the Company's contract with the investor);
- (b) To comply with any applicable legal, tax or regulatory obligations, including legal obligations under company law, anti-money laundering legislation, taxation laws and financial services regulations;

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owned resources; and "immediate family member" means a spouse, parents, siblings, children and spouse's parents or siblings.

<sup>2</sup> A "politically exposed person" ("PEP") is a term used for individuals who are or have been entrusted with prominent public functions in a foreign country, for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves.

<sup>3</sup> A "prohibited foreign shell bank" is a foreign bank that does not have a physical presence in any country, and is not a "regulated affiliate," i.e., an affiliate of a depository institution, credit union, or foreign bank that (i) maintains a physical presence in the U.S. or a foreign country, and (ii) is subject to banking supervision in the country regulating the affiliated depository institution, credit union, or foreign bank.

- (c) For any other legitimate business interests of the Company or a third party to whom the data is disclosed, where such interests are not overridden by the interests of a data subject, including for statistical analysis (including data profiling) and market research purposes; or
- (d) For any other specific purposes where investors have given their specific consent. Where processing of personal data is based on consent, the investors will have the right to withdraw it at any time.

The Company and/or any of its delegates or service providers may disclose or transfer personal data, whether in Malta or elsewhere (including companies situated in countries outside of the EEA), to third parties, including financial advisers, regulatory bodies, taxation authorities, auditors, technology providers or to a Sub-Fund or the Company's delegates and its or their duly appointed agents and any of their respective related, associated or affiliated companies for the purposes specified above.

Please note that investors' personal data will be retained by the Company for the duration of their investment and otherwise in accordance with the Company's legal obligations including, but not limited to, the Company's record retention policy. In determining appropriate retention periods, the Company shall have regard to the purpose(s) for which it was collected, the prescriptive periods under Maltese law (statutes of limitation) and any statutory obligations to retain information, including anti-money laundering, revenue and tax legislation. The Company will take all reasonable steps to destroy or erase the data from its systems when they are no longer required.

Where specific processing is based on an investor's consent, that investor has the right to withdraw it at any time. Investors have the right to request access to their personal data kept by Company; and the right to rectification or erasure of their data; to restrict or object to processing of their data, and to data portability.

The Company and/or any of its delegates will not transfer personal data to a country outside of the EEA unless that country ensures an adequate level of data protection or appropriate safeguards are in place. The European Commission has prepared a list of countries that are deemed to provide an adequate level of data protection which, to date, includes Andorra, Argentina, Canada (limited to commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland, and Uruguay, as providing adequate protection. Further countries may be added to this list by the European Commission at any time. The US is also deemed to provide an adequate level of protection where the US recipient of the data is Privacy Shield-certified. If a third country does not provide an adequate level of data protection, then the Company and/or any of its delegates will rely on the "Model clauses" (which are standardised contractual clauses, approved by the European Commission) or Binding Corporate Rules or one of the other alternative measures provided for in Data Protection Legislation.

Where processing is carried out on behalf of the Company, the Company shall engage a "data processor", within the meaning of Data Protection Legislation, who provides sufficient guarantees to implement appropriate technical and organisational security measures in such a manner that processing meets the requirements of Data Protection Legislation, and ensures the protection of the rights of investors. The Company will enter into a written contract with the data processor which will set out the data processor's specific mandatory obligations laid down in Data Protection Legislation, including to only process personal data on documented instructions from the Company.

As part of the Company's business and ongoing monitoring, the Company may from time to time carry out automated decision-making in relation to investors, including profiling of investors, and this may result in an investor being identified to tax revenue and law enforcement authorities, and the Company terminating its relationship with the investor.

Investors are required to provide their personal data for statutory and contractual purposes. Failure to provide the required data will result in the Company being unable to permit the investor's investment in the Sub-Funds and this may result in the Company terminating its relationship with the investor. Investors have a right to lodge a complaint with the Information and Data Protection Commissioner in Malta if they are unhappy with how the Company is handling their data.

If you have any queries regarding this data protection notice, please contact the Directors at the address provided in the Directory.



## Section 13 | TAXATION

**Brief details of the taxation treatment of the Investor Shares in Malta are set out below but it is entirely the responsibility of prospective shareholders to inform themselves as to any taxation or exchange control legislation affecting them personally. The following summary should not be considered legal or professional tax advice.**

### General

Investors and prospective investors are urged to seek professional advice as regards both Maltese and any foreign tax legislation applicable to the acquisition, holding and disposal of Investor Shares as well as distributions, if any, made by the Company.

The following is a summary of the anticipated tax treatment applicable to the Company and to its Shareholders in Malta. This information, which does not constitute legal or tax advice, refers only to Shareholders who do not deal in securities in the course of their normal trading activity.

The information below is based on tax law and practice applicable at the date of this Offering Memorandum. Shareholders of the Company are reminded that tax law and practice and the levels of tax relating to the Company, its Sub-Funds and the Shareholders, may change from time to time.

### The Company

In terms of current legislation, the tax regime in Malta for collective investment schemes (including sub-funds of such collective investment schemes) is based on the classification of funds into “prescribed funds” or “non-prescribed funds”. In general, a “prescribed fund” is defined as a resident fund which has declared that the value of its assets situated in Malta amounts to at least eighty-five percent (85%) of the value of the total assets of the fund. A non-prescribed fund is a fund which does not qualify as a prescribed fund.

The Sub-Funds are classified as “prescribed” or “non-prescribed” funds in terms of the Investment Income Regulations. Unless otherwise specified in the Offering Supplement relating to a Sub-Fund, the Sub-Funds shall be classified as “non-prescribed” funds and a declaration to such effect will, where required, be made in accordance with the Investment Income Regulations to achieve such classification.

In respect of Sub-Funds which are classified as “non-prescribed funds”, a tax exemption at the Sub-Fund level applies on all the income/capital gains (except for income from immovable property situated in Malta, if any).

Sub-Funds which are classified as “prescribed funds” are subject to tax on certain local interest income and on income from immovable property situated in Malta. No Maltese tax is due in respect of foreign source interest which does not qualify as investment income for purposes of Maltese income tax laws.

The Company (whether in respect of “prescribed funds” or “non-prescribed funds”) is not entitled to a credit or to a refund of any tax at source deducted from income received by the Company.

In respect of both “prescribed funds” and ‘non-prescribed funds”, capital gains, dividends, interest and any other income from foreign securities held by the Company may be subject to tax imposed by the country of origin concerned and such taxes may not be recoverable by the Company or its investors.

## Value Added Tax

Fees chargeable to the Company may be subject to VAT in accordance with applicable law. If any VAT is charged, this will generally not be recoverable by the Company.

## The Shareholders

### - Capital Gains derived by Non-Maltese Resident Investors

Capital gains realised by investors who are non-residents of Malta and who are not owned and controlled by, directly or indirectly, nor act on behalf of, individuals who are ordinarily resident and domiciled in Malta, on the transfer or redemption of Investor Shares in “prescribed funds” or “non-prescribed funds” are exempt from tax in Malta.

### - Capital Gains derived by Maltese Resident Investors

#### Non-Prescribed Funds

Capital gains realised by Maltese resident investors on redemption of Investor Shares or the transfer of Investor Shares to third parties in a Sub-Fund classified as a “non-prescribed fund” are treated as follows:

In case of redemption of the Investor Shares by Maltese resident investors (other than (a) persons carrying on banking business or (b) persons carrying on the business of insurance or (c) companies owned and controlled, directly or indirectly, by such persons in (a) and (b)) any capital gain realised upon the redemption of units will be subject to a withholding tax of 15%. Such withholding tax will be deducted at source by the Company. In the case of Maltese resident persons carrying on banking business or carrying on the business of insurance or companies owned and controlled, directly or indirectly, by such persons and in case of Maltese resident investors who opt not to receive the capital gains subject to a 15% withholding tax, such investors will be bound to declare such capital gains in their personal income tax return and would be subject to tax at the normal rates of tax which are applicable to them.

In case of transfers of the Investor Shares by Maltese resident investors to third parties, the transferor is obliged to declare any capital gains in the income tax return and pay tax at the normal rates. Any capital gains on an eventual redemption will be calculated without reference to any intermediate transfer.

#### Prescribed Funds

Where the Investor Shares in a “prescribed fund” are listed on the Malta Stock Exchange or another recognised exchange any transfer or redemption of the said Investor Shares will be exempt from Maltese tax. Where the Investor Shares in a “prescribed fund” are not so listed then the transferor will be obliged to declare any capital gains in the income tax return and pay tax at the normal rates.

- Capital Gains on Switches

Capital gains arising from the exchange of investor shares from one Sub-Fund to another Sub-Fund within the same Company are only taxable when the investor shares are eventually disposed of. Any gains or losses arising from the intermediary exchange of investor shares will be taken into account in the computation of any final taxable capital gains.

- Distributions by the Sub-Funds

Distributions by the Sub-Funds (both “prescribed funds” and “non-prescribed funds”) will be subject to a withholding tax if such distribution by the Sub-Fund is made out of what is known as the untaxed account and is made to:

- a. Maltese resident investors (other than Maltese resident companies), and
- b. non-Maltese resident investors (including non-resident companies) who are owned and controlled by, directly or indirectly, or who act on behalf of, individuals who are ordinarily resident and domiciled in Malta

The rate of withholding tax is 15% and such withholding tax will be deducted by the Company. Investors who receive dividends out of the Untaxed Account subject to the said 15% withholding tax are not required to declare such dividends in their Maltese income tax returns. However, such investors are entitled, depending on their personal circumstances, to declare such dividends in their income tax return and claim a credit of the 15% tax withheld.

The distribution of profits out of the untaxed account to persons (other than those mentioned in (a) and (b)) is not subject to withholding tax.

In view of the fact that a “non-prescribed fund” will likely receive foreign source income from its investments and such foreign source income will be exempt from Maltese tax in the hands of the said “non-prescribed fund”, it is expected that such Sub-Fund will be allocating the majority of its profits to its untaxed account.

## **Duty on Documents and Transfers**

Redemptions of Investors Shares by the Company and transfers of Investor Shares to third parties are exempt from duty on documents and transfers in Malta, as the Company is a licensed collective investment scheme and will apply for a stamp duty exemption in terms of the applicable Maltese stamp duty legislation.

## **FATCA Implementation in Malta**

On 16 December 2013, the governments of Malta and the United States signed an agreement to “Improve International Tax Compliance and to Implement FATCA” (the “Inter-Governmental Agreement”). This agreement will significantly increase the amount of tax information automatically exchanged between Malta and the United States. It provides for the automatic reporting and exchange of information in relation to accounts held in Maltese “financial institutions” by U.S. persons and the reciprocal exchange of information regarding U.S. financial accounts held by Maltese residents. One or more Sub-Funds may be subject to these rules.

The Inter-Governmental Agreement provides that Maltese financial institutions will report to the Malta Finance Ministry or its delegates in respect of U.S. account-holders and, in exchange, U.S.

financial institutions will be required to report to the U.S. Secretary of the Treasury or his delegates in respect of any Malta-resident account-holders. The two tax authorities will then automatically exchange this information on an annual basis.

A Sub-Fund (and / or the Administrator) shall be entitled to require investors to provide any information regarding their tax status, identity or residency in order to satisfy any reporting requirements which a Sub-Fund may have as a result of the Inter-Governmental Agreement or any legislation issued in connection with the agreement and investors will be deemed, by their subscription for or holding of Shares to have authorised the automatic disclosure of such information by the issuer or any other person to the relevant tax authorities.

Other jurisdictions may enact legislation, regulations or official guidance which may result in further intergovernmental agreements with potentially similar reporting exchange of information and/or withholding obligations.

### **Common Reporting Standards**

The Organisation for Economic Co-operation and Development (OECD) has developed a new global standard for the automatic exchange of financial information between tax authorities (the “Common Reporting Standard”), which is similar to FATCA. Malta is a signatory jurisdiction to the Common Reporting Standard.

The European Union directive regarding the taxation of interest income (the “EU Savings Directive”) has been repealed and was effectively replaced by EU Council Directive 2014/107/EU. EU Council Directive 2014/107/EU extends the scope of mandatory exchange of information between EU member states to financial account of information. This extension effectively incorporated the Common Reporting Standard in the EU Directives concerning automatic exchange of information.

The EU Council Directive 2014/107/EU and the Common Reporting Standard have been implemented in Maltese legislation through the publication of the Co-Operation with Other Jurisdictions on Tax Matters (Amendment) Regulations with effect from 1 January 2016 and the Inland Revenue has published guidelines in this respect.

The said requirements, may impose additional burdens and costs on the Company (or each Sub-Fund) and/or its Investors.

The Company (or each Sub-Fund) may require certain additional financial information from Investors and financial intermediaries acting on behalf of Investors to comply with its diligence and reporting obligations. If the Company (or each Sub-Fund) is unable to obtain the necessary information from Investors, it may take any steps necessary to avoid resulting sanctions, which may include (but are not limited to) compulsorily redeeming the relevant Investor.

### **Financial Transaction Taxes**

A number of jurisdictions have implemented, or are considering implementing, certain taxes on the sale, purchase or transfer of financial instruments (including derivatives), such taxes commonly known as the “Financial Transaction Tax” (“FTT”). Prospective investors should consult their own tax advisers in relation to the consequences of any FTT associated with subscribing, purchasing, holding and disposing of shares in Sub-Funds.

## Other Taxes

Prospective shareholders should consult their own counsel regarding tax laws and regulations of any other jurisdiction which may be applicable to them.

Potential investors should consult their own professional advisor on the possible tax implications of buying, holding, transferring or selling any of the Shares under the laws of their countries of citizenship, residence and domicile.

No warranty is given or implied regarding the applicability or interpretation of the tax laws in any jurisdiction.

**PROSPECTIVE SHAREHOLDERS SHOULD CONSULT THEIR OWN PROFESSIONAL TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF AN INVESTMENT IN THE SHARES OF THE COMPANY TO THEM INDIVIDUALLY.**

**TAX CONSEQUENCES MAY VARY DEPENDING UPON THE PARTICULAR STATUS OF AN INVESTOR.**

**THE TAX AND OTHER MATTERS DESCRIBED IN THIS OFFERING MEMORANDUM DO NOT CONSTITUTE, AND SHOULD NOT BE CONSIDERED AS, LEGAL OR TAX ADVICE TO INVESTORS.**

## Section 14 | INDEMNITIES

The Company has agreed that with respect to any actions in which any of its Directors, Officers, employees and agents are a party, the Company shall indemnify and hold harmless such person against any loss, claim, damage, charge, liability or expense (including reasonable attorneys' and accountants' fees), judgements and amounts paid in settlement, provided such actions did not involve negligence/ gross negligence (as applicable), wilful default or fraud. Expenses may be paid by the Company in advance of the final disposition of such action if the indemnified person agrees to reimburse the Company in the event indemnification is not permitted. Details of the indemnities granted by the Company are set out in the agreement with the respective service provider.

The Company may purchase and maintain insurance in relation to the Directors against any liabilities asserted against them.

In addition, the Company has granted indemnities to the members of the Investment Committee, the Investment Manager, the Executing Broker and the Administrator and their respective directors, officers, employees and agents (including any Investment Advisors, Sub-Investment Managers and Investment Distributors) in respect of actions brought against them in their respective capacities provided that such actions did not involve negligence, wilful default or fraud.

## Section 15 | DETERMINATION OF NET ASSET VALUE

### NAV per Share

The NAV per Share will be determined by the Administrator, except when the determination of same has been suspended in accordance with the Memorandum and Articles, on each Valuation Day and is calculated to four (4) decimal figures by aggregating the value of the assets owned or contracted by the relevant Sub-Fund and attributable to the relevant class and deducting all of the liabilities of the Sub-Fund attributable to the relevant class (including accrued liabilities and such provisions and allowances for contingencies as the Administrator considers appropriate in respect of the costs and expenses payable by the Sub-Fund and attributable to the relevant class including any accrued performance fees) and dividing such sum by the number of Investor Shares of the relevant class as may be outstanding at the close of business on that Valuation Day.

The Administrator shall not be responsible for any error in calculating the value of assets except in case of fraud, wilful default or negligence, and no adjustment shall be made to the values of any assets unless the valuation error exceeds 0.5% (half a percentage point) of the NAV in which case it shall be adjusted.

### Calculation of NAV and valuation of assets

In general, the assets of the Sub-Funds will be valued as follows:

- (a) The value of any investment which is quoted, listed or normally dealt in on a market shall be calculated by reference to the price appearing to the Company to be the last available bid price if bid and asked prices are available (or if bid and asked prices are not available, the closing price) on the market on which the investment is quoted, listed or ordinarily dealt in for such amount of such investment as the Company may consider in the circumstances to provide a fair criterion, provided that:
  - (i) if an investment is quoted, listed or normally dealt in on more than one market, the Company shall adopt the last available bid price or, as the case may be, the closing price, on the market which in their opinion provides the principal market for such investment; and
  - (ii) in the case of an investment which is quoted, listed or normally dealt in on a market but in respect of which for any reason, prices on that market may not be available at any relevant time, the value therefore shall be certified by a person firm or association making a market in such investment and qualified, in the opinion of the Company, to provide such a certificate; and
  - (iii) there shall be taken into account interest on interest bearing investments up to the relevant Valuation Day.
- (b) The value of any investment, which is not quoted, listed or normally dealt in on a market shall be the value thereof ascertained by the Company in good faith. For this purpose:

- (i) the initial value of such investment shall be the amount expended in the acquisition thereof (including the amount of the stamp duties, commissions and other expenses incurred in the acquisition thereof and the vesting thereof in the Sub-Fund);
  - (ii) there shall be taken into account interest on interest bearing investments up to the relevant Valuation Day; and
  - (iii) in valuing such investments the Company may consider, inter alia, the fundamental analytical data relating to the investments, the nature and duration of restrictions on disposition of the investments and the forces, which influence the market in which the investments are purchased and sold.
- (c) The value of any future contracts, index futures contracts and options which are dealt in on a market shall be calculated by reference to the price appearing to the Company to be the settlement price as determined by the market in question provided that where it is not the practice of the relevant market to quote a settlement price or if such settlement price is not available for any reason, such value shall be calculated in such manner as the Company shall determine;
- (d) On each Valuation Day, the value of any investment vehicle in which a Sub-Fund is invested will be the final net asset value ("Final NAV") reported by the fund manager or administrator of the investment vehicle on the Valuation Day or, if not available, the most recent estimated net asset value based on preliminary returns reported by such fund manager or administrator ("Estimated NAV"). All values assigned to securities and other assets and liabilities by the relevant party shall be final and conclusive as to all holders of the Investor Shares in the Sub-Fund. The NAV per Share will be based on Estimated NAV when Final NAV is unavailable. The Company will obtain confirmation from the managers or administrators of the investment vehicle in which the Sub-Fund invests regarding their net asset value calculations (whether they are supplying Estimated or Final NAV) prior to the determination of the NAV per Share. Once the NAV per Share has been finalised as of any Valuation Day, whether or not based on Estimated NAV, no adjustments or restatements of such NAV per Share will be performed, even if the Final NAV for particular assets differs from the Estimated NAV used to value such assets. Thus, in the event that there is a difference between Estimated NAV and Final NAV, any necessary adjustments will affect, and be reflected in, the NAV per Share reported in subsequent periods only. Accordingly, any purchase or redemption of Investor Shares will be at NAV per Share as of the Valuation Day coinciding with or immediately preceding the relevant Dealing Day. If there is ultimately a difference between the Estimated NAV and the Final NAV for particular assets that results in an adjustment of NAV after the Dealing Day, the Company will not make any adjustment to the dealing price;
- (e) Currency and futures forwards and currency and futures options shall be valued at bid or offer values (as appropriate) in accordance with procedures determined by the Company, as at such time on the Valuation Day as shall be determined by the Company;
- (f) Certificates of deposit acquired at their nominal value plus accrued interest (if any) shall be valued at cost plus accrued interest from the date of acquisition on the nominal value at the coupon rate;
- (g) Certificates of deposit acquired at a discount or premium on the sum of the nominal value and accrued interest at the date of acquisition shall be valued at their cost plus accrued interest from the date of acquisition on the nominal value at the coupon rate, and adjusted by an amount equal to the discount or premium at which they were acquired divided by the



- number of days unexpired at the date of acquisition and multiplied by the number of days elapsed from the date of acquisition to the relevant Valuation Day;
- (h) Interest bearing securities shall be valued at cost plus accrued interest from the date of acquisition and adjusted by an amount equal to any discount or premium on the sum of the nominal value and accrued interest at the date of acquisition divided by the number of days unexpired at the date of acquisition and multiplied by the number of days elapsed from the date of acquisition to the relevant Valuation Day;
  - (i) In the case of any security or other property which in the opinion of the Company it would not be appropriate to value as above provided, the value thereof shall be determined in such manner as the Company shall from time to time determine;
  - (j) In the case of any asset realised or contracted to be realised at a known value the net proceeds, discounted at a rate considered appropriate by the Company of such realisation shall be taken into account in lieu of any other method of determining the value of the asset concerned;
  - (k) The value of any such securities or other assets listed above shall be determined having regard to the full amount of any currency premium or discount which may be relevant.

Prospective investors should be aware that situations involving uncertainties as to the valuation of investment vehicles may occur and could have an adverse effect on a Sub-Fund's net assets. Absent bad faith or manifest error, the NAV per Share as determined by the Administrator is conclusive and binding on all Shareholders.

The Company may, in respect of certain assets, appoint an independent valuer to value such assets. The independent valuer shall be: (a) independent from the Company, its officials, or any service provider to the Company; (b) of good standing with recognised and relevant qualifications and an authorised member of a Recognised Professional Body; and (b) appointed by the Directors in consultation with the Auditors.

### **Suspension of Calculation of Net Asset Value**

The Company may suspend the calculation of the NAV per Share of any Sub-Fund, whereupon the issue and redemption of Investor Shares of that Sub-Fund will be suspended, under any one or more of the following circumstances:

- (a) a closure of or suspension of trading on any market on which any assets of that Sub-Fund are traded; or
- (b) a breakdown occurs in any of the means normally employed by the Administrator or Investment Manager to ascertain the value of the assets of that Sub-Fund or when for any other reason the value of the assets of that Sub-Fund cannot reasonably be ascertained; or
- (c) circumstances exist as a result of which in the opinion of the Investment Manager in consultation with the Directors it is not reasonably practicable for the Sub-Fund to realise any investments or other assets owned or contracted for which together constitute a material proportion of the overall assets of that Sub-Fund; or
- (d) for any other reason that the Investment Manager in consultation with the Directors in their discretion deem is in the best interests of the Sub-Fund.

In determining the NAV per Share, the Administrator will follow the valuation policies and procedures adopted by the Company as set out above. For the purpose of calculating the NAV per Share, the Administrator shall, and shall be entitled to, rely on, and will not be responsible for the accuracy of, financial data furnished to it by the Executing Broker or the Investment Manager. The Administrator may also use and rely on industry standard financial models in pricing any of a Sub-Fund's securities or other assets. If and to the extent that the Investment Manager is responsible for or otherwise involved in the pricing of any of a Sub-Fund's securities or other assets, the Administrator may accept, use and rely on such prices in determining the NAV per Share and shall not be liable to the Company, any investor in the Company, the Directors, the Investment Manager or any other person in so doing. The Administrator is not required and is under no obligation to value underlying assets in calculating the Net Asset Value and/or verify pricing information. Accordingly, in calculating the Net Asset Value, the Administrator shall rely in absolute terms upon the Company, its delegates or the relevant service providers for the purpose of providing the valuation of the underlying assets. The Administrator shall have the right to request the Directors to confirm the sources used for the valuation of the underlying assets.

**Additional conditions or methodologies relating to the calculation of the NAV of any particular Sub-Fund (including any class thereof) will, if applicable, be found in the relative Offering Supplement.**

## Section 16 | GENERAL INFORMATION

### Dividend Policy

Except where otherwise stated in the Offering Supplement of any particular Sub-Fund, it is not envisaged that any income or gains will be distributed by the Company to its Shareholders. The Company will accumulate all income received from its investments, which income will be reflected in the NAV per Share.

### Amendments to the Offering Memorandum and Offering Supplements

This Offering Memorandum and the Offering Supplements issued by the Company in respect of its Sub-Funds may be amended or supplemented at any time as determined by the Directors in their sole discretion for the purpose of: (i) clarifying any inaccuracy or ambiguity or reconciling any inconsistency in its provisions, or as between the provisions of this Offering Memorandum and/or any Offering Supplements and/or the provisions of the Memorandum and Articles, or to make any other provisions with respect to matters or questions arising under this Offering Memorandum and the Offering Supplements which are not inconsistent with the provisions of the Memorandum and Articles; (ii) deleting or adding any provision required to be deleted or added by the MFSA or any other governmental agency or official or in order to comply with any law, rule or regulation applicable to the Company or any of its service providers; (iii) reflecting a change of location of the principal place of business of the Company or its service providers, (iv) reflecting and describing an amendment to the terms of any agreement entered into by the Company and described herein, or reflecting and describing the terms of any new agreement entered into by the Company following the date of this Offering Memorandum or any Offering Supplement; (v) making provision for the offer of a new class of Investor Shares in an existing Sub-Fund; (vi) changing this Offering Memorandum and/or any Offering Supplements in any manner that does not, in the opinion of the Board of Directors, adversely affect the Shareholders in any material respect or that is required or contemplated by the provisions of the Memorandum and Articles or by any provision of this Offering Memorandum and/or Offering Supplements; or (vii) making any other amendment similar to the foregoing that the Directors determine to be in the best interests of the Company (provided always that such amendment does not conflict with the terms of the Memorandum and Articles).

Investors should note that, unless otherwise provided in this Offering Memorandum or relevant Offering Supplements for any specific cases or events, by subscribing for Investor Shares they accept that the terms of this Offering Memorandum and the Offering Supplements may be amended by the Board of Directors in accordance with the foregoing criteria without any advance notification to, or consent of, the Shareholders and that any amendments to this Offering Memorandum and/or the Offering Supplements effected by the Board of Directors in accordance with the foregoing criteria will be notified to the Shareholders following the adoption thereof.

### Annual Reports

The Accounting Reference Date adopted by the Company is the 31<sup>st</sup> December of each year. The first Accounting Period commenced on the date of registration of the Company and shall end on 31<sup>st</sup> December 2012.

The financial statements of the Company are prepared in accordance with International Financial Reporting Standards and are audited annually at the Company's expense by an independent firm of auditors.

Copies of the audited yearly reports are normally mailed to registered Shareholders and to the MFSA within a maximum period of six (6) months from the financial year end.

### **Evidence of Ownership of Investor Shares**

Ownership of Investor Shares in the Company shall be evidenced by book entries in registers maintained by the Administrator and Investor Shares shall not, unless specifically requested by the Subscriber, be certificated. Pledges of Investor Shares shall be notified to the Administrator and shall also be evidenced in the same manner.

### **Information, Reporting and Side Arrangements**

The Company may enter into separate agreements with certain Shareholders, including, without limitation, those deemed to involve a significant or strategic relationship, granting such Shareholders access to additional information and reporting which information and reporting other Shareholders will not receive. Such information and reporting may provide the recipient greater insights into the Company and the Sub-Fund's activities than is included in standard reports to Shareholders, thereby enhancing the recipient's ability to make investment decisions with respect to the Company and the Sub-Funds and with respect to the investment of its own assets.

The Company may not, and is not required to, provide the same type or level of disclosure regarding such information to all Shareholders. Accordingly, certain Shareholders may invest on terms that provide access to information that is not generally available to other Shareholders and, as a result, may be able to act on such additional information (e.g., request redemptions) that other Shareholders do not receive.

The Directors may in their absolute discretion agree to provide certain strategic investors in the Company with information about the Sub-Funds and its investments which is not available to investors generally.

### **Soft Dollar Arrangements**

The Investment Manager may at its sole discretion, use certain brokers with which they have negotiated terms and conditions and commission rates.

The Investment Manager may also effect transactions or arrange for the effecting of transactions through brokers with whom they have soft dollar agreements. The benefits provided under such agreements will assist the Investment Manager in the provision of services to the Company and to other third parties. Specifically, the Investment Manager may agree that a broker shall be paid a commission in excess of the amount another broker would have charged for effecting such transactions so long as, in the good faith judgement of the Investment Manager, the amount of the commission is reasonable in relation to the value of the brokerage and other services provided or paid for by such broker. Such services, which may take the form of research, analysis and advisory services, market price services, electronic trade confirmation systems, third party electronic dealing or quotation systems, computer hardware associated with specialised computer software or research services may be used by the Investment Manager in connection with transactions in which the Company will not participate. The Investment Manager will only effect a transaction, with any

person pursuant to a commission based agreement or a soft dollar arrangement, which is in the best interest of the Company.

### Material contracts

The following contracts have been entered into by the Company, as the case may be, prior to the date of this Offering Memorandum and are, or may be, material:

- (A) An Amended and Restated Investment Management Agreement dated 4<sup>th</sup> June, 2014 between: (1) the Company; and (2) the Manager whereby, subject to the control of and review by the Directors, the Company has delegated the task of the day-to-day portfolio and risk management of the Company and the Sub-Funds to the Investment Manager, who has undertaken to do perform such functions in accordance with the general directions of Investment Committee and the relevant investment objectives, strategies and restrictions established in the Offering Memorandum of the Company and the Sub-Funds. The Investment Management Agreement will continue in force until terminated by any party on 90 days' notice in writing to the other parties. It may be terminated forthwith by any party on immediate written notice if another party commits any material breach of its obligations and fails to remedy the breach within 30 days of receipt of written notice requiring the same, or if another party is dissolved or otherwise enters into insolvency proceedings. The Investment Manager will not be liable for any losses suffered by the Company or the Sub-Funds in connection with the performance or non-performance by it of its obligations and duties under the Investment Management Agreement in the absence of fraud, wilful default or gross negligence on the part of the Investment Manager. The Company has agreed to indemnify the Investment Manager against all losses incurred by it in the performance of its functions or services under the Investment Management Agreement other than liabilities arising out of the fraud, wilful default or gross negligence on the part of the Investment Manager in the performance or non-performance of its obligations and duties.
- (B) An Administration Agreement dated 9<sup>th</sup> March, 2012 between: (1) the Company; and (2) the Administrator pursuant to which the Company has appointed the Administrator to provide certain administration, accounting, registration, transfer agency and related services to the Company and the Sub-Funds. The Administrator is entitled to be indemnified by the Company, in respect of its relevant Sub-Funds, against all liabilities, damages, loss, claims and expenses (including without limitation legal fees on a full indemnity basis and amounts reasonably paid in settlement) arising out of any claims asserted or threatened against the Administrator (other than those as a direct result of the Administrator's own gross negligence, fraud, wilful misconduct or, reckless or wilful disregard of its duties) in performing its obligations or duties. The Administration Agreement is entered into for an initial fixed period until 31<sup>st</sup> December, 2013. Following this period, the Administration Agreement may be terminated by either party upon not less than 90 days' prior written notice (or such other shorter period as the parties may agree). In all cases including during the Initial Date, the Administration Agreement may be terminated without notice in the case of material breaches, liquidation of a party, breach of representations and warranties and/or if it ceases to be lawful for the Administrator to continue to provide its services.

### Additional Information

The Company intends that all prospective investors be given access to information appropriate for their consideration in determining whether to invest in the Company and its Sub-Funds. Accordingly, prospective investors may communicate in this regard with the Company and/or the Investment Manager.

Copies of the following documents will be available for inspection by prospective investors (and Shareholders) or their representatives at the registered office of the Company, or at the offices of the Administrator:

- the Memorandum and Articles, and the certificate of incorporation of the Company;
- the collective investment scheme licence issued in respect of a Sub-Fund;
- the latest Offering Memorandum and Offering Supplement of the Sub-Funds;
- the Investment Management agreement;
- any executing brokerage Agreement
- the Administration Agreement
- the ISAct
- the audited financial statements of the Company, when available
- the memorandum and articles of association, and certificate of incorporation of any underlying special purpose vehicle
- the audited financial statements of any underlying special purpose vehicle, when available.

In addition to the documents referred to above, certain additional documents may be made available to prospective investors upon written request. The Company or its representatives will also answer enquiries from prospective investors concerning matters relating to a Sub-Fund. Prospective investors will be afforded the opportunity to obtain additional information (to the extent that the Company possesses such information or can acquire it without unreasonable effort or expense) necessary to verify the accuracy of any representation or information set forth in this document.

## Section 17 | UNDERTAKINGS AND WARRANTIES

Subscribers should take notice that by completing and executing the Subscription Agreement and the Qualifying Investor Declaration Form, the Subscriber is entering into the following undertakings and giving the following warranties specified herein below:

- (a) The Subscriber irrevocably subscribes for the Investor Shares as specified in the Subscription Agreement, as may be determined in accordance with the Memorandum and Articles at the Initial Offering Price or, if the subscription is made after the Closing Date, at the prevailing Offering Price on the next Subscription Day following acceptance of the application by the Company. The Subscriber understands that fractional shares may be issued up to four (4) decimal places.
- (b) The Subscriber acknowledges that Investor Shares will be issued on the next Subscription Day following receipt of both the Subscription Agreement and the subscription monies in cleared funds, the former of which must be received by the Company at the office of the Administrator and the latter of which must be received by the Company in acceptable form, no later than the Closing Date and thereafter no later than one Business Day prior to the close of business on the relevant Subscription Day.
- (c) The Subscriber agrees that subscriptions and redemptions made in currencies other than the Base Currency of the relevant class of Investor Shares will be sold or purchased on behalf of the Company by the Investment Manager at the current market rate for the said designated currency and Investor Shares will be issued, or payment of redemption proceeds will be made, to the value of the said designated currency proceeds and the Subscriber accepts the exchange risk and costs relating to that transaction.
- (d) The Subscriber acknowledges and confirms receipt of, and that he has read, is familiar with and understands this Offering Memorandum and the Offering Supplement of the relevant Sub-Fund.
- (e) The Subscriber recognises that an investment in the Company involves a high degree of risk and has taken full cognisance of and understands all of the risk factors related to the purchase of Investor Shares, including but not limited to those set forth in this Offering Memorandum under "Section 3 | Risk Factors" and such other risk factors that may be set out in the Offering Supplement of the relevant Sub-Fund. In evaluating the suitability of an investment in the Company the Subscriber has not relied upon any representations or other information (whether oral or written) other than as set forth herein.
- (f) The Subscriber has taken the advice of professional advisors who have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of this investment and the Subscriber is fully capable of assessing and bearing the risks involved in the Subscriber's own right or with the benefit of such professional advice received.
- (g) The Subscriber acknowledges the Minimum Initial Subscription, Minimum Holding, Minimum Additional Subscription, Minimum Redemption and other minimum restrictions as outlined herein.
- (h) The Subscriber warrants that it is eligible to be treated as a Qualifying Investor.

- (i) The Subscriber warrants that it has the knowledge, experience, and expertise in financial matters to evaluate the risks and understand the relevant Sub-Fund's investment policy, has received, read and understood this Offering Memorandum and the Offering Supplement relating to the relevant Sub-Fund and is aware of the risks inherent in investing in the Investor Shares relating to the Sub-Fund and the method by which the assets of the Sub-Fund are held and traded, as described in this Offering Memorandum and the Offering Supplement and the Subscriber can bear the risk of loss of his/her entire investment.
- (j) The Subscriber agrees that the Investor Shares hereby subscribed for will be held subject to the terms and conditions of the Memorandum and Articles and the Offering Memorandum as amended from time to time and that the Company may fully protect and indemnify its Directors, the members of the Investment Committee, the Investment Manager, the Executing Broker and the Administrator as set out in this Offering Memorandum.
- (k) The Subscriber fully appreciates the Company's rights to accept or reject all applications for subscription in its sole discretion.
- (l) The Subscriber agrees that no Investor Shares hereby subscribed for may at any time be transferred to any other person without first seeking the approval of the Company in accordance with the provisions of "Section 9 | Acquisition of Investor Shares".
- (m) The Subscriber acknowledges and accepts that no share certificates will be issued.
- (n) The Subscriber acknowledges and accepts that the Offering Memorandum, the Subscription Agreement including the Qualifying Investor Declaration Form are governed by Maltese law and hereby submits to the non-exclusive jurisdiction of the Courts of Malta.
- (o) The Subscriber confirms that, to the best of the Subscriber's knowledge and belief, the Subscriber's subscription moneys are not, in whole or in part, the proceeds of drug trafficking, terrorism or any other criminal activity, nor do they represent, in whole or in part, directly or indirectly, such proceeds.
- (p) If the Subscriber is an individual person, or is a nominee for an individual person, he warrants that he is, and the beneficial owners (if applicable) are, at the date of execution of this Subscription Application, the greater of 18 years of age, or the minimum age permitted to enter into a legally binding and irrevocable contract, such as the Subscription Application, in his, or the beneficial owner's, country of residence.
- (q) The Subscriber acknowledges that it has read and understood the contents of "Section 12 | AML and Data Protection" in the Offering Memorandum and further acknowledges that the Company, Administrator or other service provider to the Company may be required by applicable laws and/or regulations to take further reasonable steps to establish the identity of the Subscriber or of any other person whom the Company, Administrator or other service provider knows or has reason to believe is a person for whom or on whose behalf the Subscriber is acting and the Subscriber undertakes to co-operate with and assist the Company, Administrator or other service provider in relation to such steps and the Subscriber acknowledges that the Company, Administrator or other service provider shall be held harmless and indemnified by the Subscriber against any loss arising as a result of a failure to process the Subscription Application if any information required by the Company, Administrator or other service provider has not been provided by the Subscriber. In this context, the Subscriber hereby agrees that it will provide the relevant information requested in the AML Supplement, which forms part of the Subscription Agreement.



- (r) If the Subscriber wishes to redeem his investment but the information has not been provided, the redemption will be acted upon but no monies will be paid to the Subscriber. Instead, the monies will be held in the Subscriber's name at the Company's account and the Subscriber will bear all associated risks.
- (s) The Subscriber confirms that, if it is a "Designated Body" (which is a bank, insurance company, or other financial institution, or financial intermediary, which is domiciled in an EU, OECD or FATF approved jurisdiction and is regulated by an approved regulated body), subscribing for and on behalf of another person as nominee, it has verified the identity of that other person in accordance with applicable anti-money laundering laws and/or regulations.
- (t) The Subscriber consents to the release by the Remitting Bank from which the subscription was made to the Company and/or the Administrator or other service provider of all evidence of the Subscriber's identity which said bank / financial institution shall have retained. The Subscriber agrees that such evidence may further be furnished by the Company and/or the Administrator to any other service provider to the Company upon request, to enable such other service provider to meet its obligations under applicable laws and/or regulations.
- (u) The Subscriber hereby authorises the Company and the Administrator to obtain verification of any information provided by the Subscriber as part of its subscription application.
- (v) The Subscriber agrees to provide any other information that may be required from time to time in compliance with relevant regulations.
- (w) Subscribers should be aware that suspicious events are reportable, under the Maltese prevention of money laundering laws and regulations and, by way of example, failure to provide justification for the change of bank account, or a request to pay the proceeds into a bank account in a jurisdiction which the subscriber is not a resident could be deemed suspicious and therefore would be reportable under the regulations and may cause the payment to be delayed or refused.
- (x) The Subscriber consents to the processing of any Personal Data by the Company and/or its data processors (which include the Administrator and the Investment Manager) as described in "Section 12 | AML and Data Protection" and specifically and unambiguously consents to the transfer of any such Personal Data to the persons and in the manner described in the aforementioned Section.
- (y) The Subscriber agrees that, where redemption requests made by the Subscriber are sent to the Company at the office of the Administrator by facsimile, the Subscriber shall immediately send the original such notice to the Company at the office of the Administrator by post or by courier but that the Administrator shall, nonetheless, be entitled, but not obliged, to treat such facsimile notice at face value and to act thereon if the original has not arrived by the relevant Subscription Day.

Exceptions are made where the delivery of the communication has been acknowledged by a signed receipt. The Subscriber further agrees to indemnify and hold harmless the Administrator, its directors and other officers, servants, employees and agents from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgements, suits, costs, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the gross negligence, fraud or wilful default of the Administrator, its directors or other officers, servants, employees or agents in its treatment of such facsimile notice) which

may be imposed on, incurred by or asserted against Administrator, its directors or other officers, servants, employees or agents in its treatment of such facsimile notice.

# DIRECTORY

**Directors of the Company**

Mr. Nicholas Calamatta  
Mr. Claudio Pereira  
Mr. Eros Lombardo

**Registered Office**

**Himalaya SICAV p.l.c.**  
259, St. Paul Street,  
Valletta VLT 1213,  
Malta

**Investment Committee**

Mr. Nicholas Calamatta  
Mr. Mario Bugeja  
Mr. Anthony V. Xuereb

**Investment Manager**

**Gamma Capital Markets Limited**  
259, St Paul Street,  
Valletta VLT 1213,  
Malta

**Administrator**

**Calamatta Cuschieri Fund Services Limited**  
Ewropa Business Centre,  
Triq Dun Karm,  
Birkirkara BKR 9034,  
Malta

**Company Secretary**

**E2S Monitoring Ltd.**  
259, St. Paul Street,  
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**Swiss Representative**

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Qormi QRM 3101,  
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**Legal Advisors (Malta)**

**GANADO Advocates**  
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Valletta VLT 1455,  
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